Income and Corporation Taxes Act 1988

1988 CHAPTER 1

An Act to consolidate certain of the enactments relating to income tax and corporation tax, including certain enactments relating also to capital gains tax; and to repeal as obsolete section 339(1) of the Income and Corporation Taxes Act 1970 and paragraphs 3 and 4 of Schedule 11 to the Finance Act 1980. [9th February 1988]

Editorial Information

X1 EDITORIAL NOTE

The originating text of this Act is derived from the 1990 edition of The Taxes Acts edited by the Inland Revenue and published by Her Majesty's Stationery Office. The style of editing followed in older versions of the revised text may therefore differ from that applicable to most other Acts published in the online edition of the revised statutes. Any references in older footnote annotations to Vol. 1, 2 etc. are to the Volumes of that 1990 edition.

References to Acts in sidenotes and footnote annotations may be abbreviated. The main abbreviations used are listed below. Where a reference to an Act consists of the year, or the year and a series number (such as "1975", or "1975 (No. 2)", etc.), without any following letter(s) in parentheses, the reference is in most cases to the Finance Act, or Finance (No. 2) Act, etc., of that year. Exceptions to this are 1952, 1970, and 1988 (as to which see the list below).

ABBREVIATIONS USED IN SIDENOTES AND FOOTNOTES

1828 (R.S.) = Revenue Solicitors Act 1828 (c. 25, SIF 57)
1890 (I.R.R.) = Inland Revenue Regulation Act 1890 (c. 21, SIF 63:1)
1952 = Income Tax Act 1952 (c. 10, SIF 63:1)
1968 (C) = Capital Allowances Act 1968 (c. 3)
1970 (M) = Taxes Management Act 1970 (c. 9, SIF 63:1)
1970 = Income and Corporation Taxes Act 1970 (c. 10, SIF 63:1)
1970 (F) = Finance Act 1970 (c. 24, SIF 63:1,2)
1970 (No.2) = Income and Corporation Taxes (No.2) Act 1970 (c. 54)
1975 (O) = Oil Taxation Act 1975 (c. 22) (and similarly as respects subsequent years)
1976 (D) = Development Land Tax Act 1976 (c. 24)
1977 (I.T.R.) = Finance (Income Tax Reliefs) Act 1977 (c. 53)
1979 (C) = Capital Gains Tax Act 1979 (c. 14, SIF 63:2)
1984 (C) = Capital Transfer Tax Act 1984/Inheritance Tax Act 1984 (c. 51, SIF 65)
1988 = Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1)
1988 (F) = Finance Act 1988 (c. 39, SIF 63:1,2)

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1990 (C) = Capital Allowances Act 1990 (c. 1, SIF 63:1)
O.J. = Official Journal of the European Communities
SIF = Statutes in Force, the official hard-copy predecessor to the online statutes (and any following numbers refer to the relevant volume)

Modifications etc. (not altering text)

C1 General amendments, modifications, etc. to Tax Acts (or Income Tax Acts or Corporation Taxes Acts as the case may be):
Taxes Management Act 1970 (c.9, SIF 63:1), **s. 41A(7)** (as added by Finance Act 1990 (c.29, SIF 63:1), **s. 95(1)(2)**);
British Telecommunications Act 1981 (c.38, SIF 96), **s. 82(2)(7)**;
Telecommunications Act 1984 (c.12, SIF 96), **s. 72(3)**;
Finance Act 1984 (c.43, SIF 63:1), ss. 82(6), 85(2), 89(1)(7), 96(1)(7), 98(7), Sch. 9 para. 3(2)(9), Sch. 16 paras. 6, **12**;
Finance Act 1985 (c.54, SIF 63:1), ss. 72(1), 74(5), **Sch. 23 para. 15(4)**;
The Income Tax (Entertainers and Sportsmen) Regulations 1987 (S.I. 1987/530), **regs. 11(2)**, 13(1), 14;
Income and Corporation Taxes Act 1988 (c.1, SIF 63:1), ss. 4, 6, 7, 9, 32, 34, 78, 134, 135, 141, 142, 185, 191, 193, 194, 195, 200, 203, 209, 212, 213, 219, 247, 253, 272, 287, 314, 315, 317, 318, 325, 326, 327, 345, 350, 351, 368, 375, 381, 397, 414, 432, 440, 442, 446, 458, 460, 461, 463, 463(2)(3) (as added by Finance Act 1990 (c.29, SIF 63:1), **s. 50(2)**), 468, 474, 475, 486, 490, 491, 503, 511, 518, 524, 532, 544, 550, 556, 558, 569, 572, 582, 595, 601, 613, 617, 619, 621, 639, 656, 660, 663, 676, 689, 691, 694, 700, 701, 714, 716, 739, 743, 754, 763, 776, 780, 781, 782, 787, 789, 811, 828, 829, 832, 833, 834, 835, 837, 838, 839, 840, 841, 842, Sch. 2 para. 5, Sch. 4 para. 5, Sch. 13 para. 10, Sch. 16 para. 10, Sch. 21 para. 6, Sch. 26 para. 1, **Sch. 27 para. 20**;
Finance Act 1988 (c.39, SIF 63:1), ss. 66, 127(1)(6), **Sch. 12 para. 6**;
Electricity Act 1989 (c. 29, SIF 44:1), s. 90, **Sch. 11 para. 8(2)**; S.I. 1990/117, art. 3, **Sch. 1**;
Capital Allowances Act 1990 (c.1, SIF 63:1), **ss. 28(1)**, 68(8), 74, 82, 83(5), 148(5), 163(4), 164(2); S.I. 1990/627;
Finance Act 1990 (c.29, SIF 63:1), **s. 25(10)**;
Income and Corporation Taxes Act 1988 (c. 1, SIF 63:1), **s. 84(3)** (having effect with respect to gifts made on or after 19.3.1991), s. 587A(2)(3) (with application as referred to in Finance Act 1991 (c.31, SIF 63:1), s. 54, **Sch. 12 para. 5** (if the new securities are issued on or after 19.3.1991)), s. 736A, Sch. 23A paras. 2(2), 3(2), 4(4), 5(2), **7(1)**;
Ports Act 1991 (c. 52, SIF 58), **s. 35(8)**;
The Official Listing of Securities (Change of Competent Authority) Regulations 1991 (S.I. 1991/2000), **regs. 1(1)**, 4(5);
British Technology Group Act 1991 (c.66, SIF 64), **s.12(1)(3)(4)**; S.I. 1991/2721, **art.2**;
The Social Security (Contributions) Regulations 1979 (S.I. 1979/591), **Sch. 1 reg. 28** (as substituted by S.I. 1992/97, **reg. 18**);
Social Security Contributions and Benefits Act 1992 (c. 4), ss. 16, 177(4), **Sch.2** (with s. 108(5));
Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 209(3)**, 289 (with ss. 60, 101(1), 171, 201(3)) (with effect for the year 1992-93 and subsequent years of assessment);
The Lloyd's Underwriters (Tax) (1989-90) Regulations 1992 (S.I. 1992/511), **reg.3** (with effect for the year of assessment 1989-90);
Finance (No. 2) Act 1992 (c. 48), ss. 66, 77, Sch. 12 paras. 6(2), 7, **Sch. 17 para.9**;
The Lloyd's Underwriters (Tax) (1990-91) Regulations 1993 (S.I. 1993/415), **regs. 1(1)**, 3(1) (with effect for the year of assessment 1990-91);
Finance Act 1993 (c. 34), s. 78(3)-(5), 118(1), 146(2)(3), 165, 175, Sch. 20 paras. 8, **9(1)**;
Finance Act 1993 (c. 34), **ss. 172(1)**, 176(1), 179(4)(5), 180(1)(a)(2), 182(2), 184(3) (with effect for the year 1992-93 and subsequent years of assessment);
Agriculture Act 1993 (c. 37), ss. 12, 36, Sch. 2, paras. 1, 2(1), 3(2), 16(2)(a), **Sch. 4 para. 1(1)**;

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The Income Tax (Manufactured Overseas Dividends) Regulations 1993 (S.I. 1993/2004), **regs. 1**, 4(1), 5(1), 7(1), 8, 11(7);
Finance Act 1994 (c. 9), ss. 139(1)(2), 173(2)(b)(4)(a)(b), 174, Sch. 25 paras. 2, **6(1)(2)**;
Finance Act 1994 (c. 9), s. 252(1)(3), Sch. 24 paras. 1(4), 12(2), 15(1)(b), 18(1)-(4), 20(1)(a)(3), **25(1)** (with retrospective effect to 11.1.1994);
Coal Industry Act 1994 (c. 21), ss. 21, 68(4), Sch. 4 paras. 11(1), 14, 17(2)-(4), **19(1)(a)(3)**; S.I. 1994/2189, art. 2, **Sch.**;
The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), **reg.3** (with effect for the year of assessment 1991-92);
Finance Act 1995 (c. 4), **ss. 152**, 157(12);
Finance Act 1995 (c. 4), **s. 154** (with retrospective effect to 29.11.1994);
Income and Corporation Taxes Act 1988 (c. 1), **Sch. 5A** (as inserted by Finance Act 1995 (c. 4), s. 85(2)(3), **Sch. 19**);
Crown Agents Act 1995 (c. 24), **s. 7(3)-(5)**;
Atomic Energy Authority Act 1995 (c. 37), s. 8, Sch. 3 paras. 1, 2, 7, **13**;
Gas Act 1995 (c. 45), s. 17(1)(2), Sch. 5 paras. 1, **10(1)-(3)**;
The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **reg. 3**;
The Lloyd's Underwriters (Tax) Regulations 1995 (S.I. 1995/351), **reg. 4** (with regs. 5-8 and S.I. 1995/352, **regs. 6-12**, 14, 15);
The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), **regs. 1**, 4 (with regs. 6-12, 14, 15 and S.I. 1995/351, **regs. 5-8**) (with effect for the years of assessment 1992-93 to 1996-97);
The Income Tax (Manufactured Dividends) (Tradepoint) Regulations 1995 (S.I. 1995/2052), **regs. 1**, 10;
Finance Act 1996 (c. 8), ss. 81(1), 151(1), 152, 154(2)(5)(9), Sch. 10 para. 4(2), **Sch. 11 para. 4(4)**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 689A(2)** (as inserted by Finance Act 1996 (c. 8), Sch. 6 paras. 16, **28**);
Broadcasting Act 1996 (c. 55), Sch. 7 paras. 1(3), 18, **27**;
Finance Act 1997 (c. 16), s. 79(3), Sch. 7 paras. 2(1)(3), 3(2)(5), **7(2)**;
Income and Corporation Taxes Act 1988 (c. 1), Sch. 23A paras. 3, **8(2A)** (as substituted and inserted respectively by Finance Act 1997 (c. 16), Sch. 10 paras. 11(1), 13(3), **16**);
Capital Allowances Act 1990 (c. 1), **ss. 28A**, 29(1)(1A) (as inserted and substituted respectively by Finance Act 1997 (c. 16), Sch. 15 paras. 3, **4**)
Finance (No. 2) Act 1997 (c. 58), s. 29(1), **Sch. 6 para. 23**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 1A(5)** (as substituted by Finance (No. 2) Act 1997 (c. 58), **s. 31(4)(6)**;
The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 3** (as amended by S.I. 2001/3629, **art. 165(2)(a)**; S.I. 2004/822, **reg. 4**)
The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **regs. 1**, 3-23 (as amended by S.I. 1997/1715);
The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), **regs. 1**, 9;
Teaching and Higher Education Act 1998 (c. 30), **s. 22(5)(g)**;
Finance Act 1998 (c. 36), ss. 30(3), 31(2), 32(8), 46, 47(3)(a), 117, 161(2)(b)(7), **Sch. 18**;
Income and Corporation Taxes Act 1988 (c. 1), ss. 65A(3), 70A(3), 596C, 754(2), **Sch. 28AA para. 6(2)(b)** (as inserted or substituted (as the case may be) by Finance Act 1998 (c. 36), ss. 38, 93(3)(4), 108(5)(6), Sch. 5 paras. 24, 25, 73, Sch. 16, Sch. 17 paras. 9(4), **37**;
Regional Development Agencies Act 1998 (c. 45), **s. 38**; S.I. 1998/2952, **art. 2(2)**;
Scotland Act 1998 (c. 46), **s. 73(2)**; S.I. 1998/3178, art. 2(2), **Sch. 3**;
The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 21;
Finance Act 1999 (c. 16), **s. 68(4)**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 469A** (as inserted by Finance Act 1999 (c. 16), **s. 68(1)(3)**);

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Commonwealth Development Corporation Act 1999 (c. 20), **ss. 6(2)(c)**, 16(1)(4)(c)(5);
Finance Act 2000 (c. 17), **Sch. 14 para. 43**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 587B(2)(b)** (as inserted by Finance Act 2000 (c. 17), **s. 43(1)(3)**);
Capital Allowances Act 2001 (c. 2), ss. 253(4), 260(5), 579, Sch. 3 paras. 54, **55**;
Income and Corporation Taxes Act 1988 (c. 1), **s. 118ZA** (as substituted by Finance Act 2001 (c. 9), **s. 75(1)(6)**);
Finance Act 2002 (c. 23), **ss. 55(2)-(4)**(7), 83(1)(a)(3), Sch. 26 para. 51;
Income Tax (Earnings and Pensions) Act 2003 (c. 1), **ss. 56**, 566(2), 723(1) (with s. 48(2), Sch. 7));
Finance Act 2003 (c. 14), **ss. 148(1)-(5)**, 150, 195;
The Taxation of Benefits under Government Pilot Schemes (Return to Work Credit and Employment Retention and Advancement Schemes) Order 2003 (S.I. 2003/2339), **arts. 1**, 3;
Finance Act 2004 (c. 12), **ss. 51**, 188(7), 192(8)(10), 205(7), 206(7), 207(7), 208(8), 215(11), 227(5), 254(7), 255(3), 284(1) (with Sch. 36);
Finance Act 2002 (c. 23),Sch. 26 para. 36(2) (as substituted by Finance Act 2004 (c. 12), s. 52(1)(3), **Sch. 10 para. 62**);
Income and Corporation Taxes Act 1988 (c. 1), **s. 837C** (as inserted by Finance Act 2004 (c. 12), Sch. 27 paras. 1, **3**);
Income and Corporation Taxes Act 1988 (c. 1), **Sch. 19B para. 15(2)** (as inserted by Finance Act 2004 (c. 12), **Sch. 38**);
Energy Act 2004 (c. 20), ss. 27(10), 28(5), 29(6), 30(6), 38(2), 44(5), **Sch. 9 para. 37(3)**; S.I. 2004/2575, art. 2(1), **Sch. 1**;
Horserace Betting and Olympic Lottery Act 2004 (c. 25), **ss. 4(1)**, 5(3)(c)(4); S.I. 2011/462, **art. 2**;
The Taxation of Benefits under Government Pilot Schemes (Working Neighbourhoods Pilot and In Work Credit) Order 2004 (S.I. 2004/575), **art. 3**;
Finance Act 2005 (c. 7), **ss. 41(4)**, 50, 53, 54, 56, 83(1);
Railways Act 2005 (c. 14), **Sch. 10 para. 34(2)**; S.I. 2005/1444, art. 2(1), **Sch. 1**; S.I. 2005/1909, art, 2, Sch.;
Finance (No. 2) Act 2005 (c. 22), **ss. 7(2)**, 8, 9;
Finance Act 1988 (c.39), **s. 66A(2)(4)** (as inserted by Finance (No. 2) Act 2005 (c. 22), **s. 60(1)(3)**);
The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **reg. 4**;
The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 3**;
The Donations to Charity by Individuals (Appropriate Declarations) (Amendment) Regulations 2005 (S.I. 2005/2790), **regs. 6**, 7;
The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 4**;
Telecommunications Act 1984 (c. 12), **s. 72(3)** (as substituted by S.I. 2006/745, **art. 2**);
The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2006 (S.I. 2006/3218), **regs. 1(1)(2)**, 2-12;
The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) (No. 2) Regulations 2006 (S.I. 2006/3389), **regs. 1(1)(2)**, 2-10 (as amended by S.I. 2007/2147, **regs. 1-6**);
Income Tax Act 2007 (c. 3), **ss. 414**, 466, 467, 473(5)(6), 474, 477, 513(4), 573, 576, 578, 586(2), 597(2), 711(2), 959, 963(4), 970(1), 988-1016 (Pt. 16) (with Sch. 2);
Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 61G** (as inserted by Finance Act 2007 (c. 11), s. 25, **Sch. 3 para. 4**);
Consumers, Estate Agents and Redress Act 2007 (c. 17), **Sch. 4 para. 11**; S.I. 2007/3546, art. 3, **Sch.**;
The Corporation Tax (Taxation of Films) (Transitional Provisions) Regulations 2007 (S.I. 2007/1050), **regs. 1**, 3-12 (as amended by Corporation Tax Act 2009 (c. 4), s. 1329(1), Sch. 2 para. 131 (with Sch. 2 Pts. 1, **2**));
The Securitisation Companies (Application of Section 83(1) of the Finance Act 2005: Accounting Standards) Regulations 2007 (S.I. 2007/3338), reg. 3;
The Taxation of Insurance Securitisation Companies Regulations 2007 (S.I. 2007/3402), **regs. 1**, 6;

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Income and Corporation Taxes Act 1988 (c. 1), **s. 461D(4)** (as inserted by Finance Act 2008 (c. 9), **Sch. 18 para. 3**);
Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 840A(3)** (as inserted by Finance Act 2008 (c. 9), Sch. 7 paras. 69, **81**);
Crossrail Act 2008 (c. 18), **Sch. 13 para. 3(2)(4)**;
The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **regs. 69Z15(2)**, 69Z16(2), 69Z17(2) (as inserted by S.I. 2008/705, **reg. 5**);
The Friendly Societies (Transfers of Other Business) (Modification of the Corporation Tax Acts) Regulations 2008 (S.I. 2008/1942), **regs. 1-7**;
The Group Relief for Overseas Losses (Modification of the Corporation Tax Acts for Non-resident Insurance Companies) Regulations 2008 (S.I. 2008/2646), **regs. 1**, 2;
Corporation Tax Act 2009 (c. 4), **ss. 2(4)**, 3, 294(2), 481(2), 490(2), 509(2), 515, 516(1), 521(4)(e)(5), 539(6), 540(3), 545, 550, 592(3), 593(2), 608(7), 799(1)(b), 802(2), 855(7)(8), 969, 1273, 1329 (with Sch. 2);
Income and Corporation Taxes Act 1988 (c. 1), **s. 230A** (as inserted by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 100**);
Finance Act 2009 (c. 10), **s. 25**;
Corporation Tax Act 2009 (c. 4), **s. 521B(2)** (as inserted by Finance Act 2009 (c. 10), Sch. 24 paras. 4, **12-16**);
The Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009 (S.R. 2009/128), **regs. 1(1)**, 4, 26(2);
The Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470), **regs. 1**, 4-7, 31(2);
The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69Z61** (as inserted by S.I. 2009/2036, **reg. 24**);
The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971), **regs. 1(1)(2)**, 4;
The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), **regs. 1**, 16(2), 94 (with Sch. 1);
Corporation Tax Act 2010 (c. 4), **ss. 128**, 620, 624, 625, 778, 784, 786, 876, 950(5), 996(1)(2), 1070, 1071, 1166 (with Sch. 2);
Taxation (International and Other Provisions) Act 2010 (c. 8), **s. 79(2)**, 192, 220 (with ss. 213, 214, Sch. 9 paras. 1-9);
Income Tax Act 2007 (c. 3), **s. 809CZB(2)** (as inserted by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), Sch. 5 para. 7 (with **Sch. 9 paras. 1-9**));
Finance Act 2011 (c. 11), s. 53(5)(7)-(10), Sch. 2 paras. 53(4), **54(6)**;
The Taxation of Equitable Life (Payments) Order 2011 (S.I. 2011/1502), **arts. 1**, 3;
Finance Act 2012 (c. 14), **ss. 69(b)**, 71(3), 72, 142(1)(b), 143(1)(b), 144(1), 148, 151, 152, 158(5), 166(5)(6), 167(4) (with Sch. 17);
Corporation Tax Act 2010 (c. 4), **ss. 793(8)**, 812(5A) (as inserted by Finance Act 2012 (c. 14), **s. 22(2)-(4)**);
Taxation (International and Other Provisions) Act 2010 (c. 8), **s. 371SO(2)** (as inserted by Finance Act 2012 (c. 14), **Sch. 20 para. 1**);
Small Charitable Donations Act 2012 (c. 23), **ss. 15**, 21(1);
The Bank Levy (Double Taxation Relief) Regulations 2012 (S.I. 2012/458), **regs. 1**, 13;
The Bank Levy (Double Taxation Arrangements) (Federal Republic of Germany) Regulations 2012 (S.I. 2012/459), **regs. 1(1)(2)**, 11;
Income Tax Act 2007 (c. 3), **Pt. 11ZA** (ss. 614ZA-614ZD) (as inserted by Finance Act 2013 (c. 29), Sch. 29 paras. 1, **51**);
Corporation Tax Act 2010 (c. 4), **Pt. 17A** (ss. 814A-814D) (as inserted by Finance Act 2013 (c. 29), Sch. 29 paras. 2, **51**);
The Taxation of Regulatory Capital Securities Regulations 2013 (S.I. 2013/3209), **regs. 1**, 3 (with reg. 8);
Finance Act 2014 (c. 26), **s. 223(8)(9)(a)**;
Corporation Tax Act 2009 (c. 4), **s. 490(2)** (as substituted by Finance Act 2014 (c. 26), **s. 27(3)(7)-(9)**);

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Corporation Tax Act 2010 (c. 4), **s. 329N(2)** (as inserted by Finance Act 2014 (c. 26), Sch. 14 paras. 1, **4**);
Social Security Contributions and Benefits Act 1992 (c. 4), **s. 11A(1)(3)** (as inserted by National Insurance Contributions Act 2015 (c. 5), Sch. 1 paras. 3, **35**);
Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7), **s. 11A(1)(3)** (as inserted by National Insurance Contributions Act 2015 (c. 5), Sch. 1 paras. 12, **35**);
Finance Act 2015 (c. 11), **ss. 99(2)**, 116;
Taxes Management Act 1970 (c. 9), **ss. 12ZH**, 12ZI, 59AB (as inserted by Finance Act 2015 (c. 11), Sch. 7 paras. 43, 51, **60**);
The Education (Postgraduate Master?s Degree Loans) Regulations 2016 (S.I. 2016/606), **regs. 1**, 67(1);
The Bank Levy (Double Taxation Relief) (Single Resolution Fund Levy) Regulations 2016 (S.I. 2016/1212), **regs. 1**, 16;
Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 61R** (as inserted by Finance Act 2017 (c. 10), Sch. 1 paras. 9, **16**);
Finance Act 2012 (c. 14), **ss. 124A(6)**, 124B(7), 124C(7) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 4 paras. 26, **190-192**);
Corporation Tax Act 2010 (c. 4), **ss. 303B(5)**, 303C(7), 303D(6), 321(2A) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 4 paras. 48, 52(3), **190-192**);
Taxes Management Act 1970 (c. 9), **ss. 28A(8)**, 28B(9) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 15 paras. 12(6), 13(6), **44**);
Finance Act 1998 (c. 36), **Sch. 18 para. 32(4)** (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 15 paras. 28(4), **44**)
Finance Act 2019 (c. 1), **Sch. 3 paras. 7, 9,** 12, 13;
Corporation Tax Act 2009 (c. 4), **s. 420A(2)** (as inserted by Finance Act 2019 (c. 1), Sch. 20 paras. 2, 10(a), **16**);
Capital Allowances Act 2001 (c. 2), **s. 270HE** (as inserted by The Capital Allowances (Structures and Buildings Allowances) Regulations 2019 (S.I. 2019/1087), **regs. 1**, 2

C2 Act (except ss. 201 and 684) amended (1.1.1992) by S.I. 1991/2684, **arts. 2**, 4,Sch. 1

C3 Act: Coal Industry Act 1994 (c. 21), **Sch. 4 Pt. 1** to be construed as one with this Act (19.9.1994) by virtue of ss. 21, 68(4) of, and Sch. 4 para. 1(2) to, that Act); S.I. 1999/2189, art. 2, **Sch.**

C4 Act modified (17.9.2004 with effect in accordance with reg. 1 of the modifying S.I.) by The Overseas Life Insurance Companies Regulations 2004 (S.I. 2004/2200), **regs. 3**, 4

C5 Act modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 7**

C6 Act modified (1.4.2006 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 94** (as amended by S.I. 2008/3159, **regs. 1(2)(4)**, 28)

C7 Act modified (31.12.2006 with effect in accordance with reg. 1 of the modifying S.I.) by The Overseas Life Insurance Companies Regulations 2006 (S.I. 2006/3271), **regs. 1**, 3-18 (as amended by: S.I. 2007/2146, **regs. 1**, 3-13; S.I. 2007/3449, **regs. 1**, 3-6; S.I. 2008/1924, **regs. 1**, 3-12)

C8 Act modified (12.12.2006 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296), **reg. 15** (as amended by S.I. 2018/143, **regs. 1**, 10(1))

C9 Act modified (with effect in accordance with Sch. 4 para. 2(2)-(4) of the modifying Act) by Finance Act 2007 (c. 11), **Sch. 4 para. 3**

C10 Act modified (14.8.2007 with effect in accordance with reg. 1(2)(3) of the modifying S.I.) by The Insurance Companies (Tax Exempt Business) Regulations 2007 (S.I. 2007/2145), **regs. 3-12**

C11 Act modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), art. 3, **Sch.**

C12 Act applied (1.4.2010 with effect in accordance with s. 1184(1) of the affecting Act) by Corporation Tax Act 2010 (c. 4), **s. 853**

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C13 Act amended by Finance Act 2010 (c. 13), **Sch. 8 para. 8(2)(4)**
C14 Act amended (2006-07) by Finance (No. 3) Act 2010 (c. 33), **Sch. 14 para. 3(5)**
C15 Act applied (with modifications) (1.10.2010) by The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 (S.I. 2010/1907), regs. 1(2), 16(2)(c), **Sch. 2**
C16 Act amended by Finance Act 2012 (c. 14), **Sch. 15 para. 17(4)(5)**

PART I

THE CHARGE TO TAX

Income tax

1 The charge to income tax.

[F1(1) Income tax is charged in accordance with the Income Tax Acts on—

(a) F2. . . . . .

(b) all amounts which are charged to tax under any of the following provisions of ITEPA 2003—

(i) Part 2 (employment income),

(ii) Part 9 (pension income), and

(iii) Part 10 (social security income), F3. . .

[F4(ba) all amounts which are charged to tax under any of the following provisions of ITTOIA 2005—

(i) Part 2 (trading income),

(ii) Part 3 (property income),

(iii) Part 4 (savings and investment income), and

(iv) Part 5 (miscellaneous income), and**]**

(c) any other amounts which, under the Income Tax Acts, are charged to income tax.**]**

(2) M1 Where any Act enacts that income tax shall be charged for any year, income tax shall be charged for that year—

[F5(aa) in respect of so much of an individual's total income as does not exceed £1,500, at such rate as Parliament may determine to be the starting rate for that year;**]**

(a) in respect of any income which does not fall within **[**F6paragraph (aa) above or**]** paragraph (b) below, at such rate as Parliament may determine to be the basic rate for that year;

[F7(b) in respect of so much of an individual's total income as exceeds **[**F8£20,700**]** at such higher rate as Parliament may determine**]**

but this subsection has effect subject to any provision of the Income Tax Acts providing for income tax to be charged at a different rate in certain cases.

[F9(2A) The amount up to which an individual's income is by virtue of subsection (2) above chargeable for any year at the starting rate shall be known as the starting rate limit.**]**

(3) M2 The amount up to which an individual's income is by virtue of subsection (2) above chargeable for any year at the **[**F10**[**F11starting rate**]** or the**]** basic rate shall be known as

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the basic rate limit,*and the parts of income in excess of the basic rate limit which are specified in paragraph (b) of that subsection shall be known respectively as the first, second, third, fourth and fifth higher rate bands*[F12].

(4) [M3] If the retail prices index for the month of **[**[F13]September**]** preceding a year of assessment is higher than it was for the previous **[**[F13]September**]**, then, unless Parliament otherwise determines, subsection (2) above shall apply for that year as if for **[**[F14]each of the amounts specified**]** in that subsection as it applied for the previous year (whether by virtue of this subsection or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index **[**[F15] and—

(a) if the result in the case of the amount specified in subsection (2)(aa) above is not a multiple of £10, rounding it up to the nearest amount which is such a multiple, and

(b) if the result in the case of the amount specified in subsection (2)(b) above is not a multiple of £100, rounding it up to the nearest amount which is such a multiple.**]**

.

[[F16](5A) Subsection (4) above shall not require any change to be made in the amounts deductible or repayable under **[**[F17]PAYE regulations**]** during the period beginning with 6th April and ending with 17th May in the year of assessment.**]**

[F18](5) . . . . . .

(6) The Treasury shall before each year of assessment make an order specifying the **[**[F19]amounts**]** which by virtue of subsection (4) above will be treated as specified for that year in subsection (2) above.

[[F20](6A) Where income tax at the basic rate has been borne on income chargeable at the **[**[F21]starting rate**]** any necessary repayment of tax shall be made on the making of a claim.**]**

(7) Part VII contains general provisions relating to the taxation of income of individuals.

Textual Amendments

F1 S. 1(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 2(2)** (with Sch. 7)

F2 S. 1(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 2(a), **Sch. 3** (with Sch. 2)

F3 Word at the end of s. 1(1)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 2(b), **Sch. 3** (with Sch. 2)

F4 S. 1(1)(ba) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 2(b)** (with Sch. 2)

F5 S. 1(2)(aa) substituted (27.7.1999 with application for the year 1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 22(1)**

F6 Words in s. 1(2)(a) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(3)(10)(11)**.

F7 1988(F) s.24(2)(a)*for* 1988-89.*Previously*
"(b) in respect of so much of an individual's total income as exceeds £17,900, at such higher rates respectively as Parliament may determine in relation to the first £2,500, the next £5,000, the next £7,900, the next £7,900 and the remainder;".

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F8 1990 s.17(1)(b)*for* 1990-91. (Art. 2(2)*of* S.I. 1990 No.677 (*in* Part III Vol.5)*was not operated.*)
F9 S. 1(2A) substituted (27.7.1999 with application for the year 1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 22(2)**
F10 Words in s. 1(3) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(5)(10)(11)**.
F11 Words in s. 1(3) substituted (27.7.1999 with application for the year 1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 22(3)**
F12 Repealed by 1988(F) s. 148 and Sch. 14 Part IV for 1988-89 and subsequent years
F13 Words in s. 1(4) substituted (27.7.1993 with effect for year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(2)(a)(8)**
F14 Words in s. 1(4) substituted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by virtue of Finance Act 1992 (c. 20), **s. 9(6)(10)(11)**.
F15 Words in s. 1(4) substituted (27.7.1999 with application for the year 1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 22(4)**
F16 S. 1(5A) inserted (27.7.1999 with effect for the year 1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 25(2)**
F17 Words in s. 1(5A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 2(3)** (with Sch. 7)
F18 S. 1(5) repealed (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, ss. 107(2)(b)(8), 213, **Sch. 23**, Pt.III
F19 Word in s. 1(6) substituted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by virtue of Finance Act 1992 (c. 20), **s. 9(7)(10)(11)**.
F20 S. 1(6A) inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(8)(10)(11)**.
F21 Words in s. 1(6A) substituted (27.7.1999 with application for the year 1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 22(6)**

Modifications etc. (not altering text)

C17 *See* s.686—*income of trustees chargeable at higher rate.*
C18 S. 1(2) amended (1991-92) by S.I. 1991/732, **art. 2(2)**
S. 1(2) amended (1992-93) by 1992 c. 20, **s. 10(2)(b)** (in place of S.I. 1992/622, **art. 2(2)**)
S. 1(2) amended (1993-94) by 1993 c. 34, **s. 51(2)** (in place of S.I. 1993/755, **art. 2(2)**)
S. 1(2) amended (1994-95) by 1994 c. 9, **s. 75(2)** (in place of S.I. 1993/2948, **art. 2(2)**)
S. 1(2)(b) amended (1995-96) by S.I. 1994/3012, **art. 2(2)(b)**
S. 1(2)(aa) amended (1995-96) by 1995 c. 4, **s. 35(2)** (in place of S.I. 1994/3012, **art. 2(2)(a)**)
S. 1(2) amended (1996-97) by 1996 c. 8, **s. 72(2)** (in place of S.I. 1995/3031, **art. 2(2)**)
S. 1(2)(b) amended (1997-98) by S.I. 1996/2952, **art. 2(2)(b)**
S. 1(2)(aa) amended (1997-98) by 1997 c. 16, **s. 54(2)** (in place of S.I. 1996/2952, **art. 2(2)(a)**)
S. 1(2) amended (1998-99) by S.I. 1998/755, **art. 2(2)**
S. 1(2)(b) amended (1999-00) by S.I. 1999/597, **art. 2(2)(b)** (the effect of art. 2(2)(a) being superseded by 1999 c. 16, **s. 22(1)** which substitutes s. 1(2)(aa))
S. 1(2) amended (2000-01) by S.I. 2000/806, **art. 2(2)**
S. 1(2)(b) amended (2001-02) by S.I. 2001/638, **art. 2(2)(b)**
S. 1(2)(aa) amended (2001-02) by 2001 c. 9, **s. 51(1)** (in place of S.I. 2001/638, **art. 2(2)(a)**)
S. 1(2) amended (2002-03) by S.I. 2002/707, **art. 2(2)**
S. 1(2) amended (2003-04) by S.I. 2003/840, **art. 2**
S. 1(2) amended (2004-05) by S.I. 2004/772, **art. 2**
S. 1(2) amended (2005-06) by S.I. 2005/716, **art. 2**
S. 1(2) amended (2006-07) by S.I. 2006/872, **art. 2**
S. 1(2) amended (2007-08) by S.I. 2007/943, **art. 2**
C19 *See* 1990 s.17(1)—*basic rate* 25%*and higher rate* 40%*for* 1990-91.
C20 *For earlier years see* Table C Vol.1.

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C21 *See*—1988(F) s.24(2)—*indexation not to apply for* 1988-89.1990 s.17(1)—*indexation not to apply for* 1990-91.
C22 S. 1(4) excluded for the year 1991-92 by Finance Act 1991 (c. 31, SIF 63:1), **s. 21(2)**
S. 1(4) excluded for the year 1992-93 by Finance Act 1992 (c. 20), **s. 10(2)(a)(5)**.
S. 1(4) excluded for the year 1993-94 by Finance Act 1993 (c. 34), **s. 51(2)**
S. 1(4) excluded for the year 1994-95 by Finance Act 1994 (c. 9), **s. 75(2)**
S. 1(4) excluded for the year 1995-96 by Finance Act 1995 (c. 4), **s. 35(2)**
S. 1(4) excluded for the year 1996-97 by Finance Act 1996 (c. 8), **s. 72(2)**
S. 1(4) excluded for the year 1999-00 by Finance Act 1999 (c. 16), **s. 22(5)**
S. 1(4) excluded for the year 2001-02 by Finance Act 2001 (c. 9), **s. 51(2)**
C23 S. 1(5A) modified for the year 2002-03 by Finance Act 2002 (c. 23), **s. 27(a)**
S. 1(5A) modified for the year 2003-04 by Finance Act 2003 (c. 14), **s. 132**
C24 *See* S.I. 1989 No. 467 in Part III Vol.5.

Marginal Citations
M1 Source—1970 s.1; 1971 s.32(1); 1980 s.24(2); 1987 s.20(1)
M2 Source#1980 s.24(3); 1984 Sch.7 3(5)
M3 Source—1980 s.24(4), (7), (9)

[F22 1A Application of lower rate to income from savings and distributions.

(1) Subject to sections 469(2) [F23, 686 and 720(5),] so much of any person's total income for any year of assessment as—
(a) comprises income to which this section applies, and
(b) in the case of an individual, is not
[savings income falling within section 1(2)(aa), or F24(i)
(ii)] income falling within section 1(2)(b),
shall, by virtue of this section, be charged for that year at the [F25rate applicable in accordance with subsection (1A) below], instead of at the rate otherwise applicable to it in accordance with section 1(2)(aa) and (a).

F26[In subsection (1)(b)(i) above "savings income" means income to which this section (1AA) applies other than—
(a) income chargeable under [F27Chapter 3, 5 or 6 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc., stock dividends from UK resident companies and loans to participators)], or
[F28(b) dividends chargeable under Chapter 4 of Part 4 of that Act (dividends from non-UK resident companies) or relevant foreign distributions chargeable under Chapter 8 of Part 5 of that Act (income not otherwise charged).]]

F29[The rate applicable in accordance with this subsection is— (1A)
(a) in the case of income chargeable under [F30Chapter 3, 5 or 6 of Part 4 of ITTOIA 2005], the [F31dividend] ordinary rate;
[F32(b) in the case of dividends chargeable under Chapter 4 of Part 4 of that Act or relevant foreign distributions chargeable under Chapter 8 of Part 5 of that Act, the dividend ordinary rate; and]
(c) in the case of any other income, the lower rate.]

F33[In relation to any year of assessment for which income tax is charged the lower rate (1B) is 20 per cent. or such other rate as Parliament may determine.]

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(2) Subject to subsection (4) below, this section applies to the following income—

(a) any income **[**F34(other than relevant foreign income) chargeable under—

(i) Chapter 2 of Part 4 of ITTOIA 2005 (charge on interest);

(ii) Chapter 7 of that Part of that Act (charge on purchased life annuity payments) other than income from annuities specified in section 718(2) of that Act; or

(iii) Chapter 8 of that Part of that Act (charge on profits from deeply discounted securities);**]**

[F35(aa) any amount chargeable to tax F36. . . by virtue of section 714, 716 or 723;**]**

(b) any income chargeable under **[**F37Chapter 3, 5 or 6 of Part 4 of ITTOIA 2005**]**; F38. . .

(c) subject to subsection (4) below, any **[**F39income falling within subsection (3) below**][**F40; and

(d) any amount included in an individual's total income by virtue of section **[**F41465 of ITTOIA 2005 (gains from contracts for life insurance etc.)**]**.**]**

[F42(3) The income which falls within this subsection is any relevant foreign income which—

(a) would fall within subsection (2)(a) but for the exclusion of relevant foreign income;

(b) is a dividend chargeable under Chapter 4 of Part 4 of ITTOIA 2005; or

(c) is a relevant foreign distribution chargeable under Chapter 8 of Part 5 of that Act.**]**

(4) This section does not apply to—

(a) any **[**F43relevant foreign income which is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis)**]**; F44. . .

F44(b) . . . . . .

[F45(5) For the purposes of subsection (1)(b) above and any other provisions of the Income Tax Acts **[**F46(other than **[**F47sections 535 to 537 of ITTOIA 2005**])][**—

(a) so much of any person's income as comprises income to which this section applies shall be treated as the highest part of his income; and

(b) so much of that part as consists of—

(i) income chargeable under **[**F48Chapter 3, 5 or 6 of Part 4 of ITTOIA 2005**]** (if any), and

[F49(ii) dividends chargeable under Chapter 4 of Part 4 of that Act (if any) or relevant foreign distributions chargeable under Chapter 8 of Part 5 of that Act (if any),**]**

shall be treated as the highest part of that part.**]**

(6) Subsection (5) above shall have effect subject to section 833(3) but shall otherwise have effect notwithstanding any provision requiring income of any description to be treated for the purposes of the Income Tax Acts (other than **[**F50sections 535 to 537 of ITTOIA 2005**]**) as the highest part of a person's income.

[F51(6A) Where income tax at the basic rate has been borne on income chargeable at the lower rate any necessary repayment of tax shall be made on the making of a claim.**]**

(7) F52. . . . . .

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[In this section "relevant foreign distribution" means any distribution of a company not [F53](8) resident in the United Kingdom which—

(a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but

(b) would be chargeable under Chapter 3 of that Part of that Act if the company were resident in the United Kingdom.

(9) And, for the meaning of "relevant foreign income", see section 832(1).**]]**

Textual Amendments

F22 S. 1A inserted (with effect in accordance with s. 73(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 73(1)**

F23 Words in s. 1A(1) substituted (with effect in accordance with s. 100(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 100(1)**

F24 Words in s. 1A(1)(b) inserted (with effect in accordance with s. 32(4) of the amending Act) by Finance Act 2000 (c. 17), **s. 32(2)**

F25 Words in s. 1A(1) substituted (with effect in accordance with s. 31(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 31(2)**

F26 S. 1A(1AA) inserted (with effect in accordance with s. 32(4) of the amending Act) by Finance Act 2000 (c. 17), **s. 32(3)**

F27 Words in s. 1A(1AA)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(2)(a)** (with Sch. 2)

F28 S. 1A(1AA)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(2)(b)** (with Sch. 2)

F29 S. 1A(1A) inserted (with effect in accordance with s. 31(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 31(3)**

F30 Words in s. 1A(1A)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(3)(a)(i)** (with Sch. 2)

F31 Word in s. 1A(1A)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(3)(a)(ii)** (with Sch. 2)

F32 S. 1A(1A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(3)(b)** (with Sch. 2)

F33 S. 1A(1B) inserted (with application in accordance with s. 22(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 22(7)(a)**

F34 Words in s. 1A(2)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(4)(a)** (with Sch. 2)

F35 S. 1A(2)(aa) inserted (with effect in accordance with s. 100(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 100(2)**

F36 Words in s. 1A(2)(aa) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 3(4)(b), **Sch. 3** (with Sch. 2)

F37 Words in s. 1A(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(4)(c)** (with Sch. 2)

F38 Word preceding s. 1A(2)(c) repealed (with effect in accordance with s. 173(2) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 35 para. 1(2), **Sch. 43 Pt. 3(13)**, Note 1

F39 Words in s. 1A(2)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 3(4)(d), **Sch. 2**

F40 S. 1A(2)(d) and preceding word inserted (with effect in accordance with s. 173(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 35 para. 1(2)**

F41 Words in s. 1A(2)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(4)(e)** (with Sch. 2)

F42 S. 1A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(5)** (with Sch. 2)

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F43 Words in s. 1A(4)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(6)(a)** (with Sch. 2)

F44 S. 1A(4)(b) and preceding word repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 3(6)(b), **Sch. 3** (with Sch. 2)

F45 S. 1A(5) substituted (with effect in accordance with s. 31(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 31(4)**

F46 Words in s. 1A(5) inserted (with effect in accordance with s. 173(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 35 para. 1(3)**

F47 Words in s. 1A(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(7)(a)** (with Sch. 2)

F48 Words in s. 1A(5)(b)(i) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch 1 para. 3(7)(b)** (with Sch. 2)

F49 S. 1A(5)(b)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(7)(c)** (with Sch. 2)

F50 Words in s. 1A(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 3(8)** (with Sch. 2)

F51 S. 1A(6A) inserted (with application in accordance with s. 22(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 22(7)(b)**

F52 S. 1A(7) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 3(9), **Sch. 3** (with Sch. 2)

F53 S. 1A(8)(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 4), **Sch. 1 para. 3(10)** (with Sch. 2)

Modifications etc. (not altering text)

C25 S. 1A extended (27.7.1999) Commonwealth Development Corporation Act 1999 (c. 20), s. 20, **Sch. 3 para. 6(4)** (with Sch. 3 para. 1)

[F55 1B Rates of tax applicable to [F54 distribution] income etc.

(1) In the case of so much of an individual's income which consists of—

[F56 (a) income chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.) (if any), and

(b) dividends chargeable under Chapter 4 of Part 4 of that Act (dividends from non-UK resident companies) (if any) or relevant foreign distributions chargeable under Chapter 8 of Part 5 of that Act (income not otherwise charged) (if any),]

as is income falling within section 1(2)(b), income tax shall, by virtue of this subsection, be charged at the [F57 dividend] upper rate, instead of at the rate otherwise applicable to it in accordance with section 1(2)(b).

(2) In relation to any year of assessment for which income tax is charged—

(a) the [F58 dividend] ordinary rate is 10 per cent., and

(b) the [F58 dividend] upper rate is 32.5 per cent.,

or, in either case, such other rate as Parliament may determine.

[In this section "relevant foreign distribution" has the same meaning as in section 1A F59 (3) (see subsection (8) of that section).]]

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Textual Amendments

F54 Words in s. 1B sidenote substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 4(5)** (with Sch. 2)

F55 S. 1B inserted (with effect in accordance with s. 31(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 31(5)**

F56 S. 1B(1)(a)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 4(2)(a)** (with Sch. 2)

F57 Word in s. 1B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 4(2)(b)** (with Sch. 2)

F58 Words in s. 1B(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 4(3)** (with Sch. 2)

F59 S. 1B(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 4(4)** (with Sch. 2)

2 Fractions of a pound, and yearly assessments.

(1) [M4] The due proportion of income tax shall be charged for every fractional part of one pound.

(2) Every assessment and charge to income tax shall be made for a year commencing on the 6th April and ending on the following 5th April.

Marginal Citations

M4 Source—1970 s.2

3 Certain income charged at basic rate.

[M5] Where a person is required to be assessed and charged with income tax in respect of any property, profits or gains out of which he makes any payment in respect of—

(a) any annuity or other annual payment (not being interest); or

(b) any royalty or other sum in respect of the user of a patent; [F60]. . .

(c) [F60]. . . . . .

he shall, in respect of so much of the property, profits or gains as is equal to the payment and may be deducted in computing his total income, be charged at the basic rate.

Textual Amendments

F60 S. 3(c) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the amending Act) by Finance Act 1997 (c. 16), **s. 113** {Sch. 18}

Marginal Citations

M5 Source—1970 s.3; 1971 Sch.6 2

4 Construction of references in Income Tax Acts to deduction of tax.

(1) [M6] Any provision of the Income Tax Acts requiring, permitting or assuming the deduction of income tax from any amount (otherwise than [F61under PAYE

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regulations**]**) or treating income tax as having been deducted from or paid on any amount, shall, subject to any provision to the contrary, be construed as referring to deduction or payment of income tax at the basic rate in force for the relevant year of assessment.

[F62(1A) As respects deductions from, and tax treated as paid on, any such amounts as constitute or (but for the person whose income they are) would constitute income to which section 1A applies, subsection (1) above shall have effect with a reference to the lower rate in force for the relevant year of assessment substituted for the reference to the basic rate in force for that year.**]**

[F63(1B) F64. . . . . .**]**

(2) For the purposes of **[**F65this section**]**, the relevant year of assessment shall be taken to be (except where otherwise provided)—

(a) if the amount is an amount payable wholly out of profits or gains brought into charge to tax, the year in which the amount becomes due;

(b) in any other case, the year in which the amount is paid.

Textual Amendments

F61 Words in s. 4(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 3** (with Sch. 7)

F62 S. 4(1A) inserted (with effect in accordance with s. 73(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 73(2)**

F63 S. 4(1B) inserted (retrospective, and with effect in accordance with s. 33(2) of the amending Act) by Finance Act 2000 (c. 17), **s. 33(1)**

F64 S. 4(1B) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para 5, **Sch. 3** (with Sch. 2)

F65 Words in s. 4(2) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), s. 73, **Sch. 6 para. 2**

Marginal Citations

M6 Source—1971 s.36; 1975(No. 2) s.44(6)

5 Date for payment.

F66. . . . . .

Textual Amendments

F66 S. 5 repealed (with effect in accordance with s. 199(2) and Sch. 26 Pt. 5(23) Note 2 of the amending Act) by Finance Act 1994 (c. 9), s. 258, **Sch. 26 Pt. 5(23)**; S.I. 1998/3173, **art. 2**

Corporation tax

6 The charge to corporation tax and exclusion of income tax and capital gains tax.

(1) M7 Corporation tax shall be charged on profits of companies, and the Corporation Tax Acts shall apply, for any financial year for which Parliament so determines, and where

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an Act charges corporation tax for any financial year the Corporation Tax Acts apply, without any express provision, for that year accordingly.

(2) The provisions of the Income Tax Acts relating to the charge of income tax shall not apply to income of a company (not arising to it in a fiduciary or representative capacity) if—

(a) the company is resident in the United Kingdom, or

(b) the income is, in the case of a company not so resident, within the chargeable profits of the company as defined for the purposes of corporation tax by section 11(2).

(3) A company shall not be chargeable to capital gains tax in respect of gains accruing to it so that it is chargeable in respect of them to corporation tax or would be so chargeable but for an exemption from corporation tax.

(4) In this section, sections 7 to 12, 114, 115 (but subject to subsection (7)), [F67]. . . [F68]. . . and 248, Part VIII, Chapter IV of Part X and Part XI, except in so far as the context otherwise requires—

(a) "profits" means income and chargeable gains; and

(b) "trade" includes "vocation", and also includes an office or employment or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts.

[[F69](4A) In sections 74(1), 79(1), 79A(1), 79B(1), 83A(1), 84(1), 86(1), 86A(2)(a), 87(1), (2) and (4), 88, 89, 90(1) and (3), 94(1), 100(2)(b), 101, 102, 401(1), 491(10), 577(7)(b), 579(2), 588(3), 589A(8) and 817(2), and in paragraph 5(11) of Schedule 30, "profession" includes vocation.**]**

(5) Part VIII contains general provisions relating to the taxation of profits of companies.

Textual Amendments

F67 Words in s. 6(4) repealed (with effect in accordance with Sch. 8 Pt. 2(4) Note of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 52, **Sch. 8**

F68 Words in s. 6(4) repealed (with application in accordance with Sch. 33 Pt. 2(10) Note of the amending Act) by Finance Act 2001 (c. 9), s. 110, **Sch. 33**

F69 S. 6(4A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 6** (with Sch. 2)

Modifications etc. (not altering text)

C26 S. 6 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 1(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

C27 Table K Vol.1.*See*—Trustee Savings Bank Act 1985 (c.58) s.5*and* Sch.2 para.6(2).1990(C) s.92—*balancing charge on a person liable to corporation tax in respect of dwelling houses let on assured tenancies to be made under* Sch.A.

C28 *See* 1988(F) s.148*and* Sch.14 Part V*for repeals which will take place from* 6*April* 1993.

Marginal Citations

M7 Source—1970 s.238

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7 Treatment of certain payments and repayment of income tax.

(1) [M8] No payment made by a company resident in the United Kingdom shall be treated for any purpose of the Income Tax Acts as paid out of profits or gains brought into charge to income tax; nor shall any right or obligation under the Income Tax Acts to deduct income tax from any payment be affected by the fact that the recipient is a company not chargeable to income tax in respect of the payment.

(2) Subject to the provisions of the Corporation Tax Acts, where a company resident in the United Kingdom receives any payment on which it bears income tax by deduction, the income tax thereon shall be set off against any corporation tax assessable on the company [F70]. . . for the accounting period in which that payment falls to be taken into account for corporation tax (or would fall to be taken into account but for any exemption from corporation tax); and accordingly in respect of that payment the company, unless wholly exempt from corporation tax, shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

(3) [M9] Subsection (2) above does not apply to a payment of relevant loan interest to which section 369 applies.

(4) [M10] References in this section to payments received by a company apply to any received by another person on behalf of or in trust for the company, but not to any received by the company on behalf of or in trust for another person.

(5) [F71] . . . . . .

(6) [F71] . . . . . .

(7) [F71] . . . . . .

Textual Amendments

F70 Words in s. 7(2) repealed (with effect as mentioned in Sch. 27 Pt. 3(28) Note of the amending Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(28)**

F71 S. 7(5)-(7) repealed (with effect as mentioned in Sch. 27 Pt. 3(28) Note of the amending Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(28)**

Modifications etc. (not altering text)

C29 *See*—1970(M) s.94—*set off to be disregarded in computing penalty for failure to deliver a return.*1990 ss.98*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C30 S. 7(2) applied (with modifications) (with effect in accordance with s. 105(1) of the applying Act) by Finance Act 1996 (c. 8), **s. 91(2)** (with Schs. 10, 11, 15)

Marginal Citations

M8 Source—1970 s.240(4), (5)

M9 Source—1982 s.26(7)

M10 Source—1970 s.240(7)

8 General scheme of corporation tax.

(1) Subject to any exceptions provided for by the Corporation Tax Acts, a company shall be chargeable to corporation tax on all its profits wherever arising.

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(2) [M11] A company shall be chargeable to corporation tax on profits accruing for its benefit under any trust, or arising under any partnership, in any case in which it would be so chargeable if the profits accrued to it directly; and a company shall be chargeable to corporation tax on profits arising in the winding up of the company, but shall not otherwise be chargeable to corporation tax on profits accruing to it in a fiduciary or representative capacity except as respects its own beneficial interest (if any) in those profits.

(3) Corporation tax for any financial year shall be charged on profits arising in that year; but assessments to corporation tax shall be made on a company by reference to accounting periods, and the amount chargeable (after making all proper deductions) of the profits arising in an accounting period shall, where necessary, be apportioned between the financial years in which the accounting period falls.

In relation to accounting periods ending after such day, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this subsection, this subsection shall have effect with the substitution for "assessments to corporation tax shall be made on a company" of "corporation tax shall be computed and chargeable (and any assessments shall accordingly be made)".

[F72](4) . . . . . .

[F72](5) . . . . . .

[F72](6) . . . . . .

Textual Amendments

F72 S. 8(4)-(6) repealed (27.7.1993 with application in relation to resolutions passed after the day on which 1993 c. 34 is passed) by 1993 c. 34, ss. 205(7), 206(1), 213, **Sch. 23 Pt.VI**

Modifications etc. (not altering text)

C31 S. 8(3): the day appointed for the purposes of s. 8(3) is 30.9.1993 by S.I. 1992/3066, **art. 2(2)(b)**.

Marginal Citations

M11 Source—1970 s.243 (1)-(3), (5)-(7); 1974 s.36; 1987(No. 2) s.90(1)(a)

[F73 8A Resolutions to reduce corporation tax.

[F74. . . . . .]

Textual Amendments

F73 S. 8A inserted (27.7.1993) by 1993 c. 34, **s. 206(2)**

F74 S. 8A repealed (29.4.1996) by Finance Act 1996 (c. 8), ss. 138, 205, Sch. 24 para. 10, **Sch. 41**

9 Computation of income: application of income tax principles.

(1) [M12] Except as otherwise provided by the Tax Acts, the amount of any income shall for purposes of corporation tax be computed in accordance with income tax principles, all questions as to the amounts which are or are not to be taken into account as income, or in computing income, or charged to tax as a person's income, or as to the time

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when any such amount is to be treated as arising, being determined in accordance with income tax law and practice as if accounting periods were years of assessment.

(2) For the purposes of this section "income tax law" means, in relation to any accounting period, the law applying, for the year of assessment in which the period ends, to the charge on individuals of income tax, except that it does not include such of the enactments of the Income Tax Acts as make special provision for individuals in relation to matters referred to in subsection (1) above.

[F75(2A) But no income shall be computed, and no assessment shall be made, for purposes of corporation tax under ITTOIA 2005.

(2B) Instead, income shall continue to be computed, and the assessment shall continue to be made, for purposes of corporation tax under Schedules A and D and the Cases of Schedule D.

(2C) For (but only for) the purpose of continuing to apply for purposes of corporation tax, those Schedules and Cases are treated as if they were still part of income tax law (and therefore applied in accordance with subsection (1) above for purposes of corporation tax).**]**

(3) Accordingly, for purposes of corporation tax, income shall be computed, and the assessment shall be made, under—

[F76(a) Schedules A **[**F77and D**]** and the Cases of **[**F78Schedule D**]**F79. . . , and

(b) the following provisions of ITEPA 2003 (which impose charges to income tax)—

(i) Part 2 (employment income),

(ii) Part 9 (pension income), and

(iii) Part 10 (social security income),**]**

and in accordance with the provisions applicable to those Schedules and Cases **[**F80and those Parts**]**, but (subject to the provisions of the Corporation Tax Acts) the amounts so computed for the several sources of income, if more than one, together with any amount to be included in respect of chargeable gains, shall be aggregated to arrive at the total profits.

(4) Without prejudice to the generality of subsection (1) above, any provision of the Income Tax Acts **[**F81(other than ITTOIA 2005)**]** which confers an exemption from income tax, or which provides for a person to be charged to income tax on any amount (whether expressed to be income or not, and whether an actual amount or not), shall, except as otherwise provided, have the like effect for purposes of corporation tax.

(5) Where, by virtue of this section or otherwise, any enactment applies both to income tax and to corporation tax—

(a) it shall not be affected in its operation by the fact that they are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to income tax and corporation tax as if they were one tax, so that, in particular, a matter which in a case involving two individuals is relevant for both of them in relation to income tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax; and

(b) for that purpose references in any such enactment to a relief from or charge to income tax, or to a specified provision of the Income Tax Acts shall, in the absence of or subject to any express adaptation, be construed as being or

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including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding provision of the Corporation Tax Acts.

(6) The provisions of the Income Tax Acts applied by this section do not include sections 1 to 5, [F82]. . . Part VII or sections 348 to 350 of this Act; and nothing in this section shall be taken to mean that income arising in any period is to be computed by reference to any other period (except in so far as this results from apportioning to different parts of a period income of the whole period).

Textual Amendments

F75 S. 9(2A)-(2C) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 7(2)** (with Sch. 2)

F76 S. 9(3)(a)(b) substituted for words in s. 9(3) (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 4(a)** (with Sch. 7)

F77 Words in s. 9(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 7(3)(a)** (with Sch. 2)

F78 Words in s. 9(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 7(3)(b)** (with Sch. 2)

F79 Words in s. 9(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 7(3)(c), **Sch. 3** (with Sch. 2)

F80 Words in s. 9(3) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 4(b)** (with Sch. 7)

F81 Words in s. 9(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 7(4)** (with Sch. 2)

F82 Words in s. 9(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 7(5), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C32 S. 9 restricted (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 881**, 883(3)(b) (with Sch. 2)

Marginal Citations

M12 Source—1970 s.250

10 Time for payment of tax.

[F83] . . . . . .

Textual Amendments

F83 S. 10 repealed (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), s. 258, **Sch. 26 Part 5(23)**, Note 4; S.I. 1998/3173, **art. 2**

11 Companies not resident in United Kingdom.

[[F84](1) A company not resident in the United Kingdom is within the charge to corporation tax if, and only if, it carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom.

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(2) If it does so, it is chargeable to corporation tax, subject to any exceptions provided for by the Corporation Tax Acts, on all profits, wherever arising, that are attributable to its permanent establishment in the United Kingdom.

These profits, and these only, are the company's "chargeable profits" for the purposes of corporation tax.

(2A) The profits attributable to a permanent establishment for the purposes of corporation tax are—

(a) trading income arising directly or indirectly through or from the establishment,

(b) income from property or rights used by, or held by or for, the establishment, and

(c) chargeable gains falling within section 10B of the 1992 Act—

(i) by virtue of assets being used in or for the purposes of the trade carried on by the company through the establishment, or

(ii) by virtue of assets being used or held for the purposes of the establishment or being acquired for use by or for the purposes of the establishment.**]**

(3) [F85]. . . Where a company not resident in the United Kingdom receives any payment on which it bears income tax by deduction, and the payment forms part of, or is to be taken into account in computing, the company's income chargeable to corporation tax, the income tax thereon shall be set off against any corporation tax assessable on that income [F86]. . . for the accounting period in which the payment falls to be taken into account for corporation tax; and accordingly in respect of that payment the company shall not be entitled to a repayment of income tax before the assessment for that accounting period is finally determined and it appears that a repayment is due.

(4) [M13]Subsection (3) above does not apply to a payment of relevant loan interest to which section 369 applies.

Textual Amendments

F84 S. 11(1)-(2A) substituted for s. 11(1)(2) (with effect in accordance with s. 149(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 149(1)**

F85 Words in s. 11(3) repealed (27.7.1993 with effect in accordance with s. 103 of the amending Act) by 1993 c. 34, ss. 103, 213, **Sch. 23 Pt.III**

F86 Words in s. 11(3) repealed (with effect as mentioned in Sch. 27 Pt. 3(28) Note of the amending Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(28)**

Modifications etc. (not altering text)

C33 *See*—1970(M) s.94(2)—*set off to be disregarded in computing penalty for failure to make a return.*1990 ss.98*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C34 S. 11(3) applied (with modifications) (with effect in accordance with s. 105(1) of the applying Act) by Finance Act 1996 (c. 8), **s. 91(2)** (with Schs. 10, 11, 15)

Marginal Citations

M13 SOURCE-1982 s. 26(7)

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[F87 11AA Determination of profits attributable to permanent establishment

(1) This section provides for determining for the purposes of corporation tax the amount of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom ("the non-resident company").

(2) There shall be attributed to the permanent establishment the profits it would have made if it were a distinct and separate enterprise, engaged in the same or similar activities under the same or similar conditions, dealing wholly independently with the non-resident company.

(3) In applying subsection (2)—

(a) it shall be assumed that the permanent establishment has the same credit rating as the non-resident company, and

(b) it shall also be assumed that the permanent establishment has such equity and loan capital as it could reasonably be expected to have in the circumstances specified in that subsection.

No deduction may be made in respect of costs in excess of those that would have been incurred on those assumptions.

(4) There shall be allowed as deductions any allowable expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the United Kingdom or elsewhere.

"Allowable expenses" means expenses of a kind in respect of which a deduction would be allowed for corporation tax purposes if incurred by a company resident in the United Kingdom.

(5) The Board may by regulations make provision as to the application of subsection (2) in relation to insurance companies.

The regulations may, in particular, make provision in place of subsection (3)(b) as to the basis on which, in the case of insurance companies, capital is to be attributed to a permanent establishment in the United Kingdom. In this subsection "insurance company" has the meaning given by section 431(2).

(6) Schedule A1 to this Act contains provisions supplementing the provisions of this section.**]**

Textual Amendments

F87 S. 11AA inserted (with effect in accordance with s. 149(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 149(2)**

12 Basis of, and periods for, assessment.

(1) **M14** Except as otherwise provided by the Corporation Tax Acts, corporation tax shall be assessed and charged for any accounting period of a company on the full amount of the profits arising in the period (whether or not received in or transmitted to the United Kingdom) without any other deduction than is authorised by those Acts.

(2) An accounting period of a company shall begin for purposes of corporation tax whenever—

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(a) the company, not then being within the charge to corporation tax, comes within it, whether by the company becoming resident in the United Kingdom or acquiring a source of income, or otherwise; or

(b) an accounting period of the company ends without the company then ceasing to be within the charge to corporation tax.

(3) An accounting period of a company shall end for purposes of corporation tax on the first occurrence of any of the following—

(a) the expiration of 12 months from the beginning of the accounting period;

(b) an accounting date of the company or, if there is a period for which the company does not make up accounts, the end of that period;

(c) the company beginning or ceasing to trade or to be, in respect of the trade or (if more than one) of all the trades carried on by it, within the charge to corporation tax;

(d) the company beginning or ceasing to be resident in the United Kingdom;

[F88(da) the company ceasing to be in administration;**]**

(e) the company ceasing to be within the charge to corporation tax.

(4) For the purposes of this section a company resident in the United Kingdom, if not otherwise within the charge to corporation tax, shall be treated as coming within the charge to corporation tax at the time when it commences to carry on business.

(5) **[**F89Subject to subsection (5A) below**]** if a company carrying on more than one trade makes up accounts of any of them to different dates, and does not make up general accounts for the whole of the company's activities, subsection (3)(b) above shall apply with reference to the accounting date of such one of the trades **[**F90as the company may determine**]**.

[F91(5A) If the Board is of the opinion, on reasonable grounds, that a date determined by a company for the purposes of subsection (5) above is inappropriate, they may by notice direct that the accounting date of such other of the trades referred to in that subsection as appears to them to be appropriate shall be used instead.**]**

[F92(5B) For the purposes of subsection (3)(da) a company ceases to be in administration when it ceases to be in administration under Schedule B1 to the Insolvency Act 1986 or any corresponding event occurs otherwise than under that Act.**]**

(6) If a chargeable gain or allowable loss accrues to a company at a time not otherwise within an accounting period of the company, an accounting period of the company shall then begin for the purposes of corporation tax, and the gain or loss shall accrue in that accounting period.

(7) Notwithstanding anything in subsections (1) to (6) above, where a company is wound up, an accounting period shall end and a new one begin with the commencement of the winding up, and thereafter, subject to **[**F93subsection (7ZA) below and**]** section 342(6), an accounting period shall not end otherwise than by the expiration of 12 months from its beginning or by the completion of the winding up.

For this purpose a winding up is to be taken to commence on the passing by the company of a resolution for the winding up of the company, or on the presentation of a winding up petition if no such resolution has previously been passed and a winding up order is made on the petition, or on the doing of any other act for a like purpose in the case of a winding up otherwise than under the **M15**Insolvency Act 1986.

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[F94(7ZA) Notwithstanding anything in subsections (1) to (6) above, where a company enters administration—

(a) an accounting period of the company shall end immediately before the day the company enters administration, and

(b) if immediately before the company enters administration it is in the course of being wound up, subsection (7) ceases to apply at the end of that accounting period.

For this purpose a company enters administration when it enters administration under Schedule B1 to the Insolvency Act 1986 or is subject to any corresponding procedure otherwise than under that Act.**]**

[F95(7A) Notwithstanding anything in **[**F96subsections (1) to (7ZA)**]** above, **[**F97and subject to subsection (7C) below**]** where **[**F98an insurance business transfer scheme has effect to transfer from a company to another person business which consists of the effecting or carrying out of contracts of long-term insurance**]**, an accounting period of the company from which the business is transferred shall end with the day of the transfer.**]**

[F99(7B) In subsection (7A) above—

"contracts of long-term insurance" means contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

"insurance business transfer scheme" means a scheme falling within section 105 of the Financial Services and Markets Act 2000 and—

(a) includes an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section, but

(b) does not include a scheme for the transfer of business carried on by one or members or former underwriting members of Lloyd's.**]**

[F100(7C) Where subsection (1) of section 444AA applies in the case of an insurance business transfer scheme—

(a) an accounting period of the transferor shall end for purposes of corporation tax—

(i) with the end of the period covered by the periodical return deemed by virtue of subsection (2) of that section, or

(ii) where the last period covered by an actual periodical return of the transferor ends immediately before the transfer, with the end of that period,

(so that an accounting period will end immediately before the transfer), and

(b) an accounting period of the transferor shall end for purposes of corporation tax with the end of the period covered by the periodical return deemed by virtue of subsection (3) of that section (so that the time of the transfer shall be an accounting period of the transferor);

and for this purpose, expressions used in this subsection and in that section have the same meaning in this subsection as in that section.**]**

(8) Where it appears to the inspector that the beginning or end of any accounting period of a company is uncertain, he may make an assessment on the company for such period, not exceeding 12 months, as appears to him appropriate, and that period shall be treated for all purposes as an accounting period of the company unless either—

(a) the inspector on further facts coming to his knowledge sees fit to revise it; or

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(b) on an appeal against the assessment in respect of some other matter the company shows the true accounting periods;

and if on an appeal against an assessment made by virtue of this subsection the company shows the true accounting periods, the assessment appealed against shall, as regards the period to which it relates, have effect as an assessment or assessments for the true accounting periods, and there may be made such other assessments for any such periods or any of them as might have been made at the time when the assessment appealed against was made.

Textual Amendments

F88 S. 12(3)(da) inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 1(2)**

F89 Words in s. 12(5) inserted (with effect as mentioned in Sch. 24 para. 11(4) of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 24 para. 11(2)(a)**

F90 Words in s. 12(5) substituted (with effect as mentioned in Sch. 4 para. 11(4) of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 24 para. 11(2)(b)**

F91 S. 12(5A) inserted (with effect as mentioned in Sch. 4 para. 11(4) of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 24 para. 11(3)**

F92 S. 12(5B) inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 1(3)**

F93 Words in s. 12(7) inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 1(4)**

F94 S. 12(7ZA) inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 1(5)**

F95 S. 12(7A) inserted by Finance Act 1990 (c. 29), s.48, **Sch.9 para.3** (in relation to transfers of business on or after 1.11.1990)

F96 Words in s. 12(7A) substituted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 1(6)**

F97 Words in s. 12(7A) inserted (with effect in accordance with Sch. 9 para. 20(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 20(2)**

F98 Words in s. 12(7A) substituted (with effect in accordance with art. 14(4) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 14(2)**

F99 S. 12(7B) inserted (with effect in accordance with art. 14(4) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 14(3)**

F100 S. 12(7C) inserted (with effect in accordance with Sch. 9 para. 20(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 20(3)**

Modifications etc. (not altering text)

C35 S. 12(1)-(7) excluded (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (SI 1997/1154), {reg. 25(2)}

C36 S. 12(1)-(7) excluded (1.4.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **regs. 1(1)**, 79(2)

C37 S. 12(7A) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **reg. 4(2)(b)**

C38 S. 12(7A) modified (19.3.1997) by S.I. 1995/171, reg. 4A (as inserted by The Friendly Societies (Taxation of Transfers of Business) (Amendment) Regulations 1997 (S.I. 1997/472), **reg. 4**)

C39 S. 12(7A) modified (with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 4** (as

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amended by S.I. 2001/3629, **art. 154**); and that modifying reg. 4 is omitted (8.4.2004 with effect in accordance with reg. 1 of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 5**

Marginal Citations

M14 SOURCE-1970 s. 247; 1972 s. 107(1)

M15 1986 c. 45.

Small companies' rate

13 Small companies' relief.

(1) [M16]Where in any accounting period the profits of **[**[F101]a company which—

(a) is resident in the United Kingdom, and

(b) is not a close investment-holding company (as defined in section 13A) at the end of that period.**]**

do not exceed the lower relevant maximum amount, the company may claim that the corporation tax charged on its basic profits for that period shall be calculated as if the rate of corporation tax (instead of being the rate fixed for companies generally) were such lower rate (to be known as the "small companies' rate") as Parliament may from time to time determine.

(2) Where in any accounting period the profits of any such company exceed the lower relevant maximum amount but do not exceed the upper relevant maximum amount, the company may claim that the corporation tax charged on its basic profits for that period shall be reduced by a sum equal to such fraction as Parliament may from time to time determine of the following amount—

$$\left(M - P\right) \text{x } \frac{I}{P}$$

where—

M is the upper relevant maximum amount;

P is the amount of the profits; and

I is the amount of the basic profits.

(3) The lower and upper relevant maximum amounts mentioned above shall be determined as follows—

(a) where the company has no associated company in the accounting period, those amounts are **[**[F102]£300,000**]** and **[**[F103]£1,500,000**]** respectively;

(b) where the company has one or more associated companies in the accounting period, the lower relevant maximum amount is **[**[F102]£300,000**]** divided by one plus the number of those associated companies, and the upper relevant maximum amount is **[**[F103]£1,500,000**]** divided by one plus the number of those associated companies.

(4) In applying subsection (3) above to any accounting period of a company, an associated company which has not carried on any trade or business at any time in that accounting period (or, if an associated company during part only of that accounting period, at any

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time in that part of that accounting period) shall be disregarded and for the purposes of this section a company is to be treated as an "associated company" of another at a given time if at that time one of the two has control of the other or both are under the control of the same person or persons.

In this subsection "control" shall be construed in accordance with section 416.

(5) In determining how many associated companies a company has got in an accounting period or whether a company has an associated company in an accounting period, an associated company shall be counted even if it was an associated company for part only of the accounting period, and two or more associated companies shall be counted even if they were associated companies for different parts of the accounting period.

(6) For an accounting period of less than 12 months the relevant maximum amounts determined in accordance with subsection (3) above shall be proportionately reduced.

(7) For the purposes of this section the profits (but not the basic profits) of a company for an accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne, with the addition of franked investment income **[**F104 other than franked investment income (if any) which the company ("the receiving company") receives from a company resident in the United Kingdom which is—

(a) a 51 per cent. subsidiary of the receiving company or of a company F105. . . of which the receiving company is a 51 per cent. subsidiary; or

(b) a trading or holding company which does not fall within **[**F106subsection (7A) below**]** and which is owned by a consortium the members of which include the receiving company.**]**

which the company (if a member of a group) receives from companies within the group **[**F107F108. . . **]** ; and for this purpose distributions received by the company from another are to be treated as coming from within the company's group if, but only if, dividends so received are group income or would be group income if the companies so elected.

[F109(7A) A company falls within this subsection if—

(a) it is a 75 per cent subsidiary of any other company, or

(b) arrangements of any kind (whether in writing or not) are in existence by virtue of which it could become such a subsidiary.**]**

(8) For the purposes of this section the basic profits of a company for an accounting period shall be taken to be the amount of its profits for that period on which corporation tax falls finally to be borne.

[F110**[**F111(8AA) Section 13ZA applies for the interpretation of subsection (7) above.**]**

(8AB) The reference in subsection (7) above to franked investment income received by a company applies to any such income received by another person on behalf of or in trust for the company, but not to any such income received by the company on behalf of or in trust for another person.**]**

[F112(8A) F113. . . . . .**]**

(9) F114. . . . . .

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Textual Amendments

F101 1989 s.105(1)*in relation to accounting periods beginning after* 31*March* 1989.*Previously* "a company resident in the United Kingdom".

F102 Words in s. 13(3) substituted (with effect in accordance with s. 86(3) of the amending Act) by Finance Act 1994 (c. 9), **s. 86(2)(a)**

F103 Words in s. 13(3) substituted (with effect in accordance with s. 86(3) of the amending Act) by Finance Act 1994 (c. 9), **s. 86(2)(b)**

F104 Words in s. 13(7) substituted (with effect in accordance with Sch. 3 para. 7(4) of the amending Act) by Finance Act 1998 (c. 36), s. 31, **Sch. 3 para. 7(2)**

F105 Words in s. 13(7)(a) repealed (with application in accordance with s. 86(6) and Sch. 33 Pt. 2(11) Note of the amending Act) by Finance Act 2001 (c. 9), s. 86(2)(a), **Sch. 33 Pt. 2(11)**

F106 Words in s. 13(7)(b) substituted (with application in accordance with s. 86(6) of the amending Act) by Finance Act 2001 (c. 9), **s. 86(2)(b)**

F107 Words in s. 13(7) inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 138, **Sch. 16 para. 11(2)**

F108 Words in s. 13 (7) repealed (with effect in accordance with Sch. 6 para. 1(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), ss. 36, 52, **Sch. 6**. para. 1(2), Sch. 8 Pt. 2(11) Note

F109 S. 13(7A) inserted (with application in accordance with s. 86(6) of the amending Act) by Finance Act 2001 (c. 9), **s. 86(3)**

F110 S. 13(8AA)(8AB) inserted (with effect in accordance with Sch. 3 para. 7(4) of the amending Act) by Finance Act 1998 (c. 36), s. 31, **Sch. 3 para. 7(3)**

F111 S. 13(8AA) substituted (with application in accordance with s. 86(6) of the amending Act) by Finance Act 2001 (c. 9), **s. 86(4)**

F112 S. 13(8A) inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 138, **Sch. 16 para. 11(3)**

F113 S. 13(8A) repealed (with effect in accordance with Sch. 6 para. 1(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), ss. 36, 52, **Sch. 6**. para. 1(3), Sch. 8 Pt. 2(11) Note

F114 S. 13(9) repealed (with effect in accordance with Sch. 20 Pt. 3(2) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 139, **Sch. 20 Pt. 3(2)**

Modifications etc. (not altering text)

C40 S. 13 modified (for the financial year 1991 and subsequent financial years) by Finance Act 1991 (c. 31, SIF 63:1), **s. 25(3)**
S. 13 modified (for the financial year 1994 and subsequent financial years) by Finance Act 1994 (c. 9), **s. 86(3)**

C41 S. 13 applied (27.7.1999) by Finance Act 1999 (c. 16), **s. 28(7)(b)**

C42 S. 13 applied (19.7.2006) by Finance Act 2006 (c. 25), **s. 26(10)**

C43 *For rates and fractions see* Table K Vol.1.

C44 S. 13(2) amended (for the financial year 1990) by Finance Act 1991 (c. 31, SIF 63:1), **s. 23(2)**

C45 S. 13(2) amended (for the financial year 1991) by Finance Act 1991 (c. 31, SIF 63:1), **s. 25(1)(b)**
S. 13(2) amended (for the financial year 1992) by Finance (No. 2) Act 1992 (c. 48), **s. 22(b)**.
S. 13(2) modified (for the financial year 1993) by Finance Act 1993 (c. 34), **s. 54(b)**
S. 13(2) modified (for the financial year 1994) by Finance Act 1994 (c. 9), **s. 86(1)(b)**
S. 13(2) modified (for the financial year 1995) by Finance Act 1995 (c. 4,) {s. 38(b)}
S. 13(2) modified (for the financial year 1996) by Finance Act 1996 (c. 8), **s. 78(b)**
S. 13(2) modified (for the financial year 1997) by Finance Act 1997 (c. 16), **s. 59(b)**
S. 13(2) modified (for the financial year 1998) by Finance Act 1998 (c. 36), **s. 28(2)(b)**
S. 13(2) modified (for the financial year 1999) by Finance Act 1998 (c. 36), **s. 29(2)(b)**
S. 13(2) modified (for the financial year 2000) by Finance Act 2000 (c. 17), **s. 36(b)**
S. 13(2) modified (for the financial year 2001) by Finance Act 2001 (c. 9), **s. 55(b)**
S. 13(2) modified (for the financial year 2002) by Finance Act 2002 (c. 23), **s. 31(b)**

C46 S. 13(4)(5) applied (with effect in accordance with s. 579 of the affecting Act) by Capital Allowances Act 2001 (c. 2), **s. 99(5)** (with Sch. 3 paras. 54, 55)

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S. 13(4)(5) applied (with effect in accordance with Sch. 14 para. 10 of the 1997 affecting Act) by Capital Allowances Act 1990 (c. 1), **s. 38D(6)** (as inserted by Finance Act 1997 (c. 16), s. 84, **Sch. 14 para. 2**)

C47 S. 13(7) amended (27.7.1993 with application as mentioned in s. 78(11) of the Amending Act) by 1993 c. 34, **s. 78(6)(11)**

Marginal Citations

M16 SOURCE-1972 s. 95; 1973 Sch. 14 2, 4; 1983 (No. 2) s. 2(2); 1987 (No. 2) s. 74(4)

[F115 13ZA Interpretation of section 13(7)

(1) In determining for the purposes of section 13(7) whether one body corporate is a 51 per cent subsidiary of another, that other shall be treated as not being the owner of any share capital—

(a) which it owns indirectly, and

(b) which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

(2) Notwithstanding that at any time a company ("the subsidiary company") is a 51 per cent subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of section 13(7) unless, additionally, at that time—

(a) the parent company would be beneficially entitled to more than 50 per cent of any profits available for distribution to equity holders of the subsidiary company, and

(b) the parent company would be beneficially entitled to more than 50 per cent of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(3) For the purposes of section 13(7) and this section—

(a) "trading or holding company" means a trading company or a company the business of which consists wholly or mainly in the holding of shares or securities of trading companies that are its 90 per cent subsidiaries;

(b) "trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

(c) a company is owned by a consortium if 75 per cent or more of the ordinary share capital of the company is beneficially owned between them by companies of which none—

(i) beneficially owns less than 5 per cent of that capital,

(ii) would be beneficially entitled to less than 5 per cent of any profits available for distribution to equity holders of the company, or

(iii) would be beneficially entitled to less than 5 per cent of any assets of the company available for distribution to its equity holders on a winding up,

and those companies are called the members of the consortium.

(4) Schedule 18 (equity holders and assets etc. available for distribution) applies for the purposes of subsections (2) and (3)(c) above as it applies for the purposes of section 413(7).]

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Textual Amendments

F115 S. 13ZA inserted (with application in accordance with s. 86(6) of the amending Act) by Finance Act 2001 (c. 9), **s. 86(5)**

[F116 13AA Corporation tax starting rate.

(1) Where in any accounting period the profits of a qualifying company do not exceed the first relevant amount, the company may, instead of making a claim under section 13(1), claim that the corporation tax charged on its basic profits for that period shall be calculated as if the rate of corporation tax were such rate (to be known as the "corporation tax starting rate"), lower than the small companies' rate, as Parliament may from time to time determine.

(2) Where in any accounting period the profits of a qualifying company exceed the first relevant amount but do not exceed the second relevant amount, the company may, instead of making a claim under section 13(1), claim that the corporation tax charged on its basic profits for that period shall be—

(a) calculated as if the rate of corporation tax were the small companies' rate; and

(b) then reduced by the sum specified in subsection (3) below.

(3) That sum is the sum equal to such fraction as Parliament may from time to time determine of the following amount—

$$\left(\mathrm{R2} - P\right) x \frac{I}{P}$$

where—

R2 is the second relevant amount;

P is the amount of the profits; and

I is the amount of the basic profits.

(4) The first and second relevant amounts mentioned above shall be determined as follows—

(a) where the company has no associated company in the accounting period, those amounts are £10,000 and £50,000 respectively;

(b) where the company has one or more associated companies in the accounting period—

(i) the first relevant amount is £10,000 divided by one plus the number of those associated companies, and

(ii) the second relevant amount is £50,000 divided by one plus the number of those associated companies.

(5) Subsections (4) and (5) of section 13 shall apply for the purposes of subsection (4) above as they apply for the purposes of subsection (3) of that section.

(6) For an accounting period of less than 12 months the relevant amounts determined in accordance with subsection (4) above shall be proportionately reduced.

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(7) The profits and the basic profits of a company for an accounting period shall be determined for the purposes of this section as they are for the purposes of section 13.

(8) In this section "qualifying company", in relation to an accounting period, means a company which—

(a) is resident in the United Kingdom;

(b) is not a close investment-holding company (as defined in section 13A) at the end of that period; and

(c) is not an investment trust which for that period has any eligible rental income (within the meaning of section 508A).**]**

Textual Amendments

F116 S. 13AA inserted (with effect in accordance with s. 28(6)(7) of the amending Act) by Finance Act 1999 (c. 16), **s. 28(1)**

Modifications etc. (not altering text)

C48 S. 13AA modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 28(7)(a)**

C49 S. 13AA(3) modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 29(b)**
S. 13AA(3) modified (11.5.2001) by Finance Act 2001 (c. 9), **s. 56(b)**
S. 13AA(3) modified (24.7.2002) by Finance Act 2002 (c. 23), **s. 32(b)**

[F117**13AB The non-corporate distribution rate**

(1) This section applies where in any accounting period—

(a) a company makes (or is treated as making) one or more non-corporate distributions, and

(b) the company's underlying rate of corporation tax is less than the non-corporate distribution rate.

(2) The rate of tax to be applied in calculating the corporation tax chargeable on the company's basic profits for the accounting period is—

(a) in relation to so much of the company's basic profits as is matched with a non-corporate distribution, the non-corporate distribution rate, and

(b) in relation to the remainder of the company's basic profits, the company's underlying rate of corporation tax.

(3) The "non-corporate distribution rate" is such rate as Parliament may from time to time determine.

(4) Schedule A2 to this Act makes provision supplementing this section, in particular—

(a) defining "non-corporate distribution" and a company's "underlying rate of corporation tax",

(b) as to the matching of a company's profits and non-corporate distributions, and

(c) providing for non-corporate distributions to be allocated to other companies in certain circumstances.**]**

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Textual Amendments

F117 S. 13AB inserted (with effect in accordance with s. 28(4)(5) of the amending Act) by Finance Act 2004 (c. 12), **s. 28(1)(6)**

Modifications etc. (not altering text)

C50 S. 13AB applied (with modifications) (22.7.2004) by Finance Act 2004 (c. 12), **s. 28(4)(5)**

[F118 13A Close investment-holding companies.

(1) A close company is for the purposes of section 13(1) **[**F119 or 13AA(8)**]** a "close investment-holding company" unless it complies with subsection (2) below.

(2) A company ("the relevant company") complies with this subsection in any accounting period if throughout that period it exists wholly or mainly for any one or more of the following purposes—

(a) the purpose of carrying on a trade or trades on a commercial basis,

(b) the purpose of making investments in land or estates or interests in land in cases where the land is, or is intended to be, let to persons other than—

(i) any person connected with the relevant company, or

(ii) any person who is the **[**F120 spouse or civil partner**]** of an individual connected with the relevant company, or is a relative, or the **[**F121 spouse or civil partner**]** of a relative, of such an individual or of the **[**F120 spouse or civil partner**]** of such an individual,

(c) the purpose of holding shares in and securities of, or making loans to, one or more companies each of which is a qualifying company or a company which—

(i) is under the control of the relevant company or of a company which has control of the relevant company, and

(ii) itself exists wholly or mainly for the purpose of holding shares in or securities of, or making loans to, one or more qualifying companies,

(d) the purpose of co-ordinating the administration of two or more qualifying companies,

(e) the purpose of a trade or trades carried on on a commercial basis by one or more qualifying companies or by a company which has control of the relevant company, and

(f) the purpose of the making, by one or more qualifying companies or by a company which has control of the relevant company, of investments as mentioned in paragraph (b) above.

(3) For the purposes of subsection (2) above, a company is a "qualifying company", in relation to the relevant company, if it—

(a) is under the control of the relevant company or of a company which has control of the relevant company, and

(b) exists wholly or mainly for either or both of the purposes mentioned in subsection (2)(a) or (b) above.

(4) Where a company is wound up, it shall not be treated as failing to comply with subsection (2) above in the accounting period that (by virtue of subsection (7) of section 12) begins with the time which is for the purposes of that subsection the

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commencement of the winding up, if it complied with subsection (2) above in the accounting period that ends with that time.

(5) In this section—

"control" shall be construed in accordance with section 416, and

"relative" has the meaning given by section 839(8).

(6) Section 839 shall apply for the purposes of this section.**]**

Textual Amendments

F118 S. 13A inserted (in relation to accounting periods beginning after 31 March 1989) by Finance Act 1989 (c. 26), **s. 105(2)(3)**

F119 Words in s. 13A(1) inserted (with effect in accordance with s. 28(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 28(2)**

F120 Words in s. 13A(2)(b)(ii) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 48(b)

F121 Words in s. 13A(2)(b)(ii) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 48(a)

Advance corporation tax

14 Advance corporation tax and qualifying distributions.

(1) **F122** . . . . . .

(2) **M17**In this Act "qualifying distribution" means any distribution other than—

(a) a distribution which, in relation to the company making it, is a distribution by virtue only of section 209(2)(c); or

(b) a distribution consisting of any share capital or security which the company making the distribution has directly or indirectly received from the company by which the share capital or security was issued and which, in relation to the latter company, is a distribution by virtue only of section 209(2)(c).

(3) **F122** . . . . . .

(4) **F122** . . . . . .

(5) **F122** . . . . . .

Textual Amendments

F122 S. 14(1)(3)-(5) repealed (with effect as mentioned in Sch. 3 para. 8(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 31, 165, Sch. 3 para. 8(2), **Sch. 27 Pt. 3(2)** Note

Modifications etc. (not altering text)

C51 *For rates see* Table J Vol.1.

C52 *See* 1980 s.117*and* Sch.18—*demergers.*

Marginal Citations

M17 SOURCE-1972 s. 84(4)

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[M18]15 Schedule A.

(1) The Schedule referred to as Schedule A is as follows:—

[[F123]SCHEDULE A

(1) (1) Tax is charged under this Schedule on the annual profits arising from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in the United Kingdom.

(2) To the extent that any transaction is entered into for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land in the United Kingdom, it is taken to be entered into in the course of such a business.

(3) All businesses and transactions carried on or entered into by a particular person or partnership, so far as they are businesses or transactions the profits of which are chargeable to tax under this Schedule, are treated for the purposes of this Schedule as, or as entered into in the course of carrying on, a single business.

There are qualifications to this rule in the case of—

(a) companies not resident in the United Kingdom (see subsection (1A) below); and

(b) insurance companies (see sections 432AA and 441B(2A)).

(4) The receipts referred to in the expression "as a source of rents or other receipts" include—

(a) payments in respect of a licence to occupy or otherwise to use land or the exercise of any other right over land, and

(b) rentcharges [F124]. . . and other annual payments reserved in respect of, or charged on or issuing out of, the land.

(2) (1) This Schedule does not apply to profits arising from the occupation of land.

(2) This Schedule does not apply to—

(a) profits charged to tax under Case I of Schedule D under—

(b) receipts or expenses taken into account as trading receipts or expenses under section 98 (tied premises);

(c) rent charged to tax under Schedule D under—

(3) The profits of a Schedule A business carried on by a company shall be computed without regard to items giving rise to—

credits or debits within Chapter II of Part IV of the Finance Act 1996 (loan relationships), or

[F125] . . . . . .

[[F126]credits or debits within Schedule 26 to the Finance Act 2002 (derivative contracts).**]**

This Schedule does not affect the operation of those provisions.

(3) (1) For the purposes of this Schedule a right to use a caravan or houseboat, where the use to which the caravan or houseboat may be put in pursuance of the right is confined to use at a single location in

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the United Kingdom, is treated as a right deriving from an estate or interest in land in the United Kingdom.

(2) In sub-paragraph (1)—

"caravan" has the meaning given by section 29(1) of the Caravan Sites and Control of Development Act 1960; and

"houseboat" means a boat or similar structure designed or adapted for use as a place of human habitation.

(4) (1) In the case of a furnished letting, any sum payable for the use of furniture shall be taken into account in computing the profits chargeable to tax under this Schedule in the same way as rent.

Expenses in connection with the provision of furniture shall similarly be taken into account in the same way as expenses in connection with the premises.

(2) A furnished letting means where—

(a) a sum is payable in respect of the use of premises, and

(b) the tenant or other person entitled to the use of the premises is also entitled, in connection with that use, to the use of furniture.

(3) This paragraph does not apply if the receipts and expenses are taken into account in computing the profits of a trade consisting in, or involving, making furniture available for use in premises.

(4) In this paragraph—

(a) any reference to a sum includes the value of consideration other than money, and references to a sum being payable shall be construed accordingly; and

(b) "premises" includes a caravan or houseboat within the meaning of paragraph 3.**]**

[F127(1A) In the case of a company which is not resident in the United Kingdom—

(a) businesses carried on and transactions entered into by it the profits of which are within the charge to corporation tax under Schedule A, and

(b) businesses carried on and transactions entered into by it the profits of which are **[**F128the profits of a UK property business within the charge to income tax under Chapter 3 of Part 3 of ITTOIA 2005**]**,

are treated **[**F129for the purposes of those charges as separate businesses**].]**

(2) F130. . . . . .

(3) F131. . . . . .

[F132(3A) Subsection (1) applies for corporation tax purposes (and does not apply for income tax purposes except so far as necessary to ensure its application for corporation tax purposes by virtue of section 9).**]**

(4) Part II contains further provisions relating to the charge to tax under Schedule A **[**F133and under Chapter 3 of Part 3 of ITTOIA 2005 (profits of a property business)**]**.

Textual Amendments

F123 S. 15(1): Sch. A substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 1** (with Sch. 5 para. 73)

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F124 S. 15(1): words in Sch. A para. 1(4)(b) repealed (S.) (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 50(2), **Sch. 13 Pt. 1**; S.S.I. 2003/456, **art. 2**

F125 S. 15(1): words in Sch. A para. 2(3) repealed (with effect in accordance with s. 79(3) of, and Sch. 23 to, the amending Act) by Finance Act 2002 (c. 23), s. 141, **Sch. 40 Pt. 3(10)**

F126 S. 15(1): words in Sch. A para. 2(3) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), s. 83(1)(b), **Sch. 27 para. 2** (with Sch. 28)

F127 S. 15(1A) inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 2** (with Sch. 5 para. 73)

F128 Words in s. 15(1A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 8(2)(a)** (with Sch. 2)

F129 Words in s. 15(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 8(2)(b)** (with Sch. 2)

F130 S. 15(2) repealed (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(4)**

F131 S. 51(3) repealed (with effect from 6.4.1988) by Finance Act 1988 (c. 39), s.148, **Sch. 14 Part V**, Note 1

F132 S. 15(3A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 8(3)** (with Sch. 2)

F133 Words in s. 15(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 8(4)** (with Sch. 2)

Modifications etc. (not altering text)

C53 *See*—1970(M) s.19—*information for purposes of* Sch.A*and associated* Sch.D*charges.*1990(C) s.9(5) —*manner of making allowances and charges.*1990(C) s.67(3)—*allowances in respect of leased assets employed for thermal insulation.*1990(C) s.92—*allowances in respect of dwelling houses let on assured tenancies.*

C54 Ss. 15-17: Schs. A-C excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **s. 219(2)(b)(4)** (with s. 220)

C55 S. 15(1): Sch. A para. 2(3) excluded (19.7.2006) by Finance Act 2006 (c. 25), **s. 120(3)(4)**

C56 S. 15(1): Sch. A para. 2(3) excluded (6.4.2008) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69Z1(3)** (as inserted by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I.2008/705), **regs. 1**, 5)

Marginal Citations

M18 SOURCE-1970(1)–(3)

F134 16 Schedule B.

. . . . . .

Textual Amendments

F134 S. 16 repealed (with effect from 6.4.1988) by Finance Act 1988 (c. 39) s.148, Sch.14 Pt. V

F135 17 Schedule C.

. . . . . .

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Textual Amendments

F135 S. 17 repealed (with effect in accordance with Sch. 7 para. 32 and Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 3, **Sch. 41 Pt. V(2)**, Note (with Sch. 7 paras. 33-35)

18 Schedule D.

(1) [M19]The Schedule referred to as Schedule D is as follows:—

SCHEDULE D

Tax under this Schedule shall be charged in respect of—

(a) the annual profits or gains arising or accruing—

(i) to any person residing in the United Kingdom from any kind of property whatever, whether situated in the United Kingdom or elsewhere, and

(ii) to any person residing in the United Kingdom from any trade, profession or vocation, whether carried on in the United Kingdom or elsewhere, and

(iii) to any person, whether a Commonwealth citizen or not, although not resident in the United Kingdom from any property whatever in the United Kingdom or from any trade, profession or vocation exercised within the United Kingdom, and

(b) all interest of money, annuities and other annual profits or gains **[**[F136]not charged under Schedule A **[**[F137]or under ITEPA 2003 as employment income, pension income or social security income**]]**, and not specially exempted from tax.

(2) [M20]Tax under Schedule D shall be charged under the Cases set out in subsection (3) below, and subject to and in accordance with the provisions of the Tax Acts applicable to those Cases respectively.

(3) The Cases are—

Case I:	tax in respect of any trade carried on in the United Kingdom or elsewhere **[**[F138]but not contained in Schedule A**]**;
Case II:	tax in respect of any profession or vocation not contained in any other Schedule;
Case III:	tax in respect of—
	(a) any interest of money, whether yearly or otherwise, or any annuity or other annual payment, whether such payment is payable within or out of the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation out of it, or as a personal debt or obligation

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	by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods, but not including any payment chargeable under Schedule A, and (b) all discounts, and (c) income **[**F139from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland**]**;
Case IV:	tax in respect of income arising from securities out of the United Kingdom F140 . . . ;
Case V:	tax in respect of income arising from possessions out of the United Kingdom not being **[**F141employment income, pension income or social security income on which tax is charged under ITEPA 2003**]**;
Case VI:	tax in respect of any annual profits or gains not falling under any other Case of Schedule D and not charged by virtue of **[**F142Schedule A **[**F143or by virtue of ITEPA 2003 as employment income, pension income or social security income**]]**.

[F144(3A) For the purposes of corporation tax subsection (3) above shall have effect as if the following Case were substituted for Cases III and IV, that is to say—

Case III:	tax in respect of— (a) profits and gains which, as profits and gains arising from loan relationships, are to be treated as chargeable under this Case by virtue of Chapter II of Part IV of the Finance Act 1996; (b) any annuity or other annual payment which— (i) is payable (whether inside or outside the United Kingdom and whether annually or at shorter or longer intervals) in respect of anything other than a loan relationship; and (ii) is not a payment chargeable under Schedule A; F145(c) . . . . .

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and as if Case V did not include tax in respect of any income falling within paragraph (a) of the substituted Case III.**]**

[F146(3B) The references in Case IV of Schedule D to income arising from securities out of the United Kingdom, and in Case V of Schedule D to income arising from possessions out of the United Kingdom, shall be taken, in the case of relevant foreign holdings, to include references to the following—

(a) any proceeds of such a sale or other realisation of coupons for foreign dividends as is effected by a bank in the United Kingdom which pays the proceeds over or carries them into an account;

(b) any proceeds of a sale of such coupons to a dealer in coupons in the United Kingdom by a person who is not a bank or another dealer in coupons.

(3C) In this section "relevant foreign holdings" means—

(a) any securities issued by or on behalf of a government or a public or local authority in a country outside the United Kingdom; or

(b) any shares or securities issued by or on behalf of a body of persons not resident in the United Kingdom;

and "securities" here includes loan stock and similar securities.

(3D) In this section "foreign dividends" means—

(a) in relation to relevant foreign holdings falling within subsection (3C)(a) above, interest or annual payments payable out of the revenue of the government or authority in question; and

(b) in relation to relevant foreign holdings falling within subsection (3C)(b) above, any dividends, interest or annual payments payable in respect of the holdings in question.

(3E) In this section—

(a) "bank" has the meaning given by section 840A; and

(b) references to coupons include, in relation to any foreign dividends, warrants for and bills of exchange purporting to be drawn or made in payment of those dividends.**]**

(4) M21The provisions of Schedule D and of subsection (2) above are without prejudice to any other provision of the Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases set out in subsection (3) above, and tax directed to be so charged shall be charged accordingly.

[F147(4A) Subsections (1) to (4) apply for corporation tax purposes (and do not apply for income tax purposes except so far as necessary to ensure their application for corporation tax purposes by virtue of section 9).**]**

(5) **[**F148Parts III and IV contain**]** further provisions relating to the charge to tax under Schedule D **[**F149and under ITTOIA 2005 (see, in particular, the charge under Chapter 2 of Part 2 of that Act (trade profits))**]**.

[F150(6) F151. . . . . .**]**

Textual Amendments

F136 S. 18(1): words in Sch. D para. (b) substituted (with effect as mentioned in Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 7 para. 4(1)** (with Sch. 7 paras. 33-35)

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F137 S. 18(1): words in Sch. D para. (b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 5(2)** (with Sch. 7)

F138 S. 18(3): words in Sch. D Case I inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 2**

F139 S. 18(3): words in Sch. D Case III para. (c) substituted (with effect as mentioned in Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 7 para. 4(2)(a)** (with Sch. 7 paras. 33-35)

F140 S. 18(3): words in Sch. D Case IV repealed (with effect as mentioned in Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 4(2)(b), **Sch. 41 Pt. V(2)**, Note (with Sch. 7 paras. 33-35)

F141 S. 18(3): words in Sch. D Case V substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 5(3)(a)** (with Sch. 7)

F142 S. 18(3): words in Sch. D Case VI substituted (with effect as mentioned in Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 7 para. 4(2)(c)** (with Sch. 7 paras. 33-35)

F143 S. 18(3): words in Sch. D Case VI substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, **Sch. 6 para. 5(3)(b)** (with Sch. 7)

F144 S. 18(3A) inserted (with effect as mentioned in s. 105 of the amending Act) by Finance Act 1996 (c. 8), s. 104, **Sch. 14 para. 5** (with Sch. 15)

F145 S. 18(3A): Sch. D Case III para. (c) repealed (with effect in accordance with Sch. 7 para. 12(9)(13) of the repealing Act) by virtue of Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 12(9), **Sch. 11 Pt. 2(8)**, Note

F146 S. 18(3B)-(3E) inserted (with effect as mentioned in Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 7 para. 4(3)** (with Sch. 7 paras. 33-35)

F147 S. 18(4A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 9(2)** (with Sch. 2)

F148 Words in s. 18(5) substituted (with effect as mentioned in Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 7 para. 4(4)** (with Sch. 7 paras. 33-35)

F149 Words in s. 18(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 9(3)** (with Sch. 2)

F150 S. 18(6) inserted (with effect in accordance with s. 97(5) of the amending Act) by Finance Act 2004 (c. 12), **s. 105(4)** (with s. 106)

F151 S. 18(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 9(4), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C57 *See, as regards exemption, the following provisions of this Act:*—s.320—*Commonwealth Agents —General and official agents etc.*s.322—*certain consular officers and employees.*s.323—*visiting forces and staffs of allied headquarters.*s.325—*certain savings bank interest.*s.326—*sums payable under certified contractual saving schemes.*s.327—*interest on damages for personal injuries.*s.328—*funds in court.*s.330—*German annuities in compensation for National Socialist persecution.*s.438—*annuity funds of insurance companies doing pension business.*s.459*to* 461—*certain friendly societies.*s.467—*certain trade unions*s.476—*certain dividends and interest payable by building societies* (*Repealed by* 1990 s.30*and* Sch.5 para.2*for* 1991-92*and subsequent years.*).s.484—*savings banks.*s.505*and* 506—*charities.*s.507—*British Museum.*s.508—*scientific research associations.*s.510—*agricultural societies.*s.514—*funds for reducing National Debt.*s.517—*issue departments of Reserve Bank of India and State Bank of Pakistan.*s.519—*local authorities.*s.578—*housing grants.*s.581—*interest on certain local authority borrowing in foreign currency.*s.613(4)—*Parliamentary pension funds.*s.614—*national insurance supplementary schemes etc; and certain Indian family pension funds.*s.614(3)—*certain pension funds for Crown service abroad.*s.614*and* 615—*certain pension funds for overseas employees.*s.620(5)*and* (6)—*approved*

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*retirement annuity trust schemes.*s.656*and* 657*—certain purchased life annuities.*s.688*—certain interest received by trustees of schemes for directors and employees to acquire shares.*
See also—1989 s.43*for periods of account ending after* 5*April* 1989*involving emoluments.*Income Tax (Repayment of Post-War Credits) Act 1959 s.2(4) (*see* Part II Vol.5)*—interest on post-war credits.*Diplomatic Privileges Act 1964 (c.81).Commonwealth Secretariat Act 1966 (c.10), **s.1(2)***and* Sch. Part I para.3*—the Commonwealth Secretariat.*International Organisations Act 1968 (c.48)*—certain international organisations and persons connected therewith.*Double taxation agreements (listed in Part III Vol.5)*in force under* ss.788-799*of this Act as to certain persons resident abroad.*

C58 S. 18: Sch. D excluded (with effect in accordance with s. 39(4)(5) of the excluding Act) by Income and Corporation Taxes Act 1988 (c. 1), s. 588(4A) (as inserted by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 24**)

C59 *See* 1970(M) Part VIII*as to charges on non-residents.*

C60 *See*—1988 s.79A(4)*—charge on contributor to training and enterprise councils and local enterprise companies who receives benefits in return.*S.I. 1987 No.530 (*in* Part III Vol.5) regn.8*—computation of profits and gains in respect of payments attributable to non-resident entertainers and sportsmen.*

C61 *See*—1989 s.94*and* Sch.11 para.5*—deep gain securities transferred on or after* 14*March* 1989.S.I. 1986 No. 1948 (*in* Part III Vol.5) regn.8(2)(d)*—interest on cash deposits which are plan investments under personal equity plans.*1990 s.56*and* Sch.10 para.12(4)*—treatment of chargeable events in relation to convertible securities.*Housing Act 1957 (c.56) Sch.8 para.4*and*Housing (Scotland) Act 1966 (c.49) Sch.7 para.4*—interest on certain small holdings of housing bonds.*Housing Subsidies Act 1967 (c.29) s.24(2)(c) (*reproduced in* Part II Vol.5)*—payment received by lender from Minister in respect of subsidised loan.*

C62 *See*—1989 s.94*and* Sch.11 para.5*—deep gain securities transferred on or after* 14*March* 1989.1990 s.56*and* Sch.10 paras.12(4)*and* 20*—treatment of chargeable events in relation to income received in the U.K. from convertible securities.*

C63 *See also*—1990 ss.9(5)*and* 15*—certain balancing charges on lessors and others in respect of industrial buildings, machinery, etc.*1970(M) s.30*—recovery of overpayment of tax, etc.*1988 s.79A(4)*—charge on contributor to training and enterprise councils and local enterprise companies who receives benefit in return.*1989 ss.68, 71*—charge on certain profits or gains of employee share ownership trusts.*1990(C) s.92(2)*—balancing charge in respect of dwelling houses let on assured tenancies.*S.I. 1956 No.1230 (*in* Part III Vol. 5) regns. 4*and* 15*—additional liabilities in respect of purchased life annuities in certain contingencies.*S.I. 1989 No.469 (*in* Part III Vol. 5) regn.22(3)*—assessments to recover tax in respect of income under personal equity plans.*

C64 S. 18: Sch. D Case I extended (with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), **s. 171(2)(a)(4)**, 184(3)
S. 18: Sch. D Case I restricted (with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), **ss. 171(2)(b)(4)**, 184(3)
S. 18: Sch. D Case 1 extended (with application in accordance with s. 219(4) of the extending Act) by Finance Act 1994 (c. 9), **s. 219(2)(a)** (with s. 220)
S. 18: Sch. D Case I modified (29.7.1996) by Broadcasting Act 1996 (c. 55), ss. 135, 149(1)(f), **Sch. 7 para. 19** (with s. 43(6))
S. 18: Sch. D Cases I, II, VI extended (31.7.1998) by Finance Act 1998 (c. 36), **s. 47(4)**
S. 18: Sch. D Cases I, II restricted (with application in accordance with s. 42(3) of the restricting Act) by Finance Act 1998 (c. 36), **s. 42(1)(2)** (with s. 42(4)(5))
S. 18: Sch. D Cases I, III, V modified (with effect in accordance with s. 117(4)(5) of the modifying Act) by Finance Act 1998 (c. 36), s. 117(1), **Sch. 18 para. 84** (with Sch. 18 para. 59(2))
S. 18: Sch. D Cases I, VI restricted (with application in accordance with s. 46(7) of the restricting Act) by Finance Act 2000 (c. 17), **s. 46(1)-(6)**

C65 S. 18: Sch. D Cases II-VI excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **s. 219(2)(b)(4)** (with s. 220)

C66 S. 18: Sch. D Case III extended (1.5.1995) by Finance Act 1995 (c. 4), **s. 157(7)**

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S. 18: Sch. D Case III applied (with effect as mentioned in s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), s. 83(9), **Sch. 8 para. 3(4)**, Sch. 15
S. 18: Sch. D Case III modified (with effect as mentioned in s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), s. 83(9), **Sch. 8 para. 3(5)**, Sch. 15
S. 18: Sch. D Cases III, IV extended (with effect in accordance with s. 105(1) of the extending Act) by Finance Act 1996 (c. 8), s. 102, **Sch. 13 para. 1(1)** (with Sch. 13 para. 16, Sch. 15)

C67 S. 18: Sch. D Case V extended (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), s. 20, **Sch. 3 para. 6(3)** (with Sch. 3 para. 1)

C68 S. 18: Sch. D Case VI extended (16.7.1992 with effect in relation to chargeable periods ending after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), s. 66, Sch. 12 paras. 1, 3(1), **7**.
S. 18: Sch. D Case VI extended (27.7.1993 with effect as mentioned in s. 165 of the amending Act) by Finance Act 1993 (c. 34), **ss. 130(2)(4)**, 165
S. 18: Sch. D Case VI restricted (27.7.1993) by Agriculture Act 1993 (c. 37), s. 12, Sch. 2 paras. 19(2), **20(2)**
S. 18: Sch. D Case VI extended (with application in accordance with Sch. 20 para. 11(1)(2) of the extending Act) by Finance Act 1994 (c. 9), s. 218, **Sch. 20 para. 11(3)** (with Sch. 20 para. 12(2))
S. 18: Sch. D Case VI extended (with effect in accordance with s. 117(4)(5) of the extending Act) by Finance Act 1998 (c. 36), s. 117(1), **Sch. 18 para. 52(4)** (with Sch. 18 para. 59(2))
S. 18: Sch. D Case VI extended (with effect in accordance with s. 579 of the extending Act) by Capital Allowances Act 2001 (c. 2), **ss. 256(2)(b)(4)** (with Sch. 3 paras. 54, 55)

Marginal Citations

M19 SOURCE-1970 s. 108(1)
M20 SOURCE-1970 s. 109(1), (2)
M21 SOURCE-1970 ss. 108(3), 109(3)

19 Schedule E.

F152 . . . . . .

Textual Amendments

F152 S. 19 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), s. 723, Sch. 6 para. 6, **Sch 8 Pt. 1** (with Sch. 7)

20 Schedule F.

F153 . . . . . .

Textual Amendments

F153 S. 20 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 10, **Sch. 3** (with Sch. 2)

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PART II

[F154PROVISIONS RELATING TO THE SCHEDULE A CHARGE]

Textual Amendments

F154 Pt. 2 heading substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 3** (with Sch. 5 para. 73)

General

[F155 21 Persons chargeable and basis of assessment.

F156 . . . . . .]

Textual Amendments

F155 Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

F156 S. 21 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 11, **Sch. 3** (with Sch. 2)

[F157 21A Computation of amount chargeable.

(1) Except as otherwise expressly provided, the profits of a Schedule A business are computed in the same way as the profits of a trade are computed for the purposes of Case I of Schedule D.

(2) The following provisions apply in accordance with subsection (1)—

section 72 (apportionment);

the provisions of Chapter V of Part IV (computational provisions relating to the Schedule D charge), except as mentioned in subsection (4) below;

section 577 (business entertainment expenses);

section 577A (expenditure involving crime);

sections 579 and 580 (redundancy payments);

[F158 section 588] (training courses for employees);

[F159 section 589A] (counselling services for employees);

section 73(2) of the M22 Finance Act 1988 (consideration for restrictive undertakings);

section 43 of the M23 Finance Act [F160 1989 (Schedule D: computation)];

section 76 of that Act (expenses in connection with non-approved retirement benefit schemes);

F161 . . . . . .

sections 42 and 46(1) and (2) of the Finance Act 1998 (provisions as to computation of profits and losses).

(3) Section 74(1)(d) of this Act (disallowance of provisions for future repairs) applies in relation to a Schedule A business as if the reference to premises occupied for

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the purposes of the trade were to premises held for the purposes of the Schedule A business.

(4) The following provisions in Chapter V of Part IV of this Act do not apply, or are excepted from applying, in accordance with subsection (1)—

F162 . . . . . .

section 87 (treatment of premiums taxed as rent),

F163 . . . . . .

section 98 (tied premises: receipts and expenses treated as those of trade).

F164(5) **[** Part 1 of Schedule 22 to the Finance Act 2001 (deduction for capital expenditure on remediation of contaminated land) applies in accordance with subsection (1), and the other Parts of that Schedule (further provision as to relief for remediation of contaminated land) have effect in relation to a Schedule A business in accordance with their provisions.**]]**

Textual Amendments

F157 Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

F158 Words in s. 21A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 7(a)** (with Sch. 7)

F159 Words in S. 21A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 7(b)** (with Sch. 7)

F160 Words in s. 21A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 7(c)** (with Sch. 7)

F161 Words in s. 21A(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 12(2), **Sch. 3** (with Sch. 2)

F162 Words in s. 21A(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 12(3)(a), **Sch. 3** (with Sch. 2)

F163 Words in s. 21A(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 12(3)(b), **Sch. 3** (with Sch. 2)

F164 S. 21A(5) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), s. 70(3), **Sch. 23 para. 1**

Marginal Citations

M22 1988 c. 39.

M23 1989 c. 26.

[F157 21B Application of other rules applicable to Case I of Schedule D.

The following provisions apply for the purposes of Schedule A in relation to a Schedule A business as they apply for the purposes of Case I of Schedule D in relation to a trade—

sections 103 to 106 F165. . . and 110 (post-cessation receipts and expenses, etc.) **[**F166, with any reference to a trade within the charge to income tax being read as a reference to a UK property business**]** ;

F165 . . . . . .

section 337(1) (effect of company beginning or ceasing to carry on trade);

section 401(1) (pre-trading expenditure);

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section 44 of and Schedule 6 to the Finance Act 1998 (change of accounting basis).**]**

Textual Amendments

F157 Ss. 21-21B substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) for s. 21 by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 4** (with Sch. 5 paras. 73, 76)

F165 Words in s. 21B repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 13(a)(c), **Sch. 3** (with Sch. 2)

F166 Words in s. 21B inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 13(b)** (with Sch. 2)

[F167 21C The Schedule A charge and mutual business.

(1) The following provisions have effect for the purpose of applying the charge to **[**F168corporation**]** tax under Schedule A in relation to mutual business.

(2) The transactions or relationships involved in mutual business are treated as if they were transactions or relationships between persons between whom no relationship of mutuality existed.

(3) Any surplus arising from the business is regarded as a profit (and any deficit as a loss) if it would be so regarded if the business were not mutual.

(4) **[**F169The company to which the profit arises is the company which would**]** satisfy that description if the business were not mutual business.

(5) Nothing in this section affects the operation of section 488 (co-operative housing associations).**]**

Textual Amendments

F167 S. 21C inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 5** (with Sch. 5 paras. 73, 76)

F168 Word in s. 21C (1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 14(a)** (with Sch. 2)

F169 Words in s. 21C (4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 14(b)** (with Sch. 2)

22 Assessments.

F170 . . . . . .

Textual Amendments

F170 S. 22 repealed (with effect in accordance with s. 39(4)(5) and Sch. 29 Pt. 8(1) Note of the repealing Act) by Finance Act 1995 (c. 4), ss. 39(3), 162, Sch. 6 para. 3, **Sch. 29 Pt. 8(1)**, Note

23 Collection from lessees and agents.

F171 . . . . . .

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Textual Amendments

F171 S. 23 repealed (with effect in accordance with s. 39(4)(5) and Sch. 29 Pt. 8(1) Note of the repealing Act) by Finance Act 1995 (c. 4), ss. 39(3), 162, Sch. 6 para. 3, **Sch. 29 Pt. 8(1)**, Note

24 Construction of Part II.

(1) [M24]In this Part, except where the context otherwise requires—

"lease" includes an agreement for a lease, and any tenancy, but does not include a mortgage or heritable security, and "lessee", "lessor" and "letting" shall be construed accordingly;

"lessee" and "lessor" include respectively the successors in title of a lessee or a lessor;

"premises" includes any land; and

"premium" includes any like sum, whether payable to the immediate or a superior landlord or to a person connected (within the meaning of section 839) with the immediate or a superior landlord.

(2) [M25]For the purposes of this Part, any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as other sufficient consideration for the payment **[**[F172]can be**]** shown to have been given.

(3) [M26]Where paragraph (c) of section 38(1) applies, the premium, or an appropriate part of the premium, payable for or in connection with either lease mentioned in that paragraph may be treated as having been required under the other.

(4) References in this section to a sum shall be construed as including the value of any consideration, and references to a sum paid or payable or to the payment of a sum shall be construed accordingly.

(5) [M27]In the application of this Part to Scotland—

"assignment" means an assignation;

"intermediate landlord" means, where an occupying lessee is a sub-lessee, any person for the time being holding the interest of landlord under a sub-lease which comprises the property of which the occupying lessee is sub-lessee, but does not include the immediate landlord;

"premium" includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sub-lease; and

"reversion" means the interest of the landlord in the property subject to the lease.

(6) [M28]In Schedule A and in sections 25 to 31—

(a) references to a lease extend only to a lease conferring a right, as against the person whose interest is subject to the lease, to the possession of the premises;

(b) "rent" includes a payment by the tenant to defray the cost of work of maintenance of, or repairs to, the demised premises, not being work required by the lease to be carried out by the tenant; [F173]. . .

(c) [F173] . . . . . .

(7) [F173] . . . . . .

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Textual Amendments

F172 Words in s. 24(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), s. 134(1), **Sch. 20 Para. 1**

F173 S. 24(6)(c)(7) and word preceding s. 24(6)(c) repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(4)**, Note

Marginal Citations

M24 SOURCE-1970 s. 90(1); 1972 s. 81(3)

M25 SOURCE-1970 s. 90(2)

M26 SOURCE-1970 s. 90(2A), (2B); 1972 s. 81(4)

M27 SOURCE-1970 s. 90(3)

M28 SOURCE-1970 s. 71(2)

Deductions and other allowances

25 Deductions from rent: general rules.

F174 . . . . . .

Textual Amendments

F174 S. 25 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(a)**; and s. 25 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 6, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 68, 73)

26 Deductions from rent: land managed as one estate.

F175 . . . . . .

Textual Amendments

F175 S. 26 repealed (with effect as mentioned in s. 39 of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(5)**, Note

27 Deductions from rent: maintenance funds for historic buildings.

F176 . . . . . .

Textual Amendments

F176 S. 27 repealed (with effect as mentioned in s. 39 of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(5)**, Note

28 Deductions from receipts other than rent.

F177 . . . . . .

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Textual Amendments

F177 S. 28 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(a)**; and s. 28 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 9, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

29 Sporting rights.

F178 . . . . . .

Textual Amendments

F178 S. 29 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(b)**; and s. 29 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 10, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

30 Expenditure on making sea walls.

(1) M29Where in any year of assessment the owner or tenant of any premises incurs any expenditure in the making of any sea wall or other embankment necessary for the preservation or protection of the premises against the encroachment or overflowing of the sea or any tidal river, **[**F179that person shall be**]** treated **[**F180for the purpose of computing the profits of any Schedule A business carried on in relation to those premises**]** as making in that year of assessment and in each of the succeeding 20 years of assessment a payment in relation to the premises preserved or protected by the embankment of an amount equal to a twenty-first part of the expenditure and incurred in respect of dilapidation attributable to the year.

(2) Where the whole of that person's interest in the premises or any part thereof is transferred (whether by operation of law or otherwise) to some other person—

(a) the amount of the payment which **[**F181that person would be**]** so treated as making for the year of assessment in which the transfer takes place shall be treated as being made partly by the transferor and partly by the transferee, as may be just; and

(b) the transferee shall, to the exclusion of the transferor, be treated in any subsequent year—

(i) where the interest transferred is in the whole of the premises, as having made the whole of the payment for that year, and

(ii) where the interest transferred is in part only of the premises, as having made so much of the payment as is properly referable to that part of the premises.

[F182(2A) If—

(a) the transferor is a company within the charge to corporation tax and the transferee is a person within the charge to income tax, or

(b) the transferor is a person within the charge to income tax and the transferee is a company within the charge to corporation tax,

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subsection (2) above shall apply only for the purpose of determining the amount of the payment which the company is treated as making in any year of assessment.

For any entitlement of the person within the charge to income tax to a deduction for any of the expenditure, see sections 316 and 318 of ITTOIA 2005 (corresponding income tax provision).**]**

(3) For the purposes of subsection (2) above, where an interest in any premises is a lease and that lease comes to an end, that interest shall be deemed to have been transferred—

(a) if an incoming lessee makes any payment to the outgoing lessee in respect of the embankment in question, to the incoming lessee, and

(b) in any other case, to the owner of the interest in immediate reversion on the lease and, in relation to Scotland, the expression "the owner of the interest in immediate reversion on the lease" shall be construed as a reference to the landlord.

(4) In relation to a company, section 9(1) shall not have effect so as to require references in this section to a year of assessment to be read as references to an accounting period, but any deduction authorised by this section shall be apportioned between the accounting periods (if more than one) comprising the year of assessment, other than any such period ended before the expenditure is incurred, or transfer takes place, by virtue of which the company is entitled to the deduction.

(5) This section shall not apply in relation to any expenditure in respect of which a capital allowance has been made.

Textual Amendments

F179 Words in s. 30(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 15(2)** (with Sch. 2)

F180 Words in s. 30(1) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 11** (with Sch. 5 para. 73)

F181 Words in s. 30(2)(a) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 15(3)** (with Sch. 2)

F182 S. 30(2A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 15(4)** (with Sch. 2)

Modifications etc. (not altering text)

C69 S. 30(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 7**

C70 *See* 1979(C) s.34(4)(b)—*restriction, by reference to capital allowances, of capital losses for purpose of capital gains.*

Marginal Citations

M29 SOURCE-1970 s. 76

31 Provisions supplementary to sections 25 to 30.

F183

. . . . . .

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Textual Amendments

F183 S. 31 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(c)**; and s. 31 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 12, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 68, 73)

VALID FROM 19/07/2007

[F184 31ZA Deduction for expenditure on energy-saving items

(1) This section applies if—

(a) a company carries on a Schedule A business in relation to land which consists of or includes a dwelling-house,

(b) the company incurs expenditure in acquiring and installing an energy-saving item in the dwelling-house or in a building containing the dwelling-house (see subsections (5) to (7)),

(c) the expenditure is incurred before 1st April 2015,

(d) a deduction for the expenditure is not prohibited by the wholly and exclusively rule but would otherwise be prohibited by the capital prohibition rule (see subsection (8)), and

(e) no allowance under the Capital Allowances Act may be claimed in respect of the expenditure.

(2) In calculating the profits of the Schedule A business, a deduction for the expenditure is allowed.

(3) But any deduction is subject to—

(a) section 31ZB (restrictions on the relief), and

(b) any provision made by regulations under section 31ZC.

(4) If, on a just and reasonable apportionment of any expenditure, part of the expenditure would qualify for the relief (but the remainder would not), a deduction is allowed for that part.

(5) "Energy-saving item" means an item of an energy-saving nature of such description as is for the time being specified in regulations made by the Treasury.

(6) The Treasury may by regulations provide for an item to be an energy-saving item only if it satisfies such conditions as may be—

(a) specified in, or

(b) determined in accordance with,

the regulations.

(7) The conditions may include conditions imposed by reference to information or documents issued by any body, person or organisation.

(8) In this section—

"the capital prohibition rule" means the rule in section 74(1)(f) or (g) (capital expenditure), as applied by section 21A, and

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"the wholly and exclusively rule" means the rule in section 74(1)(a) or (e) (expenses not wholly and exclusively for trade and unconnected losses), as applied by section 21A.**]**

Textual Amendments

F184 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **s. 17(1)**; S.I. 2008/1521, **art. 2**

VALID FROM 19/07/2007

[F184 31ZB Restrictions on relief

(1) This section restricts deductions that would otherwise be allowable under section 31ZA.

(2) No deduction is allowed if, when the energy-saving item is installed, the dwelling-house—

(a) is in the course of construction, or

(b) is comprised in land in which the company does not have an interest or is in the course of acquiring an interest or further interest.

(3) No deduction is allowed in respect of expenditure in an accounting period if—

(a) the Schedule A business consists of or includes the commercial letting of furnished holiday accommodation for the purposes of section 503, and

(b) the dwelling-house constitutes some or all of that accommodation for the accounting period.

(4) No deduction is allowed in respect of expenditure treated by section 401 (as applied by section 21B) as incurred on the date on which the company starts to carry on the Schedule A business unless the expenditure was incurred not more than 6 months before that date.

(5) No deduction is allowed in respect of expenditure incurred in acquiring and installing the energy-saving item in a building containing the dwelling-house in so far as the expenditure is not for the benefit of the dwelling-house.**]**

Textual Amendments

F184 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **s. 17(1)**; S.I. 2008/1521, **art. 2**

VALID FROM 19/07/2007

[F184 31ZC Regulations

(1) In relation to any deduction under section 31ZA, the Treasury may make regulations for—

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(a) restricting or reducing the amount of expenditure for which the deduction is allowable,

(b) excluding entitlement to the deduction in such cases as may be specified in, or determined in accordance with, the regulations,

(c) determining who is (and is not) entitled to the deduction if different persons have different interests in land that consists of or includes the whole or part of a building containing one or more dwelling-houses,

(d) making apportionments if the Schedule A business is carried on by persons in partnership or an interest in land is beneficially owned by persons jointly or in common.

(2) The apportionments that may be made include apportionments to persons within the charge to income tax.

(3) Regulations under this section may—

(a) make different provision for different cases, and

(b) contain incidental, supplemental, consequential and transitional provision and savings (including provision as to appeals in relation to apportionments mentioned in subsection (1)(d)).**]**

Textual Amendments

F184 Ss. 31ZA-31ZC inserted (with effect in accordance with s. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **s. 17(1)**; S.I. 2008/1521, **art. 2**

[F185 31A Deductions for expenditure by landlords on energy-saving items

F186 . . . . . .

Textual Amendments

F185 Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 143(1)**

F186 S. 31A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 16, **Sch. 3** (with Sch. 2)

31B Provisions supplementary to section 31A

F187 . . . . . .**]**

Textual Amendments

F185 Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 143(1)**

F187 S. 31B repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 16, **Sch. 3** (with Sch. 2)

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32 Capital allowances for machinery and plant used in estate management.

F188 . . . . . .

Textual Amendments

F188 S. 32 repealed (with effect as mentioned in Sch. 15 para. 9(1) of the repealing Act) by Finance Act 1997 (c. 16), ss. 85, 113, Sch. 15 para. 1, **Sch. 18 Pt. 06(11)**, Note

33 Agricultural land: allowance for excess expenditure on maintenance.

F189 . . . . . .

Textual Amendments

F189 S. 33 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(d)**; and s. 33 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 13, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

[F190 Connected persons

Textual Amendments

F190 Ss. 33A, 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 57(1)(2)**.

F191 33A Rents or receipts payable by a connected person.

F192 . . . . . .

Textual Amendments

F191 S. 33A inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 57(1)(2)**.

F192 S. 33A ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(e)**; and s. 33A repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 14, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

F193 33B Rents or receipts relating to land in respect of which a connected person makes payments to a third party.

F194 . . . . . .]

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Textual Amendments

F193 S. 33B inserted (16.7.1992 with effect in relation to rents or receipts accruing on or after 10.3.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 57(1)(2)**.

F194 S. 33B ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(e)**; and s. 33B repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 14, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

Premiums, leases at undervalue etc

34 [F195Treatment of premiums, etc. as rent.]

(1) M30Where the payment of any premium is required under a lease, or otherwise under the terms subject to which a lease is granted, and the duration of the lease does not exceed 50 years, the landlord shall be treated for **[**F196corporation tax purposes**]** as **[**F197receiving when the lease is granted**]** an amount by way of rent (in addition to any actual rent) equal to—

$$P - \frac{(\mathrm{P}yY)}{50}$$

where P is the premium and Y is the number of complete periods of 12 months (other than the first) comprised in the duration of the lease.

(2) Where the terms subject to which a lease is granted impose on the tenant an obligation to carry out any work on the premises, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of an amount equal to the amount by which the value of the landlord's estate or interest immediately after the commencement of the lease exceeds what its then value would have been if those terms did not impose that obligation on the tenant.

(3) M31Subsection (2) above shall not apply in so far as the obligation requires the carrying out of work the payment for which would, if the landlord and not the tenant were obliged to carry it out, be deductible **[**F198as an expense of any Schedule A business carried on by the landlord**]**.

(4) M32Where, under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or a part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—

(a) **[**F199in computing the profits of the Schedule A business of which the sum payable in lieu of rent is by virtue of this subsection to be treated as a receipt**]**, the duration of the lease shall be treated as not including any period other than that in relation to which the sum is payable; and

(b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be **[**F200deemed to be received**]** when the sum in question becomes payable by the tenant.

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(5) Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this section to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum; but—

(a) in computing **[**F201the profits of the Schedule A business of which that sum is by virtue of this subsection to be treated as a receipt**]**, the duration of the lease shall be treated as not including any period which precedes the time at which the variation or waiver takes effect, or falls after the time at which it ceases to have effect; and

(b) notwithstanding anything in subsection (1) above, rent treated as arising by virtue of this subsection shall be **[**F202deemed to be received**]** when the contract providing for the variation or waiver is entered into.

(6) M33Where a payment falling within subsection (1), (4) or (5) above is due to a person other than the landlord, **[**F203no amount shall fall under that subsection to be treated as a receipt of any Schedule A business carried on by the landlord; but **[**F204if that other person is a company, the company**]** shall be taken to have received as income an amount equal to the amount which would otherwise fall to be treated as rent and to be chargeable to **[**F205corporation tax**]** as if **[**F206the company**]** had received it in consequence of having, on **[**F207its**]** own account, entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A.**]**.

(7) Subsection (6) above shall not apply in relation to any payment falling within subsection (5) above unless it is due to a person who is, within the meaning of section 839, connected with the landlord.

[F208(7A) An amount treated under this section as rent shall be taken into account in computing the profits of the Schedule A business in question for the **[**F209accounting**]** period in which it is treated as received.**]**

(8) M34Where an amount by reference to which a **[**F210company**]** is chargeable to **[**F211corporation tax**]** by virtue of this section is payable by instalments ("the **[**F211corporation tax**]** instalments"), the **[**F211corporation tax**]** chargeable by reference to that amount **[**F212may, at **[**F213the company's**]** option, be paid**]** by such instalments as the Board may allow over a period not exceeding eight years and ending not later than the time at which the last of the **[**F211corporation tax**]** instalments is payable.

(9) F214. . . . . .

Textual Amendments

F195 S. 34 sidenote substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(2)**, (with Sch. 5 para. 73)

F196 Words in s. 34 (1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(2)** (with Sch. 2)

F197 Words in s. 34(1) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(2)**

F198 Words in s. 34(3) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(3)**, (with Sch. 5 para. 73)

F199 Words in s. 34(4)(a) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(3)(a)**

F200 Words in s. 34(4)(b) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(3)(b)**

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F201 Words in s. 34(5)(a) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(4)(a)**
F202 Words in s. 34(5)(b) substituted (with effect as mentioned in s. 40(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 40(4)(b)**
F203 Words in s. 34(6) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(4)**, (with Sch. 5 para. 73)
F204 Words in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(a)** (with Sch. 2)
F205 Words in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(b)** (with Sch. 2)
F206 Words in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(c)** (with Sch. 2)
F207 Word in s. 34(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(3)(d)** (with Sch. 2)
F208 S. 34(7A) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(5)**, (with Sch. 5 para. 73)
F209 Word in s. 34(7A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(4)** (with Sch. 2)
F210 Word in s. 34(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(5)(a)** (with Sch. 2)
F211 Words in s. 34(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(5)(b)** (with Sch. 2)
F212 Words in s. 34(8) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 15(6)**, (with Sch. 5 para. 73)
F213 Words in s. 34(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 17(5)(c)** (with Sch. 2)
F214 S. 34(9) repealed (with effect in accordance with s. 39(4)(5) of the repealing Act) by Finance Act 1995 (c. 4), s. 162, **Sch. 29 Pt. 08(01)**, Note

Modifications etc. (not altering text)
C71 S. 34 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 9**
C72 *See* 1976(D) s.34*and* Sch.6 para.4. 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part. X*with effect from* 19*March* 1985.
C73 *See* 1979(C) s.106*and* Sch.3 paras.5*and* 7*—exclusion of amounts taxed under this section in computing capital gains.*

Marginal Citations
M30 SOURCE-1970 s. 80(1), (2)
M31 SOURCE-1970 s. 80(2); 1987 Sch. 15 para. 13
M32 SOURCE-1970 s. 80(3), (4)
M33 SOURCE-1970 s. 80(5)
M34 SOURCE-1970 s. 80(6), (7); 1972 s. 81(1)

35 [F215Charge] on assignment of lease granted at an undervalue.

(1) M35This section applies to any lease of a duration not exceeding 50 years where the terms subject to which it was granted are such that the grantor, having regard to values prevailing at the time it was granted and on the assumption that the negotiations for the lease were at arm's length, could have required the payment of an additional sum by way of premium, or additional premium, for the grant of the lease; and in this section any such additional sum is referred to as the "amount foregone".

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(2) On any assignment of a lease to which this section applies for a consideration—

(a) where the lease has not previously been assigned, exceeding the premium, if any, for which it was granted, or

(b) where the lease has been previously assigned, exceeding the consideration for which it was last assigned,

the amount of the excess, in so far as it is not greater than the amount foregone reduced by the amount of any such excess arising on a previous assignment of the lease, shall in the same proportion as the amount foregone would, under section 34(1), have fallen to be treated as rent if it had been a premium under the lease, be **[**F216deemed to have been received as income by the assignor and to have been received by **[**F217the assignor in consequence of the assignor's**]** having entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A.**]**

[F218(2A) An amount deemed under this section to have been received as income by the assignor—

(a) is treated as received when the consideration mentioned in subsection (2) becomes payable, and

(b) shall be taken into account in computing the profits of the Schedule A business in question for the **[**F219accounting**]** period in which it is treated as received.**]**

(3) M36If there is submitted to the inspector, by the grantor or any assignor or assignee of the lease, a statement showing whether or not a charge to **[**F220corporation tax**]** arises or may arise under this section and, if so, the amount on which the charge arises or may arise, then, if the inspector is satisfied as to the accuracy of the statement, he shall certify the accuracy thereof.

Textual Amendments

F215 S. 35: word in sidenote substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 16(2)** (with Sch. 5 para. 73)

F216 Words in s. 35(2) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 16(3)**, (with Sch. 5 para. 73)

F217 Words in s. 35(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 18(2)** (with Sch. 2)

F218 S. 35(2A) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 16(4)**, (with Sch. 5 para. 73)

F219 Words in s. 35(2A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 18(3)** (with Sch. 2)

F220 Words in s. 35(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 18(4)** (with Sch. 2)

Modifications etc. (not altering text)

C74 *See* 1979(C) s.106*and* Sch.3 para.6(2)—1979(C) s.31 (*exclusion from capital gains computation of sums charged to income tax or corporation tax*)*not to apply to amounts on which tax paid under* s.35.

C75 S. 35 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), ss. 21, 68(4), **Sch. 4 para. 15(1)** (with s. 40(7)); S.I. 1994/2189, **art. 2**, Sch.
S. 35 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), s. 8, **Sch. 3 para. 9(1)**
S. 35 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), ss. 135, 149(1)(f), **Sch. 7 para. 21(1)**

C76 S. 35(2) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 10**

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Marginal Citations
M35 SOURCE-1970 s. 81(1)
M36 SOURCE-1970 s. 81(2)

36 [F221Charge] on sale of land with right to reconveyance.

(1) M37Where the terms subject to which an estate or interest in land is sold provide that it shall be, or may be required to be, reconveyed at a future date to the vendor or a person connected with **[**F222the vendor**]**, **[**F223the following amount shall be deemed to have been received as income by the vendor and to have been received by **[**F222the vendor**]** in consequence of **[**F224the vendor's**]** having entered into a transaction falling to be treated as mentioned in paragraph 1(2) of Schedule A, that is to say**]** any amount by which the price at which the estate or interest is sold exceeds the price at which it is to be reconveyed or, if the earliest date at which in accordance with those terms it would fall to be reconveyed is a date two years or more after the sale, **[**F225the amount of the excess**]** reduced by one-fiftieth thereof for each complete year (other than the first) in the period between the sale and that date.

(2) Where, under the terms of the sale, the date of the reconveyance is not fixed, then—

(a) if the price on reconveyance varies with the date, the price shall be taken, for the purposes of this section, to be the lowest possible under the terms of the sale, and

(b) there shall be repaid to the vendor, on a claim made before the expiry of six years after the reconveyance takes place, any amount by which **[**F226corporation tax**]** assessed on **[**F227the vendor**]** by virtue of this section exceeded the amount which would have been so assessed if that date had been treated for the purposes of this section as the date fixed by the terms of the sale.

(3) M38Where the terms of the sale provide for the grant of a lease directly or indirectly out of the estate or interest to the vendor or a person connected with **[**F228the vendor**]**, this section shall, subject to subsection (4) below, apply as if the grant of the lease were a reconveyance of the estate or interest at a price equal to the sum of the amount of the premium (if any) for the lease and the value at the date of the sale of the right to receive a conveyance of the reversion immediately after the lease begins to run.

(4) Subsection (3) above shall not apply in any case where the lease is granted and begins to run within one month after the sale.

[F229(4A) An amount deemed under this section to have been received as income by the vendor—

(a) is treated as received when the estate or interest is sold, and

(b) shall be taken into account in computing the profits of the Schedule A business in question for the **[**F230accounting**]** period in which it is treated as received.

(4B) For the purposes of subsection (4A)(a) an estate or interest in land is treated as sold when any of the following occurs—

(a) an unconditional contract for its sale is entered into,

(b) a conditional contract for its sale becomes unconditional, or

(c) an option or right of pre-emption is exercised requiring the vendor to enter into an unconditional contract for its sale.**]**

(5) M39In this section references to a person connected with another shall be construed in accordance with section 839.

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Textual Amendments

F221 S. 36: word in sidenote substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 17(2)** (with Sch. 5 para. 73)

F222 Words in s. 36(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 19(2)(a)** (with Sch. 2)

F223 Words in s. 36(1) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 17(3)(a)** (with Sch. 5 para. 73)

F224 Words in s. 36(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 19(2)(b)** (with Sch. 2)

F225 Words in s. 36(1) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 17(3)(b)** (with Sch. 5 para. 73)

F226 Words in s. 36(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 19(3)(a)** (with Sch. 2)

F227 Words in s. 36(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 19(3)(b)** (with Sch. 2)

F228 Words in s. 36(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 19(4)** (with Sch. 2)

F229 S. 36(4A)(4B) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 17(4)** (with Sch. 5 para. 73)

F230 Words in s. 36(4A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 19(5)** (with Sch. 2)

Modifications etc. (not altering text)

C77 S. 36 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), ss. 252(1)(3), **Sch. 24 para. 24**

C78 *See* 1976(D) Sch.6 para.4. 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*with effect from* 19*March* 1985.

C79 S. 36(1) modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 11**

C80 *See* 1979(C) s.106*and* Sch.3 para.6(3)—*effect of claim under* s.36(2)(b)*on computation of capital gains.*

C81 *See* 1979(C) s.106*and* Sch.3 para.5(3)—*deduction of amounts chargeable under* s.36*in computing capital gains.*

Marginal Citations

M37 SOURCE-1970 s. 82(1), (2)

M38 SOURCE-1970 S. 82(3)

M39 SOURCE-1970 s. 82(1), (3)

37 Premiums paid etc: deductions from premiums and rent received.

(1) [M40]This section applies in any case where in respect of a lease of any premises—

[F231](a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, F232. . .

(b) any amount would fall to be so treated but for the operation of subsection (2) or (3) below,

[F233](c) any amount falls to be treated as a receipt of a UK property business by virtue of any of sections 277 to 282 of ITTOIA 2005 (receipts in respect of lease premiums, sums payable instead of rent, for surrender of lease and for variation or waiver of term of lease and assignments), or

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(d) any amount would fall to be so treated but for the operation of the rule in section 288 of that Act (the additional calculation rule),**]]**

and **[**F234that amount**]** is in this section **[**F235and section 37A**]** referred to as "the amount chargeable on the superior interest" and any such lease is referred to as "the head lease".

(2) Where—

(a) a lease is granted out of, or there is a disposition of, the head lease, and

(b) in respect of that grant or disposition a **[**F236company**]** would, apart from this subsection, **[**F237be treated by virtue of section 34 or 35 as receiving any amount as income in the course of carrying on a Schedule A business**]** ("the later chargeable amount"),

then the amount **[**F238which **[**F239the company**]** shall be treated as having so received**]** shall, subject to subsection (3) below, be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest.

(3) Where a **[**F240company**]** would, apart from subsection (2) above, be **[**F241treated by virtue of section 34 or 35 as having received any amount as income in the course of carrying on a Schedule A business and falls to be so treated**]** in respect of a lease or disposition which extends to a part only of the premises subject to the head lease, the amount **[**F242which **[**F243the company**]** shall be treated as having so received**]** shall be the excess (if any) of the later chargeable amount over the appropriate fraction of the amount chargeable on the superior interest as, on a just apportionment, is attributable to that part of the premises.

(4) M41Subject to subsection (5) below, **[**F244a company which is**]** for the time being entitled to the head lease shall be treated for the **[**F245purpose, in computing the profits of a Schedule A business, of making deductions in respect of the disbursements and expenses of that business**]** as paying rent for those premises (in addition to any actual rent), becoming due from day to day, during any part of the period in respect of which the amount chargeable on the superior interest arose for which **[**F246the company**]** was entitled to the head lease, and, in all, bearing to that amount the same proportion as that part of the period bears to the whole.

(5) M42Where subsection (2) above applies, subsection (4) above shall apply for the period in respect of which the later chargeable amount arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the later chargeable amount, and shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.

(6) Where subsection (3) above applies, subsections (4) and (5) above shall be applied separately to the part of the premises referred to in subsection (3) above and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were substituted a reference to that amount proportionately adjusted.

(7) M43For the purposes of this section—

(a) the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

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where—

A is the period in respect of which the later chargeable amount arose; and

B is the period in respect of which the amount chargeable on the superior interest arose; and

(b) the period in respect of which an amount arose—

(i) where it arose under section 34, shall be the period treated in computing the amount as being the duration of the lease;

(ii) where it arose under section 35, shall be the period treated in computing the amount as being the duration of the lease remaining at the date of the assignment;

[[F247](iii) where it arose under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc.), shall be its receipt period (within the meaning of that Chapter (see section 288(6)).**]**

(8) [M44]Where the amount chargeable on the superior interest arose under section 34(2) **[**[F248]or under section 277 of ITTOIA 2005 by virtue of section 278 of that Act (amount treated as lease premium where work required)**]** by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, subsections (1) to (6) above shall apply as if the obligation had not included the carrying out of that work and that amount had been calculated accordingly.

(9) [M45]An amount or part of an amount shall not be deducted under this section more than once from any sum, or from more than one sum, and shall not in any case be so deducted if it has been otherwise allowed as a deduction in computing the income of any person for **[**[F249]income tax or corporation tax**]** purposes **[**[F250]or if it has been deducted under the rule in section 288 of ITTOIA 2005 (the additional calculation rule) in calculating the amount of a receipt of a property business (within the meaning of that Act) under Chapter 4 of Part 3 of that Act.**]**.

[[F251](10) In the application of this section to Scotland the reference to a lease being granted out of the head lease is to the grant of a sublease of land subject to the head lease.**]**

Textual Amendments

F231 S. 37(1)(a)(b) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(2)**, (with Sch. 5 para. 73)

F232 Word in s. 37(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 20(2)(a), **Sch. 3** (with Sch. 2)

F233 S. 37(1)(c)(d) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(2)(b)** (with Sch. 2)

F234 1990 s.89*and* Sch.14 para.2 (*correction of errors*)*—deemed always to have had effect. Previously*
"subsection (2) below", "this subsection"
and
"the amount of that tax"
respectively.

F235 Words in s. 37(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(2)(c)** (with Sch. 2)

F236 Word in s. 37(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(3)(a)** (with Sch. 2)

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F237 Words in s. 37(2)(b) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(3)(a)**, (with Sch. 5 para. 73)
F238 Words in s. 37(2) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(3)(b)**, (with Sch. 5 para. 73)
F239 Words in s. 37(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(3)(b)** (with Sch. 2)
F240 Word in S. 37(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(4)(a)** (with Sch. 2)
F241 Words in s. 37(3) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(4)(a)**, (with Sch. 5 para. 73)
F242 Words in s. 37(3) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(4)(b)**, (with Sch. 5 para. 73)
F243 Words in s. 37(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(4)(b)** (with Sch. 2)
F244 Words in s. 37(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(5)(a)** (with Sch. 2)
F245 Words in s. 37(4) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 18(5)**, (with Sch. 5 para. 73)
F246 Words in s. 37(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(5)(b)** (with Sch. 2)
F247 S. 37(7)(b)(iii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(6)** (with Sch. 2)
F248 Words in s. 37(8) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(7)** (with Sch. 2)
F249 Words in s. 37(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(8)(a)** (with Sch. 2)
F250 Words in s. 37(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(8)(b)** (with Sch. 2)
F251 S. 37(10) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 20(9)** (with Sch. 2)

Modifications etc. (not altering text)
C82 S. 37 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 12**
C83 *See* 1979(C) s.106*and* Sch.3 para.6(1)—*allowance under this subsection to be deducted from any loss on disposal of lease.*
C84 *See* 1976(D) Sch.6 para.4(4)—*no account to be taken of any deduction of realised development value.* 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*with effect from* 19*March* 1985.

Marginal Citations
M40 SOURCE-1970 s. 83(1); 1978 s. 32(2)
M41 SOURCE-1970 s. 83(2)
M42 SOURCE-1970 s. 83(3)
M43 SOURCE-1970 s. 83(4)
M44 SOURCE-1970 s. 83(5)
M45 SOURCE-1970 s. 83(7)

[F252 37A Section 37(4) and reductions in receipts under ITTOIA 2005

(1) This section applies if—

(a) in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 ("the ITTOIA receipt"),

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there is a reduction under section 288 of that Act by reference to a taxed receipt, and

(b) the taxed receipt is the amount chargeable on the superior interest for the purposes of section 37.

(2) Section 37(4) shall apply for the period in respect of which the ITTOIA receipt arose only if the appropriate fraction of the amount chargeable on the superior interest exceeds the amount of the ITTOIA receipt given by the formula in section 277, 279, 280, 281 or 282 of ITTOIA 2005, as the case may be.

(3) Section 37(4) shall then apply as if the amount chargeable on the superior interest were reduced in the proportion which that excess bears to that appropriate fraction.

(4) Subsection (5) applies if—

(a) the ITTOIA receipt is in respect of a lease granted out of the taxed lease,

(b) the taxed lease is the head lease for the purposes of section 37, and

(c) the lease granted as mentioned in paragraph (a) does not extend to the whole of the premises subject to the head lease.

(5) Section 37(4) and subsections (2) and (3) above shall be applied separately to the part of the premises subject to the lease and to the remainder of the premises, but as if for any reference to the amount chargeable on the superior interest there were a reference to that amount proportionately adjusted.

(6) For the purposes of this section the appropriate fraction of the amount chargeable on the superior interest is the fraction—

$$\frac{A}{B}$$

where—

A is the period in respect of which the ITTOIA receipt arose, and

B is the period in respect of which the amount chargeable on the superior interest arose for the purposes of section 37.

(7) For the purposes of this section the period in respect of which an ITTOIA receipt arose is its receipt period (within the meaning of Chapter 4 of Part 3 of ITTOIA 2005 (see section 288(6))).

(8) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—

"reduction under section 288 by reference to a taxed receipt" (see section 290(6) of that Act),

"taxed lease" (see section 287(4) of that Act), and

"taxed receipt" (see section 287(4) of that Act).

(9) In the application of this section to Scotland, references to a lease granted out of a taxed lease are to be construed as references to a sublease of land subject to the taxed lease.**]**

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Textual Amendments

F252 S. 37A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 21** (with Sch. 2)

38 Rules for ascertaining duration of leases.

(1) [M46]In ascertaining the duration of a lease for the purposes of sections 34 to 36—

(a) in any case where—

(i) any of the terms of the lease (whether relating to forfeiture or any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiry of the term of the lease, and

(ii) the premium was not substantially greater than it would have been, on the assumptions required by subsections (3) and (4) below, had the term been one expiring on that date,

the lease shall not be treated as having been granted for a term longer than one ending on that date;

(b) where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant, account may be taken of any circumstances making it likely that the lease will be so extended; and

(c) where the tenant or a person connected with him (within the meaning of section 839) is or may become entitled to a further lease or the grant of a further lease (whenever commencing) of the same premises or of premises including the whole or part of the same premises, the term of the lease may be treated as not expiring before the term of the further lease.

(2) [M47]Subsection (1) above shall be applied by reference to the facts which were known or ascertainable at the time of the grant of the lease, or in relation to **[**[F253]corporation tax**]** under section 34(5), at a time when the contract providing for the variation or waiver is entered into.

(3) It shall be assumed in applying subsection (1) above that all parties concerned, whatever their relationship, act as they would act if they were at arm's length.

(4) In any case where—

(a) by the lease or in connection with the granting of it benefits were conferred other than—

(i) vacant possession and beneficial occupation of the premises, or

(ii) the right to receive rent at a reasonable commercial rate in respect of the premises, or

(b) payments were made which would not be expected to be made by parties acting at arm's length if no other benefits had been so conferred,

it shall also be assumed, unless it **[**[F254]can be**]** shown that the benefits were not conferred or the payments made for the purpose of securing a **[**[F255]corporation tax advantage in the application of this Part or an income tax advantage in the application of Chapter 4 of Part 3 of ITTOIA 2005**]**, that the benefits would not have been conferred nor the payments made had the lease been for a term ending on the date mentioned in subsection (1)(a) above.

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(5) [M48]Where an inspector has reason to believe that a person has information relevant to the ascertainment of the duration of a lease in accordance with subsections (1) to (4) above, the inspector may by notice require him to give, within a time specified in the notice, such information on the matters so specified as is in his possession; but a solicitor shall not be so required to do more, in relation to anything done by him on behalf of a client, than state that he is or was so acting and give the name and address of his client.

(6) [M49]In this section in relation to Scotland, the expression "term", where referring to the duration of a lease, means period.

(7) [M50]This section has effect subject to paragraphs 2 and 3 of Schedule 30.

Textual Amendments

F253 Words in s. 38(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 22(2)** (with Sch. 2)

F254 Words in s. 38(4) substituted (with effect as mentioned in s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), s. 134(1), **Sch. 20 para. 2**

F255 Words in s. 38(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 22(3)** (with Sch. 2)

Modifications etc. (not altering text)

C85 S. 38(1)-(4)(6) applied (with effect in accordance with s. 579 of the affecting Act) by Capital Allowances Act 2001 (c. 2), **s. 291(3)**

C86 S. 38(1)(a)(4) excluded (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 77, Sch. 17 paras. 5(4)(6), 6(1), **7**.

C87 *See* 1990(C) s.11(4)—*rules applied in connection with leases for industrial buildings and structures.*

Marginal Citations

M46 SOURCE-1970 S. 84(1)(b)–(d); 1972 s. 81(2)(a), (b)

M47 SOURCE-1970 s. 84(2); 1972 s. 81(2)(c)

M48 SOURCE-1970 s. 84(3A); 1972 s. 81(5)

M49 SOURCE-1970 s. 84(3); 1972 s. 81(2)(d)

M50 SOURCE-1970 s. 84(4)

39 Saving for pre-1963 leases, and special relief for individuals.

(1) [M51]Subject to subsection (2) below, sections 34 to 36 shall not apply in relation to a lease granted, or an estate or interest in land sold, before the beginning of the year 1963-64 or in pursuance of a contract entered into before 4th April 1963.

(2) Section 34(5) shall apply to the variation or waiver of any terms of a lease (not being a variation or waiver made in pursuance of a contract entered into before 4th April 1963) notwithstanding that the lease was granted before the beginning of the year 1963-64.

(3) *Schedule* 2*shall have effect for giving relief on a claim being made by him in that behalf from any increase in an individual's liability to income tax which is attributable to amounts being treated by virtue of section* 34, 35*or* 36*as receipts for a single year of assessment rather than as receipts for the period in relation to which they are chargeable*[F256].

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Textual Amendments

F256 *Repealed by* 1988(F) ss.75, 148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

Marginal Citations

M51 SOURCE-1970 s. 85(1)

[F257 Supplementary provisions]

Textual Amendments

F257 Cross-heading before s. 40 substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 19**, (with Sch. 5 para. 73)

40 Tax treatment of receipts and outgoings on sale of land.

(1) M52Where—

(a) by virtue of a contract for the sale of an estate or interest in land there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which becomes due after the making of the contract but before the time to which the apportionment falls to be made, and

(b) a part of the receipt is therefore receivable by the vendor in trust for the purchaser or, as the case may be, a part of the outgoing is paid by the vendor as trustee for the purchaser,

the purchaser shall be treated for the purposes of **[**F258corporation**]** tax under Schedule A as if that part had **[**F259been received or paid by **[**F260the purchaser**]]** immediately after the time to which the apportionment falls to be made.

(2) Where by virtue of such a contract there falls to be apportioned between the parties a receipt or outgoing in respect of the estate or interest which became due before the making of the contract, the parties shall be treated for the purposes of **[**F261corporation**]** tax under Schedule A as if the contract had been entered into before the receipt or outgoing became due, and subsection (1) above shall apply accordingly.

(3) Where on the sale of an estate or interest in land there is apportioned to the vendor a part of a receipt or outgoing in respect of the estate or interest which is to become receivable or be paid by the purchaser after the making of the apportionment, then for the purposes of **[**F262corporation**]** tax under Schedule A—

(a) when the receipt becomes due or, as the case may be, the outgoing is paid, the amount of it shall be treated as reduced by so much thereof as was apportioned to the vendor, and

(b) the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and **[**F263had been received or paid directly by **[**F264the vendor**]** immediately before the time to which the apportionment is made**]**.

(4) Any reference in subsection (1) or (2) above to a party to a contract shall include a person to whom the rights and obligations of that party under the contract have passed by assignment or otherwise.

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[F265(4A) An amount deemed under this section to have been received or paid shall be taken into account in computing the profits of the Schedule A business in question for the period in which it is treated as received or paid.**]**

(5) F266 . . . . . .

Textual Amendments

F258 Word in s. 40(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 23(a)(i)** (with Sch. 2)

F259 Words in s. 40(1) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 20(2)**, (with Sch. 5 para. 73)

F260 Words in s. 40(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 23(a)(ii)** (with Sch. 2)

F261 Word in s. 40(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 23(b)** (with Sch. 2)

F262 Word in s. 40(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 23(c)(i)** (with Sch. 2)

F263 Words in s. 40(3)(b) substituted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 20(3)**, (with Sch. 5 para. 73)

F264 Words in s. 40(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 23(c)(ii)** (with Sch. 2)

F265 S. 40(4A) inserted (with effect as mentioned in s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 20(4)**, (with Sch. 5 para. 73)

F266 S. 40(5) ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(f)**; and s. 40(5) repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 20(5), **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

Marginal Citations

M52 SOURCE-1970 s. 86

41 Relief for rent etc. not paid.

F267 . . . . . .

Textual Amendments

F267 S. 41 ceased to have effect except for specified purposes (with effect in accordance with s. 39(4)(5) of the amending Act) by virtue of Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 4(g)**; and s. 41 repealed (with effect as mentioned in s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para. 21, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 paras. 65, 73)

42 Appeals against determinations under sections 34 to 36 [F268or Chapter 4 of Part 3 of ITTOIA 2005].

(1) M53Where it appears to the inspector that the determination of **[**F269—

(a)**]** any amount on which a person may be chargeable **[**F270to corporation tax**]** by virtue of section 34, 35 or 36 **[**F271, or

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(b) any amount that under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc.) is brought into account as a receipt in calculating the profits of a property business (within the meaning of that Act),**]**

may affect the liability to income tax, corporation tax or capital gains tax of other persons he may give notice to those persons as well as to the first-mentioned person of the determination he proposes to make and of the rights conferred on them by this section.

(2) Any person to whom such a notice is given may, within 30 days after the date on which it is given, object to the proposed determination by notice given to the inspector.

(3) Where notices have been given under subsection (1) above and no notice of objection is duly given under subsection (2) above the inspector shall make the determination as proposed in his notices and the determination shall not be called in question in any proceedings.

(4) Where a notice of objection is duly given the amount mentioned in subsection (1) above shall be determined in like manner as an appeal and shall be so determined by the Special Commissioners or such body of General Commissioners as may be agreed on by the person to be charged and all persons who have given notice of objection.

(5) All persons to whom notices have been given under subsection (1) above may take part in any proceedings under subsection (4) above and in any appeal arising out of those proceedings and shall be bound by the determination made in the proceedings or on appeal, whether or not they have taken part in the proceedings; and their successors in title shall also be so bound.

(6) A notice under subsection (1) above may, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information, include a statement of the grounds on which the inspector proposes to make the determination.

(7) An inspector may by notice require any person to give within the time specified in the notice such information as appears to the inspector to be required for deciding whether to give a notice under subsection (1) above to any person.

Textual Amendments

F268 S. 42: words in sidenote inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 24(3)** (with Sch. 2)

F269 Words in s. 42(1) renumbered as s. 42(1)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 24(2)(a)** (with Sch. 2)

F270 Words in s. 42(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 24(2)(b)** (with Sch. 2)

F271 S. 42(1)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 24(2)(c)** (with Sch. 2)

Modifications etc. (not altering text)

C88 S. 42 applied (3.11.2004 with effect in accordance with reg. 1(1) of the affecting S.I.) by The Energy-Saving Items (Deductions for Expenditure etc.) Regulations 2004 (S.I. 2004/2664), **reg. 4**

C89 S. 42 applied (6.12.2007 with effect in accordance with reg. 1(1) of the affecting S.I.) by The Energy-Saving Items (Income Tax) Regulations 2007 (S.I. 2007/3278), **reg. 7**

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Marginal Citations
M53 SOURCE- 1972 s. 82

[F272 42A Non-residents and their representatives.

(1) The Board may by regulations make provision for the charging, assessment, collection and recovery on or from prescribed persons falling within subsection (2) below of prescribed amounts in respect of the tax which is or may become chargeable [F273—

(a) under Schedule A, or

(b) as the profits of a UK property business, under Chapter 3 of Part 3 of ITTOIA 2005,

on the income of any person] who has his usual place of abode outside the United Kingdom ("the non-resident").

(2) A person falls within this subsection if he is—

(a) a person by whom any such sums are payable to the non-resident as fall, or would fall, to be treated as receipts of a Schedule A business [F274, or a UK property business,] carried on by the non-resident; or

(b) a person who acts on behalf of the non-resident in connection with the management or administration of any such business.

(3) A person on whom any obligation to make payments to the Board is imposed by regulations under this section shall be entitled—

(a) to be indemnified by the non-resident for all such payments; and

(b) to retain, out of any sums otherwise due from him to the non-resident, or received by him on behalf of the non-resident, amounts sufficient for meeting any liabilities under the regulations to make payments to the Board which have been discharged by that person or to which he is subject.

(4) Without prejudice to the generality of the preceding provisions of this section, regulations under this section may include any or all of the following provisions, that is to say—

(a) provision for the amount of any payment to be made to the Board in respect of the tax on any income to be calculated by reference to such factors as may be prescribed;

(b) provision for the determination in accordance with any such regulations of the period for which, the circumstances in which and the times at which any payments are to be made to the Board;

(c) provision for requiring the payment of interest on amounts which are not paid to the Board at the times required under any such regulations;

(d) provision as to the certificates to be given in prescribed circumstances to the non-resident by a person falling within subsection (2) above, and as to the particulars to be included in any such certificate;

(e) provision for the making of repayments of tax to the non-resident and for such repayments to be made in prescribed cases to persons falling within subsection (2) above;

(f) provision for the payment of interest by the Board on sums repaid under any such regulations;

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(g) provision for the rights and obligations arising under any such regulations to depend on the giving of such notices and the making of such claims and determinations as may be prescribed;

(h) provision for the making and determination of applications for requirements of any such regulations not to apply in certain cases, and for the variation or revocation, in prescribed cases, of the determinations made on such applications;

(i) provision for appeals with respect to questions arising under any such regulations;

(j) provision requiring prescribed persons falling within subsection (2)(b) above to register with the Board;

(k) provision requiring persons registered with the Board and other prescribed persons falling within subsection (2) above to make returns and supply prescribed information to the Board and to make available prescribed books, documents and other records for inspection on behalf of the Board;

(l) provision for the partnership, as such, to be treated as the person falling within subsection (2) above in a case where a liability to make any payment under the regulations arises from amounts payable or things done in the course of a business carried on by any persons in partnership;

(m) provision which, in relation to payments to be made by virtue of this section in respect of any tax or to any sums retained in respect of such payments, applies (with or without modifications) any enactment or subordinate legislation having effect apart from this section with respect to cases in which tax is or is treated as deducted from any income.

(5) Interest required to be paid by any regulations under this section shall be paid without deduction of tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.

(6) Regulations under this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate;

and the provision that may be made by virtue of paragraph (b) above may include provision which, in connection with any other provision made by any such regulations, modifies the operation in any case of section 59A of the Management Act or Schedule 21 to the Finance Act 1995 (payments on account of income tax).

(7) In this section—

"prescribed" means prescribed by, or determined by an officer of the Board in accordance with, regulations made by the Board under this section; and

"subordinate legislation" has the same meaning as in the [M54]Interpretation Act 1978.

(8) [F275]. . . . . .]

Textual Amendments

F272 S. 42A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 40(1)**

F273 Words in s. 42A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 25(2)** (with Sch. 2)

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F274 Words in s. 42A(2)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 25(3)** (with Sch. 2)
F275 S. 42A(8) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), ss. 38(1), 165, Sch. 5 para 22, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 para. 73)

Marginal Citations
M54 1978 c. 30.

43 Non-residents.

F276 . . . . . .

Textual Amendments
F276 S. 43 repealed (with effect in accordance with s. 40(3) of the repealing Act) by Finance Act 1995 (c. 4), s. 40(3), **Sch. 29 Pt. 8(16)**, Note 1

[F277 Rent factoring

Textual Amendments
F277 Ss. 43A-43G and cross-heading inserted (with effect in accordance with s. 110(2) of the amending Act) by Finance Act 2000 (c. 17), **s.110(1)**

43A Finance agreement: interpretation.

(1) A transaction is a finance agreement for the purposes of sections 43B to 43F if in accordance with **[**F278generally accepted accounting practice**]** the accounts of a company which receives money under the transaction would record a financial obligation (whether in respect of a lease creditor or otherwise) in relation to that receipt.

(2) F279 . . . . . .

(3) The reference to a company's accounts in subsection (1) shall be taken to include a reference to the consolidated group accounts of a group of companies of which it is a member; F280 . . .
(a) F280 . . . . . .
(b) F280 . . . . . .

(4) For the purposes of subsection (1) a company shall be treated as receiving any money which—
(a) falls to be taken into account as a receipt for the purpose of calculating the company's liability to corporation tax, or
(b) would fall to be taken into account as a receipt for that purpose if the company were resident in the United Kingdom.

Textual Amendments
F278 Words in s. 43A(1) substituted (24.7.2002) by Finance Act 2002 (c. 23), **s. 103(4)(a)**

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F279 S. 43A(2) repealed (24.7.2002) by Finance Act 2002 (c. 23), s. 141, **Sch. 40 Pt. 3(16)**
F280 S. 43A(3)(a)(b) and preceding word repealed (with effect in accordance with s. 80(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 21, **Sch. 11 Pt. 2(7)**, Note 2

43B Transfer of rent.

(1) This section applies to a finance agreement if it transfers a right to receive rent in respect of land in the United Kingdom from one person to another, otherwise than by means of the grant of a lease of land in the United Kingdom.

(2) A person who receives a finance amount shall be treated for the purposes of the Tax Acts as receiving it—

(a) by way of rent,

(b) in the course of a business falling within paragraph 1(1) of Schedule A **[**F281or in the course of a UK property business**]**, and

(c) in the chargeable period in which the agreement is made;

and the finance amount shall be taken into account in computing the profits of the Schedule A business **[**F282or the UK property business**]** for the chargeable period in which the agreement is made.

(3) In subsection (2) "finance amount" means a receipt in respect of which section 43A(1) is satisfied.

Textual Amendments
F281 Words in s. 43B(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 26(a)** (with Sch. 2)
F282 Words in s. 43B(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 26(b)** (with Sch. 2)

43C Transfer of rent: exceptions, &c.

(1) F283 . . . . . .

(2) Section 43B shall not apply to a finance agreement if—

(a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under **[**F284the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]**, and

(b) that person is not connected to the person from whom the right to receive rent is transferred.

(3) Section 43B shall not apply to a finance agreement if—

(a) section 36(1) applies (without reference to section 36(3)), F285. . .

(b) section 36(1) would apply (without reference to section 36(3)) if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed,

[F286(c) section 284 of ITTOIA 2005 applies, or

(d) that section would apply if the price at which an estate or interest is sold were to exceed the price at which it is to be reconveyed.**]**

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(4) If—

(a) section 36(1) would apply in relation to a finance agreement by virtue only of section 36(3), and

(b) section 43B applies in relation to the agreement,

section 36(1) shall not apply.

[F287(4A) If—

(a) section 285 of ITTOIA 2005 would apply in relation to a finance agreement, and

(b) section 43B applies in relation to the agreement,

section 285 of ITTOIA 2005 shall not apply.**]**

(5) Section 43B shall not apply to a finance agreement if section 780 applies.

(6) Section 43B(2) shall not apply to a finance amount which is brought into account—

[F288(a)**]** in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the M55Finance Act 1989 (life assurance)),**[**F289 or

(b) in computing under Chapter 2 of Part 2 of ITTOIA 2005 the profits of a trade carried on wholly or partly in the United Kingdom.**]**

Textual Amendments

F283 S. 43C(1) repealed (with effect in accordance with Sch. 7 para. 1(4)-(8) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 1(2), **Sch. 11 Pt. 2(8)**, Note

F284 Words in s. 43C(2)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), s. 578, **Sch. 2 para. 11**

F285 Word at the end of s. 43C(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 27(2)(a), **Sch. 3** (with Sch. 2)

F286 S. 43C(3)(c)(d) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(2)(b)** (with Sch. 2)

F287 S. 43C(4A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(3)** (with Sch. 2)

F288 Words in s. 43C(6) renumbered as s. 43C(6)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(4)(a)** (with Sch. 2)

F289 S. 43C(6)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 27(4)(b)** (with Sch. 2)

Marginal Citations

M55 1989 c. 26.

43D Interposed lease.

(1) This section applies to a finance agreement under which—

(a) a lease is granted in respect of land in the United Kingdom,

(b) a premium is payable in respect of the lease, and

(c) section 43A(1) is satisfied by reference to the receipt of the premium.

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(2) Where this section applies, the person to whom the premium is payable shall be treated for the purposes of the Tax Acts as receiving it—

(a) by way of rent,

(b) in the course of a business falling within paragraph 1(1) of Schedule A **[**F290or in the course of a UK property business**]**, and

(c) in the chargeable period in which the agreement is made;

and the premium shall be taken into account in computing the profits of the Schedule A business **[**F291or the UK property business**]** for the chargeable period in which the agreement is made.

Textual Amendments

F290 Words in s. 43D(2)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 28(a)** (with Sch. 2)

F291 Words in s. 43D(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 28(b)** (with Sch. 2)

43E Interposed lease: exceptions, &c.

(1) Section 43D shall not apply to a finance agreement if—

(a) F292. . . . . .

(b) F292. . . . . .

(c) the length of the lease is not significantly different from the term over which the financial obligation is to be reduced.

(2) For the purpose of subsection (1) the length of a lease shall be calculated in accordance with section 38.

(3) Section 43D shall not apply to a finance agreement if—

(a) the arrangements for the reduction of the financial obligation substantially depend on a person's entitlement to an allowance under **[**F293the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]**, and

(b) that person is not connected to the person who grants the lease in respect of which the premium is payable.

(4) Section 43D(2) shall not apply where all or part of the premium is brought into account **[**F294—

(a)**]** in computing the profits of a trade for the purposes of Case I of Schedule D (otherwise than by virtue of section 83 of the M56Finance Act 1989 (life assurance)),**[**F295 or

(b) in computing under Chapter 2 of Part 2 of ITTOIA 2005 the profits of a trade carried on wholly or partly in the United Kingdom.**]**

(5) Section 34 **[**F296and sections 277 to 281 of ITTOIA 2005**]** shall not apply in relation to a premium to which section 43D(2) applies.

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Textual Amendments

F292 S. 43E(1)(a)(b) repealed (with effect in accordance with Sch. 7 para. 1(4)-(8) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 1(3), **Sch. 11 Pt. 2(8)**, Note

F293 Words in s. 43E(3)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), s. 578, **Sch. 2 para. 12**

F294 Words in s. 43E(4) renumbered as s. 43E(4)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 29(2)(a)** (with Sch. 2)

F295 S. 43E(4)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 29(2)(b)** (with Sch. 2)

F296 Words in s. 43E(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 29(3)** (with Sch. 2)

Marginal Citations

M56 1989 c. 26.

43F Insurance business.

(1) In the application of sections 43A to 43E to companies carrying on insurance business a reference to accounts does not include a reference to accounts required to be prepared under **[**[F297]Chapter 9 of the Prudential Sourcebook (Insurers)**]**.

(2) Neither section 43B(2) nor section 43D(2) shall require any amount to be brought into account in a computation of profits of life assurance business, or any category of life assurance business, carried on by a company where the computation is made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Section 432A shall have effect in relation to any sum which is or would be treated as received by virtue of section 43B(2) or 43D(2) of this Act.

(4) Expressions used in this section and in Chapter I of Part XII have the same meaning in this section as in that Chapter.

Textual Amendments

F297 Words in s. 43F(1) substituted (1.12.2001 with effect in accordance with art. 15(2) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **arts. 1(2)(a)**, 15(1)

Modifications etc. (not altering text)

C90 S. 43F(1) modified (with effect in accordance with reg. 4A(3) of the 1997 modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 4A(1)(2)** (as inserted (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 3, and as amended by: S.I. 2003/23, **regs. 1**, 3; S.I. 2005/2005, **regs. 1**, 4)

C91 S. 43F(1) modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 4 (which modifying reg. 4 is omitted (14.8.2007 with effect in accordance with reg. 1(3) of the revoking S.I.) by virtue of S.I. 2007/2134, **regs. 1(1)**, 4)

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43G Interpretation.

(1) This section applies for the purposes of sections 43A to 43F.

(2) In those sections—

"connected" in relation to persons has the meaning given by section 839,

"rent" includes any sum which is chargeable to tax under Schedule A **[**F298or, as the profits of a UK property business, under Chapter 3 of Part 3 of ITTOIA 2005**]**,

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things, but does not include a mortgage or heritable security,

"premium" **[**F299—

(a) for the purposes of corporation tax**]** has the meaning given by section 24(1) (and, in relation to Scotland, section 24(5)), and subsections (4) and (5) of section 34 shall have effect in relation to sections 43A to 43F as they have effect in relation to section 34, and

(b) **[**F300for the purposes of income tax has the meaning given by section 307(1) of ITTOIA 2005 (and, in relation to Scotland, section 307(3) of that Act), and includes—

(i) a sum payable by the tenant under the terms subject to which a lease is granted instead of the whole or a part of the rent for a period,

(ii) a sum payable by the tenant under those terms as consideration for the surrender (in Scotland, the renunciation) of the lease, and

(iii) a sum payable by the tenant (otherwise than by way of rent) as consideration for the variation or waiver of a term of a lease, and**]**

"sum" has the meaning given by section 24(4).

(3) A reference to a transfer of a right to receive rent from one person to another includes a reference to any arrangement under which rent ceases to form part of the receipts taken into account for the purposes of calculating a company's liability to corporation tax or income tax.

(4) In calculating the term over which a financial obligation is to be reduced no account shall be taken of any period during which the arrangements for reduction differ from the arrangements which apply in a previous period if—

(a) the period begins after the financial obligation has been substantially reduced, and

(b) the different arrangements for reduction are not the result of a provision for periodic review, on commercial terms, of rent under a lease.**]**

Textual Amendments

F298 S. 43G(2): words in definition of "rent" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 30(2)** (with Sch. 2)

F299 S. 43G(2): words in definition of "premium" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 30(3)(a)** (with Sch. 2)

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F300 S. 43G(2): in definition of "premium", para. (b) inserted (6.4.2005 with effect in accordance with S. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 30(3)(b)** (with Sch. 2)

PART III

[F301GOVERNMENT SECURITIES]

Textual Amendments

F301 Pt. 3 heading substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996, s. 79, Sch. 7 para. 6 (with Sch. 7 paras. 33-35)

General

44 Income tax: mode of charge.

F302 . . . . . .

Textual Amendments

F302 S. 44 repealed (with effect in accordance with Sch. 7 para. 32 and Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 7, **Sch. 41 Pt. 5(2)** (with Sch. 7 paras. 33-35)

45 Interpretation of Part III.

F303 . . . . . .

Textual Amendments

F303 S. 45 repealed (with effect in accordance with Sch. 7 para. 32 and Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 8, **Sch. 41 Pt. 5(2)** (with Sch. 7 paras. 33-35)

Government securities: exemptions from tax

46 Savings certificates and tax reserve certificates.

(1) M57Subject to subsections (3) to (6) below, income arising from savings certificates shall not be liable to **[**F304corporation**]** tax.

(2) **[**F305M58Corporation tax**]** shall not be chargeable in respect of the interest on tax reserve certificates issued by the Treasury.

(3) M59Subsection (1) above does not apply to any savings certificates which are purchased by or on behalf of a person in excess of the amount which a person is for the time

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being authorised to purchase under regulations made by the Treasury or, as respects Ulster Savings Certificates, by the Department of Finance and Personnel.

(4) Subsection (1) above does not apply to Ulster Savings Certificates unless—

(a) the holder is resident and ordinarily resident in Northern Ireland when the certificates are repaid; or

(b) the certificates were purchased by **[**F306the holder and the holder**]** was so resident and ordinarily resident when they were purchased.

(5) A claim under this section in respect of Ulster Savings Certificates shall be made to the Board.

(6) In this section "sa00vings certificates" means savings certificates issued under section 12 of the M60National Loans Act 1968 or section 7 of the M61National Debt Act 1958 or Section 59 of the M62Finance Act 1920 and any war savings certificates as defined in section 9(3) of the M63National Debt Act 1972, together with any savings certificates issued under any corresponding enactment forming part of the law of Northern Ireland.

[F307(7) In this section "Ulster Savings Certificates" means savings certificates issued or treated as issued under section 15 of the Exchequer and Financial Provisions Act (Northern Ireland) 1950.**]**

Textual Amendments

F304 Word in s. 46(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 31(2)** (with Sch. 2)

F305 Words in s. 46(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 31(3)** (with Sch. 2)

F306 Words in s. 46(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 31(4)** (with Sch. 2)

F307 S. 46(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 31(5)** (with Sch. 2)

Modifications etc. (not altering text)

C92 *And see, as regards Ulster Savings Certificates,* Part III Vol.5.

Marginal Citations

M57 SOURCE-1981 S. 34(1)

M58 SOURCE-1970 s. 98

M59 SOURCE-1981 s. 34(2)–(5); 1979 (C) s. 71(2)(a)

M60 1968 c. 13.

M61 1958 c.6.

M62 1920 c.18.

M63 1972 c. 65.

47 United Kingdom government securities held by non-residents.

F308

. . . . . .

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Textual Amendments

F308 S. 47 repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), ss. 154(7), 205, Sch. 28 para. 1, **Sch. 41 Pt. 5(18)**, Note (with s. 154(2)-(6))

48 Securities of foreign states.

F309 . . . . . .

Textual Amendments

F309 S. 48 repealed (with effect in accordance with Sch. 7 para. 32 and Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 9, **Sch. 41 Pt. 5(2)** (with Sch. 7 paras. 33-35)

49 Stock and dividends in name of Treasury etc.

[F310(1) No tax shall be chargeable in respect of the stock or dividends—

(a) transferred, in pursuance of any Act of Parliament, to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners, or

(b) transferred, in pursuance of any Act of Parliament, to the Treasury or the National Debt Commissioners and in respect of which the Treasury or those Commissioners are entered as holder in the registers kept by the Registrar of Government Stock,

but the Bank of England and the Registrar of Government Stock shall each transmit to the Board an account of the total amount thereof in those books or registers as the case may be.**]**

(2) No tax shall be chargeable in respect of the stock or dividends belonging to the Crown, in whatever name they may stand in the books of the Bank of England **[**F311or in the registers kept by the Registrar of Government Stock**]**.

[F312(3) In this section "dividends" means any interest, public annuities, dividends or shares of annuities.**]**

[F313(4) In this section "Registrar of Government Stock" means the person or persons appointed in accordance with regulations under section 47(1)(b) of the Finance Act 1942 (see regulation 3 of the Government Stock Regulations 2004).**]**

Textual Amendments

F310 S. 49(1) substituted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(2)(a)** (with art. 3)

F311 Words in s. 49(2) inserted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(2)(b)** (with art. 3)

F312 S. 49(3) inserted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), s. 79, **Sch. 7 para. 10** (with Sch. 7 paras. 33-35)

F313 S. 49(4) inserted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(2)(c)** (with art. 3)

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Government securities: interest payable without deduction of tax

50 United Kingdom securities: Treasury directions for payment without deduction of tax.

[F314(A1) The interest on **[**F315gilt-edged securities**]** (whenever issued and whatever the terms on which they were issued) shall be paid without deduction of income tax.**]**

(1) M64The Treasury may direct that any of the following securities **[**F316in so far as they are not gilt-edged securities**]**, that is to say—

(a) F317. . . . . .

(b) any securities issued or deemed to be issued under the M65National Loans Act 1939 or issued under the M66National Loans Act 1968;

(c) F317. . . . . .

(d) F317. . . . . .

shall be issued, or shall be deemed to have been issued, subject to the condition that the interest thereon shall be paid without deduction of income tax; and subject to the provisions of this section the interest shall be so paid accordingly F318. . . .

(2) M67The holder of any registered securities the interest on which is by virtue of **[**F319subsection (A1) above or of**]** directions given under subsection (1) above payable without deduction of tax may make an application to the **[**F320Registrar**]** under this subsection requesting that income tax shall be deducted from the interest on those securities before payment thereof.

(3) Where any such application is made, income tax in respect of the interest on those securities shall, so long as they remain registered in the name of the applicant and subject to the withdrawal of the application under subsection (5) below, be deducted and charged in the same manner as if they were not securities **[**F321the interest on which is to be paid without deduction of income tax**]**.

(4) M68An application under subsection (2) above shall be made in such form as the **[**F320Registrar**]** with the approval of the Treasury may prescribe, and any application made less than **[**F322one month**]** before the date on which a payment of interest falls due shall only have effect as regards any payment of interest subsequent to that payment.

(5) An application made under subsection (2) above may at any time be withdrawn by notice to the **[**F320Registrar**]** in such form as the **[**F320Registrar**]** may with the approval of the Treasury prescribe, but an application so withdrawn shall, notwithstanding the withdrawal, continue to have effect as regards any interest payable less than **[**F322one month**]** after the date the notice is **[**F323received by**]** the **[**F320Registrar**]**.

(6) Where any securities to which subsection (2) above applies are held on trust, the holders of the securities may make an application under that subsection in respect thereof without the consent of any other person, notwithstanding anything in the instrument creating the trust.

(7) In this section—

F324. . . . . .

[F325"gilt-edged securities" means any securities which—

(a) are gilt-edged securities for the purposes of the 1992 Act; or

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(b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they were issued,**]**[F326]. . .

"registered" means entered in the register of the **[**[F327]Registrar;**]**

[[F328]"the Registrar" means the Registrar of Government Stock, as defined in section 49(4).**]**

Textual Amendments

F314 S. 50(A1) inserted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(2)**

F315 Words in s. 50(A1) substituted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(1)**

F316 Words in s. 50(1) inserted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(3)(a)**

F317 S. 50(1)(a)(c)(d) repealed (with effect in accordance with Sch. 8 Pt. 2(13) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 52, **Sch. 8 Pt. 2(13)**

F318 Words in s. 50(1) repealed (with effect in accordance with Sch. 7 para. 32 of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 11, **Sch. 41 Pt. 5(2)**, Note (with Sch. 7 paras. 33-35)

F319 Words in s. 50(2) inserted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(3)(b)**

F320 Words in s. 50 substituted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(3)(a)** (with art. 3)

F321 Words in s. 50(3) substituted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(3)(c)**

F322 Words in s. 50(4)(5) substituted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(3)(d)**

F323 Words in s. 50(5) substituted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(3)(b)** (with art. 3)

F324 S. 50(7): definition of "the Bank" omitted (15.11.2004) by virtue of The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(3)(c)(i)** (with art. 3)

F325 S. 50(7): definition of "gilt-edged securities" inserted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(4)**

F326 S. 50(7): word at the end of definition of "gilt-edged securities" omitted (15.11.2004) by virtue of The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(3)(c)(ii)** (with art. 3)

F327 S. 50(7): word in definition of "registered" substituted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(3)(c)(iii)** (with art. 3)

F328 S. 50(7): definition of "the Registrar" inserted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(3)(c)(iv)** (with art. 3)

Marginal Citations

M64 SOURCE-1970 s. 101(1)

M65 1939 c. 117.

M66 1968 c. 13.

M67 SOURCE-1970 s. 101(2)

M68 SOURCE-1970 s. 101(3)–(6)

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51 Treasury directions as respects Northern Ireland securities.

(1) [M69]The Treasury may, on the application of the Department of Finance and Personnel, as respects any securities to which this section applies, direct that the securities specified in the direction shall be issued, or shall be deemed to have been issued, subject to the condition that the interest thereon shall be paid without deduction of income tax; and in relation to any securities so specified and the interest thereon, section 50 shall have effect as if—

(a) the securities were securities in respect of which a direction had been given by the Treasury under subsection (1) of that section;

(b) references in that section to **[**[F329]"the Registrar"**]** were (notwithstanding subsection (7) of that section) references to the bank in the books of which the securities are registered or inscribed; and

(c) the references in subsections (4) and (5) of that section to the Treasury were references to the Department of Finance and Personnel.

(2) The securities to which this section applies are securities issued under section 11(1)(c) of the [M70]Exchequer and Financial Provisions Act (Northern Ireland) 1950 for money borrowed by the Department of Finance and Personnel for the purposes of making issues from the Consolidated Fund of Northern Ireland.

Textual Amendments

F329 Words in s. 51(1)(b) substituted (15.11.2004) by The Government Stock (Consequential and Transitional Provision) (No. 3) Order 2004 (S.I. 2004/2744), art. 1, **Sch. para. 2(4)** (with art. 3)

Marginal Citations

M69 SOURCE-1970 s. 102

M70 1950 c. 3 (N.I.)

[[F330]51AA Commencement of direction under section 50 or 51.

A direction under section 50 or 51 that any security shall be deemed to have been issued subject to the condition that the interest thereon shall be paid without deduction of tax may provide that the direction is to have effect in relation only to payments of interest made on or after such date as may be specified in the direction.**]**

Textual Amendments

F330 S. 51AA inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 155**

[[F331]51A Gilt-edged securities held under authorised arrangements.

[F332] . . . . . .**]**

Textual Amendments

F331 S. 51A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 77**

F332 S. 51A repealed (with effect in accordance with s. 37(8) and Sch. 8 Pt. 2(13) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), ss. 37(5), 52, **Sch. 8 Pt. 2(13)**

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[F333 51B Periodic accounting for tax on interest on gilt-edged securities.

F334 . . . . . .]

Textual Amendments

F333 S. 51B inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 78(1)**

F334 S. 51B repealed (with effect in accordance with s. 37(3) of the repealing Act and S.I. 1999/619) by Finance Act 1998 (c. 36), ss. 37(1), 165, **Sch. 27 Pt. 3(3)**, Note

52 Taxation of interest on converted government securities and interest which becomes subject to deduction.

F335 . . . . . .

Textual Amendments

F335 S. 52 repealed (with effect in accordance with Sch. 7 para. 32 of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 12, **Sch. 41 Pt. 5(2)**, Note (with Sch. 7 paras. 33-35)

PART IV

PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER I

SUPPLEMENTARY CHARGING PROVISIONS

53 Farming and other commercial occupation of land (except woodlands).

(1) M71 All farming and market gardening in the United Kingdom shall be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the [F336 profits] thereof shall be charged to [F337 corporation] tax under Case I of Schedule D accordingly.

(2) All the farming carried on by any particular [F338 company or partnership] shall be treated as one trade [F339 for corporation tax purposes].

(3) M72 Subject to subsection (4) below, the occupation of land in the United Kingdom for any purpose other than farming or market gardening shall, if the land is managed on a commercial basis and with a view to the realisation of profits, be treated as the carrying on of a trade or, as the case may be, of a part of a trade, and the [F340 profits] thereof shall be charged to [F341 corporation] tax under Case I of Schedule D accordingly.

[F342 (4) Subsection (3) above shall not apply in relation to the occupation of land which comprises woodlands or is being prepared for use for forestry purposes.]

Textual Amendments

F336 Words in s. 53(1)(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

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F337 Word in s. 53(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 32(2)** (with Sch. 2)
F338 Words in s. 53(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 32(3)(a)** (with Sch. 2)
F339 Words in s. 53(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 32(3)(b)** (with Sch. 2)
F340 Words in s. 53(1)(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1
F341 Words in s. 53(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 32(4)** (with Sch. 2)
F342 1988(F) Sch.6 para.6(7),*into force on* 6*April* 1988*subject to certain provisos. Previously*
"(4) Subsection (3) above shall not affect the taxation of woodlands which are managed on a commercial basis and with a view to the realisation of profits".

Marginal Citations
M71 SOURCE-1970 s. 110(1), (2)
M72 SOURCE-1970 s. 110(3)

F343 54 Woodlands managed on a commercial basis.

. . . . . .

Textual Amendments
F343 S. 54 repealed (15.3.1988) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 5**, Note 2

55 Mines, quarries and other concerns.

(1) **[**F344profits**]** arising out of land in the case of any concern specified in subsection (2) below shall be charged to **[**F345corporation**]** tax under Case I of Schedule D.

(2) The concerns are—
(a) mines and quarries (including gravel pits, sand pits and brickfields);
(b) ironworks, gasworks, salt springs or works, alum mines or works (not being mines falling within the preceding paragraph) and waterworks and streams of water;
(c) canals, inland navigation, docks and drains or levels;
(d) fishings;
(e) rights of markets and fairs, tolls, bridges and ferries;
(f) railways and other ways;
(g) other concerns of the like nature as any of the concerns specified in paragraphs (b) to (e) above.

Textual Amendments
F344 Word in s. 55(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1
F345 Word in s. 55(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 33** (with Sch. 2)

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56 Transactions in deposits with and without certificates or in debts.

(1) [M73][M74]Subsection (2) below applies to the following rights—

(a) the right to receive the amount, with or without interest, stated in a certificate of deposit;

(b) the right to receive an amount payable with interest—

(i) in a transaction in which no certificate of deposit or security is issued, and

(ii) which is payable by a bank or similar institution or a person regularly engaging in similar transactions;

and the right to receive that interest.

(2) [M75]Profits or gains arising to a **[**[F346]company**]** from the disposal of a right to which this subsection applies or, except so far as it is a right to receive interest, from the exercise of any such right (whether by the person to whom the certificate was issued or by some other person, or, as the case may be, by the person who acquired the right in the transaction referred to in subsection (1) above or by some person acquiring it directly or indirectly from that person), shall, if not falling to be taken into account as a trading receipt, be treated as annual profits or gains chargeable to **[**[F347]corporation tax**]** under Case VI of Schedule D.

(3) [M76]Subsection (2) above **[**[F348]and section 551 of ITTOIA 2005 (charge to income tax on profits from disposal of deposit rights) do**]** not apply in the case of the disposal or exercise of a right to receive an amount stated in a certificate of deposit or interest on such an amount—

(a) if the **[**[F349]company**]** disposing of the right acquired it before 7th March 1973;

(b) to any profits or gains arising to a fund or scheme in the case of which provision is made by section 592(2), 613, 614(1) to (3) or 620(6) for exempting the whole or part of its income from income tax;

(c) in so far as they are applied to charitable purposes only, to any profits or gains arising to a charity within the meaning of section 506.

[[F350](3A) [F351]. . . . . .

(3B) [F351]. . . . . .

(3C) [F351]. . . . . .

(3D) [F351]. . . . . .**]**

(4) [M77]For the purposes of this section, profits or gains shall not be treated as falling to be taken into account as a trading receipt by reason only that they are included in the computation required **[**[F352]for the purposes of**]** section 76(2).

[[F353](4A) This section and section 56A shall not apply for the purposes of corporation tax except in relation to rights in existence before 1st April 1996.

(4B) For the purposes of corporation tax, where any profits or gains arising from the disposal or exercise of a right in existence before 1st April 1996 are, or (if there were any) would be, chargeable under this section, nothing in Chapter II of Part IV of the Finance Act 1996 (loan relationships) shall require any amount relating to that disposal, or to the exercise of that right, to be brought into account for the purposes of that Chapter.**]**

(5) [M78] In this section—

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"certificate of deposit" means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable; and

"security" has the same meaning as in section **[**F354132 of the 1992 Act**]**.

Textual Amendments

F346 Word in s. 56(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 34(2)(a)** (with Sch. 2)

F347 Words in s. 56(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 34(2)(b)** (with Sch. 2)

F348 Words in s. 56(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 34(3)(a)** (with Sch. 2)

F349 Word in s. 56(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 34(3)(b)** (with Sch. 2)

F350 S. 56(3A)-(3D) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.2**

F351 S. 56(3A)-(3D) repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), s. 141, **Sch. 40 Pt. 3(10)**, Note

F352 Word in s. 56(4) substituted (with effect in accordance with s. 164(5)(6) of the amending act) by Finance Act 1996 (c. 8), **s. 164(4)**

F353 S. 56(4A)(4B) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 104, **Sch. 14 para. 6** (with Sch. 15)

F354 Words in s. 56(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(3)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C93 *See* s.608—*exemption for certain superannuation funds.*

C94 S. 56(2) modified (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458, **Sch. 10 para. 6** (with Sch. 10 para. 10); S.I. 2003/120, art. 2, **Sch.** (with arts. 3-7 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

M73 SOURCE-1973 s. 26(1)

M74 SOURCE-1974 s. 30(1)

M75 SOURCE-1973 s. 26(1); 1974 s. 30(1)

M76 SOURCE-1973 s. 26(1)(a)(b); 1975 (No. 2) s. 50(1)

M77 SOURCE-1973 s. 26(3); 1974 s. 30(2)

M78 SOURCE-1973 s. 26(4); 1974 s. 30(2), (1); 1968 s. 55(3); 1979(C) Sch. 7

[F35556A Disposal or exercise of rights in pursuance of deposits.

(1) This section applies where there is an arrangement under which—

(a) there is a right to receive an amount (with or without interest)

in pursuance of a deposit of money,

(b) when the right comes into existence there is no certificate of deposit in respect of the right, and

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(c) the person for the time being entitled to the right is entitled to call for the issue of a certificate of deposit in respect of the right.

(2) In such a case—

(a) the right shall be treated as not falling within section 56(1)(b), and

(b) if there is a disposal or exercise of the right before such time (if any) as a certificate of deposit is issued in respect of it, section 56(2) shall apply to it by virtue of this paragraph.

(3) In the application of section 56 by virtue of this section—

(a) subsection (2) shall have effect as if the words from "(whether" to "person)" read "(whether by the person originally entitled to the right or by some other person)", and

(b) subsection (3) shall have effect as if the words "stated in a certificate of deposit" read "under an arrangement".

(4) In this section "certificate of deposit" has the meaning given by section 56(5).**]**

Textual Amendments

F355 S. 56A inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras.1, **6**.

57 Deep discount securities.

F356 . . . . . .

Textual Amendments

F356 S. 57 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note

58 Foreign pensions.

F357 . . . . . .

Textual Amendments

F357 S. 58 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 8, **Sch. 8 Pt. 1** (with Sch. 7)

59 Persons chargeable.

(1) F358 . . . . . .

(2) F358 . . . . . .

(3) Where, in accordance with **[**F359section 12 of ITTOIA 2005**]**, income tax is charged F360. . . on the profits of markets or fairs, or on tolls, fisheries or any other annual or casual profits not distrainable, the owner or occupier or receiver of the profits thereof

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shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.

(4) **[**F361Subsection (3)**]** above shall not apply for the purposes of corporation tax.

Textual Amendments

F358 S. 59(1)(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 35(2), **Sch. 3** (with Sch. 2)

F359 Words in s. 59(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 35(3)(a)** (with Sch. 2)

F360 Words in s. 59(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 35(3)(b), **Sch. 3** (with Sch. 2)

F361 Words in s. 59(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 35(4)** (with Sch. 2)

CHAPTER II

INCOME TAX: BASIS OF ASSESSMENT ETC.

Cases I and II

60 Assessment on current year basis.

F362 . . . . . .

Textual Amendments

F362 Ss. 60-63A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 36, **Sch. 3** (with Sch. 2)

61 Basis of assessment at commencement.

F363 . . . . . .

Textual Amendments

F363 Ss. 60-63A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 36, **Sch. 3** (with Sch. 2)

62 Change of basis period.

F364 . . . . . .

Textual Amendments

F364 Ss. 60-63A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 36, **Sch. 3** (with Sch. 2)

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[F365 62A Conditions for such a change.

F366 . . . . . .]

Textual Amendments

F365 S. 62A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 203** (with Sch. 20)

F366 Ss. 60-63A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 36, **Sch. 3** (with Sch. 2)

63 Basis of assessment on discontinuance.

F367 . . . . . .

Textual Amendments

F367 Ss. 60-63A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 36, **Sch. 3** (with Sch. 2)

[F368 63A Overlap profits and overlap losses.

F369 . . . . . .]

Textual Amendments

F368 S. 63A inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 205** (with Sch. 20)

F369 Ss. 60-63A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 36, **Sch. 3** (with Sch. 2)

Cases III, IV and V

64 Case III assessments.

F370 . . . . . .

Textual Amendments

F370 S. 64 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 37, **Sch. 3** (with Sch. 2)

65 Cases IV and V assessments: general.

F371 . . . . . .

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Textual Amendments

F371 S. 65 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 38, **Sch. 3** (with Sch. 2)

[F372 65A Case V income from land outside UK: income tax.

F373 . . . . . .]

Textual Amendments

F372 S. 65A inserted (with effect in accordance with s. 41(5)-(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 41(2)**

F373 S. 65A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 39, **Sch. 3** (with Sch. 2)

66 Special rules for fresh income.

F374 . . . . . .

Textual Amendments

F374 S. 66 repealed (with effect in accordance with s. 218(1) of the repealing Act) by Finance Act 1994 (c. 9), ss. 207(4), 258, **Sch. 26 Pt. 5(24)**, Note 7 (with Sch. 20)

67 Special rules where source of income disposed of or yield ceases.

F375 . . . . . .

Textual Amendments

F375 S. 67 repealed (with effect in accordance with s. 218(1) of the repealing Act) by Finance Act 1994 (c. 9), ss. 207(4), 258, **Sch. 26 Pt. 5(24)**, Note 7 (with Sch. 20)

68 Special rules where property etc. situated in Republic of Ireland.

F376 . . . . . .

Textual Amendments

F376 S. 68 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 40, **Sch. 3** (with Sch. 2)

[F377 68A Share incentive plans: application of section 68B

F378 . . . . . .

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Textual Amendments

F377 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

F378 Ss. 68A-68C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 41, **Sch. 3** (with Sch. 2)

68B Share incentive plans: cash dividends and dividend shares

F379 . . . . . .

Textual Amendments

F377 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

F379 Ss. 68A-68C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 41, **Sch. 3** (with Sch. 2)

68C Share incentive plans: interpretation

F380 . . . . . .]

Textual Amendments

F377 Ss. 68A-68C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 10** (with Sch. 7)

F380 Ss. 68A-68C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 41, **Sch. 3** (with Sch. 2)

Case VI

69 Case VI assessments.

F381 . . . . . .

Textual Amendments

F381 S. 69 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 42, **Sch. 3** (with Sch. 2)

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CHAPTER III

CORPORATION TAX: BASIS OF ASSESSMENT ETC

70 Basis of assessment etc.

(1) [M79]In accordance with sections 6 to 12 and 337 to 344, for the purposes of corporation tax for any accounting period income shall be computed under Cases I to VI of Schedule D on the full amount of the profits or gains or income arising in the period (whether or not received in or transmitted to the United Kingdom), without any other deduction than is authorised by the Corporation Tax Acts.

(2) [M80]Where a company is chargeable to corporation tax in respect of a trade or vocation under Case V of Schedule D, the income from the trade or vocation shall be computed in accordance with the rules applicable to Case I of Schedule D.

(3) **[**[F382M81]Cases III and V**]** of Schedule D shall for the purposes of corporation tax extend to companies not resident in the United Kingdom, so far as those companies are chargeable to tax on income of descriptions which, in the case of companies resident in the United Kingdom, fall within those Cases (but without prejudice to any provision of the Tax Acts specially exempting non-residents from tax on any particular description of income).

Textual Amendments

F382 Words in s. 70(3) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 7** (with Sch. 15)

Modifications etc. (not altering text)

C95 S. 70 excluded (with application in accordance with s. 65(1)(3)(4) of the excluding Act) by Finance Act 2002 (c. 23), **s. 65(2)(a)**

Marginal Citations

M79 SOURCE-1970 s. 129(1)
M80 SOURCE-1970 s. 129(4)
M81 SOURCE-1970 s. 129(5)

[F383]70A Case V income from land outside UK: corporation tax.

(1) This section applies where a company is chargeable to corporation tax under Case V of Schedule D in respect of income which—

(a) arises from a business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over land outside the United Kingdom, and

(b) is not income to which section 70(2) applies (income from a trade or vocation).

(2) The provisions of Schedule A apply to determine whether income falls within subsection (1)(a) above as they would apply to determine whether the income fell within paragraph 1(1) of that Schedule if—

(a) the land in question were in the United Kingdom, or

(b) a caravan or houseboat which is to be used at a location outside the United Kingdom were to be used at a location in the United Kingdom.

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(3) Any provision of the Taxes Acts which deems there to be a Schedule A business in the case of land in the United Kingdom applies where the corresponding circumstances arise with respect to land outside the United Kingdom so as to deem there to be a business within subsection (1)(a) above.

(4) All businesses and transactions carried on or entered into by a particular company or partnership, so far as they are businesses or transactions the income from which is chargeable to tax under Case V of Schedule D in accordance with this section, are treated for the purposes of the charge to tax under Case V as, or as entered into in the course of carrying on, a single business (an "overseas property business").

(5) The income from an overseas property business shall be computed for the purposes of Case V of Schedule D in accordance with the rules applicable to the computation of the profits of a Schedule A business.

Those rules apply separately in relation to—

(a) an overseas property business, and

(b) any actual Schedule A business of the company chargeable,

as if each were the only Schedule A business carried on by that company.

(6) Sections 503 and 504 of this Act [F384]. . . do not apply to the profits or losses of an overseas property business.

(7) Where under this section rules expressed by reference to domestic concepts of law apply in relation to land outside the United Kingdom, they shall be interpreted so as to produce the result that most closely corresponds with the result produced for Schedule A purposes in relation to land in the United Kingdom.**]**

Textual Amendments

F383 S. 70A inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 38(1), **Sch. 5 para. 25** (with Sch. 5 para. 73)

F384 Words in S. 70A(6) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), ss. 578, 580, Sch. 2 para. 14, **Sch. 4** (with Sch. 3)

CHAPTER IV

PROVISIONS SUPPLEMENTARY TO CHAPTERS II AND III

71 Computation of income tax where no profits in year of assessment.

[F385] . . . . . .

Textual Amendments

F385 S. 71 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 43, **Sch. 3** (with Sch. 2)

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72 Apportionments etc. for purposes of Cases I, II and VI.

(1) [M82]Where in the case of any profits or gains chargeable **[**[F386]to corporation tax**]** under Case I, II or VI of Schedule D it is necessary in order to arrive for the purposes of [F387]. . . corporation tax at the profits or gains or losses of any [F387]. . . accounting period or other period, to divide and apportion to specific periods the profits or gains or losses for any period for which the accounts have been made up, or to aggregate any such profits, gains or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation.

(2) [M83]Any apportionment under this section shall be made in proportion to the number of **[**[F388]days**]** in the respective periods.

Textual Amendments

F386 Words in s. 72(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 44(a)** (with Sch. 2)

F387 Words in s. 72(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 44(b), **Sch. 3** (with Sch. 2)

F388 Word in s. 72(2) substituted (1.5.1995) by Finance Act 1995 (c. 4), **s. 121**

Modifications etc. (not altering text)

C96 *See* S.I. 1987 No. 530 (in Part III Vol. 5) regn. 16—*payments attributable to non-resident entertainers and sportsmen.*

Marginal Citations

M82 SOURCE-1970 ss. 127(1), 129(2)

M83 SOURCE-1970 s. 127(2), 527(4)

73 Single assessments for purposes of Cases III, IV and V.

[F389]. . . . . .

Textual Amendments

F389 S. 73 repealed (with effect in accordance with s. 103(7) of the repealing Act) by Finance Act 1995 (c. 4), ss. 115(09), 162, **Sch. 29 Pt. 8(14)**, Note 2

CHAPTER V

COMPUTATIONAL PROVISIONS

Modifications etc. (not altering text)

C97 *See*—1979(C) s.122—*election to take capital gain or loss into account when asset appropriated to stock in trade.*1989 ss.67-74—*employee share ownership trusts.*Banking Act 1987 (c.22) s.66—*contributions to the Deposit Protection Fund.*

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Deductions

74 General rules as to deductions not allowable.

[F390(1)**]** M84Subject to the provisions of **[**F391the Corporation Tax Acts**]**, in computing the amount of the **[**F392profits**]** to be charged **[**F393to corporation tax**]** under Case I or Case II of Schedule D, no sum shall be deducted in respect of—

(a) any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade **[**F394or profession**]**;

(b) F395. . . . . .

(c) the rent of the whole or any part of any dwelling-house or domestic offices, except any such part as is used for the purposes of the trade **[**F394or profession**]**, and where any such part is so used, the sum so deducted shall not, unless in any particular case it appears that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling-house or those offices;

(d) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade **[**F394or profession**]**, beyond the sum actually expended for those purposes;

(e) any loss not connected with or arising out of the trade **[**F394or profession**]**;

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade **[**F394or profession**]**, but so that this paragraph shall not be treated as disallowing the deduction of any interest;

(g) any capital employed in improvements of premises occupied for the purposes of the trade **[**F394or profession**]**;

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest;

[F396(j) F397. . . . . .**]**

(k) any average loss beyond the actual amount of loss after adjustment;

(l) any sum recoverable under an insurance or contract of indemnity;

(m) any annuity or other annual payment (other than interest) payable out of the **[**F398profits**]**;

(n) F399. . . . . .

[F400(o) F395. . . . . .**]**

(p) M85any royalty or other sum paid in respect of the user of a patent;

(q) F401. . . . . .

[F402(2) F403. . . . . .**]**

Textual Amendments

F390 S. 74 renumbered as s. 74(1) (3.5.1994) by virtue of Finance Act 1994 (c. 9), **s. 144(2)**

F391 Words in s. 74(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 45(a)** (with Sch. 2)

F392 Words in s. 74(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F393 Words in s. 74(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 45(b)** (with Sch. 2)

F394 Words in s. 74(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 45(c)** (with Sch. 2)

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F395 S. 74(1)(b)(o) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 45(d)(f), **Sch. 3** (with Sch. 2)
F396 S. 74(1)(j) substituted (with effect in accordance with s. 144(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 144(1)**
F397 S. 74(1)(j) repealed (with effect in accordance with s. 80(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 1, **Sch. 11 Pt. 2(5)**, Note
F398 Words in s. 74(1)(m) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1
F399 S. 74(1)(n) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note
F400 S. 74(1)(o) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 1**
F401 S. 74(1)(q) repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(2)**
F402 S. 74(2) inserted (3.5.1994) by Finance Act 1994 (c. 9) {s. 144(2)}
F403 S. 74(2) repealed (with effect in accordance with s. 80(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 1, **Sch. 11 Pt. 2(5)**, Note

Modifications etc. (not altering text)
C98 S. 74 excluded (3.5.1994) by Finance Act 1994 (c. 9), **s. 159(4)** (with Sch. 18 paras. 1(3), 2(3)(4), 3(3))
C99 S. 74 excluded (with effect in accordance with s. 105(1) of the excluding Act) by Finance Act 1996 (c. 8), **s. 82(7)** (with ss. 98, 99, Schs. 10, 11, 15)
C100 S. 74 excluded (with effect in accordance with s. 83(3) of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 26 Para. 14(4)** (with Sch. 28)
C101 *See* 1989 ss.112-113—*expenditure on security on or after* 6*April* 1989.
C102 S. 74(1)(a) extended (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 5
C103 S. 74(1)(m)(p) restricted (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 8(3)** (with Sch. 29 para. 8(4))

Marginal Citations
M84 SOURCE-1970 s. 130(a)–(m); 1987 Sch. 15para. 2(9)
M85 SOURCE-1970 s. 130(n), (o)

[F404 75 Expenses of management: companies with investment business

(1) In computing for the purposes of corporation tax the total profits for an accounting period of a company with investment business (see section 130) a deduction is to be allowed for any expenses of management of the company's investment business (see subsection (4) below) which are referable to that accounting period in accordance with section 75A.

That is subject to the following provisions of this section.

(2) A deduction is not to be allowed under subsection (1) above for any expenses to the extent that those expenses are deductible in computing profits apart from this section.

(3) Expenses of a capital nature are not expenses of management for the purposes of this section except to the extent that they fall to be treated as expenses of management for those purposes by virtue of—

(a) subsection (7) below (capital allowances), or

(b) any provision of the Tax Acts, other than this section.

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(4) For the purposes of this section, expenses of management are "expenses of management of the company's investment business" to the extent that—

(a) the expenses are in respect of so much of the company's business as consists in the making of investments, and

(b) the investments concerned are not held by the company for an unallowable purpose during the accounting period (see subsection (5) below),

and references in this section to the company's investment business shall be construed accordingly.

(5) For the purposes of subsection (4)(b) above, investments are held by a company for an unallowable purpose during an accounting period to the extent that they are held during the period—

(a) for a purpose that is not a business or other commercial purpose of the company, or

(b) for the purpose of activities in respect of which the company is not within the charge to corporation tax.

(6) For the purposes of subsection (1) above, there shall be deducted from the amount that would, apart from this subsection, be deductible under that subsection the amount of any income derived from a source not charged to tax—

(a) which the company has in the course of carrying on its investment business, and

(b) which, in a case where the company is not resident in the United Kingdom,—

(i) the company has in the course of carrying on that business through a permanent establishment in the United Kingdom, and

(ii) is such property or rights as are mentioned in section 11(2A)(b),

but which is not franked investment income.

(7) For the purposes of this section, there shall be added to a company's expenses of management referable to any accounting period the amount of any allowances falling to be made to the company for that period by virtue of section 15(1)(g) of the Capital Allowances Act (plant and machinery allowances) so far as effect cannot be given to them under section 253(2) of that Act.

(8) Subsection (9) below applies in any case where, in an accounting period of a company with investment business, the sum of—

(a) the expenses of management deductible under subsection (1) above, and

(b) any charges on income paid in the accounting period, to the extent that they are paid for the purposes of so much of the company's business as consists in the making of investments,

exceeds the amount of the profits from which those expenses and charges are deductible.

(9) In any such case—

(a) the excess shall be carried forward to the succeeding accounting period; and

(b) the amount so carried forward to the succeeding accounting period shall be treated for the purposes of this section (including any further application of this subsection) as if it were expenses of management deductible for that accounting period.

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(10) Any apportionment falling to be made for the purposes of this section shall be made on a just and reasonable basis.**]**

Textual Amendments

F404 S. 75 substituted (with effect in accordance with ss. 42, 43 of the amending Act) by Finance Act 2004 (c. 12), **s. 38(1)(5)**

Modifications etc. (not altering text)

C104 S. 75 modified (with effect in accordance with s. 70(1) of the modifying Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 27** (with Sch. 22 para. 32)

C105 S. 75 modified (6.4.2006) by Finance Act 2004 (c. 12), **ss. 196(3)**, 199(2)(b), 200(b), 246(2)(b)(3)(b), 284(1) (with Sch. 36)

C106 S. 75(1) modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(5)**

[F405 75A Accounting period to which expenses of management are referable

(1) This section has effect for the purpose of determining the accounting period to which expenses of management are referable for the purposes of section 75(1).

(2) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account,

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and

(c) the period of account coincides with an accounting period,

the expenses of management are referable to that accounting period.

(3) Where—

(a) expenses of management are debited in accounts drawn up by a company for a period of account, and

(b) the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, but

(c) the period of account does not coincide with an accounting period,

subsection (4) below applies.

(4) Where this subsection applies, the expenses of management—

(a) shall be apportioned between any accounting periods that fall within the period of account, and

(b) are referable to an accounting period to the extent that they are so apportioned to it.

(5) An apportionment under subsection (4) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(6) Where—

(a) expenses of management are not referable to an accounting period by virtue of subsections (2) to (5) above, but

(b) accounts are drawn up by the company for a period of account, and

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(c) if the expenses of management had been treated in those accounts in accordance with generally accepted accounting practice, they would fall to be debited in those accounts,

the expenses of management are referable to the accounting period to which they would have been referable in accordance with subsections (2) to (5) above if they had been so debited in those accounts.

(7) Where expenses of management are not referable to an accounting period by virtue of subsections (2) to (6) above, they are referable to the accounting period to which they would be referable in accordance with subsections (2) to (5) above on the assumptions in subsection (8) below.

(8) Those assumptions are—

(a) that for each accounting period that does not coincide with, or fall within, any period of account, there is a period of account that coincides with that accounting period, and

(b) that so much of the expenses of management as would fall to be debited in accordance with generally accepted accounting practice in accounts drawn up by the company for any such deemed period of account are so debited.

(9) This section is without prejudice to any other provision of the Corporation Tax Acts which provides for amounts to be treated for the purposes of section 75 as expenses of management referable to an accounting period.

(10) Any reference in this section to expenses of management being debited in accounts is a reference to those expenses being brought into account, in accordance with generally accepted accounting practice, as a debit—

(a) in the company's profit and loss account **[**F406or income statement**]**, or

(b) in a statement of total recognised gains and losses **[**F407, statement of changes in equity**]** or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

For this purpose "debit" means an amount which for accounting purposes reduces a profit, or increases a loss, for a period of account.**]**

Textual Amendments

F405 S. 75A inserted (with effect in accordance with ss. 42, 43 of the amending Act) by Finance Act 2004 (c. 12), **s. 39**

F406 Words in s. 75A(10)(a) inserted (with effect in accordance with s. 80(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 22(a)**

F407 Words in s. 75A(10)(b) inserted (with effect in accordance with s. 80(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 22(b)**

[F408**75B Amounts reversing expenses of management deducted: charge to tax**

(1) This section applies in any case where the following conditions are satisfied—

(a) a credit is brought into account by a company in a period of account (the "reversal period") which ends on or after the commencement date,

(b) the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),

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(c) the debit (in whole or in part) represents expenses of management deductible under section 75(1) for an accounting period of the company ("the period of deductibility"),

(d) the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),

(e) the period of deductibility ends before, or at the same time as, the reversal period,

(f) the reversal period does not coincide with an accounting period beginning before the commencement date.

(2) In any such case, subsection (4) or (5) below (as the case may be) shall apply in relation to the reversal amount.

(3) In this section "the reversal amount" means so much of the credit as—

(a) reverses so much of the debit as represents the expenses of management, and

(b) does not represent sums otherwise taken into account in determining for the purposes of corporation tax the profits and losses of the company for the relevant accounting period or any earlier accounting period.

For this purpose the relevant accounting period is the latest accounting period of the company that falls wholly or partly within the reversal period.

(4) If the reversal period coincides with an accounting period of the company beginning on or after the commencement date, the reversal amount shall be dealt with for that period in accordance with subsection (7) below.

(5) If the reversal period does not coincide with an accounting period of the company—

(a) the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and

(b) any amount so apportioned to an accounting period beginning on or after the commencement date shall be dealt with for that period in accordance with subsection (7) below.

(6) An apportionment under subsection (5) above shall be in accordance with section 834(4) (time basis) unless it appears that that method would work unreasonably or unjustly, in which case such other method shall be used as appears just and reasonable.

(7) Where an amount falls to be dealt with in accordance with this subsection for an accounting period—

(a) it shall, so far as possible, be applied in reducing or further reducing (but not below nil) the company's expenses of management deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess), and

(b) so much of the amount as cannot be so applied shall be regarded as income of the company chargeable under Case VI of Schedule D for that accounting period.

(8) In subsection (1) above "brought into account", in relation to a period of account of a company, means brought into account in accordance with generally accepted accounting practice in determining, for accounting purposes, profit and loss for that period of account.

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(9) If (apart from this subsection) an accounting period does not coincide with, or fall within, any period of account, it shall be assumed for the purposes of this section that there is a period of account of the company that coincides with that accounting period.

(10) It shall be assumed for the purposes of this section that, in determining for accounting purposes profit and loss for any period of account of any company, amounts fall to be brought into account in accordance with generally accepted accounting practice.

(11) For the purposes of this section a credit reverses a debit in whole or in part in any case where the sum represented in whole or in part by the debit is paid and then in whole or in part repaid (as well as in a case where the sum represented by the debit is never paid).

(12) In this section—

"the commencement date" means 1st April 2004;

"credit" means an amount which for accounting purposes increases or creates a profit, or reduces a loss, for a period of account;

"debit" means an amount which for accounting purposes reduces a profit, or increases or creates a loss, for a period of account.**]**

Textual Amendments

F408 S. 75B inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 45(1)** (with s. 45(2)(3))

[F409 76 Expenses of insurance companies

(1) In computing for the purposes of corporation tax the profits for any accounting period of a company—

(a) which carries on life assurance business, and

(b) which is not charged to tax in respect of that business under Case I of Schedule D,

section 75 is not to apply in computing the profits of that business, but a deduction for expenses payable (the "expenses deduction") is to be allowed in accordance with the following provisions of this section.

See also subsection (14) below for the application of this section in relation to a company which carries on capital redemption business.

(2) The expenses deduction is to be made from so much of the income and gains of the accounting period referable to basic life assurance and general annuity business as remains after any deduction falling to be made by virtue of paragraph 4(2) of Schedule 11 to the Finance Act 1996 (non-trading deficits on loan relationships).

(3) For the purposes of this section "expenses payable" means expenses brought into account in line 12, 22 or 25 of Form 40 (the revenue account) in the periodical return of the company for a period of account, but does not include any of the amounts falling within subsection (4), (5) or (6) below.

(4) The amounts falling within this subsection are the following—

(a) reinsurance premiums,

(b) refunds of premiums,

(c) profit commissions and profit participations (however described),

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(d) expenses or other amounts payable, to the extent that the company's purpose in incurring the liability to make the payment is not a business or other commercial purpose of the company.

For the purposes of paragraph (d) above, it is not one of the business or commercial purposes of a company to incur a liability to pay an amount of commission or other expenses which exceeds the amount which it could reasonably be expected to pay if the company were charged to tax under Case I of Schedule D in respect of its life assurance business.

(5) The amounts falling within this subsection are any amounts payable in connection with a policy or contract to—

(a) a policy holder or annuitant under the policy or contract (except where the policy holder is an insurance company),

(b) any other person who is entitled to receive benefits under the policy or contract,

(c) any person acting on behalf of a person falling within paragraph (a) or (b) above,

(d) the personal representatives of a deceased person who fell within paragraphs (a) to (c) above.

(6) The amounts falling within this subsection are expenses of a capital nature.

But this subsection does not apply in the case of an amount which, by virtue of any provision of the Tax Acts other than this section, falls to be treated for the purposes of this section as expenses payable which fall to be brought into account at Step 1 in subsection (7) below (the reference to Step 1 being express in the provision).

(7) The amount of the expenses deduction for an accounting period is found by taking the following steps—

Step 1

Find so much of the expenses payable as are—

(a) attributable to basic life assurance and general annuity business (see subsection (8) below), and

(b) referable to the accounting period (see subsection (9) below).

Step 2

Reduce each of the amounts found at Step 1 by excluding so much of the amount as is—

(a) deductible in computing income for the purposes of Schedule A,

(b) deductible by virtue of section 85(2B) of the Finance Act 1989, or

(c) deductible by virtue of section 121(3) in computing income from the letting of rights to work minerals in the United Kingdom.

Step 3

Find the amounts (so far as not included at Step 1) which fall to be treated for the purposes of this section as expenses payable for the accounting period by virtue of any of the following provisions—

section 432AB(3) (Schedule A loss or an overseas property business loss referable to basic life assurance and general annuity business);

section 437(1A) (relief for income element of new annuities);

section 587B(8)(b)(i) (relief for company carrying on life assurance business in relation to gifts of shares and securities);

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paragraph 16(1) of Schedule 7 to the Finance Act 1991 (transitional relief for old annuities);

paragraph 4(4)(b) of Schedule 11 to the Finance Act 1996 (carried forward non-trading deficit on loan relationships produced by separate computation for basic life assurance and general annuity business);

section 256(2)(a) of the Capital Allowances Act (capital allowances on plant and machinery used in the management of life assurance business);

paragraph 23 of Schedule 22 to the Finance Act 2001 (150% relief in respect of the remediation expenditure on contaminated land owned by a company carrying on life assurance business and acquired to be a management asset);

paragraph 13(2) of Schedule 12 to the Finance Act 2002 (125% of relevant expenditure on R&D in the case of a life assurance company);

paragraph 23(2) of Schedule 13 to the Finance Act 2002 (150% of relevant expenditure on research into vaccines in the case of a life assurance company);

paragraph 36(3) of Schedule 29 to the Finance Act 2002 (relief for non-trading loss on intangible fixed assets).

Step 4

Give effect to the provisions specified in Step 3 by adding together—

(a) so much of the amounts found at Step 1 as remains after making any reductions at Step 2, and

(b) the amounts found at Step 3,

and then deduct the amount of any reversal (wherever brought into account) of an expense included at Step 1 in a previous period,

to give Subtotal 1.

Step 5

If the whole or any part of a loss arising to the company in respect of its life assurance business in the accounting period is set off under section 393A or 403(1) —

(a) find the amount ("amount L") that is equal to so much of the loss as, in the aggregate, is so set off,

(b) find the sum ("amount S") of the amounts by which any losses for that period under section 436 or 439B fall to be reduced under section 434A(2)(b),

(c) from amount L deduct amount S, to give the adjusted loss deduction,

then reduce Subtotal 1 by deducting from it the adjusted loss deduction,

to give Subtotal 2.

Step 6

Give effect to subsection (6) of section 86 of the Finance Act 1989 (spreading of acquisition expenses) by—

(a) finding the amount that is equal to six-sevenths of the adjusted amount of the acquisition expenses (within the meaning of that section) for the accounting period, and

(b) deducting that amount from Subtotal 2,

to give Subtotal 3.

Step 7

Add together the following amounts—

(a) Subtotal 3, and

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(b) any amounts carried forward to the accounting period under subsection (12) or (13) below (unrelieved excesses from earlier accounting periods),

to give Subtotal 4.

Step 8

Give effect to subsections (8) and (9) of section 86 of the Finance Act 1989 (fraction of adjusted amount of acquisition expenses for earlier accounting periods) by adding together—

(a) Subtotal 4, and

(b) any amounts which are to be relieved under this section by virtue of those subsections,

to give the basic deduction.

Step 9

If—

(a) amount D1 (see subsection (10) below), exceeds

(b) amount R (see subsection (11) below),

deduct an amount equal to the excess from the basic deduction.

Step 10: the amount of the expenses deduction

The amount of the expenses deduction is so much of the basic deduction (see Step 8) as remains after making any deduction required at Step 9.

(8) For the purposes of Step 1, the expenses that are attributable to basic life assurance and general annuity business are the expenses which are attributable to that business in accordance with proper internal accounting practice.

In this subsection "proper internal accounting practice" means the practice of insurance companies in allocating all the expenses of the company to particular categories of business in accordance with any applicable requirements of—

(a) generally accepted accounting practice, [F410]. . .

(b) the Prudential Sourcebook (Insurers)**[**[F411], or

(c) the Integrated Prudential Sourcebook.**]**

(9) The following rules have effect for determining for the purposes of Step 1 the expenses that are referable to an accounting period.

Rule A

Where a period of account coincides with an accounting period, the expenses brought into account for the period of account are the expenses referable to the accounting period.

Rule B

Where—

(a) two or more accounting periods fall within the same period of account, and

(b) that period of account is longer than 12 months,

section 834(4) (apportionment on time basis) is to apply.

Rule C

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In any other case where two or more accounting periods fall within the same period of account, the expenses referable to any of those accounting periods are the expenses that would have been referable to that accounting period if—

(a) the accounting period had coincided with a period of account, and

(b) a separate periodical return had been made for that period of account,

and section 834(4) (apportionment on time basis) is not to apply.

Rule D

Rules A to C are subject to any provision of the Corporation Tax Acts which provides for an amount to be treated as expenses payable for, or referable to, a particular period.

(10) The amount D1 in Step 9 is the amount that would be the profits of the company's life assurance business for the accounting period if—

(a) computed in accordance with the provisions applicable to Case I of Schedule D, and

(b) adjusted in respect of losses.

The adjustment in respect of losses is a deduction of the amount which, disregarding sections 434A(2) and 440B, would fall to be set off under section 393 against the company's income for that period if the company had always been charged to tax under Case I of Schedule D in respect of its life assurance business.

(11) The amount R in Step 9 (which may be a negative amount) is found for the accounting period by—

(a) taking the company's relevant income, and

(b) deducting from it the relevant aggregate.

The "relevant income"is the sum of—

(a) the income and gains referable by virtue of section 432A to the company's basic life assurance and general annuity business;

(b) distributions received by the company from companies resident in the United Kingdom which are referable by virtue of section 432A to its basic life assurance and general annuity business;

(c) profits chargeable under Case VI of Schedule D under section 436, 439B or 441.

The "relevant aggregate"is the sum of—

(a) the basic deduction (see Step 8);

(b) any non-trading deficit on the company's loan relationships which is produced for the period in relation to the company's basic life assurance and general annuity business by a separate computation under paragraph 2 of Schedule 11 to the Finance Act 1996;

(c) any amount which in pursuance of a claim under paragraph 4(3) of that Schedule is carried back to the period and (in accordance with paragraph 4(5) of that Schedule) applied in reducing profits of the company for that period.

(12) Where for any accounting period—

(a) the amount of the expenses deduction (see Step 10), exceeds

(b) the amount from which that deduction is to be made (see subsection (2) above),

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the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(13) Subject to paragraph 4(11) to (13) of Schedule 11 to the Finance Act 1996, where for any accounting period—

(a) the basic deduction (see Step 8), exceeds

(b) the expenses deduction (see Step 10),

the excess is to be carried forward to the next accounting period and brought into account for that period in accordance with Step 7.

(14) In this section any reference to—

(a) life assurance business, or

(b) basic life assurance and general annuity business,

includes a reference to capital redemption business.

(15) In this section—

"capital redemption business" means any capital redemption business, within the meaning of section 458, which is business to which that section applies;

"expenses payable" has the meaning given by subsection (3) above;

and other expressions have the same meaning as in Chapter 1 of Part 12.**]**

Textual Amendments

F409 S. 76 substituted (with effect in accordance with ss. 42, 44 of the amending Act) by Finance Act 2004 (c. 12), **s. 40**

F410 Word in s. 76(8) repealed (with effect in accordance with Sch. 11 Pt. 2(10) Note 1 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(10)**

F411 Words in s. 76(8) inserted (with effect in accordance with Sch. 9 para. 1(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 1(2)**

Modifications etc. (not altering text)

C107 S. 76 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 5 (as amended: (14.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2007/2134, **regs. 1(1)**, 5; (12.8.2008 with effect in accordance with reg. 1(2) of the amending S.I.) by S.I. 2008/1937, **regs. 1(1)**, 3)

C108 S. 76 modified (6.4.2006) by Finance Act 2004 (c. 12), **ss. 196(4)**, 199(2)(c)(5), 246(3)(b), 284(1) (with Sch. 36)

C109 S. 76(7) modified (6.4.2006) by Finance Act 2004 (c. 12), **ss. 200(c)**, 246(2)(c), 284(1) (with Sch. 36)

76A Levies and repayments under the Financial Services and Markets Act 2000.

(1) In computing the amount of the profits to be charged **[**[F412]to corporation tax**]** under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—

(a) to the extent that it would not be deductible apart from this section, any sum expended by the authorised person in paying a levy may be deducted as an allowable expense;

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(b) any payment which is made to the authorised person as a result of a repayment provision is to be treated as a trading receipt.

[F413(2) "Levy" means—

(a) a payment required under rules made under section 136(2) of the Financial Services and Markets Act 2000 ("the Act of 2000");

(b) a levy imposed under the Financial Services Compensation Scheme;

(c) a payment required under rules made under section 234 of the Act of 2000;

(d) a payment required under scheme rules in accordance with paragraph 15(1) of Schedule 17 to the Act of 2000;

(e) a payment required in accordance with the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000 other than an award which is not an award of costs under cost rules.**]**

[F414(3) "Repayment provision" means—

(a) any provision made by virtue of section 136(7) or 214(1)(e) of the Act of 2000;

(b) any provision by scheme rules for fees to be refunded in specified circumstances.**]**

(4) "Authorised person" has the same meaning as in the Act of 2000.

[F415(5) "Scheme rules" means the rules referred to in paragraph 14(1) of Schedule 17 to the Act of 2000.

(6) "Costs rules" means—

(a) rules made under section 230 of the Act of 2000;

(b) provision relating to costs contained in the standard terms fixed under paragraph 18 of Schedule 17 to the Act of 2000.**]**

Textual Amendments

F412 Words in s. 76A(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 46** (with Sch. 2)

F413 S. 76A(2) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(3)**

F414 S. 76A(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(4)**

F415 S. 76A(5)(6) added (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(5)**

76B Levies and repayments under the Financial Services and Markets Act 2000: investment companies.

(1) For the purposes of section 75 any sums paid by **[**F416a company with investment business**]**—

(a) by way of a levy, or

(b) as a result of an award of costs under costs rules,

shall be treated as part of its expenses of management.

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(2) **[**F417For the purposes of corporation tax,**]** if a payment is made to **[**F418a company with investment business**]** as a result of a repayment provision, the company shall be charged to tax under Case VI of Schedule D on the amount of that payment.

(3) "Levy" has the meaning given in section **[**F419**]**76A(2)**]**.

[F420(4) "Costs rules" has the meaning given in section 76A(6).**]**

(5) "Repayment provision" has the meaning given in section 76A(3).

Textual Amendments

F416 Words in s. 76B(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 1(2)**

F417 Words in s. 76B(2) inserted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 1(3)(a)**

F418 Words in s. 76B(2) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 1(3)(b)**

F419 Words in s. 76B(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(7)**

F420 S. 76B(4) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 16(8)**

77 Incidental costs of obtaining loan finance.

F421 . . . . . .

Textual Amendments

F421 S.77 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 47, **Sch. 3** (with Sch. 2)

78 Discounted bills of exchange.

F422 . . . . . .

Textual Amendments

F422 S. 78 repealed with saving (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 10, **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

79 Contributions to local enterprise agencies.

(1) **M86**Notwithstanding anything in section 74, but subject to the provisions of this section, where a **[**F423company**]** carrying on a **[**F424trade or profession**]** makes any contribution (whether in cash or in kind) to an approved local enterprise agency, any expenditure incurred by **[**F425the company**]** in making the contribution may be deducted as an

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expense in computing the **[**F426profits**]** of the **[**F424trade or profession**]** for the purposes of **[**F427corporation**]** tax if it would not otherwise be so deductible.

(2) Where any such contribution is made by **[**F428a company with investment business**]** any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

[F429(2A) Where any such contribution is made by a company in relation to which section 76 applies (expenses of insurance companies) any expenditure allowable as a deduction under subsection (1) above shall for the purposes of that section be treated as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section.**]**

(3) Subsection (1) above does not apply in relation to a contribution made by **[**F430any company if either the company or any person connected with the company**]** receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the agency concerned or from any other person.

(4) In this section "approved local enterprise agency" means a body approved by the Secretary of State for the purposes of this section; but he shall not so approve a body unless he is satisfied that—

(a) its sole objective is the promotion or encouragement of industrial and commercial activity or enterprise in a particular area in the United Kingdom with particular reference to encouraging the formation and development of small businesses; or

(b) one of its principal objectives is that set out in paragraph (a) above and it maintains or is about to maintain a fund separate from its other funds which is or is to be applied solely in pursuance of that objective;

and where the Secretary of State approves a body by virtue of paragraph (b) above, the approval shall specify the fund concerned and, in relation to a body so approved, any reference in this section to a contribution is a reference to a contribution which is made wholly to or for the purposes of that fund.

(5) M87A body may be approved under subsection (4) above whether or not it is a body corporate or a body of trustees or any other association or organisation and whether or not it is described as a local enterprise agency.

(6) A body may not be approved under subsection (4) above unless it is precluded, by virtue of any enactment, contractual obligation, memorandum or otherwise, from making any direct or indirect payment or transfer to any of its members, or to any person charged with the control and direction of its affairs, of any of its income or profit by way of dividend, gift, division, bonus or otherwise howsoever by way of profit.

(7) For the purposes of subsection (6) above, the payment—

(a) of reasonable remuneration for goods, labour or power supplied or for services rendered, or

(b) of reasonable interest for money lent, or

(c) of reasonable rent for any premises,

does not constitute a payment or transfer which is required to be so precluded.

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(8) [M88]Any approval given by the Secretary of State may be made conditional upon compliance with such requirements as to accounts, provision of information and other matters as he considers appropriate; and if it appears to the Secretary of State that—

(a) an approved local enterprise agency is not complying with any such requirement, or

(b) one or other of the conditions for his approval contained in subsection (4) above or the precondition for his approval in subsection (6) above has ceased to be fulfilled with respect to an approved local enterprise agency,

he shall by notice withdraw his approval from the body concerned with effect from such date as he may specify in the notice (which may be a date earlier than the date on which the notice is given).

(9) In any case where—

(a) a contribution has been made **[**[F431]by a company**]** to an approved local enterprise agency in respect of which relief has been given under subsection (1) above, and

(b) any benefit received in any **[**[F432]accounting period**]** by **[**[F433]the company or any person connected with the company**]** is in any way attributable to that contribution,

[[F434]the company shall**]** in respect of that **[**[F432]accounting period**]** be charged to **[**[F435]corporation**]** tax under Case I or Case II of Schedule D or, if **[**[F436]the company**]** is not chargeable to **[**[F435]corporation**]** tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(10) Section 839 applies for the purposes of subsections (3) and (9) above.

(11) This section applies to contributions made on or after 1st April 1982 [F437]. . . .

Textual Amendments

F423 Word in s. 79(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(2)(a)** (with Sch. 2)

F424 Words in s. 79(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(2)(b)** (with Sch. 2)

F425 Words in s. 79(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(2)(c)** (with Sch. 2)

F426 Words in s. 79(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F427 Word in s. 79(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(2)(d)** (with Sch. 2)

F428 Words in s. 79(2) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 3(2)

F429 S. 79(2A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 3(3)

F430 Words in s. 79(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(3)** (with Sch. 2)

F431 Words in s. 79(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(4)(a)** (with Sch. 2)

F432 Words in s. 79(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(4)(b)** (with Sch. 2)

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F433 Words in s. 79(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(4)(c)** (with Sch. 2)
F434 Words in s. 79(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(4)(d)** (with Sch. 2)
F435 Words in s. 79(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(4)(e)** (with Sch. 2)
F436 Words in s. 79(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 48(4)(f)** (with Sch. 2)
F437 Words in s. 79(11) repealed (28.7.2000) by Finance Act 2000 (c. 17), s. 88, **Sch. 40 Pt. 2(9)**

Modifications etc. (not altering text)
C110 S. 79: functions transferred (1.7.1999 immediately after the coming into force of Scotland Act 1998 (c. 46), **s. 53**) by The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), arts. 1(2), 2, **Sch. 1**
C111 S. 79(4)(8): functions transferred (1.7.1999) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), arts. 1(1), 2, **Sch. 1** (with art. 7)

Marginal Citations
M86 SOURCE-1982 s. 48(1)–(4)
M87 SOURCE-1982 s. 48(5)
M88 SOURCE-1982 s. 48(6)–(9)

[F438 79A Contributions to training and enterprise councils and local enterprise companies.

(1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a [F439 company] carrying on a [F440 trade or profession] makes any contribution (whether in cash or in kind) to a training and enterprise council, [F441 business link organisation] or a local enterprise company, any expenditure incurred by [F442 the company] in making the contribution may be deducted as an expense in computing the [F443 profits] of the [F440 trade or profession] for the purposes of [F444 corporation] tax if it would not otherwise be so deductible.

(2) Where any such contribution is made by [F445 a company with investment business] any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

[F446 (2A) Where any such contribution is made by a company in relation to which section 76 applies (expenses of insurance companies) any expenditure allowable as a deduction under subsection (1) above shall for the purposes of that section be treated as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section.]

(3) Subsection (1) above does not apply in relation to a contribution made by [F447 any company if either the company or any person connected with the company] receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the council, [F448 organisation] or company concerned or from any other person.

(4) In any case where—
(a) relief has been given under subsection (1) above in respect of a contribution [F449 made by a company], and

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(b) any benefit received in any **[**F450accounting period**]** by **[**F451the company or any person connected with the company**]** is in any way attributable to that contribution,

[F452the company shall**]** in respect of that **[**F450accounting period**]** be charged to **[**F453corporation**]** tax under Case I or Case II of Schedule D, or if **[**F454the company**]** is not chargeable to **[**F453corporation**]** tax under either of those Cases for that period under Case VI of Schedule D, on an amount equal to the value of that benefit.

(5) In this section—

[F455(aa) "business link organisation" means any person authorised by or on behalf of the Secretary of State to use a service mark (within the meaning of the Trade Marks (Amendment) Act 1984) designated by the Secretary of State for the purposes of this paragraph**]**

(a) "training and enterprise council" means a body with which the Secretary of State has made an agreement (not being one which has terminated) under which it is agreed that the body shall carry out the functions of a training and enterprise council, and

(b) "local enterprise company" means a company with which an agreement (not being one which has terminated) under which it is agreed that the company shall carry out the functions of a local enterprise company has been made by F456. . . Scottish Enterprise or Highlands and Islands Enterprise.

(6) Section 839 applies for the purposes of subsections (3) and (4) above.

(7) This section applies to contributions made on or after 1st April 1990 **[**F457or, in the case of a contribution to a business link organisation, 30th November 1993**]**F458. . . .**]**

Textual Amendments

F438 1990 s.76.

F439 Word in s. 79A(1) substituted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(2)(a)** (with Sch. 2)

F440 Words in s. 79A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(2)(b)** (with Sch. 2)

F441 Words in s. 79A(1) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 145(3)**

F442 Words in s. 79A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(2)(c)** (with Sch. 2)

F443 Words in s. 79A(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F444 Word in s. 79A(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(2)(d)** (with Sch. 2)

F445 Words in s. 79A(2) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para 3(2)

F446 S. 79A(2A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 3(3)

F447 Words in s. 79A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(3)** (with Sch. 2)

F448 Word in s. 79A(3) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 145(3)**

F449 Words in s. 79A(4)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(4)(a)** (with Sch. 2)

F450 Words in s. 79A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(4)(b)** (with Sch. 2)

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F451 Words in s. 79A(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(4)(c)** (with Sch. 2)
F452 Words in s. 79A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(4)(d)** (with Sch. 2)
F453 Words in s. 79A(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(4)(e)** (with Sch. 2)
F454 Words in s. 79A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 49(4)(f)** (with Sch. 2)
F455 S. 79A(5)(aa) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 145(4)**
F456 Words in s. 79A(5)(b) repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(9)**
F457 Words in s. 79A(7) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 145(5)**
F458 Words in s. 79A(7) repealed (28.7.2000) by Finance Act 2000 (c. 17), s. 88, **Sch. 40 Pt. 2(9)**

79B Contributions to urban regeneration companies

(1) Notwithstanding anything in section 74, but subject to the provisions of this section, where a **[**[F459]company**]** carrying on a **[**[F460]trade or profession**]** makes any contribution (whether in cash or in kind) to a designated urban regeneration company, any expenditure incurred by **[**[F461]the company**]** in making the contribution may be deducted as an expense in computing the profits of the **[**[F460]trade or profession**]****[**[F462]for the purposes of corporation tax**]** if it would not otherwise be so deductible.

(2) Where any such contribution is made by **[**[F463] a company with investment business**]**, any expenditure allowable as a deduction under subsection (1) above shall for the purposes of section 75 be treated as expenses of management.

[[F464](2A) Where any such contribution is made by a company in relation to which section 76 applies (expenses of insurance companies) any expenditure allowable as a deduction under subsection (1) above shall for the purposes of that section be treated as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section.**]**

(3) Subsection (1) above does not apply in relation to a contribution made by **[**[F465]any company if either the company or any person connected with the company**]** receives or is entitled to receive a benefit of any kind whatsoever for or in connection with the making of that contribution, whether from the urban regeneration company concerned or from any other person.

(4) In any case where—

(a) relief has been given under subsection (1) above in respect of a contribution **[**[F466]made by a company**]**, and

(b) any benefit received in any **[**[F467]accounting period**]** by **[**[F468]the company or any person connected with the company**]** is in any way attributable to that contribution,

[[F469]the company shall**]** in respect of that **[**[F467]accounting period**]** be charged to **[**[F470]corporation**]** tax under Case I or Case II of Schedule D or, if **[**[F471]the company**]** is not chargeable to **[**[F470]corporation**]** tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) In this section "urban regeneration company" means any body of persons (whether corporate or unincorporate) which the Treasury by order designates as an urban regeneration company for the purposes of this section.

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(6) The Treasury may only make an order under subsection (5) above designating a body as an urban regeneration company for the purposes of this section if they consider that each of the criteria in subsection (7) below is satisfied in the case of the body.

(7) The criteria are that—

(a) the sole or main function of the body is to co-ordinate the regeneration of a specific urban area in the United Kingdom;

(b) the body is expected to seek to perform that function by creating a plan for the development of that area and endeavouring to secure that the plan is carried into effect;

(c) in co-ordinating the regeneration of that area, the body is expected to work together with some or all of the public or local authorities which exercise functions in relation to the whole or part of that area.

(8) An order under subsection (5) above may be framed so as to take effect on a date earlier than the making of the order, but not earlier than—

(a) 1st April 2003, in the case of the first order under that subsection, or

(b) three months before the date on which the order is made, in the case of any subsequent order.

(9) Section 839 (connected persons) applies for the purposes of this section.

(10) This section applies to contributions made on or after 1st April 2003.

Textual Amendments

F459 Word in s. 79B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(2)(a)** (with Sch. 2)

F460 Words in s. 79B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(2)(b)** (with Sch. 2)

F461 Words in s. 79B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(2)(c)** (with Sch. 2)

F462 Words in s. 79B(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(2)(d)** (with Sch. 2)

F463 Words in s. 79B(2) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 3(2)

F464 S. 79B(2A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 3(3)

F465 Words in s.79B(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(3)** (with Sch. 2)

F466 Words in s. 79B(4)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(4)(a)** (with Sch. 2)

F467 Words in s. 79B(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(4)(b)** (with Sch. 2)

F468 Words in s. 79B(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(4)(c)** (with Sch. 2)

F469 Words in s. 79B(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(4)(d)** (with Sch. 2)

F470 Words in s. 79B(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(4)(e)** (with Sch. 2)

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F471 Words in s. 79B(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 50(4)(f)** (with Sch. 2)

80 Expenses connected with foreign trades etc.

F472 . . . . . .

Textual Amendments

F472 S. 80-82 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 51-53, **Sch. 3** (with Sch. 2)

81 Travel between trades etc.

F473 . . . . . .

Textual Amendments

F473 S. 80-82 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 51-53, **Sch. 3** (with Sch. 2)

82 Interest paid to non-residents.

F474 . . . . . .

Textual Amendments

F474 S. 80-82 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 51-53, **Sch. 3** (with Sch. 2)

82A Expenditure on research and development.

(1) Notwithstanding anything in section 74, where a **[**F475company**]** carrying on a trade incurs expenditure not of a capital nature on research and development—

(a) related to that trade, and

(b) directly undertaken **[**F476by the company or on the company's behalf**]**,

the expenditure incurred may be deducted as an expense in computing the profits of the trade for the purposes of **[**F477corporation**]** tax.

(2) For this purpose expenditure on research and development does not include expenditure incurred in the acquisition of rights in, or arising out of, research and development.

Subject to that, it includes all expenditure incurred in carrying out, or providing facilities for carrying out, research and development.

(3) The reference in subsection (1) above to research and development related to a trade includes—

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(a) research and development which may lead to or facilitate an extension of that trade;

(b) research and development of a medical nature which has a special relation to the welfare of workers employed in that trade.

(4) The same expenditure may not be taken into account under this section in relation to more than one trade.

(5) In this section "research and development" has the meaning given by section 837A and includes oil and gas exploration and appraisal.

Textual Amendments

F475 Word in s. 82A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 54(a)** (with Sch. 2)

F476 Words in s. 82A(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 54(b)** (with Sch. 2)

F477 Word in s. 82A(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 54(c)** (with Sch. 2)

Modifications etc. (not altering text)

C112 S. 82A modified (1.1.2005 with effect in accordance with art. 2 of the commencing S.I.) by Finance Act 2004 (c. 12), **s. 53(2)**; S.I. 2004/3268, **art. 2**

82B Payments to research associations, universities etc.

(1) Notwithstanding anything in section 74, where a **[**F478company**]** carrying on a trade—

[F479(a) pays any sum to an Association in the case of which exemption may be claimed under section 508 and which has as its object the undertaking of research and development which may lead to or facilitate an extension of the class of trade to which the trade carried on by the company belongs, or

(b) pays any sum to be used for scientific research related to that class of trade**]** to any such university, college research institute or other similar institution as is for the time being approved for the purposes of this section by the Secretary of State,

the sum paid may be deducted as an expense in computing the profits of the trade for the purposes of **[**F480corporation**]** tax.

(2) In this section "scientific research" means any activities in the fields of natural or applied science for the extension of knowledge.

(3) The reference in **[**F481subsection (1)(b) above**]** to scientific research related to a class of trade includes—

(a) scientific research which may lead to or facilitate an extension of trades of that class;

(b) scientific research of a medical nature which has a special relation to the welfare of workers employed in trades of that class.

(4) If a question arises under this section whether, or to what extent, any activities constitute or constituted scientific research, the Board shall refer the question for decision to the Secretary of State.

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The decision of the Secretary of State is final.

(5) The same expenditure may not be taken into account under this section in relation to more than one trade.

Textual Amendments

F478 Word in s. 82B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 55(a)** (with Sch. 2)

F479 Words in s. 82B(1) substituted (with effect in accordance with s. 15(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 15(2)**

F480 Word in s. 82B(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 55(c)** (with Sch. 2)

F481 Words in s. 82B(3) substituted (with effect in accordance with s. 15(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 15(3)**

83 Patent fees etc. and expenses.

M89Notwithstanding anything in section 74, in computing the **[**F482profits**]** of a trade **[**F483for the purposes of corporation tax**]** there may be deducted as expenses any fees paid or expenses incurred—

(a) in obtaining for the purposes of the trade the grant of a patent, an extension of the term of a patent, the registration of a design or trade mark, **[**F484an extension of the period for which the right in a registered design subsists**]** or the renewal of registration of a trade mark, or

(b) in connection with a rejected or abandoned application for a patent made for the purposes of the trade.

F485 . . . . . .

Textual Amendments

F482 Words in s. 83 substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F483 Words in s. 83 inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 56** (with Sch. 2)

F484 Sch.7 para.36(2)Copyright, Designs and Patents Act 1988 (c.48)—*in force on* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced.*)*Previously*
"the extension of the period of copyright in a design".

F485 Words in s. 83 repealed (31.10.1994) by Trade Marks Act 1994 (c. 26), s. 109(1), **Sch. 5**; S.I. 1994/2550, **art. 2**

Modifications etc. (not altering text)

C113 S. 83(a) modified (31.10.1994) by Trade Marks Act 1994 (c. 26), s. 109(1), **Sch. 4 para. 1(1)(2)**; S.I. 1994/2550, **art. 2**

Marginal Citations

M89 SOURCE-1970 s. 132

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83A Gifts in kind to charities etc.

(1) This section applies where **[**F486a company carrying on a trade or profession**]** gives an article falling within subsection (2) below to—

(a) a charity within the meaning of section 506, or

(b) a body listed in section 507(1).

(2) An article falls within this subsection if—

(a) it is an article manufactured, or of a class or description sold, by **[**F487the company in the course of its trade**]**; F488. . .

(b) F488. . . . . .

(3) Subject to subsection (4) below, where this section applies in the case of the gift of an article—

(a) no amount shall be required, in consequence of the **[**F489the company's**]** disposal of that article from trading stock, to be brought into account for **[**F490corporation tax purposes**]** as a trading receipt of **[**F491the company**]**; F488. . .

(b) F488. . . . . .

(4) In any case where—

(a) relief is given under subsection (3) above **[**F492or section 63(2) of the Capital Allowances Act**]** in respect of the gift of an article **[**F493made by a company**]**, and

(b) any benefit received in any **[**F494accounting period**]** by **[**F495the company or any person connected with the company**]** is in any way attributable to the making of that gift,

[F496the company shall**]** in respect of that **[**F494accounting period**]** be charged to **[**F497corporation**]** tax under Case I or Case II of Schedule D or, if **[**F498the company**]** is not chargeable to **[**F497corporation**]** tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) Section 839 applies for the purposes of this section.

Textual Amendments

F486 Words in s. 83A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(2)** (with Sch. 2)

F487 Words in s. 83A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(3)** (with Sch. 2)

F488 S. 83A(2)(b)(3)(b) and preceding words repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 16(1)(2), **Sch. 4**

F489 Words in s. 83A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(4)(a)** (with Sch. 2)

F490 Words in s. 83A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(4)(b)** (with Sch. 2)

F491 Words in s. 83A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(4)(c)** (with Sch. 2)

F492 Words in s. 83A(4)(a) inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 16(3)**

F493 Words in s. 83A(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(5)(a)** (with Sch. 2)

F494 Words in s. 83A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(5)(b)** (with Sch. 2)

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F495 Words in s. 83A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(5)(c)** (with Sch. 2)

F496 Words in s. 83A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(5)(d)** (with Sch. 2)

F497 Words in s. 83A(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(5)(e)** (with Sch. 2)

F498 Words in s. 83A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 57(5)(f)** (with Sch. 2)

Modifications etc. (not altering text)

C114 S. 83A modified (with effect in accordance with s. 58(4) of the modifying Act) by Finance Act 2002 (c. 23), **Sch. 18 para. 9(3)(a)**

[84 F499 Gifts to educational establishments.

(1) This section applies where **[**F500a company carrying on a trade or profession**]** ("the donor") makes a gift for the purposes of a designated educational establishment of—

(a) an article manufactured, or of a class or description sold, by the donor in the course of **[**F501its trade**]** which qualifies as **[**F502plant or machinery**]** in the hands of the educational establishment; F503 . . .

(b) F503 . . . . . .

(2) For the purposes of this section, an article "**[**F504qualifies as plant or machinery**]** in the hands of an educational establishment" if, and only if, it is an article such that—

(a) were the activities carried on by the educational establishment regarded as a trade carried on by a body of persons, and

(b) had that body, at the time of the gift, incurred capital expenditure wholly and exclusively on the provision of an identical article for the purposes of those activities, and

(c) had the identical article belonged to that body in consequence of the incurring of that expenditure,

the identical article would be regarded for the purposes of **[**F505Part 2 of the Capital Allowances Act as plant or machinery**]** provided by the body for the purposes of that trade.

(3) Where this section applies—

(a) if the gift is of an article falling within paragraph (a) of subsection (1) above, then, for **[**F506corporation tax purposes**]**, no amount shall be required to be brought into account as a trading receipt of the donor in consequence of **[**F507its disposal**]** of that article from trading stock; F503 . . .

(b) F503 . . . . . .

but this subsection shall not apply unless, within **[**F508the period specified in subsection (3A) below**]**, the donor makes a claim for relief under this subsection, specifying the article given and the name of the educational establishment in question.

[F509(3A) The period mentioned in subsection (3) above is **[**F510the period of two years beginning at the end of the accounting period in which the gift is made.**]**

(3B) F511 . . . . . .**]**

(4) In any case where—

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(a) relief is given under subsection (3) above **[**F512or section 63(2) of the Capital Allowances Act**]** in respect of the gift of an article **[**F513made by the donor**]**, and

(b) any benefit received in any **[**F514accounting period**]** by the donor or any person connected with **[**F515the donor**]** is in any way attributable to the making of that gift,

the donor shall in respect of that **[**F514accounting period**]** be charged to **[**F516corporation**]** tax under Case I or Case II of Schedule D or, if **[**F517the donor**]** is not chargeable to **[**F516corporation**]** tax under either of those Cases for that period, under Case VI of Schedule D on an amount equal to the value of that benefit.

(5) In this section "designated educational establishment" means any educational establishment designated, or of a category designated,—

(a) as respects Great Britain, in regulations made by the Secretary of State; or

(b) as respects Northern Ireland, in regulations made by the Department of Education for Northern Ireland;

and any such regulations may make different provision for different areas.

(6) If any question arises as to whether a particular establishment falls within a category designated in regulations under subsection (5) above, the Board shall refer the question for decision—

(a) in the case of an establishment in Great Britain, to the Secretary of State, or

(b) in the case of an establishment in Northern Ireland, to the Department of Education for Northern Ireland.

(7) The power of the Secretary of State to make regulations under subsection (5) above shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.

(8) Regulations made under subsection (5) above for Northern Ireland—

(a) shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and

(b) shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.

(9) Section 839 applies for the purposes of subsection (4) above.**]**

Textual Amendments

F499 S. 84 substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 68(1)(2)**

F500 Words in s. 84(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(2)(a)** (with Sch. 2)

F501 Words in s. 84(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(2)(b)** (with Sch. 2)

F502 Words in s. 84(1)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 17(1)(a)**

F503 S. 84(1)(b)(3)(b) and preceding words repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c, 2), Sch. 2 para. 17(1)(b)(3), {Sch. 4}

F504 Words in s. 84(2) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 17(2)(a)**

F505 Words in s. 84(2) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 17(2)(b)**

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F506 Words in s. 84(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(3)(a)** (with Sch. 2)

F507 Words in s. 84(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(3)(b)** (with Sch. 2)

F508 Words in s. 84(3) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 2(2)**

F509 S. 84(3A)(3B) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 2(3)**

F510 S. 84(3A): by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(4)** it is provided that "In subsection (3A) for "above is--" to the end substitute "the period of two years beginning at the end of the accounting period in which the gift is made."" (in force 6.4.2005 with effect in accordance with s. 883(1) of the amending Act) (with Sch. 2)

F511 S. 84(3B) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 58(5), **Sch. 3** (with Sch. 2)

F512 Words in s. 84(4)(a) inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 17(4)**

F513 Words in s. 84(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(6)(a)** (with Sch. 2)

F514 Words in s. 84(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(6)(b)** (with Sch. 2)

F515 Words in s. 84(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(6)(c)** (with Sch. 2)

F516 Words in s. 84(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(6)(d)** (with Sch. 2)

F517 Words in s. 84(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 58(6)(e)** (with Sch. 2)

Modifications etc. (not altering text)

C115 S. 84: functions transferred (1.7.1999 immediately after the coming into force of Scotland Act 1998 (c. 46), **s. 53**) by The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), arts. 1(2), 2, **Sch. 1**

[F518 84A Costs of establishing share option or profit sharing schemes: relief.

(1) Subsection (2) below applies where—

(a) a company incurs expenditure on establishing a share option scheme which the Board approve and under which no employee or director obtains rights before such approval is given, or

(b) a company incurs expenditure on establishing a profit sharing scheme which the Board approve and under which the trustees acquire no shares before such approval is given.

(2) In such a case the expenditure—

(a) shall be deducted in computing for the purposes of Schedule D **[**F519 or Part 2 of ITTOIA 2005**]** the **[**F520 profits**]** of a trade carried on by the company, or

[F521 (b) if the company is one with investment business, shall be treated as expenses of management deductible under section 75 to the extent that it otherwise would not be, or

(c) if the company is one in relation to which section 76 applies, shall be treated for the purposes of that section as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section to the extent that it otherwise would not be.**]**

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(3) In a case where—

(a) subsection (2) above applies, and

(b) the approval is given after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

[[F522]for the purpose of applying subsection (2) above the expenditure shall be treated in accordance with subsection (3ZA) below.**]**

[F523](3ZA) **[** Where this subsection applies—

(a) in applying subsection (2)(a) above, the expenditure shall be treated as incurred in the period of account in which the approval is given (and not the period of account mentioned in subsection (3)(b) above),

(b) in applying subsection (2)(b) or (c) above, the expenditure shall be treated as referable to the accounting period in which the approval is given.**]**

[F524](3A) **[** In this section, "share option scheme" means—

(a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003 (approved SAYE option schemes)), or

(b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of that Act (approved CSOP schemes)).**]**

(4) References in this section to approving are to approving under Schedule 9 **[**[F525]to this Act or under Schedule 3 or 4 to ITEPA 2003 (approved SAYE option schemes and approved CSOP schemes)**]**.

(5) This section applies where the expenditure is incurred on or after 1st April 1991.**]**

Textual Amendments

F518 S. 84A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 42**

F519 Words in s. 84A(2)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 59** (with Sch. 2)

F520 Words in s. 84A(2)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F521 S. 84A(2)(b)(c) substituted for s. 84A(2)(b) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 4(2)

F522 Words in s. 84A(3) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 4(3)

F523 S. 84A(3ZA) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 4(4)

F524 S. 84A(3A) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 11(2)** (with Sch. 7)

F525 Words in s. 84A(4) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 11(3)** (with Sch. 7)

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85 Payments to trustees of approved profit sharing schemes.

(1) [M90]Any sum expended in making a payment to the trustees of an approved profit sharing scheme by a company which is in relation to that scheme the grantor or a participating company—

(a) shall be deducted in computing for the purposes of Schedule D the **[**[F526]profits**]** of a trade carried on by that company; or

[[F527](b) if that company is a company with investment business, shall be treated as expenses of management deductible under section 75, or

(c) if that company is one in relation to which section 76 applies, shall be treated as expenses payable for the purposes of that section,**]**

if, and only if, one of the conditions in subsection (2) below is fulfilled.

(2) The conditions referred to in subsection (1) above are—

(a) that before the expiry of the relevant period the sum in question is applied by the trustees in the acquisition of shares for appropriation to individuals who are eligible to participate in the scheme by virtue of their being or having been employees or directors of the company making the payment; and

(b) that the sum is necessary to meet the reasonable expenses of the trustees in administering the scheme.

(3) For the purposes of subsection (2)(a) above "the relevant period" means the period of nine months beginning on the day following the end of the period of account in which the sum in question is charged as an expense of the company incurring the expenditure or such longer period as the Board may allow by notice given to that company.

(4) For the purposes of this section, the trustees of an approved profit sharing scheme shall be taken to apply sums paid to them in the order in which the sums are received by them.

(5) In this section—

"approved profit sharing scheme" means a profit sharing scheme approved under Schedule 9; and

"the grantor" and "participating company" have the meaning given by paragraph 1(3) and (4) of that Schedule.

Textual Amendments

F526 Words in s. 85(1)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F527 S. 85(1)(b)(c) substituted for s. 85(1)(b) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 5(2)

Modifications etc. (not altering text)

C116 S. 85 amended (28.7.2000) by Finance Act 2000 (c. 17), **s. 50**

Marginal Citations

M90 SOURCE-1978 s. 60

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[85A F528Costs of establishing employee share ownership trusts: relief.

(1) Subsection (2) below applies where a company incurs expenditure on establishing a qualifying employee share ownership trust.

(2) In such a case the expenditure—

(a) shall be deducted in computing for the purposes of Schedule D the [F529profits] of a trade carried on by the company,F530 . . .

[F531(b) if the company is a company with investment business, shall be treated as expenses of management deductible under section 75 to the extent that it otherwise would not be, or

(c) if the company is one in relation to which section 76 applies, shall be treated for the purposes of that section as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section to the extent that it otherwise would not be.]

(3) In a case where—

(a) subsection (2) above applies, and

(b) the trust is established after the end of the period of nine months beginning with the day following the end of the period of account in which the expenditure is incurred,

[F532for the purpose of applying subsection (2) above, the expenditure shall be treated in accordance with subsection(3A) below.]

F533[(3A) Where this subsection applies—

(a) in applying subsection (2)(a) above, the expenditure shall be treated as incurred in the period of account in which the trust is established (and not the period of account mentioned in subsection (3)(b) above),

(b) in applying subsection (2)(b) or (c) above, the expenditure shall be treated as referable to the accounting period in which the trust is established.]

(4) In this section "qualifying employee share ownership trust" shall be construed in accordance with Schedule 5 to the Finance Act 1989.

(5) For the purposes of this section the trust is established when the deed under which it is established is executed.

(6) This section applies where the expenditure is incurred on or after 1st April 1991.]

Textual Amendments

F528 S. 85A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 43**

F529 Words in s. 85A(2)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 10

F530 Word in s. 85A(2)(a) omitted (28.9.2004 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 6(2)(a)

F531 S. 85A(2)(b)(c) substituted for s. 85A(2)(b) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 6(2)(b)

F532 Words in s. 85A(3) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 6(3)

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F533 S. 85A(3A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 6(4)

85B Approved share incentive plans

Schedule 4AA (which provides for deductions relating to approved share incentive plans) shall have effect.

86 Employees seconded to charities and educational establishments.

(1) **[**F534M91 If a company ("the employer") carrying on a trade, profession or business for the purposes of which it**]** employs a person ("the employee") makes available to a charity, on a basis which is expressed and intended to be of a temporary nature, the services of the employee then, **[**F535notwithstanding anything in section 74, 75 or 76, any expenditure incurred**]** by the employer which is attributable to the employment of that employee shall continue to be deductible in the manner and to the like extent as if, during the time that his services are so made available to the charity, they continued to be available for the purposes of the employer's trade, business **[**F536or profession**]**.

(2) In subsection (1) above—

"charity" has the same meaning as in section 506;

[F537"deductible" means—

(a) deductible as an expense in computing the profits of the employer to be charged **[**F538to corporation tax**]** under Case I or II of Schedule D,

(b) deductible as expenses of management for the purposes of section 75, or

(c) falling to be brought into account in accordance with section 76 as expenses payable which fall to be brought into account at Step 1 in subsection (7) of that section,

as the case may be.**]**

(3) With respect to expenditure attributable to the employment of a person on or after 26th November 1986 F539. . . , this section shall have effect as if the references to a charity included references to any of the following bodies, that is to say—

[F540(a) in England and Wales, any body falling within subsection (4) below;

(b) in Scotland, any body falling within subsection (5) below;

(c) in Northern Ireland, any body falling within subsection (6) below; and**]**

(d) any other educational body which is for the time being approved for the purposes of this section by the Secretary of State or, in Northern Ireland, the Department of Education for Northern Ireland.

[F541(4) A body falls within this subsection if it is—

(a) a local education authority;

(b) an educational institution maintained or otherwise supported by such an authority (including a grant-maintained school or a grant-maintained special school within the meaning of the Education Act 1996);

(c) an independent school, within the meaning of the Education Act 1996, whose registration under section 465 of that Act is final; or

(d) an institution within the further education sector, or the higher education sector, within the meaning of the Further and Higher Education Act 1992.

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(5) A body falls within this subsection if it is—

(a) an education authority;

(b) an educational establishment managed by such an authority within the meaning of the Education (Scotland) Act 1980 ("the 1980 Act");

(c) a public or grant-aided school within the meaning of the 1980 Act;

(d) a self-governing school within the meaning of the Self-Governing Schools etc. (Scotland) Act 1989;

(e) an independent school within the meaning of the 1980 Act;

(f) a central institution within the meaning of the 1980 Act;

(g) an institution within the higher education sector within the meaning of section 56(2) of the Further and Higher Education (Scotland) Act 1992; or

(h) a college of further education within the meaning of section 36(1) of that Act.

(6) A body falls within this subsection if it is—

(a) an education or library board within the meaning of the Education and Libraries (Northern Ireland) Order 1986;

(b) a college of education or a controlled, maintained, grant-maintained integrated, controlled integrated, voluntary or independent school within the meaning of that Order; or

(c) an institution of further education within the meaning of the Further Education (Northern Ireland) Order 1997.**]**

Textual Amendments

F534 Words in s. 86(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 60(2)(a)** (with Sch. 2)

F535 Words in s. 86(1) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 7(2)

F536 Words in s. 86(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 60(2)(b)** (with Sch. 2)

F537 S. 86(2): definition of "deductible" substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 7(3)

F538 S. 86(2): words in definition of "deductible" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 60(3)** (with Sch. 2)

F539 Words in s. 86(3) repealed (retrospectively) by Finance Act 1999 (c. 16), s. 58(2)(5), **Sch. 20 Pt. 3(14)**, Note

F540 S. 86(3)(a)-(c) substituted (with effect in accordance with s. 58(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 58(3)**

F541 S. 86(4)-(6) inserted (with effect in accordance with s. 58(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 58(4)**

Marginal Citations

M91 SOURCE-1983 s. 28; 1984 s. 33; 1987 s. 34

[F542 86A Charitable donations: contributions to agent's expenses.

(1) This section applies where—

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(a) **[**F543a company**]** (the employer) is liable to make to any individual payments from which income tax falls to be deducted **[**F544under PAYE regulations**]**, and

(b) the employer withholds sums from those payments in accordance with **[**F545an approved scheme and pays the sums to an approved agent**]**.

[In subsection (1)(b) "approved scheme" and "approved agent" have the same meaning F546(1A) as in section 714 of ITEPA 2003.**]**

(2) Any relevant expenditure incurred by the employer on or after 16th March 1993—

(a) shall be deducted in computing for the purposes of Schedule D the **[**F547profits**]** of a trade **[**F548or profession**]** carried on by the employer, or

[F549(b) if the employer is a company with investment business, shall be treated as expenses of management deductible under section 75.**]**

(3) Relevant expenditure is expenditure incurred in making to the agent any payment in respect of expenses which have been or are to be incurred by the agent in connection with his functions under the scheme.**]**

Textual Amendments

F542 S. 86A inserted (27.7.1993) by 1993 c. 34, **s.69**

F543 Words in s. 86A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 61(a)** (with Sch. 2)

F544 Words in s. 86A(1)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 13(2)** (with Sch. 7)

F545 Words in s. 86A(1)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 13(3)** (with Sch. 7)

F546 S. 86A(1A) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 13(4)** (with Sch. 7)

F547 Words in s. 86A(2)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F548 Words in s. 86A(2)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 61(b)** (with Sch. 2)

F549 S. 86A(2)(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 8(2)

87 Taxable premiums etc.

(1) M92This section applies where in relation to any land used in connection with a **[**F550trade or profession**]**—

[F551(a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, F552. . .

(b) any amount would fall to be so treated but for the operation of section 37(2) or (3);**]**

[F553(c) any amount falls to be treated as a receipt of a UK property business by virtue of any of sections 277 to 282 of ITTOIA 2005 (receipts in respect of lease premiums, sums payable instead of rent, for surrender of lease and for variation or waiver of term of lease and assignments), or

(d) any amount would fall to be so treated but for the operation of the rule in section 288 of that Act (the additional calculation rule),**]**

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and that amount is referred to below **[**F554and in section 87A**]** as "the amount chargeable".

(2) M93Subject to subsections (3) to (8) below, where—

(a) during any part of the relevant period the land in relation to which the amount chargeable arose is occupied by **[**F555a company which is**]** for the time being entitled to the lease as respects which it arose, and

(b) that occupation is for the purposes of a **[**F556trade or profession**]** carried on by **[**F557the company**]**,

[F558the company**]** shall be treated, in computing the **[**F559profits**]** of the **[**F556trade or profession**]** chargeable to **[**F560corporation tax**]** under Case I or II of Schedule D, as paying in respect of that land rent for the period (in addition to any actual rent), becoming due from day to day, of an amount which bears to the amount chargeable the same proportion as that part of the relevant period bears to the whole.

(3) As respects any period during which a part only of the land in relation to which the amount chargeable arose is occupied as mentioned in subsection (2) above, that subsection shall apply as if the whole were so occupied, but the amount chargeable shall be treated as reduced by so much thereof as, on a just apportionment, is attributable to the remainder of the land.

(4) M94Where a **[**F561company**]**, although not in occupation of the land or any part of the land, deals with **[**F562the company's**]** interest in the land or that part as property employed for the purposes of a **[**F563trade or profession**]** carried on by **[**F564the company**]**, subsections (2) and (3) above shall apply as if the land or part were occupied by **[**F564the company**]** for those purposes.

(5) M95Where section 37(2) and (3) has effect in relation to a lease granted out of the interest referred to in subsection (4) above, subsections (5) and (6) of that section shall apply for modifying the operation of subsections (2) and (3) above as they apply for modifying the operation of subsection (4) of that section.

(6) M96In computing **[**F559profits**]** chargeable under Case I or II of Schedule D for any **[**F565accounting period**]**, rent shall not by virtue of subsection (4) above be treated as paid by a **[**F566company**]** for any period in respect of land in so far as rent treated under section 37(4) as paid by **[**F567the company**]** for that period in respect of the land has in any previous **[**F565accounting period**]** been deducted, or falls in that **[**F565accounting period**]** to be deducted under Part II.

(7) M97Where, in respect of expenditure on the acquisition of **[**F568the company's**]** interest in the land in relation to which the amount chargeable arose, a **[**F569company**]** has become entitled to an allowance under **[**F570Part 5 of the Capital Allowances Act in respect of expenditure falling within section 403 (mineral asset expenditure)**]** for any **[**F571accounting period**]**, then—

(a) if the allowance is in respect of the whole of the expenditure, no deduction shall be allowed **[**F572the company**]** under this section for that or any subsequent **[**F571accounting period**]**; or

(b) if the allowance is in respect of part only of the expenditure ("the allowable part"), a deduction allowed **[**F572the company**]** under this section for that or any subsequent **[**F571accounting period**]** shall be the fraction—

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$$\frac{A - B}{A}$$

of the amount which apart from this subsection would fall to be deducted, where—

A is the whole of the expenditure, and

B is the allowable part of the expenditure;

F573 . . . . . .

(8) Where the amount chargeable arose under section 34(2) **[**F574or under section 277 of ITTOIA 2005 by virtue of section 278 of that Act (amount treated as lease premium where work required)**]** by reason of an obligation which included the carrying out of work in respect of which any capital allowance has fallen or will fall to be made, this section shall apply as if the obligation had not included the carrying out of that work and the amount chargeable had been calculated accordingly.

(9) M98In this section "the relevant period" means—

(a) where the amount chargeable arose under section 34, the period treated in computing that amount as the duration of the lease;

(b) where the amount chargeable arose under section 35, the period treated in computing that amount as the duration of the lease remaining at the date of the assignment;

[F575(c) where the amount chargeable arose under Chapter 4 of Part 3 of ITTOIA 2005 (profits of property businesses: lease premiums etc.), its receipt period (within the meaning of that Chapter (see section 288(6)).**]**

[F576(9A) In the application of this section and section 87A to Scotland—

(a) the reference to a lease being granted out of the interest referred to in subsection (4) above is to the grant of a sublease of land subject to that interest, and

(b) references to the lease so granted are to be construed as references to the sublease.**]**

(10) F577 . . . . . .

Textual Amendments

F550 Words in s. 87(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(2)(a)** (with Sch. 2)

F551 S. 87(1)(a)(b) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 34** (with Sch. 5 para. 73)

F552 Word at the end of s. 87(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 62(2)(b), **Sch. 3** (with Sch. 2)

F553 S. 87(1)(c)(d) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(2)(c)** (with Sch. 2)

F554 Words in s. 87(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(2)(d)** (with Sch. 2)

F555 Words in s. 87(2)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(3)(a)** (with Sch. 2)

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F556 Words in s. 87(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(3)(b)** (with Sch. 2)

F557 Words in s. 87(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(3)(c)** (with Sch. 2)

F558 Words in s. 87(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(3)(d)** (with Sch. 2)

F559 Words in s. 87(2)(6) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F560 Words in s. 87(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(3)(e)** (with Sch. 2)

F561 Word in s. 87(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(4)(a)** (with Sch. 2)

F562 Words in s. 87(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(4)(b)** (with Sch. 2)

F563 Words in s. 87(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(4)(c)** (with Sch. 2)

F564 Words in s. 87(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(4)(d)** (with Sch. 2)

F565 Words in s. 87(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(5)(a)** (with Sch. 2)

F566 Word in s. 87(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(5)(b)** (with Sch. 2)

F567 Words in s. 87(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(5)(c)** (with Sch. 2)

F568 Words in s. 87(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(6)(a)** (with Sch. 2)

F569 Word in s. 87(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(6)(b)** (with Sch. 2)

F570 Words in s. 87(7) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 18**

F571 Words in s. 87(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(6)(c)** (with Sch. 2)

F572 Words in s. 87(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(6)(d)** (with Sch. 2)

F573 *Words repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F574 Words in s. 87(8) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(7)** (with Sch. 2)

F575 S. 87(9)(c) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(8)** (with Sch. 2)

F576 S. 87(9A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 62(9)** (with Sch. 2)

F577 S. 87(10) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note

Modifications etc. (not altering text)

C117 *See*—1976(D) Sch.6 para.4(4)—*no account to be taken of any deduction of realised development value.* 1976(D)*repealed by* 1985 ss.93, 98(6)*and* Sch.27 Part X*from* 19*March* 1985.1990(C) s.111—*reduction of qualifying expenditure for premium relief.*

C118 S. 87 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 15(2)** (with s. 40(7)); S. I. 1994/2189, **art. 2**, Sch.

C119 S. 87 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 9(2)**

C120 S. 87 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch 7 para. 21(2)** (with s. 43(6))

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C121 S. 87(1) modified (with effect in accordance with s. 39(4)(5) of the modifying act) by Finance Act 1995 (c. 4), **Sch. 6 para. 14(1)**

Marginal Citations

M92 SOURCE-1970 s. 134(1); 1978 s. 32
M93 SOURCE-1970 s. 134(2), (3); 1978 s. 32
M94 SOURCE-1970 s. 134(4)
M95 SOURCE-1970 s. 134(4)(a)
M96 SOURCE-1970 s. 134(4)(b)
M97 SOURCE-1970 s. 134(5), (6); 1986 Sch. 13 para. 26
M98 SOURCE-1970 s. 134(1)(i), (ii)

87A Section 87(2) and (3) and reductions in receipts under ITTOIA 2005

(1) This section applies if—

(a) a lease has been granted out of the interest referred to in section 87(4),

(b) in calculating the amount that falls to be treated as a receipt of a UK property business under Chapter 4 of Part 3 of ITTOIA 2005 in respect of the lease, there is a reduction under section 288 of that Act by reference to a taxed receipt, and

(c) the taxed receipt is the amount chargeable for the purposes of section 87.

(2) Section 37A (section 37(4) and reductions in receipts under ITTOIA 2005) shall apply for modifying the operation of section 87(2) and (3) as it applies for modifying the operation of section 37(4).

(3) In this section the following expressions have the same meaning as in Chapter 4 of Part 3 of ITTOIA 2005—

"reduction under section 288 by reference to a taxed receipt" (see section 290(6) of that Act), and

"taxed receipt" (see section 287(4) of that Act).

88 Payments to Export Credit Guarantee Department.

M99Any sums paid by **[**F578a company**]** to the Export Credits Guarantee Department under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the M100Export Guarantees and Overseas Investment Act 1978, or with a view to entering into such an agreement, shall be included—

(a) in the sums to be deducted in computing for the purposes of Case I or Case II of Schedule D the **[**F579profits**]** of any **[**F580trade or profession carried on by that company**]**; or

[F581(b) **[**F582if that company**]** is a company with investment business, in the expenses of management that are deductible under section 75 in computing the company's profits for the purpose of corporation tax;**]**

whether or not they would fall to be so included apart from this section.

Textual Amendments

F578 Words in s. 88 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 64(a)** (with Sch. 2)

F579 Words in s. 88(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

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F580 Words in s. 88(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 64(b)** (with Sch. 2)
F581 S. 88(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 9(2)
F582 Words in s. 88(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 64(c)** (with Sch. 2)

Marginal Citations
M99 SOURCE-1972 s. 124(1)
M100 1978 c. 18.

[F583 88A Debts of overseas governments etc.

F584 . . . . . .]

Textual Amendments
F583 Ss. 88A-88C inserted by Finance Act 1990 (c. 29), **s. 74**
F584 Ss. 88A-88C repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

[F585 88B Section 88A debts: restriction on deductions under section 74(j).

F586 . . . . . .]

Textual Amendments
F585 Ss. 88A-88C inserted by Finance Act 1990 (c. 29), **s. 74**
F586 Ss. 88A-88C repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

[F587 88C Section 88A debts: restriction on other deductions.

F588 . . . . . .]

Textual Amendments
F587 Ss. 88A-88C inserted by Finance Act 1990 (c. 29), **s. 74**
F588 Ss. 88A-88C repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

88D Restriction of deductions in respect of certain debts

(1) This section applies to debts to which the following provisions do not apply—
(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships, etc);
(b) Schedule 26 to the Finance Act 2002 (derivative contracts);
(c) Schedule 29 to that Act (intangible fixed assets).

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(2) In calculating the profits of a company's trade for the purposes of corporation tax, no deduction is allowed in respect of a debt owed to the company, except—

(a) by way of impairment loss, or

(b) to the extent that the debt is released wholly and exclusively for the purposes of that trade as part of a statutory insolvency arrangement.

(3) In this section "debt" includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

(4) In this section "trade" has the meaning given by section 6(4).

[F589 89 Debts proving to be irrecoverable after discontinuance etc

(1) This section applies if—

(a) section 337(1) applies to treat a trade as discontinued by reason of any event, or

(b) a person permanently ceases to carry on a trade or profession,

and a company carries on the trade or profession after that event or cessation.

(2) In computing for corporation tax purposes the profits of the trade or profession in any period after the event or cessation, there may be deducted a sum equal to any amount proved during that period to be irrecoverable in respect of any debts—

(a) which were credited in computing for tax purposes the profits for any period before the event or cessation, and

(b) in respect of which the benefit was assigned to the company carrying on the trade or profession after the event or cessation.

(3) Subsection (2) applies only so far as the total amount proved to be irrecoverable in respect of the debts exceeds any **[**F590relevant deduction in respect of them**]** in a computation for any period before the event or cessation.

[F591(4) In this section "debt" includes an obligation or liability that falls to be discharged otherwise than by the payment of money.

The references to a debt being irrecoverable shall be read accordingly.

(5) For the purposes of this section "relevant deduction", in relation to a debt, means a deduction made for tax purposes in respect of an impairment loss or release.**]]**

Textual Amendments

F589 S. 89 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 65** (with Sch. 2)

F590 Words in s. 89(3) substituted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 3(3)(a)**

F591 S. 89(4)(5) added (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 3(3)(b)**

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90 Additional payments to redundant employees.

[F592(1) Where a payment is made by way of addition to a redundancy payment or to the corresponding amount of any other employer's payment and the additional payment would be—

(a) allowable as a deduction in computing for the purposes of Schedule D the profits or losses of a trade **[**F593or profession**]**,

(b) deductible under section 75 as expenses of management of a business, or

(c) regarded as expenses payable for the purposes of section 76,

but for the permanent discontinuance of the trade, **[**F594profession or business**]**, the additional payment shall, subject to subsection (2) below, be so allowable, deductible or regarded notwithstanding that discontinuance.

If the additional payment—

(i) is made after discontinuance, or

(ii) is for the purposes of section 75 or 76 referable to an accounting period beginning after the discontinuance,

it shall be treated as made, or (as the case may be) as referable to the accounting period ending, on the last day on which the trade, **[**F594profession or business**]** was carried on.**]**

[F595(1A) To the extent that the additional payment would, apart from this subsection, be regarded as expenses payable for the purposes of Step 5 in subsection (7) of section 76, it shall not be so regarded for the purposes of that subsection (or of subsection (1) above so far as relating to that section).**]**

(2) Subsection (1) above applies to an additional payment only so far as it does not exceed three times the amount of the redundancy payment or of the corresponding amount of the other employer's payment.

(3) In this section references to the permanent discontinuance of a trade, **[**F596profession or business**]** include references to any occasion on which it is treated as permanently discontinued by virtue of section F597. . . 337(1).

(4) In this section references to a redundancy payment or to the corresponding amount of an employer's payment shall be construed as in sections 579 and 580.

Textual Amendments

F592 S. 90(1) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 10(2)

F593 Words in s. 90(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 66(2)(a)** (with Sch. 2)

F594 Words in s. 90(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 66(2)(b)** (with Sch. 2)

F595 S. 90(1A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para. 10(3)

F596 Words in s. 90(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 66(3)(a)** (with Sch. 2)

F597 Words in s. 90(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 66(3)(b), **Sch. 3** (with Sch. 2)

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91 Cemeteries.

(1) [M101]In computing **[**[F598]for corporation tax purposes**]** the **[**[F599]profits**]** or losses for any period of a trade which consists of or includes the carrying on of a cemetery, there shall be allowed as a deduction—

(a) any capital expenditure incurred by **[**[F600]the company**]** engaged in carrying on the trade in providing any land in the cemetery sold during that period for the purpose of interments, and

(b) the appropriate fraction of the residue at the end of that period of the relevant capital expenditure.

(2) [M102]Subject to subsection (3) below, the relevant capital expenditure is capital expenditure incurred for the purposes of the trade in question by **[**[F601]the company**]** engaged in carrying it on, being—

(a) expenditure on any building or structure other than a dwelling-house, being a building or structure in the cemetery likely to have little or no value when the cemetery is full; and

(b) expenditure incurred in providing land taken up by any such building or structure, and any other land in the cemetery not suitable or adaptable for use for interments and likely to have little or no value when the cemetery is full.

(3) Relevant capital expenditure—

(a) does not include expenditure incurred on buildings or structures which have been destroyed before the beginning of the first period to which subsection (1) above applies in the case of the trade in question; and

(b) of other expenditure incurred before that time, includes only the fraction—

$$\frac{A}{A+B}$$

where—

A is the number of grave-spaces which at that time were or could have been made available in the cemetery for sale, and

B is the number already sold.

(4) [M103]For the purposes of this section—

(a) the residue of any expenditure at the end of a period is the amount incurred before that time which remains after deducting—

(i) any amount allowed in respect of that expenditure under subsection (1)(b) above **[**[F602], or under section 170(2)(b) of ITTOIA 2005 (relief for income tax purposes)**]** in computing **[**[F603]for tax purposes**]** the **[**[F599]profits**]** or losses of the trade for any previous period, and

(ii) if, after the beginning of the first period to which subsection (1) above applies in the case of a trade and before the end of the period mentioned at the beginning of this subsection, any asset representing that expenditure is sold or destroyed, the net proceeds of sale or, as the case may be, any insurance money or other compensation of any description received by **[**[F604]the company**]** carrying on the trade in

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respect of the destruction and any money received by **[**F605it**]** for the remains of the asset; and

(b) the appropriate fraction of the residue of any expenditure at the end of any period is—

$$\frac{A}{A+B}$$

where—

A is the number of grave-spaces in the cemetery sold in the period, and

B is the number of grave-spaces which at the end of the period are or could be made available in the cemetery for sale.

(5) Where in any chargeable period there is a change in the persons engaged in carrying on a trade which consists of or includes the carrying on of a cemetery, any allowance to be made under this section to **[**F606the company carrying on the trade after the change**]** shall, whether or not it is to be assumed for other purposes that the trade was discontinued and a new trade set up and commenced, be computed—

(a) as if **[**F607the company**]** had at all times been engaged in carrying on the trade;

(b) as if everything done to or by any of **[**F608its**]** predecessors in carrying on the trade had been done to or by **[**F609it**]**; and

(c) without regard to the price paid on any sale on the occasion of any such change.

[F610(6) No expenditure shall be taken into account—

(a) under both paragraphs (a) and (b) of subsection (1) above, or

(b) under both subsection (1)(a) above and section 170(2)(b) of ITTOIA 2005 or under both subsection (1)(b) above and section 170(2)(a) of ITTOIA 2005,

whether for the same or different periods.**]**

(7) This section shall apply in relation to a trade which consists of or includes the carrying on of a crematorium and, in connection therewith, the maintenance of memorial garden plots, as it applies in relation to a trade which consists of or includes the carrying on of a cemetery, but subject to the modifications that—

(a) references to the cemetery or land in the cemetery shall be taken as references to the land which is devoted wholly to memorial garden plots, and

(b) references to grave-spaces shall be taken as references to memorial garden plots, and

(c) references to the sale or use of land for interments shall be taken as references to its sale or use for memorial garden plots.

(8) In this section—

(a) references to the sale of land include references to the sale of a right of interment in land, and to the appropriation of part of a memorial garden in return for a dedication fee or similar payment;

(b) references to capital expenditure incurred in providing land shall be taken as references to the cost of purchase and to any capital expenditure incurred in levelling or draining it or otherwise rendering it suitable for the purposes of a cemetery or a memorial garden; and

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(c) the reference in subsection (4)(a)(ii) to subsection (1) above includes a reference to section 141 of the 1970 Act and section 22 of the [M104]Finance Act 1952 (which made similar provision to that made by this section).

[[F611](9) Section 532 of the Capital Allowances Act (general rule excluding contributions) shall apply for the purposes of this section as it applies for the purposes of that Act.**]**

Textual Amendments

F598 Words in s. 91(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(2)(a)** (with Sch. 2)

F599 Words in s. 91(1)(4)(a)(i) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F600 Words in s. 91(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(2)(b)** (with Sch. 2)

F601 Words in s. 91(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(3)** (with Sch. 2)

F602 Words in s. 91(4)(a)(i) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(4)(a)** (with Sch. 2)

F603 Words in s. 91(4)(a)(i) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(4)(b)** (with Sch. 2)

F604 Words in s. 91(4)(a)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(5)(a)** (with Sch. 2)

F605 Word in s. 91(4)(a)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(5)(b)** (with Sch. 2)

F606 Words in s. 91(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(6)(a)** (with Sch. 2)

F607 Words in s. 91(5)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(6)(b)** (with Sch. 2)

F608 Word in s. 91(5)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(6)(c)** (with Sch. 2)

F609 Word in s. 91(5)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(6)(d)** (with Sch. 2)

F610 S. 91(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 67(7)** (with Sch. 2)

F611 S. 91(9) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 19**

Marginal Citations

M101 SOURCE-1970 s. 141(1)

M102 SOURCE-1970 s. 141(2)

M103 SOURCE-1970 s. 141(3)–(8)

M104 1952 c. 33.

[[F612]91A Waste disposal: restoration payments.

(1) This section applies where on or after 6th April 1989 a **[**[F613]company**]** makes a site restoration payment in the course of carrying on a trade.

(2) Subject to subsection (3) below, for the purposes of [F614]. . . corporation tax the payment shall be allowed as a deduction in computing the **[**[F615]profits**]** of the trade for the period of account in which the payment is made.

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(3) Subsection (2) above shall not apply to so much of the payment as—

(a) represents expenditure which has been allowed as a deduction in computing the **[**F615profits**]** of the trade for any period of account preceding the period of account in which the payment is made, or

(b) represents capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.

(4) For the purposes of this section a site restoration payment is a payment made—

(a) in connection with the restoration of a site or part of a site, and

(b) in order to comply with any condition of a relevant licence, or any condition imposed on the grant of planning permission to use the site for the carrying out of waste disposal activities, or **[**F616any relevant obligation**]**.

(5) For the purposes of this section waste disposal activities are the collection, treatment, conversion and final depositing of waste materials, or any of those activities.

(6) For the purposes of this section a relevant icence is—

(a) a disposal licence under Part I of the M105Control of Pollution Act 1974 or Part II of the M106Pollution Control and Local Government (Northern Ireland) Order 1978, or

(b) a waste management licence under Part II of the Environmental Protection Act 1990 or any corresponding provision for the time being in force in Northern Ireland, **[**F617 or

[F618(ba) a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999, **[**F619or a permit under regulations under Article 4 of the Environment (Northern Ireland) Order 2002,**]** or**]**

[F620(ba) a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999, **[**F619or a permit under regulations under Article 4 of the Environment (Northern Ireland) Order 2002,**]** or**]**

(c) any authorisation under the M107Radioactive Substances Act 1960 or the M108Radioactive Substances Act 1993 for the disposal of radioactive waste or any nuclear site licence under the M109Nuclear Installations Act 1965.**]**

[For the purposes of this section a relevant obligation is—

F621(7) (a) an obligation arising under an agreement made under—

(i) section 106 of the M110Town and Country Planning Act 1990, as originally enacted;

(ii) **[**F622section 75 of the Town and Country Planning (Scotland) Act 1997**]**;

(b) a planning obligation entered into under section 106 of the Act of 1990, as substituted by section 12 of the M111Planning and Compensation Act 1991, or under section 299A of the Act of 1990;

(c) an obligation arising under or under an agreement made under any provision—

(i) corresponding to section 106 of the M110Town and Country Planning Act 1990, as originally enacted or as substituted by the Act of 1991 or to section 299A of the Act of 1990; and

(ii) for the time being in force in Northern Ireland.**]**

(8) F623. . . . . .**]**

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Textual Amendments

F612 Ss. 91A, 91B inserted by Finance Act 1990 (c. 29), **s. 78**.

F613 Word in s. 91A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 68(a)** (with Sch. 2)

F614 Words in s. 91A(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 68(b), **Sch. 3** (with Sch. 2)

F615 Words in s. 91A(2)(3)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F616 Words in s. 91A(4)(b) substituted (25.10.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1, 2), **s. 83(a)**; S.I. 1991/2272, **art. 3(2)**

F617 S. 91A(6)(c) and the word "or" immediately preceding it inserted (27.7.1993 with effect in relation to any case where the trade in question is begun after 31.3.1993) by 1993 c. 34, **s. 110(1)(3)**

F618 S. 91A(6)(ba) inserted (E.W.) (1.8.2000) by The Pollution Prevention and Control (England and Wales) Regulations 2000 (S.I. 2000/1973), **Sch. 10 para. 1** (with reg. 5)

F619 Words in s. 91A(6)(ba) inserted (31.3.2003) by The Pollution Prevention and Control Regulations (Northern Ireland) 2003 (S.R. 2003/46), reg. 1, **Sch. 11 para. 3**

F620 S. 91A(6)(ba) inserted (S.) (28.9.2000) by The Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323), **Sch. 10 para. 2** (with reg. 34)

F621 S. 91A(7) substituted (25.10.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1, 2), **s. 83(b)**; S.I. 1991/2272, **art. 3(2)**

F622 Words in s. 91A(7) substituted (S.) (27.5.1997) by Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), s. 6(2), **Sch. 2 para. 41**

F623 S. 91A(8) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

Marginal Citations

M105 1974 c. 40.
M106 S.I. 1978/1049 (N.I.19).
M107 1960 c. 34.
M108 1993 c. 12.
M109 1965 c. 57.
M110 1990 c. 8.
M111 1991 c. 34.

91B Waste disposal: preparation expenditure.

(1) This section applies where a **[**F624company**]**—

(a) incurs, in the course of carrying on a trade, site preparation expenditure in relation to a waste disposal site (the site in question),

(b) holds, at the time the **[**F624company**]** first deposits waste materials on the site in question, a relevant licence which is then in force,

(c) makes a claim for relief under this section in such form as the Board may direct, and

(d) submits such plans and other documents (if any) as the Board may require;

and it is immaterial whether the expenditure is incurred before or after the coming into force of this section.

(2) In computing the **[**F625profits**]** of the trade for a period of account ending after 5th April 1989, the allowable amount shall be allowed as a deduction for the purposes of F626. . . corporation tax.

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(3) In relation to a period of account (the period in question) the allowable amount shall be determined in accordance with the formula—

$$\left(A\text{-}B\right) \times \frac{C}{C+D}$$

(4) A is the site preparation expenditure incurred by the **[**F627company**]** at any time before the beginning of, or during, the period in question—

(a) in relation to the site in question, and

(b) in the course of carrying on the trade;

but this subsection is subject to subsections (5) and (9) below.

(5) A does not include any expenditure—

(a) which has been allowed as a deduction in computing **[**F628for the purposes of corporation tax or income tax**]** the **[**F625profits**]** of the trade for any period of account preceding the period in question, or

(b) which constitutes capital expenditure in respect of which an allowance has been, or may be, made **[**F629for the purposes of corporation tax or income tax**]** under the enactments relating to capital allowances.

(6) B is an amount equal to any amount allowed as a deduction under this section **[**F630or section 165 of ITTOIA 2005 (relief for income tax purposes)**]**, if allowed—

(a) in computing the **[**F625profits**]** of the trade for any period of account preceding the period in question, and

(b) as regards expenditure incurred in relation to the site in question;

and if different amounts have been so allowed as regards different periods, B is the aggregate of them.

(7) C is the volume of waste materials deposited on the site in question during the period in question; but if the period is one beginning before 6th April 1989 C shall be reduced by the volume of any waste materials deposited on the site during the period but before that date.

(8) D is the capacity of the site in question not used up for the deposit of waste materials, looking at the state of affairs at the end of the period in question.

(9) Where any of the expenditure which would be included in A (apart from this subsection) was incurred before 6th April 1989, A shall be reduced by an amount determined in accordance with the formula—

$$E \times \frac{F}{F+G}$$

(10) For the purposes of subsection (9) above—

(a) E is so much of the initial expenditure (that is, the expenditure which would be included in A apart from subsection (9) above) as was incurred before 6th April 1989,

(b) F is the volume of waste materials deposited on the site in question before 6th April 1989, and

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(c) G is the capacity of the site in question not used up for the deposit of waste materials, looking at the state of affairs immediately before 6th April 1989.

[F631(10A) For the purposes of this section any expenditure incurred for the purposes of a trade by a **[**F632company**]** about to carry it on shall be treated as if it had been incurred by that **[**F632company**]** on the first day on which **[**F633it**]** does carry it on and in the course of doing so.**]**

(11) For the purposes of this section—

(a) a waste disposal site is a site used (or to be used) for the disposal of waste materials by their deposit on the site,

(b) in relation to such a site, site preparation expenditure is expenditure on preparing the site for the deposit of waste materials (and may include expenditure on earthworks),

(c) in relation to such a site, "capacity" means capacity expressed in volume,

(d) "relevant licence" has the same meaning as in section 91A, F634. . .

(e) F634. . . . . .

Textual Amendments

F624 Words in s. 91B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(a)** (with Sch. 2)

F625 Words in s. 91B(2)(5)(a)(6)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F626 Words in s. 91B(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 69(b), **Sch. 3** (with Sch. 2)

F627 Word in s. 91B(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(c)** (with Sch. 2)

F628 Words in s. 91B(5)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(d)** (with Sch. 2)

F629 Words in s. 91B(5)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(e)** (with Sch. 2)

F630 Words in s. 91B(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(f)** (with Sch. 2)

F631 S. 91B(10A) inserted (27.7.1993 with effect in relation to any case where the trade in question is begun after 31.3.1993) by 1993 c. 34, **s. 110(2)(3)**

F632 Words in s. 91B(10A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(g)** (with Sch. 2)

F633 Word in s. 91B(10A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 69(g)** (with Sch. 2)

F634 S. 91B(11)(e) and preceding word repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

91BA Waste disposal: entitlement of successor to allowances.

(1) This section applies where—

(a) site preparation expenditure has been incurred in relation to a waste disposal site,

(b) that expenditure was incurred by a person in the course of carrying on a trade, and

(c) on or after 21st March 2000—

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(i) that person ("the predecessor") ceases to carry on that trade, or ceases to carry it on so far as it relates to that site, and

(ii) another person **[**F635that is a company**]** ("the successor") begins to carry on that trade, or to carry on in the course of a trade the activities formerly carried on by the predecessor in relation to that site.

(2) If the conditions specified in the following provisions of this section are met, then, for the purposes of section 91B above—

(a) the trade carried on by the successor shall be treated as the same trade as that carried on by the predecessor, and

(b) allowances shall be made to the successor (and not to the predecessor) as if everything done to or by the predecessor had been done to or by the successor.

(3) The first condition is that the whole of the site in question is transferred to the successor.

Provided the successor holds an estate or interest in the whole of the site, it need not be the same as that held by the predecessor.

(4) The second condition is that the successor, at the time **[**F636it**]** first deposits waste material at the site, holds a relevant licence in respect of the site which is then in force.

(5) Expressions used in this section have the same meaning as in section 91B.

Textual Amendments

F635 Words in s. 91BA(1)(c)(ii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 70(a)** (with Sch. 2)

F636 Word in s. 91BA(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 70(b)** (with Sch. 2)

91C Mineral exploration and access.

Where—

(a) a **[**F637company**]** carrying on a trade incurs expenditure on mineral exploration and access as defined in **[**F638section 396(1) of the Capital Allowances Act**]** in an area or group of sands in which the presence of mineral deposits in commercial quantities has already been established, and

(b) if the presence in that area or group of sands of mineral deposits in commercial quantities had not already been established, that expenditure would not have been allowed to be deducted in computing the **[**F639profits**]** of the trade for the purposes of **[**F640corporation tax**]**,

that expenditure shall not be so deducted.

Textual Amendments

F637 Word in s. 91C(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 71** (with Sch. 2)

F638 Words in s. 91C(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 20**

F639 Word in s. 91C(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

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F640 Words in s. 91C(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 71** (with Sch. 2)

VALID FROM 01/04/2009

[F641 Payments for restrictive undertakings

Textual Amendments

F641 S. 76ZA and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 31** (with Sch. 2 Pts. 1, 2)

76ZA Payments for restrictive undertakings

(1) This section applies if a payment—

(a) is treated as earnings of an employee by virtue of section 225 of ITEPA 2003 (payments for restrictive undertakings), and

(b) is made, or treated as made for the purposes of section 226 of that Act (valuable consideration given for restrictive undertakings), by a company in relation to which section 76 applies.

(2) The payment is treated as expenses payable which fall to be brought into account at Step 1 in section 76(7), so far as it otherwise would not be.**]**

VALID FROM 01/04/2009

[F642 Seconded employees

Textual Amendments

F642 S. 76ZB and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 32** (with Sch. 2 Pts. 1, 2)

76ZB Employees seconded to charities and educational establishments

(1) This section applies if a company to which section 76 applies makes the services of a person employed for the purposes of the company's life assurance business available to—

(a) a charity, or

(b) an educational establishment,

on a basis that is stated and intended to be temporary.

(2) Expenses of the employer that are attributable to the employee's employment during the period of the secondment are treated as expenses payable which fall to be brought into account at Step 1 in section 76(7).

(3) In this section—

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"educational establishment" has the same meaning as in section 70 of CTA 2009, and

"the period of the secondment" means the period for which the employee's services are made available to the charity or educational establishment.**]**

VALID FROM 01/04/2009

[F643 Counselling and retraining expenses

Textual Amendments

F643 S. 76ZC and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 33** (with Sch. 2 Pts. 1, 2)

76ZC Counselling and other outplacement services

(1) This section applies if—

(a) a company carrying on life assurance business ("the employer") incurs counselling expenses,

(b) the expenses are incurred in relation to a person ("the employee") who holds or has held an office or employment under the employer, and

(c) the relevant conditions are met.

(2) The expenses are brought into account under section 76 as expenses payable (so far as they otherwise would not be).

(3) In this section "counselling expenses" means expenses incurred—

(a) in the provision of services to the employee in connection with the cessation of the office or employment,

(b) in the payment or reimbursement of fees for such provision, or

(c) in the payment or reimbursement of travelling expenses in connection with such provision.

(4) In this section "the relevant conditions" means—

(a) conditions A to D for the purposes of section 310 of ITEPA 2003 (employment income exemptions: counselling and other outplacement services), and

(b) in the case of travel expenses, condition E for those purposes.

[F644 76ZD Retraining courses

(1) This section applies if—

(a) a company carrying on life assurance business ("the employer") incurs training course expenses,

(b) they are incurred in relation to a person ("the employee") who holds or has held an office or employment under the employer, and

(c) the relevant conditions are met.

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(2) The expenses are brought into account under section 76 as expenses payable (so far as they otherwise would not be).

(3) In this section—

"retraining course expenses" means expenses incurred in the payment or reimbursement of retraining course expenses within the meaning given by section 311(2) of ITEPA 2003, and

"the relevant conditions" means—

(a) the conditions in subsections (3) and (4) of section 311 of ITEPA 2003 (employment income exemptions: retraining courses), and

(b) in the case of travel expenses, the conditions in subsection (5) of that section.**]**

Textual Amendments

F644 S. 76ZD inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 34** (with Sch. 2 Pts. 1, 2)

[F645 76ZE Retraining courses: recovery of tax]

(1) This section applies if—

(a) an employer's liability to corporation tax for an accounting period is determined on the assumption that it is entitled by virtue of section 76ZD to bring an amount into account in determining the amount of a deduction to be made under section 76, and

(b) without section 76ZD the employer would not have been so entitled.

(2) If, subsequently—

(a) the condition in section 311(4)(a) of ITEPA 2003 is not met because of the employee's failure to begin the course within the period of one year after ceasing to be employed, or

(b) the condition in section 311(4)(b) of ITEPA 2003 is not met because of the employee's continued employment or re-employment,

an assessment of an amount or further amount of corporation tax due as a result of the condition not being met may be made under paragraph 41 of Schedule 18 to FA 1998.

(3) Such an assessment must be made before the end of the period of 6 years immediately following the end of the accounting period in which the failure to meet the condition occurred.

(4) If subsection (2) applies, the employer must give an officer of Revenue and Customs a notice containing particulars of—

(a) the employee's failure to begin the course,

(b) the employee's continued employment, or

(c) the employee's re-employment,

within 60 days of coming to know of it.

(5) If an officer of Revenue and Customs has reason to believe that the employer has failed to give such a notice, the officer may by notice require the employer to provide

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such information as the officer may reasonably require for the purposes of this section about—

(a) the failure to begin the course,

(b) the continued employment, or

(c) the re-employment.

(6) A notice under subsection (5) may specify a time (not less than 60 days) within which the required information must be provided.**]**

Textual Amendments

F645 S. 76ZE inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 35** (with Sch. 2 Pts. 1, 2)

Modifications etc. (not altering text)

C122 S. 76ZE applied (with modifications) (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **Sch. 2 para. 139(3)(4)** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

I[F646] Redundancy payments etc

Textual Amendments

F646 S. 76ZF and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 36** (with Sch. 2 Pts. 1, 2)

76ZF Redundancy payments and approved contractual payments

(1) Sections 76ZG to 76ZI apply if—

(a) a company to which section 76 applies ("the employer") makes a redundancy payment or an approved contractual payment to another person ("the employee"), and

(b) the payment is in respect of the employee's employment wholly in the employer's life assurance business or partly in the employer's life assurance business and partly in one or more other capacities.

(2) For the purposes of this section and sections 76ZG to 76ZH "redundancy payment" means a redundancy payment payable under—

(a) Part 11 of the Employment Rights Act 1996, or

(b) Part 12 of the Employment Rights (Northern Ireland) Order 1996.

(3) For the purposes of this section and those sections—

"contractual payment" means a payment which, under an agreement, an employer is liable to make to an employee on the termination of the employee's contract of employment, and

a contractual payment is "approved" if, in respect of that agreement, an order is in force under—

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(a) section 157 of the Employment Rights Act 1996, or
(b) Article 192 of the Employment Rights (Northern Ireland) Order 1996.

[F647 76ZG Payments in respect of employment wholly in employer's business

(1) This section applies if the payment is in respect of the employee's employment wholly in the employer's life assurance business.

(2) The payment is treated as expenses payable which fall to be brought into account at Step 1 in section 76(7), so far as it otherwise would not be.

(3) The amount brought into account by virtue of this section for an approved contractual payment must not exceed the amount which would have been due to the employee if a redundancy payment had been payable.

(4) If the payment is referable to an accounting period beginning after the business has permanently ceased to be carried on, it is treated as referable to the last accounting period in which the business was carried on.**]**

Textual Amendments

F647 S. 76ZG inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 37** (with Sch. 2 Pts. 1, 2)

[F648 76ZH Payments in respect of employment in more than one capacity

(1) This section applies if the payment is in respect of the employee's employment with the employer—
(a) partly in the employer's life assurance business, and
(b) partly in one or more other capacities.

(2) The amount of the redundancy payment, or the amount which would have been due if a redundancy payment had been payable, is to be apportioned on a just and reasonable basis between—
(a) the employment in the life assurance business, and
(b) the employment in the other capacities.

(3) The part of the payment apportioned to the employment in the life assurance business is treated as a payment in respect of the employee's employment wholly in the life assurance business for the purposes of section 76ZG.**]**

Textual Amendments

F648 S. 76ZH inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 38** (with Sch. 2 Pts. 1, 2)

[F649 76ZI Additional payments

(1) This section applies if the employer's business, or part of it, ceases (permanently) to be carried on and the employer makes a payment to the employee in addition to—
(a) the redundancy payment, or

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(b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.

(2) If—

(a) the additional payment would not otherwise be regarded as expenses payable for the purposes of section 76, but

(b) that is only because the business, or the part of the business, has ceased to be carried on,

the additional payment is regarded as expenses payable for the purposes of section 76.

(3) So far as the additional payment would, apart from this subsection, be regarded as expenses payable for the purposes of Step 5 in subsection (7) of section 76, it is not to be so regarded for the purposes of that subsection (or of subsection (2) above so far as relating to section 76).

(4) The amount treated under this section as expenses payable for the purposes of section 76 is limited to 3 times the amount of—

(a) the redundancy payment, or

(b) if an approved contractual payment is made, the amount that would have been due if a redundancy payment had been payable.

(5) If the payment is referable to an accounting period beginning after the business or the part of the business has ceased to be carried on, it is treated as referable to the last accounting period in which the business, or the part concerned, was carried on.**]**

Textual Amendments

F649 S. 76ZI inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 39** (with Sch. 2 Pts. 1, 2)

[F650 76ZJ Payments by the Government]

(1) This section applies if—

(a) a redundancy payment or an approved contractual payment is payable by a company to which section 76 applies ("the employer"), and

(b) a payment to which subsection (2) applies is made in respect of the payment.

(2) This subsection applies to—

(a) payments made by the Secretary of State under section 167 of the Employment Rights Act 1996, and

(b) payments made by the Department for Employment and Learning under Article 202 of the Employment Rights (Northern Ireland) Order 1996.

(3) So far as the employer reimburses the Secretary of State or Department for the payment, sections 76ZG to 76ZI apply as if the payment were—

(a) a redundancy payment, or

(b) an approved contractual payment,

made by the employer.**]**

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Textual Amendments

F650 S. 76ZJ inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 40** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

I[F651] Contributions to local enterprise organisations or urban regeneration companies

Textual Amendments

F651 S. 76ZK and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 41** (with Sch. 2 Pts. 1, 2)

76ZK Contributions to local enterprise organisations or urban regeneration companies

(1) This section applies if a company to which section 76 applies ("the contributor") incurs expenses in making a contribution (whether in cash or in kind)—

(a) to a local enterprise organisation, or

(b) to an urban regeneration company.

(2) The expenses are treated for the purposes of section 76 as expenses payable which fall to be brought into account at Step 1 in section 76(7).

(3) But if, in connection with the making of the contribution, the contributor or a connected person—

(a) receives a disqualifying benefit of any kind, or

(b) is entitled to receive such a benefit,

the amount treated in accordance with subsection (2) is restricted to the amount of the expenses less the value of the benefit.

(4) For this purpose it does not matter whether a person receives, or is entitled to receive, the benefit—

(a) from the local enterprise organisation or urban regeneration company concerned, or

(b) from anyone else.

(5) Subsection (6) applies if—

(a) an amount has been brought into account in accordance with subsection (2), and

(b) the contributor or a connected person receives a disqualifying benefit that is in any way attributable to the contribution.

(6) The contributor is to be treated as receiving, when the benefit is received, an amount—

(a) which is equal to the value of the benefit (so far as not brought into account in determining the amount of the deduction), and

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(b) to which the charge to corporation tax on income applies.

(7) In this section—

"disqualifying benefit" means a benefit the expenses of obtaining which, if incurred by the contributor directly in a transaction at arm's length, would not be expenses payable for the purposes of section 76,

"local enterprise organisation" has the meaning given by section 83 of CTA 2009,

"urban regeneration company" has the meaning given by section 86 of CTA 2009.

(8) Section 839 ("connected person") applies for the purposes of subsections (3) and (5).**]**

VALID FROM 01/04/2009

[F652 Unpaid remuneration

Textual Amendments

F652 S. 76ZL and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 42** (with Sch. 2 Pts. 1, 2)

76ZL Unpaid remuneration

(1) This section applies if—

(a) an amount is charged in respect of employees' remuneration in the accounts for a period of a company to which section 76 applies,

(b) the amount would apart from this section be brought into account under section 76 as expenses payable, and

(c) the remuneration is not paid before the end of the period of 9 months immediately following the end of the period of account.

(2) If the remuneration is paid after the end of that period of 9 months, the amount is brought into account for the period of account in which it is paid.

(3) But—

(a) subsection (2) is subject to section 86 of FA 1989 (spreading of relief for acquisition expenses), and

(b) in interpreting that section the remuneration is treated as expenses payable which fall to be included at Step 1 in section 76(7) for the period of account in which the remuneration is paid.

(4) The amount is not brought into account under section 76 as expenses payable if it is not paid.

[F653 76ZM Unpaid remuneration: supplementary]

(1) For the purposes of section 76ZL an amount charged in the accounts in respect of employees' remuneration includes an amount for which provision is made in the accounts with a view to its becoming employees' remuneration.

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(2) For the purposes of section 76ZL it does not matter whether an amount is charged for—

(a) particular employments, or

(b) employments generally.

(3) If the profits of the company are calculated before the end of the 9 month period mentioned in section 76ZL(1)(c)—

(a) it must be assumed, in making the calculation, that any remuneration which is unpaid when the calculation is made will not be paid before the end of that period, but

(b) if the remuneration is subsequently paid before the end of that period, nothing in this subsection prevents the calculation being revised and any tax return being amended accordingly.

(4) For the purposes of this section and section 76ZL remuneration is paid when it—

(a) is treated as received by an employee for the purposes of ITEPA 2003 by section 18 or 19 of that Act (receipt of money and non-money earnings), or

(b) would be so treated if it were not exempt income.

(5) In this section and section 76ZL—

"employee" includes an office-holder and "employment" therefore includes an office, and

"remuneration" means an amount which is or is treated as earnings for the purposes of Parts 2 to 7 of ITEPA 2003.**]**

Textual Amendments

F653 S. 76ZM inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 43** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F654Car or motor cycle hire]

Textual Amendments

F654 S. 76ZN and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 44** (with Sch. 2 Pts. 1, 2)

[F655 76ZN Car or motor cycle hire

(1) Subsection (2) applies if—

(a) in calculating the corporation tax to which a company is liable for an accounting period, an amount representing expenses incurred on the hiring of a car or motor cycle can be brought into account under section 76 as expenses payable,

(b) the car or motor cycle is not a qualifying hire car or motor cycle, and

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(c) the retail price of the car or motor cycle when new exceeds £12,000.

(2) The amount that would otherwise be capable of being brought into account as expenses payable is reduced by multiplying the amount by the fraction—

$$\frac{£\ 12{,}000 + RP}{2 \times RP}$$

where RP is the retail price of the car or motor cycle when new.

(3) Subsection (4) applies if an amount is reduced as a result of subsection (2), or a corresponding provision, and—

(a) subsequently—

(i) there is a rebate (however described) of the hire charges, or

(ii) a debt in respect of any of the hire charges is released otherwise than as part of a statutory insolvency agreement, and

(b) an amount is brought into account in respect of the rebate or release.

(4) For the purposes of subsection (3)(b) an amount is brought into account in respect of a rebate of hire charges or the release of a debt if—

(a) the amount of a reversal representing the rebate or release falls to be deducted under Step 4 in section 76(7), or

(b) (in the case of a rebate of hire charges) an amount representing the rebate is chargeable under section 85(1) of the Finance Act 1989 (c. 26).

(5) The amount that would otherwise be deductible as mentioned in subsection (4)(a) or chargeable as mentioned in subsection (4)(b) is reduced by multiplying it by the fraction set out in subsection (2).

(6) In this section "corresponding provision" means—

(a) section 56(2) of CTA 2009 (car or motor cycle hire: trade profits and property income),

(b) section 1251(2) of CTA 2009 (car or motor cycle hire: companies with investment business), and

(c) section 48(2) of ITTOIA 2005 (car or motor cycle hire: trade profits and property income).

(7) The power under section 74(4) of CAA 2001 to increase or further increase the sums of money specified in Chapter 8 of Part 2 of CAA 2001 includes the power to increase or further increase the sum of money specified in subsection (1)(c) or (2).

(8) In this section "car or motor cycle" and "qualifying hire car or motor cycle" have the meanings given by section 57 of CTA 2009.**]**

Textual Amendments

F655 S. 76ZN and cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 44** (with Sch. 2 Pts. 1, 2)

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[F656 76ZO Hiring cars (but not motor cycles) with low CO_2 emissions before 1 April 2013

(1) Section 76ZN does not apply to expenses incurred on the hiring of a car with low CO_2 emissions, or an electrically-propelled car, if—

(a) the car was first registered on or after 17 April 2002, and

(b) the period of hire begins before 1 April 2013 under a contract entered into before that date.

(2) For this purpose—

"car with low CO_2 emissions" has the meaning given by section 45D of CAA 2001, and

"electrically-propelled car" has the meaning given by that section.**]**

Textual Amendments

F656 S. 76ZO inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 45** (with Sch. 2 Pts. 1, 2)

Treatment of regional development and other grants and debts released etc.

92 Regional development grants.

(1) M112 A regional development grant which, apart from this subsection, would be taken into account as a receipt in computing the profits of a trade, profession or vocation which are chargeable under Case I or II of Schedule D, shall not be taken into account as a receipt in computing those profits.

(2) M113 A regional development grant which is made to an investment company—

(a) shall not be taken into account as a receipt in computing its profits under Case VI of Schedule D; and

(b) shall not be deducted, by virtue of section 75(2), from the amount treated as expenses of management.

(3) In this section "regional development grant" means a payment by way of grant under Part II of the M114 Industrial Development Act 1982.

Marginal Citations

M112 SOURCE-1984 s. 54(1), (4)
M113 SOURCE-1984 s. 54(2), (3)
M114 1982 c. 52.

93 Other grants under Industrial Development Act 1982 etc.

(1) M115 A payment to which this section applies which is made to a **[**F657 company**]** carrying on a trade the profits of which are chargeable **[**F658 to corporation tax**]** under Case I of Schedule D shall be taken into account as a receipt in computing those profits; and any such payment which is made to **[**F659 a company with investment business**]** shall be taken into account as a receipt in computing its profits under Case VI of Schedule D.

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(2) [M116]This section applies to any payment which would not, apart from this section, be taken into account as mentioned in subsection (1) above, being a payment by way of a grant under—

(a) section 7 or 8 of the Industrial Development Act 1982 or section 7 or 8 of the [M117]Industry Act 1972; or

(b) section 1 of the [M118]Industries Development Act (Northern Ireland) 1966 or section 4 of the [M119]Industries Development Act (Northern Ireland) 1971; or

(c) [M120]any of Articles 7, 9 and 30 of the [M121]Industrial Development (Northern Ireland) Order 1982;

other than a grant designated as made towards the cost of specified capital expenditure or as made by way of compensation for the loss of capital assets and other than a grant falling within subsection (3) below.

(3) [M122]A payment by way of grant which is made—

(a) under Article 7 of the Order referred to in subsection (2)(c) above, and

(b) in respect of a liability for corporation tax (including a liability which has already been met),

shall not be taken into account as mentioned in subsection (1) above, whether by virtue of this section or otherwise.

Textual Amendments

F657 Word in s. 93(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 72(a)** (with Sch. 2)

F658 Words in s. 93(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 72(b)** (with Sch. 2)

F659 Words in s. 93(1) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 1(2), Sch. para 11(2)

Marginal Citations

M115 SOURCE-1980 s. 42(1)
M116 SOURCE-1980 s. 42(2)
M117 1972 c. 63.
M118 1966 c. 36 (N.I.).
M119 1971 c. 22 (N.I.).
M120 SOURCE-1980 s. 42(2); 1984 s. 55(1)
M121 S.I. 1982/1083 (N.I. 15).
M122 SOURCE-1980 s. 42(3); 1984 s. 55(2)

94 Debts deducted and subsequently released.

[F660(1)] [M123]Where, in computing for [F661corporation tax purposes] the [F662profits] of a [F663trade or profession], a deduction has been allowed for any debt incurred for the purposes of the [F663trade or profession], then, if the whole or any part of the debt is thereafter released [F664otherwise than as part of a [F665statutory insolvency arrangement]], the amount released shall be treated as a receipt of the [F663trade or profession] arising in the period in which the release is effected.

(2) [F666] . . . . . .

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Textual Amendments

F660 S. 94 renumbered as s. 94(1) (3.5.1994) by virtue of Finance Act 1994 (c. 9), **s. 144(4)**

F661 Words in s. 94(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 73(a)** (with Sch. 2)

F662 Words in s. 94(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F663 Words in s. 94(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 73(b)** (with Sch. 2)

F664 Words in s. 94(1) inserted (with effect in accordance with s. 144(7) of the amending Act) by Finance Act 1994 (c. 9), **s. 144(3)(a)**

F665 Words in s. 94(1) substituted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 4(2)**

F666 S. 94(2) repealed (with effect in accordance with s. 80(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 4(3), **Sch. 11 Pt. 2(5)**, Note

Marginal Citations

M123 SOURCE-1970 s. 136

95 [F667Taxation of dealers in respect of distributions etc.]

[F668[F669](1) Where a dealer—

(a) receives a relevant distribution, that is to say—

(i) any distribution which is made by a company resident in the United Kingdom ("a UK distribution"), or

(ii) any payment which is representative of a UK distribution, or

(b) makes any payment which is representative of a UK distribution,

the distribution or, as the case may be, the payment shall be taken into account in computing the profits of the dealer which are chargeable to [F670corporation tax] in accordance with the provisions of this Act applicable to Case I or II of Schedule D.]

(1A) Accordingly, where a dealer receives a [F671relevant distribution]—

(a) F672. . . . . .

(b) F673. . . . . .

(c) [F674section 208] shall not apply to that distribution; and

(d) F675. . . . . .

[F676(e) F677. . . . . .]

(1B) F678. . . . . .

[F679(1C) The application of subsection (1) above in relation to a payment made by a dealer is subject to paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose).]

(2) For the purposes of this section a person is a dealer in relation to any F680. . . distribution if—

(a) were there a sale by that person of the shares [F681or stock] in respect of which the distribution is made, and

(b) the circumstances of that sale were such that the price would not fall to be treated as a F680. . . distribution,

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the price would be taken into account in computing the profits of that person which are chargeable to **[**[F682]corporation tax**]** in accordance with the provisions of this Act applicable to Case I or II of Schedule D.**]**

[[F683](2A) The reference in subsection (2) above to the profits of a person does not include the profits of that person in respect of insurance business or any category of insurance business.**]**

(4) [F684] . . . . . .

(5) [F684] . . . . . .

Textual Amendments

F667 S. 95 sidenote substituted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(9)**

F668 S. 95(1)(1A)(1B)(2) substituted for s. 95(1)-(3) (with effect in accordance with Sch. 7 para. 8(3) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 7 para. 8(1)**

F669 S. 95(1) substituted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(2)**

F670 Words in s. 95(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 74(2)** (with Sch. 2)

F671 Words in s. 95(1A) substituted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(3)(a)**

F672 S. 95(1A)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 74(3), **Sch. 3** (with Sch. 2)

F673 S. 95(1A)(b) repealed (with effect in accordance with s. 24(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 24(3)(b), **Sch. 8 Pt. 2(8)**, Note 1

F674 Words in s. 95(1A)(c) substituted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(3)(c)**

F675 S. 95(1A)(d) repealed (with effect in accordance with s. 24(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 24(3)(d), **Sch. 8 pt. 2(8)**, Note 1

F676 S. 95(1A)(e) inserted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(3)(e)**

F677 S. 95(1A)(e) repealed (with effect in accordance with Sch. 43 Pt. 3(6) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(6)**

F678 S. 95(1B) repealed (with effect in accordance with s. 24(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 24(4), **Sch. 8 Pt. 2(8)**, Note 1

F679 S. 95(1C) inserted (2.7.2004) by Finance Act 2004 (c. 12), **s. 137(2)(6)**

F680 Words in s. 95(2) repealed (with effect in accordance with s. 24(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 24(5)(a), **Sch. 8 Pt. 2(8)**, Note 1

F681 Words in s. 95(2)(a) inserted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(5)(b)**

F682 Words in s. 95(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 74(4)** (with Sch. 2)

F683 S. 95(2A) inserted (with effect in accordance with s. 24(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(6)**

F684 S. 95(4)(5) repealed (with effect in accordance with s. 24(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(7)(8)**. {Sch. 8 Pt. 2(8)}

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VALID FROM 21/07/2008

[F685 95ZA Taxation of UK distributions received by insurance companies

(1) If the total amount of relevant distributions received by a company in an accounting period exceeds £50,000, those distributions are to be taken into account in calculating for corporation tax purposes the profits of the company in that period (and accordingly section 208 does not apply in relation to those distributions).

(2) A company ("company A") receives a "relevant distribution" if—

(a) it receives a distribution made by a company resident in the United Kingdom ("company B"),

(b) the value of the shares or stock in respect of which the distribution is made ("the holding") is materially reduced by reason of the distribution,

(c) a profit on the sale of the holding (to anyone other than company B) would be taken into account in calculating company A's profits in respect of relevant insurance business, and

(d) either—

(i) the holding amounts to, or is an ingredient in a holding amounting to, 10% of all holdings of the same class in company B, or

(ii) the period between the acquisition by company A of the holding and that company first taking steps to dispose of the holding does not exceed 30 days.

(3) In this section "relevant insurance business" means any kind of insurance business other than life assurance business.

(4) Section 177(7) of TCGA 1992 (provision supplementing provision corresponding to subsection (2)(d)(i) above) applies for the purposes of subsection (2)(d)(i).

(5) Section 731(4) below (interpretation of "taking steps to dispose of securities") applies for the purposes of subsection (2)(d)(ii) as if the reference to the securities were to the holding.]

Textual Amendments

F685 S. 95ZA inserted (with effect in accordance with Sch. 17 para. 16(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 16(1)**

Special provisions

[F686 95A Creative artists: relief for fluctuating profits

F687 . . . . . .]

Textual Amendments

F686 S. 95A inserted (11.5.2001) by Finance Act 2001 (c. 9), **s. 71(1)**

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F687 S. 95A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 75, **Sch. 3** (with Sch. 2)

96 Farming and market gardening: relief for fluctuating profits.

F688 . . . . . .

Textual Amendments

F688 S. 96 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 76, **Sch. 3** (with Sch. 2)

97 Treatment of farm animals etc.

M124Schedule 5 shall have effect with respect to the treatment, in computing **[**F689profits**]** for the purposes of Case I of Schedule D, of animals and other living creatures kept for the purposes of farming or any other trade.

Textual Amendments

F689 Words in s. 97 substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

Marginal Citations

M124 SOURCE-1970 s. 139

[F690**98 Tied premises: receipts and expenses treated as those of trade.**

(1) This section applies **[**F691for corporation tax purposes**]** where **[**F692a company ("the trader")**]**—

(a) carries on a trade,

(b) in the course of the trade supplies, or is concerned in the supply of, goods sold or used on premises occupied by **[**F693a person other than the trader**]**,

(c) has an estate or interest in those premises, and

(d) deals with that estate or interest as property employed for the purposes of the trade.

(2) Where this section applies the receipts and expenses in connection with the premises that would otherwise fall to be brought into account in computing the profits of a Schedule A business carried on by the trader shall instead be brought into account in computing the profits of the trade.

(3) Any necessary apportionment shall be made on a just and reasonable basis of receipts or expenses—

(a) which do not relate only to the premises concerned, or

(b) where the conditions in subsection (1) are met only in relation to part of the premises.

(4) This section applies to premises outside the United Kingdom as if the premises were in the United Kingdom.**]**

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Textual Amendments

F690 S. 98 substituted (17.3.1998) by Finance Act 1998 (c. 36), **s. 41(1)(3)** (with s. 41(4)-(7))

F691 Words in s. 98(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 77(a)** (with Sch. 2)

F692 Words in s. 98(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 77(b)** (with Sch. 2)

F693 Words in s. 98(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 77(c)** (with Sch. 2)

99 Dealers in land.

(1) [M125]In computing for **[**[F694]corporation tax purposes**]** the **[**[F695]profits**]** of a trade of dealing in land, there shall be disregarded—

(a) so much of the cost of woodlands in the United Kingdom purchased in the course of the trade as is attributable to trees or saleable underwood growing on the land; and

(b) where any amount has been disregarded under paragraph (a) above and, on a subsequent sale of the woodlands in the course of the trade, all or any of the trees or underwood to which the amount disregarded was attributable are still growing on the land, so much of the price for the land as is equal to the amount so disregarded in respect of those trees or underwood.

(2) [M126]In computing the **[**[F695]profits**]** of a trade of dealing in land, any trading receipt falling within subsection (1), (4) or (5) of section 34 or section 35 or 36 shall be treated as reduced by the amount on which **[**[F696]corporation tax**]** is chargeable by virtue of that section.

(3) Where, on a claim being made under subsection (2)(b) of section 36, the amount on which **[**[F697]corporation tax**]** was chargeable by virtue of that section is treated as reduced, subsection (2) above shall be deemed to have applied to the amount as reduced, and any such adjustment of liability to **[**[F697]corporation tax**]** shall be made (for all relevant **[**[F698]accounting periods**]**) whether by means of an assessment or otherwise, as may be necessary, and may be so made at any time at which it could be made if it related only to **[**[F697]corporation tax**]** for the **[**[F699]accounting period**]** in which that claim is made.

(4) [M127]Subsection (1) above shall not apply where the purchase mentioned in paragraph (a) of that subsection was made under a contract entered into before 1st May 1963.

Textual Amendments

F694 Words in s. 99(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 78(2)** (with Sch. 2)

F695 Words in s. 99(1)(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F696 Words in s. 99(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 78(3)** (with Sch. 2)

F697 Words in s. 99(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 78(4)(a)** (with Sch. 2)

F698 Words in s. 99(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 78(4)(b)** (with Sch. 2)

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F699 Words in s. 99(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 78(4)(c)** (with Sch. 2)

Marginal Citations
M125 SOURCE-1970 s. 142(1)
M126 SOURCE-1970 s. 142(2), (4)
M127 SOURCE-1970 s. 142(2), (4)

CHAPTER VI

DISCONTINUANCE [F700]. . .

Textual Amendments
F700 Words in Pt. 4 Ch. 6 heading repealed (with application in accordance with Sch. 27 Pt. 3(6) Note of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(6)**

Valuation of trading stock etc.

100 Valuation of trading stock at discontinuance of trade.

(1) [M128]In computing for **[**[F701]any corporation tax purpose**]** the **[**[F702]profits**]** of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance shall be valued as follows—

(a) if—

(i) the stock is sold or transferred for valuable consideration to a person who carries on, or intends to carry on, a trade in the United Kingdom, and

(ii) the cost of the stock may be deducted by the purchaser as an expense in computing for any tax purpose the **[**[F702]profits**]** of that trade,

the value of the stock shall be taken to be the amount **[**[F703]determined in accordance with subsections (1A) to (1C) below; and**]**

(b) if the stock does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

[[F704](1ZA) This section does not apply in relation to any trading stock if paragraph 1(2) of Schedule 28AA (provision not at arm's length) has effect in relation to any provision made or imposed in relation to that stock and having effect in connection with the discontinuance of the trade.**]**

[[F705](1A) Subject to subsections (1B) and (1C) below and to paragraph 2 of Schedule 12 to the [M129]Finance Act 1988 (gilt-edged securities and other financial trading stock), the value of any trading stock falling to be valued under paragraph (a) of subsection (1) above shall be taken—

(a) except where the person to whom it is sold or transferred is connected with **[**[F706]the company which**]** makes the sale or transfer, to be the amount ("the price actually received for it") which is in fact realised on the sale or, as the

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case may be, which is in fact the value of the consideration given for the transfer; and

(b) if **[**F707that person and that company**]** are connected with each other, to be what would have been the price actually received for it had the sale or transfer been a transaction between independent persons dealing at arm's length.

(1B) In a case falling within subsection (1)(a) above—

(a) F708. . . . . .

(b) stock sold in circumstances in which the amount realised on the sale would be taken to be an amount determined in accordance with paragraph 5 of Schedule 5 shall be taken to have the value so determined, instead of the value for which subsection (1A)(a) or (b) above provides.

(1C) If—

(a) trading stock is sold or transferred to a person in circumstances where paragraph (b) of subsection (1A) above would apply (apart from this subsection) for determining the value of the stock so sold or transferred,

(b) the amount which would be taken in accordance with that paragraph to be the value of all of the stock sold or transferred to that person is more than the acquisition value of that stock and also more than the price actually received for it, and

(c) both parties to the sale or transfer, by notice signed by them and sent to the inspector no later than two years after the end of the **[**F709accounting period**]** in which the trade is discontinued, elect that this subsection shall apply,

then the stock sold or transferred to that person shall be taken to have a value equal to whichever is the greater (taking all the stock so sold or transferred together) of its acquisition value and the price actually received for it or, in a case where they are the same, to either of them.

(1D) In subsection (1C) above "acquisition value", in relation to any trading stock, means the amount which, in computing for any **[**F710corporation**]** tax purposes the **[**F702profits**]** of the discontinued trade, would have been deductible as representing the acquisition value of that stock if—

(a) the stock had, immediately before the discontinuance, been sold in the course of the trade for a price equal to whatever would be its value in accordance with subsection (1A)(b) above; and

(b) the period for which those **[**F702profits**]** were to be computed began immediately before the sale.

(1E) **[**F711Where the value of the trading stock is determined in accordance with subsections (1A) to (1C) above, or sections 176 to 178 of ITTOIA 2005 or section 127 of that Act (by virtue of section 175(3)) (corresponding provisions for income tax purposes),**]** the amount to be brought into account as the value of that stock in computing **[**F702profits**]** of the discontinued trade shall also be taken, for the purpose of making **[**F712for corporation tax purposes**]** any deduction in computing the **[**F702profits**]** of any trade carried on by the purchaser, to be the cost of that stock to the purchaser.

(1F) For the purposes of this section two persons are connected with each other if—

(a) they are connected with each other within the meaning of section 839;

(b) one of them is a partnership and the other has a right to a share in the partnership;

(c) one of them is a body corporate and the other has control over that body;

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(d) both of them are partnerships and some other person has a right to a share in each of them; or

(e) both of them are bodies corporate or one of them is a partnership and the other is a body corporate and, in either case, some other person has control over both of them;

and in this subsection the references to a right to a share in a partnership are references to a right to a share of the assets or income of the partnership and "control" has the meaning given by section 840.

(1G) In this section "purchaser", in relation to a transfer otherwise than by sale, means the person to whom the transfer is made.**]**

(2) [M130]For the purposes of this section "trading stock", in relation to any trade—

(a) means property of any description, whether real or personal, being either—

(i) property such as is sold in the ordinary course of the trade, or would be so sold if it were mature or if its manufacture, preparation or construction were complete; or

(ii) materials such as are used in the manufacture, preparation or construction of any such property as is referred to in sub-paragraph (i) above; and

(b) includes also any services, article or material which would, if the trade were a profession [F713]. . . , be treated, for the purposes of section 101, as work in progress of the profession [F713]. . . , and references to the sale or transfer of trading stock shall be construed accordingly.

[[F714](3) Where trading stock falling to be valued under paragraph (a) of subsection (1) above is sold or transferred together with other assets, so much of the amount realised on the sale or, as the case may be, of the value of the consideration given for the transfer as on a just and reasonable apportionment is properly attributable to each asset shall be treated for the purposes of this section as the amount realised on the sale or, as the case may be, the value of the consideration given for the transfer, of that asset.**]**

Textual Amendments

F701 Words in s. 100(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(2)** (with Sch. 2)

F702 Words in s. 100(1)(1D)(1E) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F703 Words in s. 100(1)(a) substituted (with application in accordance with s. 140(2) of the amending Act) by Finance Act 1995 (c. 4), **s. 140(1)**

F704 S. 100(1ZA) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 2(2)**

F705 S. 100(1A)-(1G) inserted (with application in accordance with s. 140(2) of the amending Act) by Finance Act 1995 (c. 4), by {s. 140(1)}

F706 Words in s. 100(1A)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(3)(a)** (with Sch. 2)

F707 Words in s. 100(1A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(3)(b)** (with Sch. 2)

F708 S. 100(1B)(a) repealed (24.7.2002) by Finance Act 2002 (c. 23), s. 105(1), **Sch. 40 Pt. 3(17)**

F709 Words in s. 100(1C)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(4)** (with Sch. 2)

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F710 Word in s. 100(1D) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(5)** (with Sch. 2)
F711 Words in s. 100(1E) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(6)(a)** (with Sch. 2)
F712 Words in s. 100(1E) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 79(6)(b)** (with Sch. 2)
F713 Words in s. 100(2)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 79(7), **Sch. 3** (with Sch. 2)
F714 S. 100(3) inserted (with application in accordance with s. 106(2) of the amending Act) by Finance Act 2002 (c. 23), **s. 106(1)**

Modifications etc. (not altering text)
C123 S. 100 excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 11(3)**; S.I. 2003/120, art. 2, **Sch.** (with arts. 3-7 (as amended by S.I. 2003/333, **art. 14**))
C124 *See*—1988(F) Sch.12 para.2—*building societies converting to companies.*Trustee Savings Bank Act 1985 (c.58) s.5*and* Sch.2 para.6(1)—*this provision not to apply to the discontinuance of an existing bank under the* TSB Act 1985.

Marginal Citations
M128 Source—1970 s.137(1)
M129 1988 c. 39.
M130 Source—1970 s.137(4)

101 Valuation of work in progress at discontinuance of profession or vocation.

(1) **M131**Where, in computing for **[**F715any corporation tax purpose**]** the **[**F716profits**]** of a profession F717. . . which has been discontinued, a valuation is taken of the work of the profession F717. . . in progress at the discontinuance, that work shall be valued as follows—

(a) if—

(i) the work is transferred for money or any other valuable consideration to a person who carries on, or intends to carry on, a profession F717. . . in the United Kingdom, and

(ii) the cost of the work may be deducted by that person as an expense in computing for any tax purpose the **[**F716profits**]** of that profession F717. . . ,

the value of the work shall be taken to be the amount paid or other consideration given for the transfer; and

(b) if the work does not fall to be valued under paragraph (a) above, its value shall be taken to be the amount which would have been paid for a transfer of the work on the date of the discontinuance as between parties at arm's length.

(2) **M132**Where a profession F718. . . is discontinued, and the **[**F719company by which**]** it was carried on immediately before the discontinuance so elects by notice sent to the inspector at any time within **[**F720the period specified in subsection (2A) below**]**—

(a) the amount (if any) by which the value of the work in progress at the discontinuance (as ascertained under subsection (1) above) exceeds the actual cost of the work shall not be brought into account in computing the **[**F716profits**]** of the period immediately before the discontinuance; but

(b) the amount by which any sums received for the transfer of the work exceed the actual cost of the work shall be included in the sums chargeable to tax by

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virtue of section 103 as if it were a sum to which that section applies received after the discontinuance.

[F721(2A) The period mentioned in subsection (2) above is—

(a) F722. . . . . .

(b) F723. . . the period of two years beginning at the end of the accounting period in which the profession F723. . . is discontinued.**]**

(3) M133References in this section to work in progress at the discontinuance of a profession F724. . . shall be construed as references to—

(a) any services performed in the ordinary course of the profession F724. . . , the performance of which was wholly or partly completed at the time of the discontinuance and for which it would be reasonable to expect that a charge would have been made on their completion if the profession F724. . . had not been discontinued; and

(b) any article produced, and any such material as is used, in the performance of any such services,

and references in this section to the transfer of work in progress shall include references to the transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the carrying out of the work.

Textual Amendments

F715 Words in s. 101(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 80(2)(a)** (with Sch. 2)

F716 Words in s. 101(1)(2)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F717 Words in s. 101(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 80(2)(b), **Sch. 3** (with Sch. 2)

F718 Words in s. 101(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 80(3), **Sch. 3** (with Sch. 2)

F719 Words in s. 101(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 80(3)** (with Sch. 2)

F720 Words in s. 101(2) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 3(2)**

F721 S. 101(2A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 3(3)**

F722 S. 101(2A)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 80(4)(a), **Sch. 3** (with Sch. 2)

F723 Words in s. 101(2A)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 80(4)(b), **Sch. 3** (with Sch. 2)

F724 Words in s. 101(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 80(5), **Sch. 3** (with Sch. 2)

Marginal Citations

M131 Source—1970 s.138(1)

M132 Source—1970 s.138(3)

M133 Source—1970 s.138(5)

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102 Provisions supplementary to sections 100 and 101.

(1) [M134]Any question arising under section 100(1)(a) or 101(1)(a) shall be determined as follows, for the purpose of computing for any tax purpose the **[**[F725]profits**]** of both the trades or, as the case may be, the professions [F726]. . . concerned—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to **[**[F727]each of the persons whose **[**[F728]trade or profession**]** is one of those**]** concerned, the question shall be determined by those Commissioners unless all parties concerned agree that it shall be determined by the Special Commissioners;

(b) in any other case, the question shall be determined by the Special Commissioners; and

(c) the General or Special Commissioners shall determine the question in like manner as an appeal.

(2) [M135]Where, by virtue of section [F729]. . . 337(1), a **[**[F730]trade or profession**]** is treated as having been permanently discontinued for the purpose of computing **[**[F731]corporation**]** tax, it shall also be so treated for the purposes of sections 100 and 101[F729]. . . .

Textual Amendments

F725 Words in s. 102(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F726 Words in s. 102(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 81(2)(a), **Sch. 3** (with Sch. 2)

F727 Words in s. 102(1)(a) substituted (with effect in accordance with Sch. 22 para. 12 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 22 para. 11**

F728 Words in s. 102(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 81(2)(b)** (with Sch. 2)

F729 Words in s. 102(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 81(3)(a)(d), **Sch. 3** (with Sch. 2)

F730 Words in s. 102(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 81(3)(b)** (with Sch. 2)

F731 Word in s. 102(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 81(3)(c)** (with Sch. 2)

Marginal Citations

M134 Source—1970 s.137(2), 138(2)

M135 Source—1970 s.137(3), 138(4)

Case VI charges on receipts

103 Receipts after discontinuance: earnings basis charge and related charge affecting conventional basis.

[M136](1) Where any trade, profession or vocation **[**[F732]carried on wholly or partly in the United Kingdom**]** the **[**[F733]profits**]** of which are chargeable to tax [F734]. . . has been permanently discontinued, **[**[F735]corporation tax shall be charged under Case VI of Schedule D**]** in respect of any sums to which this section applies which are received after the discontinuance.

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(2) Subject to subsection (3) below, this section applies to the following sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance (not being sums otherwise chargeable to tax)—

(a) where the **[**F733profits**]** for that period were computed by reference to earnings, all such sums in so far as their value was not brought into account in computing the **[**F733profits**]** for any period before the discontinuance, and

(b) where those **[**F733profits**]** were computed on a conventional basis (that is to say, were computed otherwise than by reference to earnings), any sums which, if those **[**F733profits**]** had been computed by reference to earnings, would not have been brought into the computation for any period before the discontinuance because the date on which they became due, or the date on which the amount due in respect thereof was ascertained, fell after the discontinuance.

(3) This section does not apply to any of the following sums—

(a) sums received by a **[**F736company**]** beneficially entitled thereto **[**F737which**]** is not resident in the United Kingdom, or by a person acting on **[**F738its**]** behalf, which represent income arising directly or indirectly from a country or territory outside the United Kingdom, or

(b) F739 . . . . . .

[F740(bb) F739 . . . . . .**]**

(c) sums realised by the transfer of trading stock belonging to a trade at the discontinuance of the trade, or by the transfer of the work of a profession or vocation in progress at its discontinuance.

F741 . . . . . .

(4) Where—

(a) in computing for tax purposes the **[**F733profits**]** of a trade, profession or vocation a deduction has been allowed for any debt incurred for the purposes of the trade, profession or vocation, and

(b) the whole or any part of that debt is thereafter released **[**F742otherwise than as part of a **[**F743statutory insolvency arrangement**]]**, and

(c) the trade, profession or vocation has been permanently discontinued at or after the end of the period for which the deduction was allowed and before the release was effected,

subsections (1) to (3) above shall apply as if the amount released were a sum received after the discontinuance.

[F744(4A) F745 . . . . . .**]**

(5) For the purposes of this section the value of any sum received in payment of a debt shall be treated as not brought into account in the computation of the **[**F733profits**]** of a trade, profession or vocation to the extent that **[**F746a deduction has been made for tax purposes in respect of an impairment loss or a release of liability**]**.

Textual Amendments

F732 Words in s. 103(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 82(2)(a)** (with Sch. 2)

F733 Words in s. 103(1)(2)(a)(b)(4)(a)(5) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

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F734 Words in s. 103(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 82(2)(b), **Sch. 3** (with Sch. 2)

F735 Words in s. 103(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 82(2)(c)** (with Sch. 2)

F736 Word in s. 103(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 82(3)(a)(i)** (with Sch. 2)

F737 Word in s. 103(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 82(3)(a)(ii)** (with Sch. 2)

F738 Word in s. 103(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 82(3)(a)(iii)** (with Sch. 2)

F739 S. 103(3)(b)(bb) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 82(3)(b), **Sch. 3** (with Sch. 2)

F740 Sch.7 para.36(3)Copyright Designs and Patents Act 1988 (c.48)*in force on* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced*).

F741 Words in s. 103(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 82(3)(c), **Sch. 3** (with Sch. 2)

F742 Words in s. 103(4)(b) inserted (with effect in accordance with s. 144(7) of the amending Act) by Finance Act 1994 (c. 9), **s. 144(3)(b)**

F743 Words in s. 103(4)(b) substituted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 5(2)**

F744 S. 103(4A) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 144(5)**

F745 S. 103(4A) repealed (with effect in accordance with s. 80(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 5(3), **Sch. 11 Pt. 2(5)**, Note

F746 Words in s. 103(5) substituted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 5(5)**

Marginal Citations

M136 Source—1970 s.143; 1983 s.27(b)

104 Conventional basis: general charge on receipts after discontinuance F747. . . .

(1) M137Where any trade, profession or vocation **[**F748carried on wholly or partly in the United Kingdom**]** the **[**F749profits**]** of which are chargeable to tax F750. . . has been permanently discontinued, and the **[**F749profits**]** for any period before the discontinuance were computed on a conventional basis, **[**F751corporation tax shall be charged under Case VI of Schedule D**]** in respect of any sums to which this subsection applies which are received on or after the discontinuance.

(2) Subject to subsection (3) below, subsection (1) above applies to all sums arising from the carrying on of the trade, profession or vocation during any period before the discontinuance, not being sums otherwise chargeable to tax, in so far as the amount or value of the sums was not brought into account in computing the **[**F749profits**]** for any period before the discontinuance.

(3) In subsection (2) above the reference to sums otherwise chargeable to tax includes any sums which (disregarding this section) are chargeable to **[**F752corporation tax**]** under section 103 or to which that section would have applied but for subsection (3)(a) F753. . . of that section.

(4) F754. . . . . .

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(5) [F754] . . . . . .

(6) [M138]It is hereby declared that where work in progress at the discontinuance of a profession or vocation, or the responsibility for its completion, is transferred, the sums to which subsection (1) above applies include any sums received by way of consideration for the transfer, and any sums received by way of realisation by the transferee, on behalf of the transferor, of the work in progress transferred.

(7) [F754] . . . . . .

Textual Amendments

F747 Words in s. 104 sidenote repealed (with effect in accordance with Sch. 27 Pt. 3(6) Note of the repealing act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(6)**

F748 Words in s. 104(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 83(2)(a)** (with Sch. 2)

F749 Words in s. 104(1)(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F750 Words in s. 104(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 83(2)(b), **Sch. 3** (with Sch. 2)

F751 Words in s. 104(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 83(2)(c)** (with Sch. 2)

F752 Words in s. 104(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 83(3)(a)** (with Sch. 2)

F753 Words in s. 104(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 83(3)(b), **Sch. 3** (with Sch. 2)

F754 S. 104(4)(5)(7) repealed (with application in accordance with Sch. 27 Pt. 3(6) Note of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(6)**

Marginal Citations

M137 Source—1970 s.144(1)

M138 Source—1970 s.144(3), (4)

105 Allowable deductions.

[M139](1) In computing the charge to **[**[F755]corporation tax**]** in respect of sums received by any **[**[F756]company**]** which are chargeable to **[**[F755]corporation tax**]** by virtue of section 103 or 104(1) (including amounts treated as sums received by **[**[F757]it**]** by virtue of section 103(4)), there shall be deducted from the amount which, apart from this subsection, would be chargeable to **[**[F755]corporation tax**]**—

(a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade, profession or vocation had not been discontinued, would have been deducted in computing for tax purposes the **[**[F758]profits**]** of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those **[**[F758]profits**]** as so computed, and

(b) any capital allowance to which the person who carried on the trade, profession or vocation was entitled immediately before the discontinuance and to which effect has not been given by way of relief before the discontinuance.

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(2) No amount shall be deducted under subsection (1) above if that amount has been allowed under any other provision of the Tax Acts **[**F759or by virtue of section 90(4) of the Finance Act 1995**]**.

(3) No amount shall be deducted more than once under subsection (1) above; and—

(a) any expense or debit shall be apportioned between a sum chargeable under section 103 and a sum chargeable under section 104(1) in such manner as may be just;

(b) as between sums chargeable, whether under section 103 or 104(1), for one **[**F760accounting period**]** and sums so charged for a subsequent **[**F760accounting period**]**, any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier **[**F760accounting period**]**;

(c) subject to paragraph (b) above, as between sums chargeable for any **[**F760accounting period**]** under section 103 and sums so chargeable under section 104(1), any deduction in respect of a loss or capital allowance shall be made against the last-mentioned sums rather than the first-mentioned;

but, in the case of a loss which is to be allowed after the discontinuance, not so as to authorise its deduction from any sum chargeable for a **[**F760accounting period**]** preceding that in which the loss is incurred.

(4) F761 . . . . . .

Textual Amendments

F755 Words in s. 105(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 84(2)(a)** (with Sch. 2)

F756 Word in s. 105(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 84(2)(b)** (with Sch. 2)

F757 Word in s. 105(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 84(2)(c)** (with Sch. 2)

F758 Words in s. 105(1)(a)(4) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F759 Words in s. 105(2) inserted (with effect in accordance with s. 90(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 90(6)**

F760 Words in s. 105(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 84(3)** (with Sch. 2)

F761 S. 105(4) repealed (with application in accordance with Sch. 27 Pt. 3(6) Note of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(6)**

Modifications etc. (not altering text)

C125 S. 105 modified by Capital Allowances Act 1990 (c. 1), **s. 15A** (as inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 201, **Sch. 39 para. 1(2)**)

Marginal Citations

M139 Source—1970 s.145

106 Application of charges where rights to payments transferred.

M140(1) Subject to subsection (2) below, in the case of a transfer for value of the right to receive any sum to which section 103, 104(1) or 104(4) applies, any **[**F762corporation tax**]** chargeable by virtue of either of those sections shall be charged in respect of the

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amount or value of the consideration (or, in the case of a transfer otherwise than at arm's length, in respect of the value of the right transferred as between parties at arm's length), and references in this Chapter, except section 101(2), to sums received shall be construed accordingly.

(2) Where a trade, profession or vocation is treated as permanently discontinued by reason of a change in the persons carrying it on, and the right to receive any sum to which section 103 or 104(1) applies is or was transferred at the time of the change to **[**F763the company carrying on the trade,**]** profession or vocation after the change, **[**F764corporation tax**]** shall not be charged by virtue of either of those sections, but any sum received by **[**F765that company**]** by virtue of the transfer shall be treated for **[**F766corporation tax purposes**]** as a receipt to be brought into the computation of the **[**F767profits**]** of the trade, profession or vocation in the period in which it is received.

Textual Amendments

F762 Words in s. 106(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 85(2)** (with Sch. 2)

F763 Words in s. 106(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 85(3)(a)** (with Sch. 2)

F764 Words in s. 106(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 85(3)(b)** (with Sch. 2)

F765 Words in s. 106(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 85(3)(c)** (with Sch. 2)

F766 Words in s. 106(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 85(3)(d)** (with Sch. 2)

F767 Word in s. 106(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

Marginal Citations

M140 Source—1970 s.147

Reliefs

107 Treatment of receipts as earned income.

F768 . . . . . .

Textual Amendments

F768 S. 107 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 86, **Sch. 3** (with Sch. 2)

108 Election for carry-back.

F769 . . . . . .

Textual Amendments

F769 S. 108 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 87, **Sch. 3** (with Sch. 2)

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109 Charge under section 104: relief for individuals born before 6th April 1917.

F770 . . . . . .

Textual Amendments

F770 S. 109 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 88, **Sch. 3** (with Sch. 2)

[F771 Relief for post-cessation expenditure

Textual Amendments

F771 S. 109A and preceding cross-heading inserted (with effect in accordance with s. 90(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 90(1)**

109A Relief for post-cessation expenditure.

(1) Where in connection with a trade, profession or vocation formerly carried on by him which has been permanently discontinued a person makes, within seven years of the discontinuance, a payment to which this section applies, he may, by notice given within twelve months from the 31st January next following the year of assessment in which the payment is made, claim relief from income tax on an amount of his income for that year equal to the amount of the payment.

(2) This section applies to payments made wholly and exclusively—

(a) in remedying defective work done, goods supplied or services rendered in the course of the former trade, profession or vocation or by way of damages (whether awarded or agreed) in respect of any such defective work, goods or services; or

(b) in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective;

(c) in insuring against any liabilities arising out of any such claim or against the incurring of such expenses; or

(d) for the purpose of collecting a debt taken into account in computing the **[**F772profits**]** of the former trade, profession or vocation.

(3) F773 . . . . . .

(4) Where a trade, profession or vocation carried on by a person has been permanently discontinued and subsequently an unpaid debt which was taken into account in computing the **[**F772profits**]** of that trade, profession or vocation and to the benefit of which he is entitled**][**F774 is released in whole or in part as part of a relevant arrangement or compromise (within the meaning of section 74), he shall be treated as making a payment to which this section applies of—

(a) an amount equal to the amount released, or

(b) if he was entitled to only part of the benefit of the debt, an amount equal to an appropriate proportion of that amount.**]**

F775 . . . . . .

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[F776(4A) Where a trade, profession or vocation carried on by a person has been permanently discontinued and subsequently an unpaid debt which was taken into account in computing the **[**F772profits**]** of that trade, profession or vocation and to the benefit of which he is entitled, proves to be bad, then if—

(a) in making a claim for a year of assessment under subsection (1) above he gives notice that the debt was bad in any part of that year, and

(b) he has not given such a notice in respect of that debt in the making of any other such claim,

he shall be treated as making in that year a payment to which this section applies of an amount equal to the amount of the debt or, if he was entitled to only part of the benefit of the debt, to an appropriate proportion of that amount.

F777 . . . . . .**]**

(5) Where in the case of a trade, profession or vocation which has subsequently been permanently discontinued a deduction was made in computing the profits or losses of the trade, profession or vocation in respect of an expense not actually paid (an "unpaid expense"), then—

(a) if relief under this section in connection with that trade, profession or vocation is claimed in respect of any year of assessment, the amount of the relief shall be reduced by the amount of any unpaid expenses at the end of that year;

(b) for the purposes of the application of paragraph (a) above in relation to a subsequent year of assessment, any amount by which relief under this section has been reduced by virtue of that paragraph shall be treated as having been paid in respect of the expense in question; and

(c) if subsequently any amount is in fact paid in respect of an expense in respect of which a reduction has been made under paragraph (a), that amount (or, if less, the amount of the reduction) shall be treated as a payment to which this section applies.

(6) Relief shall not be given under this section in respect of an amount for which relief has been given or is available under any other provision of the Income Tax Acts.

In applying this subsection relief available under **[**F778section 254 of ITTOIA 2005 (allowable deductions against post-cessation receipts charged to income tax)**]** shall be treated as given in respect of other amounts before any amount in respect of which relief is available under this section.

[F779(6A) This section applies in relation to a UK property business as it applies in relation to a trade, profession or vocation.**]**

(7) This section does not apply for the purposes of corporation tax.

Textual Amendments

F772 Words in s. 109A(2)(d)(4)(4A) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F773 S. 109A(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 89(2), **Sch. 3** (with Sch. 2)

F774 Words in s. 109A(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 5(1)**

F775 Words in s. 109A(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 89(3), **Sch. 3** (with Sch. 2)

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F776 S. 109A(4A) inserted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 5(2)**

F777 Words in s. 109A(4A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 89(4), **Sch. 3** (with Sch. 2)

F778 Words in s. 109A(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 89(5)** (with Sch. 2)

F779 S. 109A(6A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 89(6)** (with Sch. 2)

Modifications etc. (not altering text)

C126 S. 109A(1) modified (with application as stated in s. 90(7) of the modifying Act) by Finance Act 1995 (c. 4), **s. 90(2)**

Supplemental

110 Interpretation etc.

(1) [M141]The following provisions have effect for the purposes of **[**[F780]sections 103 to 109A**]**.

[[F781](1A) In the case of a trade carried on by a person other than a company or a profession or vocation within the charge to income tax carried on by any person, any reference to the permanent discontinuance of a trade, profession or vocation includes a reference to—

(a) a person permanently ceasing to carry on a trade, profession or vocation, or

(b) in relation to a trade or profession carried on by a person in partnership with other persons, the occurrence of an event treated under section 246(4) of ITTOIA 2005 (basic meaning of "post-cessation receipt") as a person permanently ceasing to carry on a trade or profession.

(1B) In the case of a trade carried on by a company, any reference to the permanent discontinuance of a trade includes a reference to the occurrence of an event treated under section 337(1) below as a discontinuance or treated under section 18 of ITTOIA 2005 (companies beginning or ceasing to carry on trade) as the company permanently ceasing to carry on the trade.

(1C) In the case of a UK property business carried on by a person other than a company, any reference to the permanent discontinuance of a UK property business includes a reference to—

(a) a person permanently ceasing to carry on a UK property business, or

(b) in relation to a UK property business carried on by a person in partnership with other persons, the occurrence of an event treated under section 353(3) of ITTOIA 2005 (basic meaning of "post-cessation receipt") as a person permanently ceasing to carry on a UK property business.

(1D) In the case of a UK property business carried on by a company, any reference to the permanent discontinuance of a UK property business includes a reference to the occurrence of an event treated under section 362 of ITTOIA 2005 (companies beginning or ceasing to be within the charge to income tax) as the company permanently ceasing to carry on the business.**]**

(3) [M142]The **[**[F782]profits**]** of a trade, profession or vocation in any period shall be treated as computed by reference to earnings where all credits and liabilities accruing during that period as a consequence of its being carried on are brought into account in computing

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those **[**F782profits**]** for tax purposes, and not otherwise, and "earnings basis" shall be construed accordingly.

(4) "Conventional basis" has the meaning given by section 103(2), so that **[**F782profits**]** are computed on a conventional basis if computed otherwise than by reference to earnings.

(5) There is a change from a conventional basis to the earnings basis at the end of a period the **[**F782profits**]** of which were computed on a conventional basis if the **[**F782profits**]** of the next succeeding period are computed by reference to earnings; and, if the **[**F782profits**]** of two successive periods are computed on different conventional bases, a change of conventional basis occurs at the end of the earlier period.

(6) In sections 103 and 104—

(a) "trading stock" has the meaning given by section 100(2);

(b) references to work in progress at the discontinuance of a profession or vocation, and to the transfer of work in progress, are to be construed in accordance with section 101(3); and

(c) the reference to work in progress at the time of a change of basis is also to be construed in accordance with section 101(3), substituting therein for this purpose references to the change of basis for references to the discontinuance.

Textual Amendments

F780 Words in s. 110(1) substituted (with effect in accordance with s. 90(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 90(3)**

F781 S. 110(1A)-(1D) subsituted for s. 110(2) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 90** (with Sch. 2)

F782 Words in s. 110(3)(4)(5) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

Marginal Citations

M141 Source—1970 s.151(1)

M142 Source—1970 s.151(2)-(5)

[F783[F784 Change of residence]

Textual Amendments

F783 S. 110A and preceding cross-heading inserted (with effect in accordance with s. 124(2) of the amending Act) by Finance Act 1995 (c. 4), **s. 124(1)**

F784 S. 110A and preceding cross-heading repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 91, **Sch. 3** (with Sch. 2)

110A Change of residence.

F785 . . . . . .**]**

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Textual Amendments

F785 S. 110A and preceding cross-heading repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 91, **Sch. 3** (with Sch. 2)

CHAPTER VII

PARTNERSHIPS AND SUCCESSIONS

General

[F786 111 Treatment of partnerships.

(1) Where a trade or profession is carried on by persons in partnership, the partnership shall not, unless the contrary intention appears, be treated for [F787 corporation tax purposes] as an entity which is separate and distinct from those persons.

(2) F788 . . . . . .

(3) F788 . . . . . .

(4) F788 . . . . . .

(5) F788 . . . . . .

(6) F788 . . . . . .

(7) F788 . . . . . .

(8) F788 . . . . . .

(9) F788 . . . . . .

(10) F788 . . . . . .

(11) F788 . . . . . .

(12) F788 . . . . . .

(13) F788 . . . . . .]

Textual Amendments

F786 S. 111 substituted (with effect in accordance with s. 215(4)(5) of the 1994 amending Act) by Finance Act 1994 (c. 9), **s. 215(1)** (as amended (retrospectively) by Finance Act 1995 c. 4, **s. 117(1)(a)(2)(4)**) (with Sch. 20)

F787 Words in s. 111(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 92(2)** (with Sch. 2)

F788 S. 111(2)-(13) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 92(3), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C127 S. 111 modified (1.5.1995) by Finance Act 1995 c. 4, **s. 125(1)**

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C128 S. 111 excluded (subsection (1) excepted) (with application in accordance with s. 44 of the excluding act) by Finance Act 1998 (c. 36), s. 46(1)(2), **Sch. 6 para. 6(6)**

C129 S. 111 excluded (subsection (1) excepted) (with effect in accordance with s. 64 and Sch. 22 paras. 16-18 of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 22 para. 13(6)**

112 Partnerships controlled abroad.

F789 . . . . . .

Textual Amendments

F789 S. 112 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 93, **Sch. 3** (with Sch. 2)

113 Effect, for income tax, of change in ownership of trade, profession or vocation.

F790 . . . . . .

Textual Amendments

F790 S. 113 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 94, **Sch. 3** (with Sch. 2)

Partnerships involving companies

114 Special rules for computing profits and losses.

(1) M143So long as a trade **[**F791profession or business**]** is carried on by persons in partnership, and any of those persons is a company, the profits and losses (including terminal losses) of the trade **[**F791profession or business**]** shall be computed for the purposes of corporation tax in like manner, and by reference to the like accounting periods, as if the partnership were a company **[**F792and, subject to section 115(4), as if that company were resident in the United Kingdom**]**, and without regard to any change in the persons carrying on the trade **[**F791profession or business**]**, except that—

(a) references to distributions shall not apply; and

(b) subject to section 116(5), no deduction or addition shall be made for charges on income, or for capital allowances and charges, nor in any accounting period for losses incurred in any other period nor for any expenditure to which section 401(1) applies; and

(c) a change in the persons engaged in carrying on the trade **[**F791profession or business**]** shall be treated as the transfer of the trade **[**F791profession or business**]** to a different company if there continues to be a company so engaged after the change, but not a company that was so engaged before the change.

(2) M144A company's share in the profits or loss of any accounting period of the partnership, or in any matter excluded from the computation by subsection (1)(b) above, shall be determined according to the interests of the partners during that period, and corporation tax shall be chargeable as if that share derived from a trade

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[F791profession or business**]** carried on by the company alone in its corresponding accounting period or periods; and the company shall be assessed and charged to tax for its corresponding accounting period or periods accordingly.

In this subsection "corresponding accounting period or periods" means the accounting period or periods of the company comprising or together comprising the accounting period of the partnership, and any necessary apportionment shall be made between corresponding accounting periods if more than one.

(3) F793. . . . . .

(4) F794. . . . . .

Textual Amendments

F791 Words in s. 114(1)-(3) inserted (with effect in accordance with s. 215(4)(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 215(2)** (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

F792 Words in s. 114(1) inserted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), **s. 125(4)**

F793 S. 114(3) repealed (with effect in accordance with Finance Act 1994 (c. 9), s. 218(1)) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(15)**, Note 1

F794 S. 114(4) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 215(3)(a), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

Modifications etc. (not altering text)

C130 S. 114(1) modified (3.5.1994) by Finance Act 1994 (c. 9), **s. 172(4)-(6)**

Marginal Citations

M143 Source—1970 s.155(1); 1973 s.31(5); 1980 s.39(3)

M144 Source—1970 s.155(2); 1972 s.107(2)

115 Provisions supplementary to section 114.

(1) F795. . . . . .

(2) F795. . . . . .

(3) F795. . . . . .

[F796(4) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is a company which is not resident in the United Kingdom, section 114 shall have effect in relation to that company as if—

(a) the reference in subsection (1) to a company resident in the United Kingdom were a reference to a company that is not so resident; and

(b) in subsection (2), after "carried on" there were inserted "in the United Kingdom through a **[**F797permanent establishment**]**".

[F798(5) Subsections (5A) and (5B) apply if—

(a) a company resident in the United Kingdom ("the resident partner") is a member of a partnership which resides outside the United Kingdom or which carries on any trade, profession or business the control and management of which is situated outside the United Kingdom, and

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(b) by virtue of any arrangements falling within section 788 ("the arrangements") any of the income or capital gains of the partnership is relieved from corporation tax in the United Kingdom.

(5A) The arrangements do not affect any liability to corporation tax in respect of the resident partner's share of any income or capital gains of the partnership (and section 114 has effect accordingly).

(5B) If the resident partner's share of the income of the partnership consists of or includes a share in a qualifying distribution made by a company resident in the United Kingdom, the resident partner (and not the partnership) is, despite the arrangements, entitled to the share of the tax credit in respect of the distribution which corresponds to the partner's share of the distribution (and section 114 has effect accordingly).**]]**

[[F799](5C) For the purposes of subsections (5) to (5B) the members of a partnership include any company which is entitled to a share of income or capital gains of the partnership.**]**

(6) [F795] . . . . . .

(7) For the purposes of this section and section 114 "profits" shall not be taken as including chargeable gains.

Textual Amendments

F795 S. 115(1)-(3)(6) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 215(3)(b), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, s. 125(1)) (with Sch. 20)

F796 S. 115(4)(5) substituted (with effect in accordance with s. 125(1) of the amending Act) by Finance Act 1995 (c. 4), **s. 125(5)**

F797 Words in s. 115(4)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F798 S. 115(5)-(5B) substituted for s. 115(5) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 95(2)** (with Sch. 2)

F799 S. 115(5C) inserted (retrospectively) by Finance Act 2008 (c. 9), **s. 58(1)(4)**

Modifications etc. (not altering text)

C131 S. 115(5) modified (with retrospective effect) by Finance Act 2008 (c. 9), **s. 58(5)(6)(b)**

116 Arrangements for transferring relief.

[M145](1) The provisions of subsection (2) below shall apply in relation to a company ("the partner company") which is a member of a partnership carrying on a trade if arrangements are in existence (whether as part of the terms of the partnership or otherwise) whereby—

(a) in respect of the whole or any part of the value of, or of any portion of, the partner company's share in the profits or loss of any accounting period of the partnership, another member of the partnership or any person connected with another member of the partnership receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth; or

(b) in respect of the whole or any part of the cost of, or of any portion of, the partner company's share in the loss of any accounting period of the partnership, the partner company or any person connected with that company

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receives any payment or acquires or enjoys, directly or indirectly, any other benefit in money's worth, other than a payment in respect of group relief to the partner company by a company which is a member of the same group as the partner company for the purposes of group relief.

(2) In any case where the provisions of this subsection apply in relation to the partner company—

(a) the company's share in the loss of the relevant accounting period of the partnership and its share in any charges on income, within the meaning of section 338, paid by the partnership in that accounting period shall not be available for set-off for the purposes of corporation tax except against its share in the profits of the trade carried on by the partnership; and

(b) except in accordance with paragraph (a) above, no trading losses shall be available for set-off for the purposes of corporation tax against the company's share in the profits of the relevant accounting period of the partnership; and

(c) except in accordance with paragraphs (a) and (b) above, no amount which, apart from this subsection, would be available for relief against profits shall be available for set-off for the purposes of corporation tax against so much of the company's total profits as consists of its share in the profits of the relevant accounting period of the partnership; and

(d) F800 . . . . . .

(3) In subsection (2) above "relevant accounting period of the partnership" means any accounting period of the partnership in which any such arrangements as are specified in subsection (1) above are in existence or to which any such arrangements apply.

(4) If a company is a member of a partnership and **[**F801corporation**]** tax in respect of any profits of the partnership is chargeable under Case VI of Schedule D, this section shall apply in relation to the company's share in the profits or loss of the partnership as if—

(a) the profits or loss to which the company's share is attributable were the profits of, or the loss incurred in, a trade carried on by the partnership; and

[F802(b) any allowance to be given effect under Part 2 of the Capital Allowances Act in respect of a special leasing of plant or machinery were an allowance to be given effect in calculating the profits of that trade.**]**

(5) For the purposes of this section, subsection (2) of section 114 shall have effect for determining a company's share in the profits or loss of any accounting period of a partnership as if, in subsection (1)(b) of that section, the words " or for capital allowances and charges " were omitted.

(6) In this section "arrangements" means arrangements of any kind whether in writing or not.

(7) Section 839 shall apply for the purposes of this section.

Textual Amendments

F800 S. 116(2)(d) repealed (with effect in accordance with Sch. 3 para. 10(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 10(2), **Sch. 27 Pt. 3(2)**, Note

F801 Word in s. 116(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 96** (with Sch. 2)

F802 S. 116(4)(b) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 21**

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Marginal Citations
M145 Source—1973 s.31(1)-(5), (9), 32(6)

Limited partners

117 Restriction on relief: individuals.

(1) M146An amount which may be given F803. . . to an individual under section F804. . . 380 or 381 below F805. . . —

(a) in respect of a loss sustained by him in a trade F806. . . in a relevant year of assessment;F807. . .

(b) F807. . . . . .

may be given F803. . . otherwise than against income consisting of **[**F808profits**]** arising from the trade only to the extent that the amount given F803. . . or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) M147In this section—

"limited partner" means—

(i) a person who is carrying on a trade as a limited partner in a limited partnership registered under the M148Limited Partnerships Act 1907;

(ii) a person who is carrying on a trade as a general partner in a partnership, who is not entitled to take part in the management of the trade and who is entitled to have his liabilities, or his liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade discharged or reimbursed by some other person; or

(iii) a person who carries on a trade jointly with others and who, under the law of any territory outside the United Kingdom, is not entitled to take part in the management of the trade and is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;

"relevant year of assessment" means a year of assessment at any time during which the individual carried on the trade as a limited partner;

"the aggregate amount" means the aggregate of any amounts given F809. . . to him at any time under section F810. . . 380 or 381 below F811. . . —

(a) in respect of a loss sustained by him in the trade F812. . . in a relevant year of assessment **[**F813or a qualifying year of assessment within the meaning of section 118ZE**]**; F814. . .

(b) F814. . . . . .

[F815less the amount of any reclaimed relief at that time;**]**

[F816"the amount of any reclaimed relief" at any time means the total of any amounts at that time which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade;**]**

"the relevant sum" means the amount of his contribution to the trade as at the appropriate time; and

"the appropriate time" is the end of the relevant year of assessment in which the loss is sustained F817. . . or for which the allowance falls to be made (except

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that where he ceased to carry on the trade during that year of assessment it is the time when he so ceased).

(3) [M149]A person's contribution to a trade at any time is the aggregate of—

(a) the amount which he has contributed to it as capital and has not, directly or indirectly, drawn out or received back (other than anything which he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a limited partner or which he is or may be entitled to require another person to reimburse to him), and

(b) the amount of any **[**[F808]profits**]** of the trade to which he is entitled but which he has not received in money or money's worth.

(4) [M150]To the extent that an allowance is taken into account in computing **[**[F808]profits**]** or losses in the year of the loss by virtue of section 383(1) it shall, for the purposes of this section, be treated as falling to be made in the year of the loss (and not the year of assessment for which the year of loss is the basis year).

[[F818](5) This section is subject to provision made by regulations under section 118ZN (partners: meaning of "contribution to the trade").**]**

Textual Amendments

F803 Words in s. 117(1) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 22(1)(a), **Sch. 4**

F804 Words in s. 117(1) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(1)(a)(i)(12), **Sch. 11 Pt. 2(4)**, Note

F805 Words in s. 117(1) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 22(1)(b), **Sch. 4**

F806 Words in s. 117(1)(a) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(1)(a)(ii)(12), **Sch. 11 Pt. 2(4)**, Note

F807 S. 117(1)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 22(1)(c), **Sch. 4**

F808 Words in s. 117(1)(3)(b)(4) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)** Sch. 7 para. 1

F809 Words in s. 117(2) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 22(2)(a), **Sch. 4** (with Sch. 2 para. 22(3))

F810 Words in s. 117(2) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(1)(b)(i)(12), **Sch. 11 Pt. 2(4)**, Note

F811 Words in s. 117(2) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 22(2)(b), **Sch. 4** (with Sch. 2 para. 22(3))

F812 Words in s. 117(2) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(1)(b)(ii)(12), **Sch. 11 Pt. 2(4)**, Note

F813 Words in s. 117(2) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(2)**

F814 S. 117(2)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 22(2)(c), **Sch 4** (with Sch. 2 para. 22(3))

F815 Words in s. 117(2) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 78(1)(a)(4)**

F816 S. 117(2): definition of "the amount of any reclaimed relief" inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 78(1)(b)(4)**

F817 Words in s. 117(2) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(1)(c)(12), **Sch. 11 Pt. 2(4)**, Note

F818 S. 117(5) added (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 73(2)(5)**

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Marginal Citations

M146 Source—1985 Sch.12 2(1)-(3).
M147 1985 Sch.12 1, 2(4)
M148 1907 c. 24.
M149 Source—1985 Sch.12 4
M150 Source—1985 Sch.12 2(5)

118 Restriction on relief: companies.

(1) M151An amount which may be given F819. . . under section 338, **[**F820393A(1)**]** or **[**F821403**]** below F822. . . —

(a) in respect of a loss incurred by a company in a trade, or of charges paid by a company in connection with the carrying on of a trade, in a relevant accounting period; F823. . .

(b) F823. . . . . .

may be given F819. . . to that company ("the partner company") otherwise than against **[**F824profits**]** arising from the trade, or to another company, only to the extent that the amount given F819. . . or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) M152In this section—

"relevant accounting period" means an accounting period of the partner company at any time during which it carried on the trade as a limited partner (within the meaning of section 117(2));

"the aggregate amount" means the aggregate of any amounts given F825. . . to the partner company or another company at any time under section 338, **[**F826393A(1)**]** or **[**F821403**]** below F827. . . —

(a) in respect of a loss incurred by the partner company in the trade, or of charges paid by it in connection with carrying it on, in any relevant accounting period; F828. . .

(b) F828. . . . . .

"the relevant sum" means the amount of the partner company's contribution (within the meaning of section 117(3)) to the trade as at the appropriate time; and

"the appropriate time" is the end of the relevant accounting period in which the loss is incurred or the charges paid or for which the allowance falls to be made (except that where the partner company ceased to carry on the trade during that accounting period it is the time when it so ceased).

Textual Amendments

F819 Words in s. 118(1) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 23(1)(a), **Sch. 4**
F820 Words in s. 118(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 4(a)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)
F821 Words in s. 118(1)(2) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 35**
F822 Words in s. 118(1) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 23(1)(b), **Sch. 4**

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F823 S. 118(1)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 23(1)(c), **Sch. 4**
F824 Words in s. 118(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1
F825 Words in s. 118(2) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 23(2)(a)** {Sch. 4} (with Sch. 2 para. 23(3))
F826 Words in s. 118(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 4(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)
F827 Words in s. 118(2)(b) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 23(2)(b), **Sch. 4** (with Sch. 2 para. 23(3))
F828 S. 118(2)(b) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 23(2)(c), **Sch. 4** (with Sch. 2 para. 23(3))

Marginal Citations
M151 Source—1985 Sch.12 3(1)-(3)
M152 Source—1985 Sch.12 3(4), 1, 4

[F829 Limited liability partnerships

Textual Amendments
F829 Ss. 118ZA-118ZD and preceding cross-heading inserted (6.4.2001) by Limited Liability Partnerships Act 2000 (c. 12), **ss. 10(1)**, 19(1); S.I. 2000/3316, **art. 2**

118ZA Treatment of limited liability partnerships.

[F830(1) For **[F831**corporation tax purposes**]**, where a limited liability partnership carries on a trade, profession or other business with a view to profit—

(a) all the activities of the partnership are treated as carried on in partnership by its members (and not by the partnership as such),

(b) anything done by, to or in relation to the partnership for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and

(c) the property of the partnership is treated as held by the members as partnership property.

References in this subsection to the activities of the limited liability partnership are to anything that it does, whether or not in the course of carrying on a trade, profession or other business with a view to profit.

(2) For all purposes, except as otherwise provided, in **[F832**the Corporation Tax Acts**]**—

(a) references to a partnership include a limited liability partnership in relation to which subsection (1) above applies,

(b) references to members of a partnership include members of such a limited liability partnership,

(c) references to a company do not include such a limited liability partnership, and

(d) references to members of a company do not include members of such a limited liability partnership.

(3) Subsection (1) above continues to apply in relation to a limited liability partnership which no longer carries on any trade, profession or other business with a view to profit—

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(a) if the cessation is only temporary, or

(b) during a period of winding up following a permanent cessation, provided—

(i) the winding up is not for reasons connected in whole or in part with the avoidance of tax, and

(ii) the period of winding up is not unreasonably prolonged,

but subject to subsection (4) below.

(4) Subsection (1) above ceases to apply in relation to a limited liability partnership—

(a) on the appointment of a liquidator or (if earlier) the making of a winding-up order by the court, or

(b) on the occurrence of any event under the law of a country or territory outside the United Kingdom corresponding to an event specified in paragraph (a) above.**]**

Textual Amendments

F830 S. 118ZA substituted (retrospective to 6.4.2001) by Finance Act 2001 (c. 9), **s. 75(1)(6)**

F831 Words in s. 118ZA(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 97(a)** (with Sch. 2)

F832 Words in s. 118ZA(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 97(b)** (with Sch. 2)

118ZB Restriction on relief.

[F833(1)**]** Sections 117 and 118 have effect in relation to a member of a limited liability partnership as in relation to a limited partner, but subject to sections 118ZC and 118ZD.

[F834(2) However, section 117 does not apply in relation to a loss sustained by an individual in a trade F835. . . in a qualifying year of assessment within the meaning of section 118ZE.**]**

Textual Amendments

F833 S. 118ZB renumbered as s. 118ZB(1) (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(3)**

F834 S. 118ZB(2) added (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(3)**

F835 Words in s. 118ZB(2) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(2)(12), **Sch. 11 Pt. 2(4)**, Note

118ZC Member's contribution to trade.

(1) Subsection (3) of section 117 does not have effect in relation to a member of a limited liability partnership.

(2) But, for the purposes of that section and section 118, such a member's contribution to a trade at any time ("the relevant time") is the greater of—

(a) the amount subscribed by him, and

(b) the amount of his liability on a winding up.

(3) The amount subscribed by a member of a limited liability partnership is the amount which he has contributed to the limited liability partnership as capital, less so much of that amount (if any) as—

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(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he is a member of the limited liability partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(4) The amount of the liability of a member of a limited liability partnership on a winding up is the amount which—

(a) he is liable to contribute to the assets of the limited liability partnership in the event of its being wound up, and

(b) he remains liable so to contribute for the period of at least five years beginning with the relevant time (or until it is wound up, if that happens before the end of that period).

[F836(5) This section is subject to provision made by regulations under section 118ZN (partners: meaning of "contribution to the trade").**]**

Textual Amendments

F836 S. 118ZC(5) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 73(3)(5)**

118ZD Carry forward of unrelieved losses.

(1) Where amounts relating to a trade carried on by a member of a limited liability partnership are, in any one or more chargeable periods, prevented from being given or allowed by section 117 or 118 as it applies otherwise than by virtue of this section (his "total unrelieved loss"), subsection (2) applies in each subsequent chargeable period in which—

(a) he carries on the trade as a member of the limited liability partnership, and

(b) any of his total unrelieved loss remains outstanding.

(2) Sections 380, 381, 393A(1) and 403 (and sections 117 **[**F837, 118 and 118ZE**]** as they apply in relation to those sections) shall have effect in the subsequent chargeable period as if—

(a) any loss sustained or incurred by the member in the trade in that chargeable period were increased by an amount equal to so much of his total unrelieved loss as remains outstanding in that period, or

(b) (if no loss is so sustained or incurred) a loss of that amount were so sustained or incurred.

(3) To ascertain whether any (and, if so, how much) of a member's total unrelieved loss remains outstanding in the subsequent chargeable period, deduct from the amount of his total unrelieved loss the aggregate of—

(a) any relief given under any provision of the Tax Acts (otherwise than as a result of subsection (2)) in respect of his total unrelieved loss in that or any previous chargeable period, and

(b) any amount given or allowed in respect of his total unrelieved loss as a result of subsection (2) in any previous chargeable period (or which would have been so given or allowed had a claim been made).**]**

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Textual Amendments

F837 Words in s. 118ZD(2) substituted (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(4)**

[F838Non-active general partners and non-active members of limited liability partnerships

Textual Amendments

F838 Ss. 118ZE-118ZK and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 124(1)**

118ZE Restriction on relief for non-active partners

(1) This section applies to an amount which may be given to an individual under section F839. . . 380 or 381 in respect of a loss sustained by him in a trade F839. . . in a qualifying year of assessment.

(2) The amount may be given otherwise than against income consisting of profits arising from the trade only to the extent that—

(a) the amount given, or

(b) (as the case may be) the aggregate amount,

does not exceed the amount of the individual's contribution to the trade as at the end of that year of assessment.

(3) A "qualifying year of assessment" means a year of assessment—

(a) at any time during which the individual carried on the trade as a general partner or a member of a limited liability partnership,

(b) in which he did not devote a significant amount of time to the trade (within the meaning given by section 118ZH),

(c) which is the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(d) the basis period for which ends on or after 10 February 2004, and

(e) which is not a year of assessment at any time during which he carried on the trade as a limited partner.

(4) In this section—

(a) a "general partner" means any partner who is not a limited partner, and

(b) "limited partner" has the meaning given by section 117(2),

and in paragraph (a) "any partner" does not include a member of a limited liability partnership.

(5) In this section and sections 118ZF to 118ZK, "basis period" means (subject to subsection (6)) the basis period given by **[**F840Chapter 15 of Part 2 of ITTOIA 2005 as applied by section 853 of that Act**]**.

(6) The basis period for a year of assessment to which **[**F841section 199(1) of ITTOIA 2005**]** applies is to be taken for the purposes of this section and sections 118ZF to 118ZK **[**F842below**]** to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment.

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(7) In subsection (1) "a trade" does not include underwriting business within the meaning of section 184 of the Finance Act 1993 (Lloyd's underwriters).

(8) This section has effect subject to sections 118ZJ and 118ZK (transitional provision).

Textual Amendments

F839 Words in s. 118ZE(1) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(3)(12), **Sch. 11 Pt. 2(4)**, Note

F840 Words in s. 118ZE(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 98(2)** (with Sch. 2)

F841 Words in s. 118ZE(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 98(3)(a)** (with Sch. 2)

F842 Words in s. 118ZE(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 98(3)(b)** (with Sch. 2)

118ZF Meaning of "the aggregate amount"

(1) In section 118ZE(2) "the aggregate amount" means (subject to section 118ZK) the aggregate of any amounts given to the individual at any time under section [F843]. . . 380 or 381 in respect of a loss sustained by him in the trade [F843]. . . in a year of assessment falling within subsection (2) **[**[F844], less the amount of any reclaimed relief.**]**

[[F845](1A) For the purposes of subsection (1) "the amount of any reclaimed relief" means the total of any amounts which the individual has been treated as receiving under section 74 of the Finance Act 2005 (recovery of excess relief given under section 380 or 381) as a result of the application of that section of that Act to him in respect of losses sustained by him in the trade.**]**

(2) A year of assessment falls within this subsection if—

(a) it is a qualifying year of assessment within the meaning of section 118ZE, or

(b) it is a year of assessment—

(i) at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2), and

(ii) the basis period for which ends on or after 10 February 2004.

Textual Amendments

F843 Words in s. 118ZF(1) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(4)(12), **Sch. 11 Pt. 2(4)**, Note

F844 Words in s. 118ZF(1) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 78(2)(a)(4)**

F845 S. 118ZF(1A) inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 78(2)(b)(4)**

118ZG "The individual's contribution to the trade"

(1) For the purposes of section 118ZE(2), the individual's contribution to the trade at any time ("the relevant time") is the sum of—

(a) the amount subscribed by him,

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(b) the amount of any profits of the trade to which he is entitled but which he has not received in money or money's worth, and

(c) where there is a winding up, the amount that he has contributed to the assets of the partnership on its winding up.

(2) For the purposes of subsection (1)(a) the "amount subscribed"by an individual is the sum of—

(a) the total amount (if any) contributed by him to the trade as capital on or after 10 February 2004, reduced (but not below nil) by his withdrawn capital, and

(b) the total amount (if any) contributed by him to the trade as capital before 10 February 2004, reduced (but not below nil) by—

(i) the pre-announcement allowance (within the meaning given by section 118ZJ),

(ii) the aggregate of any amounts given to him at any time under section [F846]. . . 380 or 381 in respect of a loss sustained by him in a trade [F846]. . . in a year of assessment falling within subsection (3), and

(iii) the amount (if any) of his withdrawn capital that has not been used in the reduction to nil required by paragraph (a).

(3) A year of assessment falls within this subsection if—

(a) it does not fall within section 118ZE(3)(d), and

(b) it is either—

(i) a year of assessment that would be a qualifying year of assessment but for section 118ZE(3)(d), or

(ii) a year of assessment at any time during which the individual carried on the trade as a member of a limited liability partnership or as a limited partner within the meaning given by section 117(2).

(4) The individual's "withdrawn capital"is so much, if any, of the amount that he has contributed to the trade as capital as—

(a) he has previously, directly or indirectly, drawn out or received back,

(b) he so draws out or receives back during the period of five years beginning with the relevant time,

(c) he is or may be entitled so to draw out or receive back at any time when he carries on the trade as a member of the partnership, or

(d) he is or may be entitled to require another person to reimburse to him.

(5) An amount drawn out or received back that would otherwise fall within subsection (4)(a) or (b), or an entitlement that would otherwise fall within subsection (4)(c), shall be treated as not so falling if the amount drawn out or received back is chargeable to income tax as profits of the trade.

(6) In relation to a member of a limited liability partnership, references in this section to an amount contributed to the trade as capital shall be read as references to an amount contributed to the limited liability partnership as capital.

[[F847](7) This section is subject to provision made by regulations under section 118ZN (partners: meaning of "contribution to the trade").**]**

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Textual Amendments

F846 Words in s. 118ZG(2)(b)(ii) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(5)(12), **Sch. 11 Pt. 2(4)**, Note

F847 S. 118ZG(7) added (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 73(4)(5)**

118ZH "A significant amount of time"

(1) For the purposes of section 118ZE the individual shall be treated as having "devoted a significant amount of time to the trade"in a given year of assessment if, for the whole of the relevant period, he spent an average of at least ten hours a week personally engaged in activities carried on for the purposes of the trade.

(2) "The relevant period" means the basis period for the year of assessment in question, except that—

(a) if the basis period is less than six months and begins with the date when the individual first carried on the trade, "the relevant period" means six months beginning with that date, and

(b) if the basis period is less than six months and ends with the date when the individual ceased to carry on the trade, "the relevant period" means six months ending with that date.

(3) Where relief has been given on the assumption that an individual will meet the condition in subsection (1) and he fails to do so, the relief shall be withdrawn by the making of an assessment **[**F848to income tax**]**.

Textual Amendments

F848 Words in s. 118ZH(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 99** (with Sch. 2)

118ZI Carry forward of unrelieved losses of non-active partners

(1) Where amounts relating to a trade carried on by an individual in a qualifying year of assessment are prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD, subsection (3) of this section applies as respects each subsequent year of assessment in which—

(a) the individual carries on the trade in partnership or makes a contribution to the assets of the partnership on its winding up, and

(b) any of his total restricted loss remains outstanding.

(2) His "total restricted loss" means the total of any amounts, relating to any one or more qualifying years of assessment, that have been prevented from being given by section 118ZE as it applies otherwise than by virtue of this section or section 118ZD.

(3) Sections 380 and 381 (and section 118ZE as it applies in relation to those sections) shall have effect in the subsequent year of assessment as if—

(a) any loss sustained by the individual in the trade in that year of assessment were increased by an amount equal to so much of his total restricted loss as remains outstanding in that year of assessment, or

(b) (if no loss is sustained) a loss of that amount were so sustained.

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(4) To ascertain whether any (and, if so, how much) of the individual's total restricted loss remains outstanding in the subsequent year of assessment, deduct from the amount of his total restricted loss the aggregate of—

(a) any relief given (otherwise than as a result of subsection (3)) under any provision of the Tax Acts, in that or any previous year of assessment, in respect of any of his total restricted loss, and

(b) any amount which was given as a result of subsection (3), in any previous year of assessment, in respect of any of his total restricted loss (or which would have been so given had a claim been made).

(5) For the purposes of sections 118ZE and 118ZF (and of sections 117 and 118ZB(2))—

(a) any additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, and

(b) any loss deemed by subsection (3)(b) to have been so sustained,

shall be treated as having been sustained in a qualifying year of assessment.

(6) Subsection (7) applies where the subsequent year of assessment—

(a) is one in which the trade is not carried on in partnership by the individual, but

(b) is one in which he contributes to the assets of the partnership on its winding up.

(7) Where this subsection applies, nothing in section 381(4) or 384 (restrictions on right of set-off) applies to—

(a) an additional amount of loss deemed by subsection (3)(a) to have been sustained in the subsequent year of assessment, or

(b) a loss deemed by subsection (3)(b) to have been so sustained.

(8) In this section "qualifying year of assessment" has the meaning given by section 118ZE.

18ZJ Commencement: the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment the basis period for which includes 10 February 2004 ("the first restricted year").

(2) If this section would (but for this subsection) apply in relation to more than one year of assessment as respects the same individual and the same trade, it applies only in relation to the first of those years of assessment and "the first restricted year" means that year of assessment.

(3) Where this section applies, section 118ZE(2) shall have effect as if for the words from "only to the extent that" there were substituted only to the extent that the total amount given under section [F849]. . . 380 and 381 in respect of losses sustained by him in the trade [F849]. . . in that year of assessment does not exceed the sum of—

(a) the pre-announcement allowance, and

(b) the post-announcement allowance.

(4) The "pre-announcement allowance" is [F850]. . . —

(a) the loss (if any) sustained by the individual in the trade in the period beginning with the start of the basis period for the first restricted year and ending with 9 February 2004, [F851]. . .

(b) [F851] . . . . . .

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(5) The "post-announcement allowance"is so much of—

(a) the loss (if any) sustained by the individual in the trade in the period beginning with 10 February 2004 and ending with the end of the basis period for the first restricted year, F852. . .

(b) F852. . . . . .

as does not exceed the individual's contribution to the trade as at the end of the year of assessment, computed in accordance with section 118ZG.

(6) In each of subsections (4)(a) and (5)(a), the reference to the loss sustained by the individual in the trade in the period there mentioned is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) subject to subsection (7), the losses of the partnership arising for that period from the trade shall be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 111(2), and

(b) subject to subsection (8), the individual's share of the losses shall be determined according to his interest in the partnership during that period.

(7) In computing for the purposes of subsection (6) the losses of the partnership arising for the period mentioned in subsection (4)(a) or (5)(a)—

(a) any capital allowance treated as an expense of the trade for the purposes of the computation required by section 111(2) for the first restricted year is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the capital expenditure to which it relates is incurred after 9 February 2004, and

(b) any amount deducted under section 42(1) of the Finance (No. 2) Act 1992 for the purposes of that computation is to be regarded as belonging to the period mentioned in subsection (4)(a) unless the expenditure to which it relates is incurred after 9 February 2004.

(8) If the individual had an interest in the partnership at any time that falls within—

(a) the basis period for the first restricted year, and

(b) the period beginning with 10 February 2004 and ending with 25 March 2004,

he shall be deemed for the purposes of subsection (6)(b) to have had the interest on 9 February 2004.

Textual Amendments

F849 Words in s. 118ZJ(3) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(6)(a)(12), **Sch. 11 Pt. 2(4)**, Note

F850 Words in s. 118ZJ(4) repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(6)(b)(i)(12), **Sch. 11 Pt. 2(4)**, Note

F851 S. 118ZJ(4)(b) and preceding word repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(6)(b)(ii)(12), **Sch. 11 Pt. 2(4)**, Note

F852 S. 118ZJ(5)(b) and preceding word repealed (retrospective to 2.12.2004 with effect in accordance with s. 72(7)-(11) of the repealing Act) by Finance Act 2005 (c. 7), s. 72(6)(c)(12), **Sch. 11 Pt. 2(4)**, Note

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118ZK Transitional provision for years after the first restricted year

(1) This section applies where the year of assessment referred to in section 118ZE(1) is a year of assessment later than the first restricted year.

(2) Section 118ZE(2) shall not apply to any part of the amount mentioned in section 118ZE(1) that—

(a) derives from a capital allowance treated as an expense of the trade where the capital expenditure to which the allowance relates was incurred before 10 February 2004, or

(b) derives from a deduction made under section 42(1) of the Finance (No. 2) Act 1992 **[**F853or any of sections 138 to 140 of ITTOIA 2005**]** where the expenditure to which the deduction relates was incurred before 10 February 2004.

(3) In computing for the purposes of section 118ZE(2)(a) or (b) the amount given or (as the case may be) the aggregate amount, any part of an amount given that falls within subsection (2)(a) or (b) of this section shall be left out of account.

(4) In computing the aggregate amount for the purposes of section 118ZE(2), any amount given in respect of the pre-announcement allowance shall be left out of account.

(5) For the purposes of subsections (2) and (3) the part of an amount that derives from a capital allowance or a deduction made under section 42(1) of the Finance (No. 2) Act 1992 **[**F853or any of sections 138 to 140 of ITTOIA 2005**]** shall be determined on such basis as is just and reasonable.

(6) In this section "the first restricted year" and "the pre-announcement allowance" have the meanings given by section 118ZJ.**]**

Textual Amendments

F853 Words in s. 118ZK(2)(b)(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 100** (with Sch. 2)

*[*F854*Partnerships exploiting films*

Textual Amendments

F854 Ss. 118ZL, 118ZM and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 125**

118ZL Partnerships exploiting films

(1) Where (apart from this section) an amount may be given to an individual under section 380 or 381 in respect of a loss ("the loss in question") sustained by him—

(a) in a trade consisting of or including the exploitation of films, and

(b) in an affected year of assessment,

none of that amount may be given otherwise than against income consisting of profits arising from the trade; but this is subject to subsection (4).

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(2) An "affected year of assessment" means a year of assessment at any time during which the individual carried on the trade in partnership which is also—

(a) the year of assessment in which the trade is first carried on by him or any of the next three years of assessment,

(b) a year of assessment in which he did not devote a significant amount of time to the trade, and

(c) a year of assessment at any time during which there existed a relevant agreement guaranteeing him an amount of income.

(3) For the purposes of subsection (2)(c)—

(a) "a relevant agreement" means—

(i) an agreement that was made with a view to the individual's carrying on the trade or in the course of his carrying it on (including any agreement under which he is or may be required to contribute an amount to the trade), or

(ii) an agreement related to an agreement falling within sub-paragraph (i),

(b) an agreement "guarantees" the individual an amount of income if the agreement, or any part of it, is designed to secure the receipt by the individual of that amount (or at least that amount) of income, and

(c) it is immaterial when the amount of income would be received under the agreement.

(4) If the loss in question derives to any extent from exempt expenditure, amounts that (apart from this section) may be given under section 380 or 381 in respect of the loss otherwise than against income consisting of profits arising from the trade may be so given to the extent that the total of the amounts so given does not exceed the exempt part of the loss.

(5) The exempt part of the loss is so much of the loss in question as derives from exempt expenditure.

(6) Expenditure is exempt expenditure for the purposes of this section if it is—

(a) expenditure incurred before 26 March 2004 in a case where this paragraph applies, or

(b) expenditure that, for the purposes of the computation required by **[**F855section 849 of ITTOIA 2005 (calculation of firm's profits or losses)**]**, was deducted under **[**F856any of sections 137 to 140 of ITTOIA 2005**]**, or

(c) incidental expenditure that, although deductible apart from **[**F857sections 137 to 140 of that Act**]**, was incurred in connection with the production or acquisition of a film in relation to which expenditure was deducted under **[**F858any of**]** those sections.

(7) Subsection (6)(a) applies where the individual carried on the trade before 26 March 2004.

Textual Amendments

F855 Words in s. 118ZL(6)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 101(a)(i)** (with Sch. 2)

F856 Words in s. 118ZL(6)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 101(a)(ii)** (with Sch. 2)

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F857 Words in s. 118ZL(6)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 101(b)(i)** (with Sch. 2)
F858 Words in s. 118ZL(6)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 101(b)(ii)** (with Sch. 2)

118ZM Partnerships exploiting films: supplementary

(1) In section 118ZL and this section any reference to a film is to be construed in accordance with paragraph 1 of Schedule 1 to the Films Act 1985.

(2) Section 118ZH (meaning of "a significant amount of time" etc) applies for the purposes of section 118ZL as it applies for the purposes of section 118ZE.

(3) For the purposes of section 118ZL(3) agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) The reference in section 118ZL(6) to the acquisition of a film is a reference to **[**F859the acquisition of the original master version of the film; and this subsection is to be construed as if contained in Chapter 9 of Part 2 of ITTOIA 2005.**]**

(5) In section 118ZL(6) "incidental expenditure" means expenditure on management, administration or obtaining finance.

(6) The part of the loss in question that derives from exempt expenditure shall be determined on such basis as is just and reasonable.

(7) The extent to which any expenditure falls within section 118ZL(6)(c) shall be determined on such basis as is just and reasonable.

(8) In any case where sections 380 and 381 have effect as mentioned in section 118ZD(2) or 118ZI(3) (cases where sections 380 and 381 have effect as if loss carried forward from earlier year sustained in subsequent year), section 118ZL also has effect as mentioned in section 118ZD(2) or (as the case may be) section 118ZI(3).**]**

Textual Amendments

F859 Words in s. 118ZM(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 102** (with Sch. 2)

Modifications etc. (not altering text)

C132 S. 118ZM modified (retrospective to 2.12.2004) by Finance Act 2005 (c.7), Sch. 3 paras. 17, **31(3)**

[F860Partners: meaning of "contribution to the trade"

Textual Amendments

F860 Ss. 118ZN, 118ZO and preceding cross-heading inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), **s. 73(1)(5)**

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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118ZN Partners: meaning of "contribution to the trade"

(1) This section applies for the purposes of the application of any of the following provisions ("the relevant provisions")—

(a) section 117 (restriction on relief for limited partners),

(b) that section as applied by section 118ZB in relation to a member of a limited liability partnership, and

(c) section 118ZE (restriction on relief for non-active partners),

to an amount which may be given to an individual under section 380 or 381 in respect of a relevant loss sustained by him in a trade ("the relevant trade").

(2) The Board may by regulations provide that, for those purposes, any amount of a description specified in the regulations is to be excluded when computing the amount of the individual's contribution to the relevant trade at any time for the purposes of the relevant provisions.

(3) Regulations under this section may—

(a) make provision having effect before the date on which the regulations are made,

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be necessary or expedient, and

(c) make different provision for different cases or different purposes.

(4) The provision mentioned in subsection (3)(b) may include provision amending or repealing any provision of an Act passed before the passing of the Finance Act 2005.

(5) No regulations may be made under this section unless a draft has been laid before and approved by a resolution of the House of Commons.

118ZO Meaning of "relevant loss" in section 118ZN

(1) For the purposes of section 118ZN a "relevant loss" means—

(a) a loss sustained by the individual in the relevant trade in a year of assessment the basis period for which begins on or after 2nd December 2004, or

(b) a post-announcement loss sustained by the individual in the relevant trade in a straddling year of assessment.

(2) For the purposes of this section—

"basis period" means the basis period given by Chapter 15 of Part 2 of ITTOIA 2005, as applied by section 853 of that Act, except that the basis period for a year of assessment to which section 199(1) of that Act applies is to be taken to be the period beginning with the date when the individual first carried on the relevant trade and ending with the end of the year of assessment;

"post-announcement loss", in relation to a straddling year of assessment, means the loss (if any) sustained by the individual in the relevant trade in the period which—

(a) begins with 2nd December 2004, and

(b) ends with the end of the basis period for that straddling year of assessment;

"straddling year of assessment" means a year of assessment the basis period for which begins before and includes 2nd December 2004.

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(3) In the definition of "post-announcement loss" in subsection (2), the reference to the loss sustained by the individual in the relevant trade in a period is a reference to his share of any losses of the partnership arising for that period from the trade, and—

(a) the losses of the partnership arising for that period from the trade are to be computed in the same way as if the period were one for which profits and losses had to be computed for the purposes of section 849 of ITTOIA 2005, and

(b) the individual's share of the losses is to be determined according to his interest in the partnership during that period.

(4) In subsection (3) the references to "the partnership" are to the partnership as a member of which the individual carries on the relevant trade.

(5) In relation to years of assessment which are before the year 2005-06, this section has effect as if—

(a) in subsection (2) for the definition of "basis period" there were substituted—

> ""basis period" means the basis period given by sections 60 to 63 as applied by section 111(4) and (5), except that the basis period for a year of assessment to which section 61(1) applies is to be taken to be the period beginning with the date when the individual first carried on the trade and ending with the end of the year of assessment;", and

(b) the reference in subsection (3)(a) to section 849 of ITTOIA 2005 were a reference to section 111(2) of this Act.**]**

[F861[F862CHAPTER VIIA

PAYING AND COLLECTING AGENTS**]**

Textual Amendments

F861 Pt. 4 Ch. 7A (ss. 118A-118K) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 29 para. 1**

F862 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118A Definitions.

F863 . . . . . .

Textual Amendments

F863 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118B Paying agents.

F864 . . . . . .

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Textual Amendments

F864 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118C Collecting agents.

F865

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Textual Amendments

F865 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118D Chargeable payments and chargeable receipts.

F866

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Textual Amendments

F866 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118E Deduction of tax from chargeable payments and chargeable receipts.

F867

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Textual Amendments

F867 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118F Accounting for tax on chargeable payments and chargeable receipts.

F868

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Textual Amendments

F868 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118G Relevant securities of eligible persons.

F869

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Textual Amendments

F869 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118H Relevant securities of eligible persons: administration.

F870 . . . . . .

Textual Amendments

F870 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118I Deduction of tax at reduced rate.

F871 . . . . . .

Textual Amendments

F871 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118J Prevention of double accounting.

F872 . . . . . .

Textual Amendments

F872 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

118K Regulations.

F873 . . . . . .]

Textual Amendments

F873 Pt. 4 Ch. 7A (ss. 118A-118K) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(1), **Sch. 40 Pt. 2(17)**, Note 1

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CHAPTER VIII

MISCELLANEOUS AND SUPPLEMENTAL

119 Rent etc. payable in connection with mines, quarries and similar concerns.

M153(1) Where rent is payable in respect of any land or easement, and either—

(a) the land or easement is used, occupied or enjoyed in connection with any of the concerns specified in section 55(2); or

(b) the lease or other agreement under which the rent is payable provides for the recoupment of the rent by way of reduction of royalties or payments of a similar nature in the event of the land or easement being so used, occupied or enjoyed,

the rent shall, subject to section 122 **[**F874and section 201 of the 1992 Act**]**, be charged to **[**F875corporation**]** tax under Schedule D, F876. . . .

(2) Where the rent is rendered in produce of the concern, it shall, F877. . . , be charged under Case III of Schedule D, and the value of the produce so rendered shall be taken to be the amount of the profits or income arising therefrom.

(3) For the purposes of this section—

"easement" includes any right, privilege or benefit in, over or derived from land; and

"rent" includes a rent service, rentcharge, fee farm rent F878. . . or other rent, toll, duty, royalty or annual or periodical payment in the nature of rent, whether payable in money or money's worth or otherwise.

Textual Amendments

F874 Words in s. 119(1) inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(4)** (with ss. 60, 101(1), 171, 201(3)).

F875 Word in s. 119(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 103** (with Sch. 2)

F876 Words in s. 119(1) repealed (with effect in accordance with s. 145(3), Sch. 29 Pt. 8(22) Note of the repealing Act) by Finance Act 1995 (c. 4), s. 145(1), **Sch. 29 Pt. 8(22)**

F877 Words in s. 119(2) repealed (with effect in accordance with Sch. 29 Pt. 8(22) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(22)**

F878 Word in s. 119(3) repealed (S.) (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act (asp 5), ss. 71, 77(2), Sch. 12 para. 50(3), {Sch. 13 Pt. 1}; S.S.I. 2003/456, **art. 2**

Modifications etc. (not altering text)

C133 S. 119(1) excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 201(2)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M153 Source—1970 s.156

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120 Rent etc. payable in respect of electric line wayleaves.

M154(1) [F879Subject to subsection (1A) below,] where rent is payable in respect of any easement enjoyed in the United Kingdom in connection with any electric, telegraphic or telephonic wire or cable (not being such an easement as is mentioned in section 119(1)), the rent shall be charged to [F880corporation] tax under Schedule D F881. . . .

[F882(1A) If—

(a) the profits and gains arising to any person for any [F883accounting period] include both rent in respect of any such easement as is mentioned in subsection (1) above and amounts which are charged to [F884corporation] tax under Schedule A, and

(b) some or all of the land to which the easement relates is included in the land by reference to which the amounts charged under Schedule A arise,

then, for that period, that rent shall be charged to [F884corporation] tax under Schedule A, instead of being charged under Schedule D.]

(2) F885. . . . . .

(3) F885. . . . . .

(4) F885. . . . . .

(5) In this section—

(a) "easement" and "rent" have the same meanings as in section 119;

(b) the reference to easements enjoyed in connection with any electric, telegraphic or telephonic wire or cable includes (without prejudice to the generality of that expression) references to easements enjoyed in connection with any pole or pylon supporting any such wire or cable, or with any apparatus (including any transformer) used in connection with any such wire or cable; F886. . .

(c) F886. . . . . .

Textual Amendments

F879 Words in s. 120(1) inserted (with effect in accordance with s. 60(5) of the amending Act) by Finance Act 1997 (c. 16), **s. 60(2)(a)**

F880 Word in s. 120(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 104(a)** (with Sch. 2)

F881 Words in s. 120(1) repealed (with effect in accordance with s. 60(5), Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), s. 60(2)(b), **Sch. 18 Pt. 6(2)**

F882 S. 120(1A) inserted (with effect in accordance with s. 60(5) of the amending Act) by Finance Act 1997 (c. 16), **s. 60(3)**

F883 Words in s. 120(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 104(b)** (with Sch. 2)

F884 Words in s. 120(1A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 104(c)** (with Sch. 2)

F885 S. 120(2)-(4) repealed (with effect in accordance with s. 60(5), Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), s. 60(4), **Sch. 18 Pt. 6(2)**

F886 S. 120(5)(c) and preceding word repealed (with effect in accordance with s. 60(5), Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997, (c. 16), s. 60(5), {Sch. 18 Pt. 6(2)}

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Marginal Citations

M154 Source—1970 s.157

121 Management expenses of owner of mineral rights.

[F887M155(1) F888. . . . . .**]**

(3) In computing for the purposes of corporation tax the income of a company for any accounting period from the letting of rights to work minerals in the United Kingdom, there may be deducted any sums disbursed by the company wholly, exclusively and necessarily as expenses of management or supervision of those minerals in that period.

Textual Amendments

F887 S. 121(1) substituted for s. 121(1)(2) (with effect in accordance with s.145(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 145(2)**

F888 S. 121(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 105, **Sch. 3** (with Sch. 2)

Marginal Citations

M155 Source—1970 s.158(1), (2)

122 Relief in respect of mineral royalties.

(1) M156Subject to the following provisions of this section, **[**F889a company resident in the United Kingdom which in any**]** accounting period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated—

(a) F890. . . for the purposes of corporation tax on profits exclusive of chargeable gains, as if the total of the mineral royalties receivable by **[**F891it**]** under that lease or agreement in that F890. . . period and any management expenses available for set-off against those royalties in that F890. . . period were each reduced by one-half; F892. . .

F892(b) . . . . . .

and this section shall have effect notwithstanding any provision of section 119(1) making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D F893. . . .

(2) M157For the purposes of subsection (1)(a) above, "management expenses available for set-off" against royalties means—

(a) where section 121 applies in respect of the royalties, any sum F894. . . deductible from those royalties under **[**F895subsection (3)**]** of that section in computing the income of a company for the purposes of corporation tax; and

(b) if the royalties are chargeable to tax under Schedule A, any sums deductible under Part II as payments made in respect of management of the property concerned;

and if neither paragraph (a) nor paragraph (b) above applies, the reference in subsection (1)(a) above to management expenses available for set-off shall be disregarded.

(3 F896 . . . . . .

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(4) F897 . . . . . .

(5) In this section references to mineral royalties refer only to royalties receivable on or after 6th April 1970, and the expression "mineral royalties" means so much of any rents, tolls, royalties and other periodical payments in the nature of rent payable under a mineral lease or agreement as relates to the winning and working of minerals; and the Board may by regulations—

(a) provide whether, and to what extent, payments made under a mineral lease or agreement and relating both to the winning and working of minerals and to other matters are to be treated as mineral royalties; and

(b) provide for treating the whole of such payments as mineral royalties in cases where the extent to which they relate to matters other than the winning and working of minerals is small.

(6) In this section—

"minerals" means all minerals and substances in or under land which are ordinarily worked for removal by underground or surface working but excluding water, peat, top-soil and vegetation; and

"mineral lease or agreement" means—

(a) a lease, profit à prendre, licence or other agreement conferring a right to win and work minerals in the United Kingdom;

(b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom; and

(c) a grant of a right under section 1 of the M158Mines (Working Facilities and Support) Act 1966, other than an ancillary right within the meaning of that Act.

(7) In the application of this section to Northern Ireland—

(a) references to mineral royalties include references to periodical payments—

(i) of compensation under section 29 or 35 of the M159Mineral Development Act (Northern Ireland) 1969 ("the 1969 Act") or under section 4 of the M160Petroleum (Production) Act (Northern Ireland) 1964 ("the 1964 Act"); and

(ii) made as mentioned in section 37 of the 1969 Act or under section 55(4)(b) of that Act or under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the M161Irish Land Act 1903); and

(b) in its application to any such payments as are mentioned in paragraph (a) above, references to the mineral lease or agreement under which mineral royalties are payable shall be construed as references to the enactment under which the payments are made.

F896(8) . . . . . .

Textual Amendments

F889 Words in s. 122(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 106(2)(a)** (with Sch. 2)

F890 Words in s. 122(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 106(2)(b)(d), **Sch. 3** (with Sch. 2)

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F891 Word in s. 122(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 106(2)(c)** (with Sch. 2)
F892 S. 122(1)(b) and the word "and" immediately preceding it repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).
F893 Words in s. 122(1) repealed (1.5.1995 with effect in accordance with Note to Sch. 29 Pt. 8(22) of the amending act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(22)**
F894 Words in s. 122(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 106(3)(a), **Sch. 3** (with Sch. 2)
F895 Words in s. 122(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 106(3)(b)** (with Sch. 2)
F896 S. 122(3)(8) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).
F897 S. 122(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 106(4), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)
C134 *For regulations see* Part III Vol.5.
C135 S. 122(5)-(7) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 203(1)**, 289 (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations
M156 Source—1970(F) s.29(1), (3); 1971 Sch.9 4
M157 Source—1970(F) s.29(2)
M158 1966 c. 4.
M159 1969 c. 35 (N.I.).
M160 1964 c. 28 (N.I.).
M161 1903 c. 37.

123 Foreign dividends.

F898 . . . . . .

Textual Amendments
F898 S. 123 repealed (with effect in accordance with Sch. 7 para. 32 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 7 para. 13, **Sch. 41 Pt. 5(2)**, Note (with Sch. 7 paras. 33-35)

124 Interest on quoted Eurobonds.

F899 . . . . . .

Textual Amendments
F899 S. 124 repealed (with effect in accordance with s. 111(6)(b) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(2), **Sch. 40 Pt. 2(17)**, Note 2

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125 [F900Annual payments for dividends or non-taxable consideration]

M162(1) Any payment to which this subsection applies shall be made without deduction of [F901income tax and] shall not be allowed as a deduction in computing the income or total income of the person by whom it is made F902. . . .

(2) Subject to the following provisions of this section, subsection (1) above applies to any payment which—

[F903(a) is not interest but is—

(i) an annuity or other annual payment charged with income tax under Part 5 of ITTOIA 2005 otherwise than as relevant foreign income; or

(ii) an annuity or other annual payment charged with corporation tax under Case III of Schedule D; and]

[F904(b) is made under a liability incurred for consideration in money or money's worth all or any of which—

(i) consists of, or of the right to receive, a dividend, or

(ii) is not required to be brought into account in computing for the purposes of income tax or corporation tax the income of the person making the payment.]

(3) Subsection (1) above does not apply to—

(a) any payment which in the hands of the recipient is income falling within [F905section 627(1) or (2)(a) of ITTOIA 2005];

(b) any payment made to an individual under a liability incurred in consideration of his surrendering, assigning or releasing an interest in settled property to or in favour of a person having a subsequent interest;

(c) any annuity granted in the ordinary course of a business of granting annuities; or

(d) any annuity charged on an interest in settled property and granted at any time before 30th March 1977 by an individual to a company whose business at that time consisted wholly or mainly in the acquisition of interests in settled property or which was at that time carrying on life assurance business in the United Kingdom.

(4) In the application of this section to Scotland the references in subsection (3) above to settled property shall be construed as references to property held in trust.

(5) Subsection (1) above applies to a payment made after 5th April 1988 irrespective of when the liability to make it was incurred.

Textual Amendments

F900 S. 125 title substituted (retrospective to 2.12.2004) by virtue of Finance Act 2005 (c. 7), **s. 91(3)**

F901 Words in s. 125(1) substituted (with effect in accordance with s. 38(7)(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 38(3)**

F902 Words in s. 125(1) repealed (with effect in accordance with s. 38(7)(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

F903 S. 125(2)(a) and word substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 107(2)** (with Sch. 2)

F904 S. 125(2)(b) substituted (with retrospective effect in accordance with s. 91(7) of the amending Act) by Finance Act 2005 (c. 7), **s. 91(2)**

F905 Words in s. 125(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 107(3)** (with Sch. 2)

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Modifications etc. (not altering text)
C136 *See* 1989 s.59*—rights of admission disregarded in the case of certain covenanted subscriptions.*

Marginal Citations
M162 Source—1977 s.48

126 Treasury securities issued at a discount.

F906 . . . . . .

Textual Amendments
F906 Ss. 126, 126A repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996, Sch. 41 Pt. 5(3), Note

126A Charge to tax on appropriation of securities and bonds.

F907 . . . . . .

Textual Amendments
F907 Ss. 126, 126A repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996, Sch. 41 Pt. 5(3), Note

127 Enterprise allowance.

F908 . . . . . .

Textual Amendments
F908 S. 127 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 108, **Sch. 3** (with Sch. 2)

[F909 127A Futures and options: transactions with guaranteed returns.

F910 . . . . . .]

Textual Amendments
F909 S. 127A inserted (with effect in accordance with s. 80(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 80(1)**
F910 S. 127A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 109, **Sch. 3** (with Sch. 2)

128 Commodity and financial futures etc.: losses and gains. M163

[F911 (1) F912 . . . . . .]

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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[F913(2) For the purposes of corporation tax, any gain arising to any company in the course of dealing in financial futures or in qualifying options, which apart from this subsection would constitute profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, shall not be chargeable to tax under Case V or VI of Schedule D.**]**

[F914(3)**]** In this section "commodity or financial futures" and "qualifying options" have the same meaning as in section **[**F915143 of the 1992 Act**]**, and the reference to a gain arising in the course of dealing in commodity or financial futures includes any gain which is regarded as arising in the course of such dealing by virtue of subsection **[**F915(3)**]** of that section.

Textual Amendments

F911 Words in s. 128 renumbered as s. 128(1) (with effect in accordance with s. 83(3) of the amending Act) by virtue of Finance Act 2002 (c. 23), **Sch. 27 para. 3(1)(a)** (with Sch. 28)

F912 S. 128(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 110, **Sch. 3** (with Sch. 2)

F913 S. 128(2) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 3(2)** (with Sch. 28)

F914 Words in s. 128 renumbered as s. 128(3) (with effect in accordance with s. 83(3) of the amending Act) by virtue of Finance Act 2002 (c. 23), **Sch. 27 para. 3(3)** (with Sch. 28)

F915 Words in s. 128 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(7)** (with ss. 60, 101(1), 171, 201(3)).

Marginal Citations

M163 Source—1985 s.72(1), (2); 1987 (No.2) s.81(1)

129 Stock lending.

F916 . . . . . .

Textual Amendments

F916 Ss. 129, 129A repealed (with effect in accordance with Sch. 10 para. 7(1) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 1, **Sch. 18 Pt. 6(10)**, Note 1; S.I. 1997/991, **art. 2**

[F917129A Stock lending: interest on cash collateral.

F918 . . . . . .**]**

Textual Amendments

F917 S. 129A inserted (with application in accordance with s. 85(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 85(1)**

F918 Ss. 129, 129A repealed (with effect in accordance with Sch. 10 para. 7(1) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 1, **Sch. 18 Pt. 6(10)**, Note 1; S.I. 1997/991, **art. 2**

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[F919 129B Stock lending fees.

(1) The income which, as income deriving from investments of a description specified in any of the relevant provisions, is eligible for relief from tax by virtue of that provision shall be taken to include any relevant stock lending fee.

(2) For the purposes of this section the relevant provisions are sections 592(2), 608(2)(a), 613(4), 614(3), 620(6) and 643(2).

(3) In this section "relevant stock lending fee", in relation to investments of any description, means any amount, in the nature of a fee, which is payable in connection with [F920 any] stock lending arrangement relating to investments which, but for any transfer under the arrangement, would be investments of that description.

[F921 (4) In this section "stock lending arrangement" has the same meaning as in section 263B of the 1992 Act.]]

Textual Amendments

F919 S. 129B inserted (with effect in accordance with s. 157(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 157(1)**

F920 Word in s. 129B(3) substituted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 2(1)**; S.I. 1997/991, **art. 2**

F921 S. 129B(4) substituted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 2(2)**; S.I. 1997/991, **art. 2**

130 [F922 Meaning of "company with investment business" and "investment company" in Part 4]

M164 In this Part of this Act [F923—

"company with investment business" means any company whose business consists wholly or partly in the making of investments;]

"investment company", means any company whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom, but includes any savings bank or other bank for savings except any which, for the purposes of the M165 Trustee Savings Bank Act 1985, is a successor or a further successor to a trustee savings bank.

Textual Amendments

F922 S. 130 sidenote substituted (with effect in accordance with ss. 38(5), 42, 43 of the amending Act) by virtue of Finance Act 2004 (c. 12), **s. 38(4)**

F923 S. 130: definition of "company with investment business" inserted (with effect in accordance with ss. 38(5), 42, 43 of the amending Act) by Finance Act 2004 (c. 12), **s. 38(3)**

Modifications etc. (not altering text)

C137 *See*—1988 s.338(6)—*definition applied for purposes of* s.338(3) (*charges*).1988 s.576(5)—*definition applied for purposes of* ss.573 to 576 (*losses on unquoted shares in trading companies*).Trustee Savings Banks Act 1985 (c.58) s.5*and* Sch.2 para.6(6).

Marginal Citations

M164 Source—1970 s.304(5); 1980 Sch.11

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M165 1985 c. 58.

PART V

PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER I

SUPPLEMENTARY CHARGING PROVISIONS OF GENERAL APPLICATION

Miscellaneous provisions

131 Chargeable emoluments.

F924 . . . . . .

Textual Amendments

F924 Ss. 131-134 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 14, **Sch. 8 Pt. 1** (with Sch. 7)

132 Place of performance, and meaning of emoluments received in the U.K.

F925 . . . . . .

Textual Amendments

F925 Ss. 131-134 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 14, **Sch. 8 Pt. 1** (with Sch. 7)

133 Voluntary pensions.

F926 . . . . . .

Textual Amendments

F926 Ss. 131-134 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 14, **Sch. 8 Pt. 1** (with Sch. 7)

134 Workers supplied by agencies.

F927 . . . . . .

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Textual Amendments

F927 Ss. 131-134 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 14, **Sch. 8 Pt. 1** (with Sch. 7)

Shareholdings, loans etc.

135 Gains by directors and employees from share options.

F928 . . . . . .

Textual Amendments

F928 Ss. 135-137 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 15, **Sch. 8 Pt. 1** (with Sch. 7)

136 Provisions supplementary to section 135.

F929 . . . . . .

Textual Amendments

F929 Ss. 135-137 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 15, **Sch. 8 Pt. 1** (with Sch. 7)

137 Payment of tax under section 135 by instalments.

F930 . . . . . .

Textual Amendments

F930 Ss. 135-137 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 15, **Sch. 8 Pt. 1** (with Sch. 7)

F931 138 Share acquisitions by directors and employees.

(1) *Subject to section* 185 *and the following provisions of this section, where a person has acquired or acquires shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a director or employee of that or any other body corporate, and not in pursuance of an offer to the public—*

(a) *M166 if the market value of the shares at the end of the period mentioned in subsection* (9) *below exceeds their market value at the time of the acquisition, he shall be chargeable to tax under Schedule E for the year of assessment in which that period ends on an amount equal, except as provided by subsection* (8) *below, to the excess* (*or, if his interest is less than the full beneficial ownership, such part of that amount as corresponds to his interest*);

(b) *M167 if he receives, by virtue of his ownership of or interest in the shares, any benefit not received by the majority of persons who—*

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(i) *hold shares forming part of the ordinary share capital of the same body corporate; and*

(ii) *have acquired the shares otherwise than as mentioned above*;

and the benefit is not otherwise chargeable to income tax, he shall be chargeable to tax under ***[****F932**the employment income Parts of ITEPA 2003****]*** *for the year of assessment in which he receives the benefit on an amount equal to the value of the benefit*;*and any amount chargeable under this subsection shall be treated as earned income, whether or not it would otherwise fall to be so treated.*

(2) *Subsection* (1)*above does not apply if the acquisition—*

(a) **M168***was made in pursuance of arrangements under which employees of a body corporate receive as part of their emoluments shares or interests in shares in that body or in a body controlling it to an extent determined in advance by reference to the profits of either body; and*

(b) **M169***where the arrangements were made or modified after* 22*nd March* 1973,*was of shares or an interest in shares which satisfy the conditions set out in subsection* (4)(a)*below and the arrangements satisfy the condition set out in subsection* (4)(b)*below.*

(3) *Subsection* (1)(a)*above does not apply if—*

(a) **M170***the acquisition was an acquisition of shares in a body and either of the following conditions was satisfied immediately after the acquisition, namely—*

(i) *that the shares were not subject to such restrictions as are specified in subsection* (6)*below, and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired otherwise than as mentioned in subsection* (1)*above; or*

(ii) *that the shares were not subject to such restrictions as are specified in paragraph* (a)*or* (b)*of subsection* (6)*below and were not exchangeable for shares subject to such restrictions, and the majority of the available shares of the same class was acquired by persons who were or had been employees or directors of, or of a body controlled by, that body and who were together able as holders of the shares to control that body; or*

(b) **M171***the acquisition was an acquisition after* 5*th April* 1984*of an interest in shares which consists of units in an authorised unit trust and—*

(i) *prior to the acquisition the unit trust was approved by the Board for the purposes of this section and, at the time of the acquisition, continues to be so approved, and*

(ii) *the condition set out in subsection* (7)*below is fulfilled with respect to the body corporate* (*in that subsection referred to as "the relevant company"*)*directorship of or employment by which gave rise to the right or opportunity by virtue of which the acquisition was made; or*

(c) **M172***the acquisition took place before* 6*th April* 1981.

(4) *The conditions referred to in subsection* (2)(b)*above are as follows—*

(a) **M173***that the shares—*

(i) *are not subject to such restrictions as will or may result in the person acquiring the shares or an interest in the shares obtaining a benefit*

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through an increase, subsequent to the acquisition, of the value or the value to him of the shares or interest; and

(ii) *cannot* (*whether by one transaction or a series of transactions*)*be exchanged for or converted into shares which are subject to such restrictions; and*

(iii) *are either shares of a class quoted on a recognised stock exchange or are shares in a company which is not under the control of another company;*

(b) [M174]*that the arrangements allow every full-time employee of the company concerned who—*

(i) *has been a full-time employee of that company for a continuous period of not less than five years, and*

(ii) *is chargeable to tax in respect of his employment under* ***[***[F933]*section 15 or 21 of ITEPA 2003 (earnings of employee resident and ordinarily resident in the UK)****]****, and*

(iii) *is not less than* 25*years old,*

to acquire shares or interests in shares of the same class on similar terms.

(5) [M175]*For the purposes of subsection* (3)(a)*above—*

(a) *shares in a body are available shares if they are not held by or for the benefit of an associated company of that body; and*

(b) *shares are exchangeable for other shares if* (*whether by one transaction or a series of transactions*)*they can be exchanged for or converted into the other shares.*

(6) [M176]*The restrictions referred to in subsection* (3)(a)*above are—*

(a) *restrictions not attaching to all shares of the same class; or*

(b) *restrictions ceasing or liable to cease at some time after the acquisition; or*

(c) *restrictions depending on the shares being or ceasing to be held by directors or employees of any body corporate* (*other than such restrictions imposed by a company's articles of association as require shares to be disposed of on ceasing to be so held*).

(7) [M177]*The condition referred to in subsection* (3)(b)*above is fulfilled with respect to the relevant company if, for no continuous period of one month or more, throughout which any director or employee of the relevant company either—*

(a) *has, by virtue of his office or employment, any such right or opportunity as is referred to in subsection* (1)*above to acquire units in the unit trust, or*

(b) *retains any beneficial interest in any units in the unit trust which he acquired in pursuance of such a right or opportunity,*

do investments in the relevant company and in any other company in relation to which the relevant company is an associated company make up more than 10*per cent. by value of the investments subject to the trusts of the unit trust.*

(8) [M178]*The amount on which or on part of which the person making the acquisition is chargeable to tax under subsection* (1)(a)*above* (*"the chargeable amount"*)*shall, in the following cases, be reduced as follows, that is to say—*

(a) *where, in accordance with the terms on which the acquisition of the shares was made, the consideration for the acquisition is subsequently increased, the chargeable amount shall be reduced by an amount equal to the increase; and*

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(b) *where, in accordance with those terms, the shares are subsequently disposed of for a consideration which is less than their market value at the time of the disposal, the chargeable amount shall be reduced so as to be equal to the excess of that consideration over the market value of the shares at the time of the acquisition*;

and similarly where the interest acquired is less than the full beneficial ownership, and such assessments, alterations of assessments or repayments of tax shall be made as may be necessary to give effect to the reduction.

(9) *The period referred to in subsection* (1)(a)*above is a period ending at the earliest of the following times—*

(a) *the expiration of seven years from the acquisition of the shares or interest in the shares*;

(b) *the time when the person making the acquisition ceases to have any beneficial interest in the shares*;

(c) *in relation only to a person who acquires shares, the time when by reason of their ceasing to be subject to such restrictions as are specified in subsection* (6)*above either of the conditions in subsection* (3)(a)*above would be satisfied in relation to the shares if they had been acquired at that time*;

and for the purposes of subsection (1)(a)*and paragraph* (b)*above a person whose beneficial interest in shares is reduced shall be treated as ceasing to have an interest in such part of the shares as is proportionate to the reduction.*

(10) [M179]*Subsection* (11)*below applies where—*

(a) *a person has acquired shares or an interest in shares as mentioned in subsection* (1)*above* (*and the shares which he acquires or in which he acquires an interest are in sub-paragraphs* (b)*and* (c)*and subsection* (11)*below referred to as "the original shares"*);*and*

(b) *the circumstances of his acquisition of the original shares are such that the application of subsection* (1)(a)*above is not excluded; and*

(c) *after* 18*th March* 1986*by virtue of his holding of the original shares or the interest in them he acquires* (*whether or not for consideration*)*additional shares or an interest in additional shares* (*and the shares which he so acquires or in which he so acquires an interest are in subsection* (11)*below referred to as "the additional shares"*).

(11) *Where this subsection applies—*

(a) *the additional shares or, as the case may be, the interest in them shall be treated as having been acquired as mentioned in subsection* (1)*above and in circumstances falling within subsection* (10)(b)*above and, for the purposes of subsection* (9)(a)*above, as having been acquired at the same time as the original shares or the interest in them;*

(b) *for the purposes of subsections* (1)(a)*and* (8)*above, the additional shares and the original shares shall be treated as one holding of shares and the market value of the shares comprised in that holding at any time shall be determined accordingly (the market value of the original shares at the time of acquisition being attributed proportionately to all the shares in the holding); and*

(c) *for the purposes of those subsections, any consideration given for the acquisition of the additional shares or the interest in them shall be taken to be an increase falling within subsection* (8)(a)*above in the consideration for the original shares or the interest in them.*

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(12) [M180]*Subsection* (1)(b)*above does not apply where the benefit is received by virtue of a person's ownership of or of an interest in shares which were acquired before* 6*th April* 1972.

Textual Amendments

F931 Ss. 138, 139 repealed by Finance Act 1988 (c. 39) ss. 88, 148, Sch.14 Part VI in respect of shares issued on or after 26 October 1987, subject to transitional arrangements.

F932 Words in s. 138(1)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 16(2)** (with Sch. 7)

F933 Words in s. 138(4)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 16(3)** (with Sch. 7)

Modifications etc. (not altering text)

C138 S. 138 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss.120**, 289 (with ss. 60, 101(1), 171, 201(3)).

C139 Ss. 138-140 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(4)** (and as that affecting section 418 is substituted (with effect in accordance with Sch. 22 para 2(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 22 para 2(1)**)

Marginal Citations

M166 Source—1972 s.79(1), (4)
M167 Source—1972 c.79(1), (7)
M168 Source—1972 s.79(2)(b), (3)(b), (8)
M169 Source—1973 Sch.8 1
M170 Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)
M171 Source—1972 s.79(2)(bb); 1984 s.40(1)
M172 Source—1972 s.79(6)
M173 Source—1973 Sch.8 1(b), 3; 1974 s.20(2)
M174 Source—1973 Sch.8 2
M175 Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)
M176 Source—1972 s.79(2A); 1973 Sch.8 4(1)(b)
M177 Source—1972 s.79(2B); 1984 s.40(2)
M178 Source—1972 s.79(5), (6); 1973 Sch.8 4(1)(c); 1986 s.26(4)
M179 Source—1972 s.79(5A), (5B); 1986 s.26(3), (6)
M180 Source—1972 s.79(3)(a); 1974 s.20(1)(b)

[F934]139 Provisions supplementary to section 138.

(1) [M181]*Where—*

(a) *a director or employee of a body corporate acquires shares in pursuance of an opportunity to acquire shares of that class offered to directors and employees of the body in their capacity as such (" the discount offer ");and*

(b) *the discount offer is made in conjunction with an offer to the public (" the main offer ")under which shares of the same class may be acquired on the same terms, except that a discount in price is offered to directors and employees; and*

(c) *the director or employee is chargeable to tax under Schedule E on an amount equal to the discount in the price of the shares acquired by him; and*

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(d) *at least* 75*per cent. of the aggregate number of shares of the class in question which are acquired in pursuance of the discount offer and the main offer taken together are shares acquired in pursuance of the main offer,*

he shall be treated for the purposes of section 138(1)*as acquiring the shares in pursuance of an offer to the public.*

(2) *Where a director or employee acquires an interest in shares, subsection* (1)*above shall apply as if the references in that subsection to the acquisition of shares were references to the acquisition of an interest in shares.*

(3) [M182]*For the purposes of section* 138*and this section, where a person acquires any shares or an interest in shares in a body corporate in pursuance of a right conferred on him or opportunity offered to him as a person connected with a director or employee of that or any other body corporate, the shares or interest shall be deemed to be acquired by the director or employee, and section* 32A(4)*of the* 1979*Act shall apply with the necessary modifications; and where that person receives a benefit as mentioned in section* 138(1)(b)*the benefit shall be deemed to be received by the director or employee.*

(4) *For the purposes of section* 138*,a person who disposes of shares or an interest in shares otherwise than by a bargain at arm's length with a person who is not connected with him shall be deemed not to cease to have a beneficial interest in the shares.*

(5) [M183]*Where in any year of assessment a person acquires shares or an interest in shares as mentioned in section* 138(1) (*disregarding subsections* (1)*and* (2)*above*)*,the body from which the shares are or the interest is acquired shall deliver to the inspector within* 30*days of the end of that year particulars in writing of the shares and the acquisition.*

(6) [M184]*The Board may by notice require the managers or trustees of any unit trust scheme which is an authorised unit trust approved by the Board for the purposes of section* 138*to furnish to the Board within such time as they may direct* (*but not being less than* 30*days*)*such information as the Board think necessary for the purposes of enabling them to determine—*

(a) *whether the condition in subsection* (7)*of that section is being or has at any time been fulfilled; and*

(b) *the liability to tax of any unit holder whose rights were acquired as mentioned in subsection* (1)*of that section.*

(7) [M185]*Subject to subsection* (9)*below, in determining for the purposes of section* 138 (*including any valuation made for those purposes*)*whether shares which, or interests in which, have been acquired or are or are to be acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition by which his freedom to dispose of the shares or any interest in them or to exercise any right conferred by them is restricted or by which such a disposal or exercise may result in any disadvantages to him or a person connected with him, except where the restriction is imposed as a condition of a loan which is not a related loan as defined by subsection* (8)*below.*

This subsection does not apply where the person acquired the shares before 19*th October* 1972.

(8) *A loan made to any person is a related loan for the purposes of subsection* (7)*above if—*

(a) *it is made, arranged, guaranteed or in any way facilitated by—*

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(i) *the body corporate of which he is a director or employee, or*

(ii) *an associated company of that body, or*

(iii) *if that body or an associated company of it is a close company, any person having a material interest in the close company; or*

(b) *it is made to a person connected with another person and would have been such a loan if it had been made to that other person;*

but a loan made by the body corporate, associated company or person mentioned in paragraph (a)*above is not a related loan if that body, company or person carries on a business of making personal loans and the loan is made in the ordinary course of that business.*

(9) *For the purposes of section* 138(3)(a),*shares acquired by any person shall not, by virtue of subsection* (7)*above, be regarded as subject to any restriction by reason only of any contract, agreement, arrangement or condition providing for the disposal of the shares, when that person ceases to hold the office or employment by virtue of which he acquired the shares, to a person nominated in accordance with the contract, agreement, arrangement or condition if he is required to dispose of them at a price not exceeding their market value.*

(10) [M186]*Any reference in subsection* (7)*above to a contract, agreement, arrangement or condition does not include a reference to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Rules set out in the Model Code for Securities Transactions by Directors of Listed Companies issued by the Stock Exchange in November* 1984.

(11) *In section* 138*and this section—* [M187]

"associated company" has the meaning given by section 416;

"control" has the meaning given by section 840;

"director" includes a person who is to be a director;

"employee" includes a person who is to be an employee;

"full-time", in relation to an employee, means required to devote substantially the whole of his time to service as an employee;

"shares" includes stock and securities and references to an interest in any shares include references to the proceeds of sale of part of the shares; and

"units", in relation to an authorised unit trust, means an entitlement to a share in the investments subject to that trust.

(12) *For the purposes of section* 138*and this section, section* 168(11)*shall apply for determining whether a person has a material interest in a company, but with the omission of the words following*" 417(3) ".

(13) [M188]*If, on a person ceasing to have a beneficial interest in any shares, he acquires, after* 18*th March* 1986,*other shares or an interest in other shares and the circumstances are such that, for the purposes of sections* 78*to* 81*of the* 1979*Act* (*reorganisations etc.*)*the shares in which he ceases to have a beneficial interest constitute original shares and the other shares constitute a new holding—*

(a) *section* 78*of that Act* (*which equates the original shares with the new holding*)*shall apply for the purposes of this section and section* 138;

(b) *if any such consideration is given for the new holding as is mentioned in section* 79(1)*of that Act, it shall be treated for the purposes of this section and section* 138*as an increase falling within section* 138(8)(a)*in the consideration for the shares; and*

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(c) *if any such consideration is received for the disposal of the original shares as is mentioned in section* 79(2) *of the* 1979 *Act—*

(i) *the consideration shall be apportioned among the shares comprised in the new holding, and*

(ii) *the amount which, apart from this paragraph, would at any subsequent time be the market value of any of those shares shall be taken to be increased by the amount of the consideration apportioned to them*;

and in paragraphs (a) *to* (c) *above "the original shares" shall be construed in accordance with sections* 78 *to* 81 *of the* 1979 *Act.*

(14) [M189] *In any case where section* 138(1) *applies and the acquisition was an acquisition of units in an authorised unit trust—*

(a) *any reference in section* 138(1)(a), (8) *or* (9) *or subsection* (4) *above or section* [F935 120(4) *of the* 1992 *Act*] *to shares shall be construed as references to units; and*

(b) *any reference in those provisions to an interest in shares shall be omitted .*

Textual Amendments

F934 Ss. 138, 139 repealed by Finance Act 1988 (c. 39), ss. 88, 148, **Sch. 14 Part VI** in respect of shares issued on or after 26 October 1987, subject to transitional arrangements.

F935 Words in s. 139(14) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(10)** (with ss. 60, 101(1), 171, 201(3)).

Modifications etc. (not altering text)

C140 Ss. 138-140 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(4)** (and as that affecting section 418 is substituted (with effect in accordance with Sch. 22 para 2(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 22 para. 2(1)**)

Marginal Citations

M181 Source—1972 s.79(1A), (1B); 1984 s.41(1)
M182 Source—1972 s.79(10), (11)
M183 Source—1972 Sch.12 3; 1984 s.41(2)
M184 Source—1972 Sch.12 3A; 1984 s.40(4)
M185 Source—1973 Sch.8 5-7; 1982 s.41
M186 Source—11982 s.41; 1986 s.23(4)
M187 Source—1973 Sch.8 35; 1972 Sch.12 6, 8
M188 Source—1972 s.79(6A); 1986 s.26(5)
M189 Source—1972 s.79(4A); 1984 s.40(3)

140 Further interpretation of sections 135 to 139.

F936 . . . . . .

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Textual Amendments

F936 S. 140 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 17, **Sch. 8 Pt. 1** (with s. 418(4), Sch. 7)

[F937 140A Conditional acquisition of shares.

F938 . . . . . .

Textual Amendments

F937 Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 50(1)**

F938 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

140B Consideration for shares conditionally acquired.

F939 . . . . . .

Textual Amendments

F937 Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 50(1)**

F939 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

140C Cases where interest to be treated as only conditional.

F940 . . . . . .]

Textual Amendments

F937 Ss. 140A-140C inserted (with application in accordance with s. 50(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 50(1)**

F940 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

[F941 140D Convertible shares.

F942 . . . . . .

Textual Amendments

F941 Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 51(1)**

F942 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

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140E Consideration for convertible shares.

F943 . . . . . .

Textual Amendments

F941 Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 51(1)**

F943 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

140F Supplemental provision with respect to convertible shares.

F944 . . . . . .]

Textual Amendments

F941 Ss. 140D-140F inserted (with application in accordance with s. 51(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 51(1)**

F944 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

[F945 140G Information for the purposes of sections 140A to 140F.

F946 . . . . . .]

Textual Amendments

F945 S. 140G inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 52(1)**

F946 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

[F947 140H Construction of sections 140A to 140G.

F948 . . . . . .]

Textual Amendments

F947 S. 140H inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 53**

F948 Ss. 140A-140H repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 18, **Sch. 8 Pt. 1** (with Sch. 7)

Vouchers etc.

141 Non-cash vouchers.

F949 . . . . . .

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Textual Amendments

F949 Ss. 141-144 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 19, **Sch. 8 Pt. 1** (with Sch. 7)

142 Credit-tokens.

F950 . . . . . .

Textual Amendments

F950 Ss. 141-144 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 19, **Sch. 8 Pt. 1** (with Sch. 7)

143 Cash vouchers taxable under P.A.Y.E.

F951 . . . . . .

Textual Amendments

F951 Ss. 141-144 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 19, **Sch. 8 Pt. 1** (with Sch. 7)

144 Supplementary provisions.

F952 . . . . . .

Textual Amendments

F952 Ss. 141-144 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 19, **Sch. 8 Pt. 1** (with Sch. 7)

[F953 144A Payments etc. received free of tax.

F954 . . . . . .]

Textual Amendments

F953 S. 144A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 132**

F954 S. 144A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 20, **Sch. 8 Pt. 1** (with Sch. 7)

Living accommodation

145 Living accommodation provided for employee.

F955 . . . . . .

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Textual Amendments

F955 Ss. 145-147 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 21, **Sch. 8 Pt. 1** (with Sch. 7)

146 Additional charge in respect of certain living accommodation.

F956 . . . . . .

Textual Amendments

F956 Ss. 145-147 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 21, **Sch. 8 Pt. 1** (with Sch. 7)

[F957 146A Priority of rules applying to living accommodation.

F958 . . . . . .]

Textual Amendments

F957 S. 146A inserted (with application in accordance with s. 106(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 106(2)**

F958 Ss. 145-147 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 21, **Sch. 8 Pt. 1** (with Sch. 7)

147 Occupation of Chevening House.

F959 . . . . . .

Textual Amendments

F959 Ss. 145-147 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 21, **Sch. 8 Pt. 1** (with Sch. 7)

Payments on retirement, sick pay etc.

148 Payments and other benefits in connection with termination of employment, etc.

F960 . . . . . .

Textual Amendments

F960 Ss. 148-151A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 22, **Sch. 8 Pt. 1** (with Sch. 7)

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149 Sick pay.

F961 . . . . . .

Textual Amendments

F961 Ss. 148-151A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 22, **Sch. 8 Pt. 1** (with Sch. 7)

150 Job release scheme allowances, maternity pay and statutory sick pay.

F962 . . . . . .

Textual Amendments

F962 Ss. 148-151A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 22, **Sch. 8 Pt. 1** (with Sch. 7)

151 Income support etc.

F963 . . . . . .

Textual Amendments

F963 Ss. 148-151A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 22, **Sch. 8 Pt. 1** (with Sch. 7)

[F964 151A Jobseeker's allowance.

F965 . . . . . .]

Textual Amendments

F964 S. 151A inserted (2.9.1996) by Jobseekers Act 1995 (c. 18), s. 41(2)(4), **Sch. 2 para. 12**; S.I. 1996/2208, **art. 2(a)**

F965 Ss. 148-151A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 22, **Sch. 8 Pt. 1** (with Sch. 7)

152 [F966 Notification of taxable amount of certain benefits].

M190 (1) A benefit officer may by notice notify a person who is taxable in respect of any unemployment benefit [F967, Jobseeker's allowance] or income support of the amount on which he is taxable and any such notification shall state the date on which it is issued and shall inform the person to whom it is given that he may object to the notification by notice given within 60 days after the date of issue of the notification.

(2) Where—

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(a) no objection is made to a notification of an amount under subsection (1) above within the period specified in that subsection (or such further period as may be allowed by virtue of subsection (5) below); or

(b) an objection is made but is withdrawn by the objector by notice,

that amount shall not be questioned in any appeal against any assessment in respect of income including that amount.

(3) Where—

(a) an objection is made to a notification of an amount under subsection (1) above within the period specified in that subsection (or such further period as may be allowed by virtue of subsection (5) below), and

(b) the benefit officer and the objector come to an agreement that the amount notified should be varied in a particular manner, and

(c) the officer confirms the agreement to vary in writing,

then, subject to subsection (4) below, that amount as so varied shall not be questioned in any appeal against any assessment in respect of income including that amount.

(4) Subsection (3) above shall not apply if, within 60 days from the date when the agreement was come to, the objector gives notice to the benefit officer that he wishes to repudiate or resile from the agreement.

(5) An objection to a notification may be made later than 60 days after the date of the issue of the notification if, on an application for the purpose—

(a) a benefit officer is satisfied that there was a reasonable excuse for not objecting within that time, and

(b) the objection was made thereafter without unreasonable delay, and

(c) the officer gives consent in writing;

and if the officer is not so satisfied he shall refer the application for determination—

(i) by the General Commissioners for the division in which the objector ordinarily resides or,

(ii) in a case where an appeal has been made against an assessment in respect of income including the amount in question, the General Commissioners or the Special Commissioners having jurisdiction in that appeal.

(6) Where a benefit officer has notified an amount to a person under subsection (1) above, he may by another notice notify the person of an alteration in the amount previously notified and, if he does so, the original notification shall be cancelled and this section shall apply to such a subsequent notification as it applies to the original notification.

(7) In this section "benefit officer" means the appropriate officer, **[**[F968]in Great Britain, of the Department for Work and Pensions**]**, or, in Northern Ireland, of the Department of Health and Social Services.

Textual Amendments

F966 S. 152 sidenote substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 23** (with Sch. 7)

F967 Words in s. 152(1) inserted (7.10.1996) by Jobseekers Act 1995 (c. 18), s. 41(2)(4), **Sch. 2 para. 13**; S.I. 1996/2208, **art. 2(b)**

F968 Words in s. 152(7) substituted (27.6.2002) by The Secretaries of State for Education and Skills and for Work and Pensions Order 2002 (S.I. 2002/1397), **Sch. para. 6**

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Marginal Citations

M190 Source—1981 s.28; 1987 Sch.3 6

CHAPTER II

[F969EMPLOYEES EARNING £8,500 OR MORE AND DIRECTORS]

Textual Amendments

F969 Pt. 5 Ch. 2 heading substituted by Finance Act 1989 (c. 26), **s. 53(2)(a)**

Expenses

153 Payments in respect of expenses.

F970 . . . . . .

Textual Amendments

F970 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

Benefits in kind

154 General charging provision.

F971 . . . . . .

Textual Amendments

F971 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

155 Exceptions from the general charge.

F972 . . . . . .

Textual Amendments

F972 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F973155ZA Accommodation, supplies or services used in performing duties of employment.

F974 . . . . . .]

Textual Amendments

F973 S. 155ZA inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 2(1)**

F974 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F975 155ZB Power to provide for exemption of minor benefits.

F976 . . . . . .]

Textual Amendments

F975 S. 155ZB inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 3(1)**

F976 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F977 155AA Mobile telephones.

F978 . . . . . .]

Textual Amendments

F977 S. 155AA inserted (with effect in accordance with s. 44(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 44(1)**

F978 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F979 155A Care for children.

F980 . . . . . .]

Textual Amendments

F979 S. 155A inserted (1990-91 and subsequent years of assessment) by Finance Act 1990 (c. 29), **s. 21(1)(3)**

F980 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

156 Cash equivalent of benefits charged under section 154.

F981 . . . . . .

Textual Amendments

F981 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

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[F982 156A Limited exemption for computer equipment.

F983 . . . . . .]

Textual Amendments

F982 S. 156A inserted (with application in accordance with s. 45(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 45(1)**

F983 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

157 Cars available for private use.

F984 . . . . . .

Textual Amendments

F984 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F985 157A Cars available for private use: cash alternative, etc.

F986 . . . . . .]

Textual Amendments

F985 S. 157A inserted (with effect in accordance with s. 43(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 43(1)**

F986 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

158 Car fuel.

F987 . . . . . .

Textual Amendments

F987 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

159 Pooled cars.

F988 . . . . . .

Textual Amendments

F988 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

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[F989 159AA Vans available for private use.

F990 . . . . . .]

Textual Amendments

F989 Ss. 159AA, 159AB inserted after s. 159 (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 4, **8**

F990 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F991 159AB Pooled vans.

F992 . . . . . .

Textual Amendments

F991 Ss. 159AA, 159AB inserted after s. 159 (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras. 4, **8**

F992 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F993 159AC Heavier commercial vehicles available for private use.

F994 . . . . . .]

Textual Amendments

F993 S. 159AC inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 74(1)(3)**

F994 Ss. 153-159AC repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F995 159A . . . . . .

F996 . . . . . .]

Textual Amendments

F995 S. 159A inserted (1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31), **s. 30(2)(3)**

F996 S. 159A repealed (with effect in accordance with s. 44(6) of the repealing Act) by Finance Act 1999 (c. 16), ss. 44(2), 139, **Sch. 20 Pt. 3(9)**, Note

160 Beneficial loan arrangements.

F997 . . . . . .

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Textual Amendments

F997 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

161 Exceptions from section 160.

F998 . . . . . .

Textual Amendments

F998 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F999 161A Treatment of qualifying loans.

F1000 . . . . . .]

Textual Amendments

F999 S. 161A inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 4(1)**

F1000 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F1001 161B Beneficial loans: loans on ordinary commercial terms.

F1002 . . . . . .]

Textual Amendments

F1001 S. 161B inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 5(1)**

F1002 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

162 Employee shareholdings.

F1003 . . . . . .

Textual Amendments

F1003 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

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163 Expenses connected with living accommodation.

F1004 . . . . . .

Textual Amendments

F1004 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

164 Director's tax paid by employer.

F1005 . . . . . .

Textual Amendments

F1005 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

165 Scholarships.

F1006 . . . . . .

Textual Amendments

F1006 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

General supplementary provisions

166 Notice of nil liability under this Chapter.

F1007 . . . . . .

Textual Amendments

F1007 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

167 Employment to which this Chapter applies.

F1008 . . . . . .

Textual Amendments

F1008 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

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168 Other interpretative provisions.

F1009 . . . . . .

Textual Amendments

F1009 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F1010 168A Price of a car as regards a year.

F1011 . . . . . .]

Textual Amendments

F1010 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

F1011 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F1012 168AA Equipment to enable disabled person to use car.

F1013 . . . . . .]

Textual Amendments

F1012 S. 168AA inserted (with effect in accordance with s. 44(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 44(2)**

F1013 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

[F1014 168AB Equipment etc. to enable car to run on road fuel gas.

F1015 . . . . . .]

Textual Amendments

F1014 S. 168AB inserted (with effect in accordance with s. 60(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 60(3)**

F1015 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F1016 168B Price of a car: accessories not included in list price.

F1017 . . . . . .

Textual Amendments

F1016 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

F1017 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F1018 168C Price of a car: accessories available after car first made available.

F1019 . . . . . .

Textual Amendments

F1018 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

F1019 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F1020 168D Price of a car: capital contributions.

F1021 . . . . . .

Textual Amendments

F1020 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

F1021 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F1022 168E Price of a car: replacement accessories.

F1023 . . . . . .

Textual Amendments

F1022 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

F1023 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F1024 168F Price of a car: classic cars.

F1025 . . . . . .

Textual Amendments

F1024 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

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F1025 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

F1026 168C Price of a car: cap for expensive car.

F1027 . . . . . .

Textual Amendments

F1026 Ss. 168A-168G inserted (with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, s. 72, Sch. 3 paras. 4, **7**

F1027 Ss. 160-168G repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 24, **Sch. 8 Pt. 1** (with Sch. 7)

CHAPTER III

PROFIT-RELATED PAY

Preliminary

169 Interpretation.

F1028 . . . . . .

Textual Amendments

F1028 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

170 Taxation of profit-related pay.

F1029 . . . . . .

Textual Amendments

F1029 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

The relief

171 Relief from tax.

F1030 . . . . . .

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Textual Amendments

F1030 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

172 Exceptions from tax.

F1031

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Textual Amendments

F1031 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

Registration

173 Persons who may apply for registration.

F1032

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Textual Amendments

F1032 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

174 Excluded employments.

F1033

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Textual Amendments

F1033 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

175 Applications for registration.

F1034

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Textual Amendments

F1034 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

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176 Registration.

F1035 . . . . . .

Textual Amendments

F1035 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

177 Change of scheme employer.

F1036 . . . . . .

Textual Amendments

F1036 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

[F1037 177A Death of scheme employer.

F1038 . . . . . .]

Textual Amendments

F1037 Ss. 177A, 177B inserted by Finance Act 1989 (c. 26), **Sch. 4 para. 3**

F1038 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

177B Alteration of scheme's terms.

F1039 . . . . . .

Textual Amendments

F1039 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

178 Cancellation of registration.

F1040 . . . . . .

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Textual Amendments

F1040 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

Administration

179 Recovery of tax from scheme employer.

F1041 . . . . . .

Textual Amendments

F1041 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

180 Annual returns etc.

F1042 . . . . . .

Textual Amendments

F1042 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

181 Other information.

F1043 . . . . . .

Textual Amendments

F1043 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

182 Appeals.

F1044 . . . . . .

Textual Amendments

F1044 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

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Supplementary

183 Partnerships.

F1045 . . . . . .

Textual Amendments

F1045 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

184 Independent accountants.

F1046 . . . . . .

Textual Amendments

F1046 Ss. 169-184 (Pt. 5 Ch. 3) repealed (with effect in accordance with s. 61(2)(3) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**, Note 1 (with saving in Note 2; and Ch. 3 modified, as so saved, by s. 61(1) of the repealing Act)

CHAPTER IV

OTHER EXEMPTIONS AND RELIEFS

Share option and profit sharing schemes

185 Approved share option schemes.

F1047 . . . . . .

Textual Amendments

F1047 S. 185 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 25, **Sch. 8 Pt. 1** (with Sch. 7)

186 Approved profit sharing schemes.

(1) M191 The provisions of this section apply where, after 5th April 1979 **[**F1048 and before 1st January 2003**]**, the trustees of an approved profit sharing scheme appropriate shares—

(a) which have previously been acquired by the trustees, and

(b) as to which the conditions in Part II of Schedule 9 are fulfilled,

to an individual who participates in the scheme ("the participant").

(2) M192 Notwithstanding that, by virtue of such an appropriation of shares as is mentioned in subsection (1) above, the beneficial interest in the shares passes to the participant to whom they are appropriated—

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(a) the value of the shares at the time of the appropriation shall be treated as not being income of his chargeable to tax under Schedule E; and

(b) he shall not be chargeable to income tax under that Schedule by virtue of **[**F1049section 78 or 79 of the Finance Act 1988 in respect of the shares**]** or by virtue of section 162 in any case where the shares are appropriated to him at an undervalue within the meaning of that section.

(3) M193Subject to the provisions of this section and paragraph 4 of Schedule 10, if, in respect of or by reference to any of a participant's shares, the trustees become or the participant becomes entitled, before the release date, to receive any money or money's worth ("a capital receipt"), F1050. . . the appropriate percentage (determined as at the time the trustees become or the participant becomes so entitled) of so much of the amount or value of the receipt as exceeds the appropriate allowance for that year, as determined under subsection (12) below**[**F1051 counts as employment income of the participant for the year of assessment in which the entitlement arises**]**.

(4) M194If the trustees dispose of any of a participant's shares at any time before the release date or, if it is earlier, the date of the participant's death, then, subject to subsections (6) and (7) below, F1052. . . the appropriate percentage of the locked-in value of the shares at the time of the disposal**[**F1053 counts as employment income of the participant for the year of assessment in which the disposal takes place**]**.

(5) M195Subject to paragraphs 5 and 6(6) of Schedule 10, the locked-in value of a participant's shares at any time is—

(a) if prior to that time he has become **[**F1054 entitled to a capital receipt (within the meaning of subsection (3) above) which is referable to those shares and—

(i) an amount calculated by reference to that capital receipt counts as his employment income by virtue of subsection (3) above, or

(ii) if the entitlement to the capital receipt arose before 6th April 2003, he was chargeable to income tax by virtue of that subsection (as it had effect before that date) in respect of that capital receipt,**]**

the amount by which their initial market value exceeds the amount or value of that capital receipt or, if there has been more than one such receipt, the aggregate of them; and

(b) in any other case, their initial market value.

(6) Subject to subsection (7) below, if, on a disposal of shares falling within subsection (4) above, the proceeds of the disposal are less than the locked-in value of the shares at the time of the disposal, subsection (4) above shall have effect as if that locked-in value were reduced to an amount equal to the proceeds of the disposal.

(7) If, at any time prior to the disposal of any of a participant's shares, a payment was made to the trustees to enable them to exercise rights arising under a rights issue, then, subject to subsection (8) below, subsections (4) and (6) above shall have effect as if the proceeds of the disposal were reduced by an amount equal to that proportion of that payment or, if there was more than one, of the aggregate of those payments which, immediately before the disposal, the market value of the shares disposed of bore to the market value of all the participant's shares held by the trustees at that time.

(8) M196For the purposes of subsection (7) above—

(a) no account shall be taken of any payment to the trustees if or to the extent that it consists of the proceeds of a disposal of rights arising under a rights issue; and

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(b) in relation to a particular disposal the amount of the payment or, as the case may be, of the aggregate of the payments referred to in that subsection shall be taken to be reduced by an amount equal to the total of the reduction (if any) previously made under that subsection in relation to earlier disposals;

and any reference in subsection (7) or paragraph (a) above to the rights arising under a rights issue is a reference to rights conferred in respect of a participant's shares, being rights to be allotted, on payment, other shares or securities or rights of any description in the same company.

(9) [M197]If at any time the participant's beneficial interest in any of his shares is disposed of, the shares in question shall be treated for the purposes of the relevant provisions as having been disposed of at that time by the trustees for (subject to subsection (10) below) the like consideration as was obtained for the disposal of the beneficial interest; and for the purposes of this subsection there is no disposal of the participant's beneficial interest if and at the time when—

(a) in England and Wales or Northern Ireland, that interest becomes vested in any person on the insolvency of the participant or otherwise by operation of law, or

(b) in Scotland, that interest becomes vested in a judicial factor, in a trustee on the participant's sequestrated estate or in a trustee for the benefit of the participant's creditors.

(10) If—

(a) a disposal of shares falling within subsection (4) above is a transfer to which paragraph 2(2)(c) of Schedule 9 applies, or

[[F1055](b) any other disposal falling within that subsection is not at arm's length,**]**

(c) a disposal of shares falling within **[**[F1056]that subsection**]** is one which is treated as taking place by virtue of subsection (9) above and takes place within the period of retention,

then for the purposes of the relevant provisions the proceeds of the disposal shall be taken to be equal to the market value of the shares at the time of the disposal.

(11) [M198]Where the trustees of an approved scheme acquire any shares as to which the requirements of Part II of Schedule 9 are fulfilled and, within the period of 18 months beginning with the date of their acquisition, those shares are appropriated in accordance with the scheme, section 686 shall not apply to income consisting of dividends on those shares received by the trustees; and, for the purpose of determining whether any shares are appropriated within that period, shares which were acquired at an earlier time shall be taken to be appropriated before shares of the same class which were acquired at a later time.

(12) [M199]For the purposes of subsection (3) above, "the appropriate allowance", in relation to any year of assessment, means a sum which, subject to a maximum of **[**[F1057]£60**]**, is the product of multiplying £20 by 1 plus the number of years which fall within the period of **[**[F1058]three years**]** immediately preceding the year in question and in which shares were appropriated to the participant under the scheme; and if in any year (and before the release date) the trustees become or the participant becomes entitled, in respect of or by reference to any of his shares, to more than one capital receipt, the receipts shall be set against the appropriate allowance for that year in the order in which they are received.

(13) Schedule 10 shall have effect with respect to profit sharing schemes.

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Textual Amendments

F1048 Words in s. 186(1) inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 49(3)**

F1049 Words in s. 186(2)(b) substituted (in respect of acquisitions of shares on or after 26.10.1987) by Finance Act 1988 (c. 39), **s. 89**

F1050 Words in s. 186(3) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 26(2)(a), **Sch. 8 Pt. 1** (with Sch. 7)

F1051 Words in s. 186(3) added (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 26(2)(b)** (with Sch. 7)

F1052 Words in s. 186(4) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 26(3)(a), **Sch. 8 Pt. 1** (with Sch. 7)

F1053 Words in s. 186(4) added (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 26(3)(b)** (with Sch. 7)

F1054 Words in s. 186(5)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 26(4)** (with Sch. 7)

F1055 S. 186(10)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), s. 134(1), **Sch. 20 para. 11(a)**

F1056 Words in s. 186(10)(c) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), s. 134(1), **Sch. 20 para. 11(b)**

F1057 Words in s. 186(12) substituted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 118(1)(a)**

F1058 Words in s. 186(12) substituted (with effect in accordance with s. 118(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 118(1)(b)**

Modifications etc. (not altering text)

C141 S. 186 modified (29.4.1996) by Finance Act 1996 (c. 8), **ss. 115(1)**, 116(3)

C142 S. 186 continued (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(3)** (with Sch. 7)

Marginal Citations

M191 Source—1978 s.53(1)

M192 Source—1978 s.53(3)

M193 Source—1978 s.56(1); 1982 s.42(1)

M194 Source—1978 s.55(1)

M195 Source—1978 s.55(2)-(4)

M196 Source—1978 s.55(5), (9)

M197 Source—1978 s.55(7), (8)

M198 Source—1978 s.53(6)

M199 Source—1978 s.56(6); 1980 s.46(6); 1982 s.42(2); 1985 s.45(4)

187 Interpretation of sections 185 and 186 and Schedules 9 and 10.

(1) **[**F1059M200In sections 185 and 186, this section and Schedules 9 and 10 "the relevant provisions" means those sections (including this section) and Schedules.**]**

(2) **[**F1059For the purposes of the relevant provisions, except where the context otherwise requires—

"appropriate percentage" shall be construed in accordance with paragraph 3 of Schedule 10;

"approved", in relation to a scheme, means approved under Schedule 9;

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"associated company" has the same meaning as in section 416, except that, for the purposes of paragraph 23 of Schedule 9, subsection (1) of that section shall have effect with the omission of the words " or at any time within one year previously ";

"bonus date" has the meaning given by paragraph 17 of Schedule 9;

"capital receipt" means money or money's worth to which the trustees of or a participant in a profit sharing scheme become or becomes entitled as mentioned in section 186(3), but subject to paragraph 4 of Schedule 10;

"certified contractual savings scheme" has the meaning given by section 326;

"control" has the same meaning as in section 840;

"grantor", in relation to any scheme, means the company which has established the scheme;

"group scheme" and, in relation to such a scheme, "participating company" have the meanings given by paragraph 1(3) and (4) of Schedule 9;

"initial market value", in relation to shares in a profit sharing scheme, has the meaning given by paragraph 30(4) of Schedule 9;

"locked-in value", in relation to any shares, shall be construed in accordance with section 186(5);

"market value" has the same meaning as in Part VIII of the **[**F1060 1992 Act**]**;

"new holding" has the meaning given by section **[**F1060 126(1)(b) of the 1992 Act**]**;

"participant", in relation to a profit sharing scheme, means an individual to whom the trustees of the scheme have appropriated shares;

"participant's shares", in relation to a participant in a profit sharing scheme, means, subject to paragraph 5(4) of Schedule 10, shares which have been appropriated to the participant by the trustees;

F1061 . . . . . .

"period of retention" has the meaning given by paragraph 2 of Schedule 10;

"release date", in relation to any of the shares of a participant in a profit sharing scheme, means the **[**F1062 third**]** anniversary of the date on which they were appropriated to him;

"relevant amount", in relation to a participant in a profit sharing scheme, means an amount which is **[**F1063 not less than £3,000 and not more than £8,000**]** but which, subject to that, is 10 per cent. of his salary (determined under subsection (5) below) for the year of assessment in question or the preceding year of assessment, whichever is the greater;

"relevant requirements" has the meaning given by paragraph 1 of Schedule 9;

"savings-related share option scheme" has the meaning given by paragraph 1 of Schedule 9;

"scheme" means a savings-related share option scheme, a share option scheme which is not a savings-related share option scheme or a profit sharing scheme, as the context may require;

"shares" includes stock;

[F1064 "specified age", in relation to a scheme, means the age specified in pursuance of paragraph 8A of Schedule 9 as the specified age for the purposes of the scheme;**]**

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"the trustees", in relation to an approved profit sharing scheme or the shares of a participant in such a scheme, means the body of persons for the establishment of which the scheme must provide as mentioned in paragraph 30 of Schedule 9; and

"just instrument", in relation to an approved profit sharing scheme, means the instrument referred to in paragraph 30(1)(c) of Schedule 9.**]**

(3) **[**F1059M201For the purposes of the application of the relevant provisions in relation to any share option scheme or profit sharing scheme, a person has a material interest **[**F1065in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company, or

(b) where the company is a close company, possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the assets which would then be available for distribution among the participators.**]**

(4) **[**F1065In this subsection "associate" has the meaning given by section 417(3) and "participator" has the meaning given by section 417(1)**].]**

(4) **[**F1059M202Subsection (3) above shall have effect subject to the provisions of Part VI of Schedule 9.**]**

(5) M203For the purposes of subsection (2) above, a participant's salary for a year of assessment means such of the emoluments of the office or employment by virtue of which he is entitled to participate in a profit sharing scheme as are liable to be paid in that year under deduction of tax pursuant to section 203 after deducting therefrom amounts included by virtue of Chapter II of this Part.

(6) **[**F1059M204Section 839 shall apply for the purposes of the relevant provisions.**]**

(7) **[**F1059M205For the purposes of the relevant provisions a company is a member of a consortium owning another company if it is one of a number of companies which between them beneficially own not less than three-quarters of the other company's ordinary share capital and each of which beneficially owns not less than one-twentieth of that capital.**]**

(8) M206Where the disposal referred to in section 186(4) is made from a holding of shares which were appropriated to the participant at different times, then, in determining for the purposes of the relevant provisions—

(a) the initial market value and the locked-in value of each of those shares, F1066. . .

(b) F1066. . . . . .

(9) M207Any of the relevant provisions with respect to—

(a) the order in which any of a participant's shares are to be treated as disposed of for the purposes of those provisions, or

(b) the shares in relation to which an event is to be treated as occurring for any such purpose,

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shall have effect in relation to a profit sharing scheme notwithstanding any direction given to the trustees with respect to shares of a particular description or to shares appropriated to the participant at a particular time.

(10) [M208]In the relevant provisions "workers' cooperative" means a registered industrial and provident society, within the meaning of section 486, which is a cooperative society and the rules of which include provisions which secure—

(a) that the only persons who may be members of it are those who are employed by, or by a subsidiary of, the society and those who are the trustees of its profit sharing scheme; and

(b) that, subject to any provision about qualifications for membership which is from time to time made by the members of the society by reference to age, length of service or other factors of any description, all such persons may be members of the society;

and in this subsection "cooperative society" has the same meaning as in section 1 of the [M209]Industrial and Provident Societies Act 1965 or, as the case may be, the [M210]Industrial and Provident Societies Act (Northern Ireland) 1969.

Textual Amendments

F1059 S. 187(1)-(4)(6)(7) repealed (except so far as relating to profit sharing schemes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 27, **Sch. 8 Pt. 1** (with Sch. 7)

F1060 Words in s. 187(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(13)** (with ss. 60, 101(1), 171, 201(3)).

F1061 S. 187(2): definition of "pensionable age" repealed (19.7.1995) by Pensions Act 1995 (c. 26), ss. 126, 177, 180(2)(a), Sch. 4 para. 12(a), **Sch. 7 Pt. 2**

F1062 Word in s. 187(2) substituted (with effect in accordance with s. 116(2)(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 116(1)**

F1063 Words in s. 187(2) substituted (for the year 1991-92 and subsequent years of assessment) by virtue of Finance Act 1991 (c. 31), **s. 41(1)(2)**

F1064 S. 187(2): definition of "specified age" inserted by Finance Act 1991 (c. 31), **s. 38(4)**

F1065 Words in s. 187(3) substituted (in relation to accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), **Sch. 12 para. 9**

F1066 S. 187(8)(b) and preceding word repealed (with effect in accordance with s. 117(3) of the repealing Act) by Finance Act 1996 (c. 8), ss. 117(2), 205, **Sch. 41 Pt. 5(5)**, Note 1

Modifications etc. (not altering text)

C143 S. 187 modified (29.4.1996) by Finance Act 1996 (c. 8), **ss. 115(1)**, 116(3)

C144 S. 187 applied (29.4.1996) by Finance Act 1996 (c. 8), s. 114, **Sch. 16 para. 5(1)**

C145 S. 187 continued so far as relating to APS schemes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(3)** (with Sch. 7)

Marginal Citations

M200 Source—1978 ss.53(2), 54(2), (4)(b), 6, 56(1), 57(1), (4), 61(1), Sch.9 1, 16; 1980 s.46(4), Sch.10 5(b), 8, 26(1); 1982 s.40(8); 1983 s.25(1); 1984 Sch.10 15(1), (2); 1985 s.45(2)

M201 Source—1970 s.285(6); 1978 Sch.9 11(3)(b); 1980 Sch.10 26(2); 1984 Sch.10 4(4)

M202 Source—1987 s.33(2)

M203 Source—1978 s.61(4); 1983 s.25(2)

M204 Source—1978 Sch.9 16; 1980 Sch.10 26(4); 1984 Sch.10 15(3)

M205 Source—1978 Sch.9 17; 1980 Sch.10 26(5); 1984 Sch.10 15(4); 1986 s.23(5)

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M206 Source—1978 s.55(6)
M207 Source—1978 s.61(2)
M208 Source—1978 Sch.9 18; 1986 s.24(1)
M209 1965 c. 12.
M210 1969 c. 24. (N.I.).

I[F1067 Contributions in respect of share option gains

Textual Amendments
F1067 S. 187A and preceding cross-heading inserted (with application in accordance with s. 56(1) of the amending Act) by Finance Act 2000 (c. 17), **s. 56(1)**

187A Relief for contributions in respect of share option gains.

F1068 . . . . . .]

Textual Amendments
F1068 S. 187A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(a), **Sch. 8 Pt. 1** (with Sch. 7)

Retirement benefits etc.

188 Exemptions from section 148.

F1069 . . . . . .

Textual Amendments
F1069 S. 188 repealed (with application in accordance with s. 58(4) of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(9)**, Note

189 Lump sum benefits on retirement.

F1070 . . . . . .

Textual Amendments
F1070 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

190 Payments to MPs and others.

F1071 . . . . . .

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Textual Amendments

F1071 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

191 Job release scheme allowances not to be treated as income.

F1072 . . . . . .

Textual Amendments

F1072 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1073 Removal expenses and benefits

Textual Amendments

F1073 Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

F1074 191A Removal expenses and benefits.

F1075 . . . . . .

Textual Amendments

F1074 Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

F1075 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

F1076 191B Removal benefits: beneficial loan arrangements.

F1077 . . . . . .]

Textual Amendments

F1076 Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

F1077 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

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Foreign emoluments and earnings, pensions and certain travel facilities

192 Relief from tax for foreign emoluments.

F1078 . . . . . .

Textual Amendments

F1078 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1079 192A Foreign earnings deduction for seafarers.

F1080 . . . . . .]

Textual Amendments

F1079 S. 192A inserted (with effect in accordance with s. 63(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 63(2)** (with s. 63(6)(7))

F1080 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

193 Foreign earnings and travel expenses.

F1081 . . . . . .

Textual Amendments

F1081 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

194 Other foreign travel expenses.

F1082 . . . . . .

Textual Amendments

F1082 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

195 Travel expenses of employees not domiciled in the United Kingdom.

F1083 . . . . . .

Textual Amendments

F1083 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

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196 Foreign pensions.

F1084 . . . . . .

Textual Amendments

F1084 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

197 Leave travel facilities for the armed forces.

F1085 . . . . . .

Textual Amendments

F1085 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1086 197A Car parking facilities

F1087 . . . . . .]

Textual Amendments

F1086 S. 197A inserted (1988-89 and subsequent years of assessment) by Finance Act 1988 (c. 39), **s. 46(4)**

F1087 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1088 197AA Works bus services.

F1089 . . . . . .

Textual Amendments

F1088 Ss. 197AA, 197AB inserted (with effect in accordance with s. 48(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 48(1)**

F1089 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

197AB Support for public transport road services.

F1090 . . . . . .]

Textual Amendments

F1088 Ss. 197AA, 197AB inserted (with effect in accordance with s. 48(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 48(1)**

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F1090 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1091 197AC Provision of cycle or cyclist's safety equipment.

F1092 . . . . . .]

Textual Amendments

F1091 S. 197AC inserted (with effect in accordance with s. 50(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 50(1)**

F1092 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1093 Mileage allowances

Textual Amendments

F1093 Ss. 197AD-197AH and preceding cross-heading inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 57(1)**

197AD Mileage allowance payments

F1094 . . . . . .

Textual Amendments

F1094 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

197AE Passenger payments

F1095 . . . . . .

Textual Amendments

F1095 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

197AF Mileage allowance relief

F1096 . . . . . .

Textual Amendments

F1096 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

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197AG Giving effect to mileage allowance relief

F1097 . . . . . .

Textual Amendments

F1097 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

197AH Interpretation of sections 197AD to 197AG

F1098 . . . . . .]

Textual Amendments

F1098 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1099 Mileage allowances

Textual Amendments

F1099 Ss. 197B-197F and preceding cross-heading inserted by Finance Act 1990 (c. 29), s. 23, **Sch. 4**

197B . . . . . .

F1100 . . . . . .

Textual Amendments

F1100 Ss. 197B-197F repealed (with effect in accordance with Sch. 33 Pt. 2(1) Note of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(1)**

197C . . . . . .

F1101 . . . . . .

Textual Amendments

F1101 Ss. 197B-197F repealed (with effect in accordance with Sch. 33 Pt. 2(1) Note of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(1)**

197D . . . . . .

F1102 . . . . . .

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Textual Amendments

F1102 Ss. 197B-197F repealed (with effect in accordance with Sch. 33 Pt. 2(1) Note of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(1)**

197E . . . . . .

F1103 . . . . . .

Textual Amendments

F1103 Ss. 197B-197F repealed (with effect in accordance with Sch. 33 Pt. 2(1) Note of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(1)**

197F . . . . . .

F1104 . . . . . .]

Textual Amendments

F1104 Ss. 197B-197F repealed (with effect in accordance with Sch. 33 Pt. 2(1) Note of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(1)**

[F1105 Sporting and recreational facilities

Textual Amendments

F1105 S. 197G and preceding cross-heading inserted (27.7.1993 with application for the year 1993-94 and subsequent years of assessment) by Finance Act 1993 (c. 34), **s. 75(1)(2)**

197G Sporting and recreational facilities.

F1106 . . . . . .]

Textual Amendments

F1106 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

Other expenses, subscriptions etc.

198 Relief for necessary expenses.

F1107 . . . . . .

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Textual Amendments

F1107 Ss. 189-198 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(b), **Sch. 8 Pt. 1** (with Sch. 7)

[F1108 198A. . . . . .

F1109 . . . . . .]

Textual Amendments

F1108 S. 198A inserted (with effect in accordance with s. 62(5) of the amending Act) by Finance Act 1997 (c. 16), **s. 62(2)**

F1109 S. 198A repealed (with effect in accordance with Sch. 27 Pt. 3(10) Note of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(10)**

199 Expenses necessarily incurred and defrayed from official emoluments.

F1110 . . . . . .

Textual Amendments

F1110 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200 Expenses of Members of Parliament.

F1111 . . . . . .

Textual Amendments

F1111 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

[F1112 200ZA Expenses of members of Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.

F1113 . . . . . .]

Textual Amendments

F1112 S. 200ZA inserted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), s. 52(1), **Sch. 5 para. 2(1)**

F1113 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

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[F1114 200AA Incidental benefits for holders of certain offices etc.

F1115 . . . . . .]

Textual Amendments

F1114 S. 200AA inserted (with effect in accordance with s. 108(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 108(1)**

F1115 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

[F1116 200A Incidental overnight expenses.

F1117 . . . . . .]

Textual Amendments

F1116 S. 200A inserted (with effect in accordance with s. 93(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 93(4)**

F1117 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

[F1118 200B Work-related training provided by employers.

F1119 . . . . . .

Textual Amendments

F1118 Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 63(1)**

F1119 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200C Expenditure excluded from section 200B.

F1120 . . . . . .

Textual Amendments

F1118 Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 63(1)**

F1120 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200D Other work-related training.

F1121 . . . . . .]

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Textual Amendments

F1118 Ss. 200B-200D inserted (with application in accordance with s. 63(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 63(1)**

F1121 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

[F1122 200E Education and training funded by employers.

F1123 . . . . . .

Textual Amendments

F1122 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

F1123 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200F Section 200E: exclusion of expenditure not directly related to training.

F1124 . . . . . .

Textual Amendments

F1122 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

F1124 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200G Section 200E: exclusion of expenditure if contributions not generally available to staff.

F1125 . . . . . .

Textual Amendments

F1122 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

F1125 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200H Section 200E: exclusion of expenditure otherwise relieved.

F1126 . . . . . .

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Textual Amendments

F1122 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

F1126 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

200J Education or training funded by third parties.

F1127 . . . . . .]

Textual Amendments

F1122 Ss. 200E-200H, 200J inserted (with application in accordance with s. 58(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 58(1)**

F1127 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

201 Fees and subscriptions to professional bodies, learned societies etc.

F1128 . . . . . .

Textual Amendments

F1128 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

[F1129 201AA Employee liabilities and indemnity insurance.

F1130 . . . . . .]

Textual Amendments

F1129 S. 201AA inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 91(1)**

F1130 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

[F1131 201A Expense of entertainers.

F1132 . . . . . .]

Textual Amendments

F1131 S. 201A inserted by Finance Act 1990 (c. 29), **s. 77**

F1132 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

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202 Donations to charity: payroll deduction scheme.

F1133 . . . . . .

Textual Amendments

F1133 Ss. 199-202 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 28(c), **Sch. 8 Pt. 1** (with Sch. 7)

CHAPTER V

ASSESSMENT, COLLECTION, RECOVERY AND APPEALS

[F1134 202A Assessment on receipts basis.

F1135 . . . . . .]

Textual Amendments

F1134 Ss. 202A, 202B inserted by Finance Act 1989 (c. 26), **s. 37**

F1135 Ss. 202A, 202B repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 29, **Sch. 8 Pt. 1** (with Sch. 7)

202B Receipts basis: meaning of receipt.

F1136 . . . . . .

Textual Amendments

F1136 Ss. 202A, 202B repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 29, **Sch. 8 Pt. 1** (with Sch. 7)

203 Pay as you earn.

F1137 . . . . . .

Textual Amendments

F1137 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1138 203A P.A.Y.E.: meaning of payment.

F1139 . . . . . .]

Textual Amendments

F1138 S. 203A inserted by Finance Act 1989 (c. 26), **s. 37(2)(4)(5)**

F1139 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1140 203B PAYE: payment by intermediary.

F1141 . . . . . .]

Textual Amendments

F1140 S. 203B inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 125**

F1141 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1142 203C PAYE: employee of non-UK employer.

F1143 . . . . . .

Textual Amendments

F1142 Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 126**

F1143 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

203D PAYE: employee non-resident, etc.

F1144 . . . . . .

Textual Amendments

F1142 Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 126**

F1144 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

203E PAYE: mobile UK workforce.

F1145 . . . . . .]

Textual Amendments

F1142 Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 126**

F1145 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1146 203F PAYE: tradeable assets.

F1147 . . . . . .]

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Textual Amendments

F1146 S. 203F inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 127**

F1147 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1148 203FA PAYE: enhancing the value of an asset.

F1149 . . . . . .]

Textual Amendments

F1148 S. 203FA inserted (with effect in accordance with s. 66(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 66(1)** (with s. 66(3))

F1149 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1150 203FB PAYE: gains from share options etc.

F1151 . . . . . .]

Textual Amendments

F1150 S. 203FB inserted (with effect in accordance with s. 67(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 67(1)** (with s. 67(3))

F1151 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1152 203G PAYE: non-cash vouchers.

F1153 . . . . . .]

Textual Amendments

F1152 S. 203G inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 128**

F1153 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1154 203H PAYE: credit-tokens.

F1155 . . . . . .]

Textual Amendments

F1154 S. 203H inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 129**

F1155 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

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[F1156 203I PAYE: cash vouchers.

F1157 . . . . . .]

Textual Amendments

F1156 S. 203I inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 130**

F1157 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

[F1158 203J S.203B to s.203I: accounting for tax.

F1159 . . . . . .

Textual Amendments

F1158 Ss. 203J-203L inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 131**

F1159 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

203K Trading arrangements.

F1160 . . . . . .

Textual Amendments

F1158 Ss. 203J-203L inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 131**

F1160 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

203L S.203B to s.203K: interpretation, etc.

F1161 . . . . . .]

Textual Amendments

F1158 Ss. 203J-203L inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 131**

F1161 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

204 P.A.Y.E repayments.

F1162 . . . . . .

Textual Amendments

F1162 Ss. 203-204 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 30, **Sch. 8 Pt. 1** (with Sch. 7)

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205 Assessments unnecessary in certain circumstances.

F1163 . . . . . .

Textual Amendments

F1163 Ss. 205, 206 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 31, **Sch. 8 Pt. 1** (with Sch. 7)

206 Additional provision for certain assessments.

F1164 . . . . . .

Textual Amendments

F1164 Ss. 205, 206 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 31, **Sch. 8 Pt. 1** (with Sch. 7)

[F1165 206A PAYE settlement agreements.

F1166 . . . . . .]

Textual Amendments

F1165 S. 206A inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 110**

F1166 S. 206A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 32, **Sch. 8 Pt. 1** (with Sch. 7)

207 Disputes as to domicile or ordinary residence.

F1167 . . . . . .

Textual Amendments

F1167 S. 207 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 32, **Sch. 8 Pt. 1** (with Sch. 7)

PART VI

COMPANY DISTRIBUTIONS, TAX CREDITS ETC

Modifications etc. (not altering text)

C146 Pt. 6 modified by Airports Act 1986 (c. 31), **s. 77(3)** (as substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 3 (with **Sch. 15**))

C147 Pt. 6 modified by Gas Act 1986 (c. 44), **s. 60(3)** (as substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 4 (with **Sch. 15**))

C148 Pt. 6 modified by British Steel Act 1988 (c. 35), **s. 11(7)** (as substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 55 (with **Sch. 15**))

CHAPTER I

TAXATION OF COMPANY DISTRIBUTIONS

Modifications etc. (not altering text)

C149 Pt. 6 Chs. 1-3: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)(d)**

[F1168 207A Application of lower rate to company distributions.

F1169 . . . . . .]

Textual Amendments

F1168 S. 207A inserted (27.7.1993 with application in relation to the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(1)(2)(5)**

F1169 S. 207A repealed (with effect in accordance with s. 73 of the repealing Act) by Finance Act 1996, Sch. 41 Pt. 5(1), Note 1

208 U.K. company distributions not generally chargeable to corporation tax.

M211 Except as otherwise provided by the Corporation Tax Acts, corporation tax shall not be chargeable on dividends and other distributions of a company resident in the United Kingdom, nor shall any such dividends or distributions be taken into account in computing income for corporation tax.

Modifications etc. (not altering text)

C150 S. 208 excluded (with effect in accordance with s. 230(3) of the excluding Act) by Finance Act 1994 (c. 9), **ss. 219(4)**, 220

C151 S. 208 excluded by Finance Act 1994 (c. 9), **ss. 219(4A)**, 220 (as that s. 219(4A) is inserted (with effect in accordance with s. 22(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), s. 22(4))

C152 S. 208 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **6(2)(a)**

C153 s. 208 excluded (with effect in accordance with **s. 22(7)** of the amending Act) by Finance Act1993 (c. 34), s. 171(4A) (as inserted by 1997 c. 58, s. 22(4)),

C154 S. 208 modified (with retrospective effect) by Finance (No. 3) Act 2010 (c. 33), **Sch. 3 para. 6(1)(2)**

Marginal Citations

M211 Source—1970 s.239

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CHAPTER II

MATTERS WHICH ARE DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

Modifications etc. (not altering text)

C155 Pt. 6 Ch. 2 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 14(5)**

C156 Pt. 6 Ch. 2 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 13(5)** (with s. 40(7), Sch. 4 para. 14); S.I. 1994/2189, art. 2, **Sch.**

C157 Pt. 6 Ch. 2 modified (8.11.1995) by Gas Act 1995 (c. 45), s. 18(2)(c), Sch. 5 paras. 1, **10(4)**

C158 Pt. 6 Chs. 1-3: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)(d)**

209 Meaning of "distribution".

(1) [M212]The following provisions of this Chapter, together with section 418, shall, subject to **[**[F1170]any express exceptions**]**, have effect with respect to the meaning of "distribution" and for determining the persons to whom certain distributions are to be treated as made, but references in the Corporation Tax Acts to distributions of a company shall not apply to distributions made in respect of share capital in a winding up.

(2) In the Corporation Tax Acts "distribution", in relation to any company, means—

(a) [M213]any dividend paid by the company, including a capital dividend;

(b) subject to subsections (5) and (6) below, any other distribution out of assets of the company (whether in cash or otherwise) in respect of shares in the company, except so much of the distribution, if any, as represents repayment of capital on the shares or is, when it is made, equal in amount or value to any new consideration received by the company for the distribution;

(c) subject to section 230, any redeemable share capital or any security issued by the company in respect of shares in or securities of the company otherwise than wholly for new consideration, or such part of any redeemable share capital or any security so issued as is not properly referable to new consideration;

(d) [M214]any interest or other distribution out of assets of the company in respect of securities of the company, where they are securities under which the consideration given by the company for the use of the principal thereby secured represents more than a reasonable commercial return for the use of that principal, except so much, if any, of any such distribution as represents that principal and so much as represents a reasonable commercial return for the use of that principal;

[[F1171](da) [F1172]. . . . . .**]**

(e) [M215]any interest or other distribution out of assets of the company in respect of securities of the company (except so much, if any, of any such distribution as represents the principal thereby secured and except so much of any distribution as falls within **[**[F1173]paragraph (d) [F1174]. . . **]** above), where the securities are—

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(i) securities issued as mentioned in paragraph (c) above, but excluding securities issued before 6th April 1965 in respect of shares and securities issued before 6th April 1972 in respect of securities; or

(ii) securities convertible directly or indirectly into shares in the company or securities issued after 5th April 1972 and carrying any right to receive shares in or securities of the company, not being (in either case) securities **[**F1175listed**]** on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so **[**F1175listed**]**; or

(iii) securities under which the consideration given by the company for the use of the principal secured is to any extent dependent on the results of the company's business or any part of it; or

(iv) F1176. . . . . .

(v) F1176. . . . . .

(vi) securities which are connected with shares in the company, and for this purpose securities are so connected if, in consequence of the nature of the rights attaching to the securities or shares and in particular of any terms or conditions attaching to the right to transfer the shares or securities, it is necessary or advantageous for a person who has, or disposes of or acquires, any of the securities also to have, or to dispose of or to acquire, a proportionate holding of the shares **[**F1177or;

(vii) equity notes issued by the company ("the issuing company") and held by a company which is associated with the issuing company or is a funded company;**]**

(f) any such amount as is required to be treated as a distribution by subsection (4) below or section 210.

(3) M216Without prejudice to section 254(11), no amount shall be regarded for the purposes of **[**F1178subsection (2)(d)F1179. . . **]** and (e) above as representing the principal secured by a security issued after 5th April 1972 in so far as it exceeds any new consideration which has been received by the company for the issue of the security.

[F1180(3A) Where any security of a company is issued at a premium representing new consideration—

(a) the references in subsection (2)(d)F1181. . . and (e) above to so much of any distribution as represents, or is an amount representing, the principal secured by a security shall be construed, in relation to a distribution in respect of the security issued at a premium, as references to the aggregate of—

(i) so much of the distribution as represents, or is an amount representing, that principal, and

(ii) so much of it as represents, or is an amount representing, the premium;

and

(b) the reference in subsection (2)(d) above to so much of any distribution as represents a reasonable commercial return for the use of the principal secured by a security shall be construed, in relation to a distribution in respect of the security issued at a premium, as a reference to the aggregate of—

(i) so much of the distribution as represents a reasonable commercial return for the use of that principal, and

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(ii) so much of it as (when regard is had to the extent to which distributions represent the premium) represents a reasonable commercial return for the use of the premium.**]**

[F1182(3AA) If, in the case of any security issued by a company, the amount of new consideration received by the company for the issue of the security exceeds the amount of the principal secured by the security—

(a) the amount of the principal so secured shall be treated for the purposes of paragraph (d) of subsection (2) above as increased to the amount of the new consideration so received; and

(b) subsection (3A) above, so far as relating to that paragraph, shall not have effect in relation to the security;

but this subsection is subject to sections 209A and 209B.**]**

[F1183(3B) For the purposes of subsection (2)(e)(iii) above the consideration given by the company for the use of the principal secured shall not be treated as being to any extent dependent on the results of the company's business or any part of it by reason only of the fact that the terms of the security provide—

(a) for the consideration to be reduced in the event of the results improving, or

(b) for the consideration to be increased in the event of the results deteriorating.**]**

(4) M217Where on a transfer of assets or liabilities by a company to its members or to a company by its members, the amount or value of the benefit received by a member (taken according to its market value) exceeds the amount or value (so taken) of any new consideration given by him, the company shall, subject to subsections (5) and (6) below, be treated as making a distribution to him of an amount equal to the difference.

(5) Subsection (4) above shall not apply where the company and the member receiving the benefit are both resident in the United Kingdom and either the former is a subsidiary of the latter or both are subsidiaries of a third company also so resident; and any amount which would apart from this subsection be a distribution shall not constitute a distribution by virtue of subsection (2)(b) above.

(6) M218No transfer of assets (other than cash) or of liabilities between one company and another shall constitute, or be treated as giving rise to, a distribution by virtue of subsection (2)(b) or (4) above if they are companies—

(a) both of which are resident in the United Kingdom and neither of which is a 51 per cent. subsidiary of a company not so resident; and

(b) which, neither at the time of the transfer nor as a result of it, are under common control.

For the purposes of this subsection two companies are under common control if they are under the control of the same person or persons, and for this purpose "control" shall be construed in accordance with section 416.

(7) M219The question whether one body corporate is a subsidiary of another for the purpose of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate, if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt; or

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(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(8) [M220]For the purposes of subsection (2)(c) above—

(a) the value of any redeemable share capital shall be taken to be the amount of the share capital together with any premium payable on redemption, or in a winding up, or in any other circumstances; and

(b) the value of any security shall be taken to be the amount of the principal thereby secured (including any premium payable at maturity or in a winding up, or in any other circumstances);

and in determining the amount of the distribution constituted by the issue of any redeemable share capital or any security, the capital or security shall be taken at that value.

[[F1184](8A) [F1185]. . . . . .

(8B) [F1185]. . . . . .

(8C) [F1185]. . . . . .

(8D) [F1185]. . . . . .

(8E) [F1185]. . . . . .

(8F) [F1185]. . . . . .**]**

[[F1186](9) For the purposes of subsection (2)(e)(vii) above a security is an equity note if as regards the whole of the principal or as regards any part of it—

(a) the security's terms contain no particular date by which it is to be redeemed,

(b) under the security's terms the date for redemption, or the latest date for redemption, falls after the expiry of the permitted period,

(c) under the security's terms redemption is to occur after the expiry of the permitted period if a particular event occurs and the event is one which (judged at the time of the security's issue) is certain or likely to occur, or

(d) the issuing company can secure that there is no particular date by which the security is to be redeemed or that the date for redemption falls after the expiry of the permitted period;

and the permitted period is the period of 50 years beginning with the date of the security's issue.

(10) For the purposes of subsection (2)(e)(vii) above and subsection (11) below a company is associated with the issuing company if—

(a) the issuing company is a 75 per cent. subsidiary of the other company,

(b) the other company is a 75 per cent. subsidiary of the issuing company, or

(c) both are 75 per cent. subsidiaries of a third company.

(11) For the purposes of subsection (2)(e)(vii) above a company is a funded company if there are arrangements involving the company being put in funds (directly or indirectly) by the issuing company or a company associated with the issuing company.**]**

Textual Amendments

F1170 Words in s. 209(1) substituted (with effect in accordance with s. 40(11) of the amending Act) by Finance Act 2000 (c. 17), **s. 40(9)**

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F1171 S. 209(2)(da) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(1)**

F1172 S. 209(2)(da) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 34(1)(a), **Sch. 42 Pt. 2(2)**, Note

F1173 Words in s. 209(2)(e) substituted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(2)(a)**

F1174 Words in s. 209(2)(e) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**

F1175 Words in s. 209(2)(e)(ii) substituted (with effect in accordance with Sch. 38 para. 6(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(b)**

F1176 S. 209(2)(e)(iv)(v) repealed (with effect in accordance with s. 87(7)(8) of the repealing Act) by Finance Act 1995 (c. 4), s. 87(2)(b), **Sch. 29 Pt. 8(12)**, Note

F1177 S. 209(2)(e)(vii) and word "or" immediately preceding inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 31(1)(4)**.

F1178 Words in s. 209(3) substituted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(2)(b)**

F1179 Words in s. 209(3) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

F1180 S. 209(3A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 11** (with Sch. 15)

F1181 Words in s. 209(3A)(a) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

F1182 S. 209(3AA) inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 102(1)**

F1183 S. 209(3B) inserted (with application in accordance with s. 86(1) of the amending Act) by Finance Act 2000 (c. 17), **s. 86(1)**

F1184 S. 209(8A)-(8F) inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(3)**

F1185 S. 209(8A)-(8F) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 34(1)(b), **Sch. 42 Pt. 2(2)**, Note

F1186 S. 209(9)-(11) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 31(2)(4)**.

Modifications etc. (not altering text)

C159 S. 209(2)(da)(e)(vii) applied by Finance Act 1996 (c. 8), **Sch. 9 para. 11A** (as inserted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 2002 (c. 23), Sch. 23 para 11 (with s. 81(4)(5), **Sch. 23 para. 25**))

C160 S. 209(2)(b)-(f) excluded (12.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Taxation of Securitisation Companies Regulations 2006 (S.I. 2006/3296), **regs. 1(1)**, 16

Marginal Citations

M212 Source—1970 s.233(1); 1980 s.45(2)

M213 Source—1970 s.233(2)(a), (b), (c); 1972 Sch.22 1, 2(1)

M214 Source—1970 s.233(2)(d)(iii); 1972 Sch.22 3(2)

M215 Source—1970 s.233(d), (e); 1970(F) Sch.4 6; 1972 Sch.22 3(1)

M216 Source—1972 Sch.22 3(3)

M217 Source—1970 s.233(3); 1972 Sch.22 4(3)

M218 Source—1972 Sch.22 4(1), (2)

M219 Source—1970 s.233(4)

M220 Source—1972 Sch.22 2(2)

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[F1187209A Section 209(3AA): link to shares of company or associated company

(1) Subsection (3AA) of section 209 does not apply in relation to a security issued by a company (the "issuing company") if the security is one which to a significant extent reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in one or more companies each of which is—

(a) the issuing company; or

(b) an associated company of the issuing company;

but this subsection is subject to the following provisions of this section.

(2) Subsection (1) above does not prevent subsection (3AA) of section 209 above from applying in relation to a security if—

(a) the issuing company is a bank or securities house;

(b) the security is issued by the issuing company in the ordinary course of its business; and

(c) the security reflects dividends or other distributions in respect of, or fluctuations in the value of, shares in companies falling within paragraph (a) or (b) of subsection (1) above by reason only that the security reflects fluctuations in a qualifying index.

(3) In subsection (2)(c) above "qualifying index" means an index whose underlying subject matter includes both—

(a) shares in one or more companies falling within paragraph (a) or (b) of subsection (1) above, and

(b) shares in one or more companies falling within neither of those paragraphs,

and which is an index such that the shares falling within paragraph (b) above represent a significant proportion of the market value of the underlying subject matter of the index.

(4) In this section—

"bank" has the meaning given by section 840A;

"securities house" means any person—

(a) who is authorised for the purposes of the Financial Services and Markets Act 2000; and

(b) whose business consists wholly or mainly of dealing in financial instruments as principal;

and in paragraph (b) above "financial instrument" has the meaning given by section 349(5) and (6).

(5) For the purposes of this section a company is an "associated company" of another at any time if at that time one has control of the other or both are under the control of the same person or persons.

(6) For the purposes of subsection (5) above, "control", in relation to a company, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(7) There shall be left out of account for the purposes of subsection (6) above—

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(a) any shares held by a company, and

(b) any voting power or other powers arising from shares held by a company,

if a profit on a sale of the shares would be treated as a trading receipt of a trade carried on by the company and the shares are not, within the meaning of Chapter 1 of Part 12, assets of an insurance company's long-term insurance fund (see section 431(2)).**]**

Textual Amendments

F1187 Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 102(2)**

[F1187 209B Section 209(3AA): hedging arrangements

(1) Subsection (3AA) of section 209 does not at any time apply in relation to a security issued by a company (the "issuing company") if at that time, or any earlier time on or after 17th April 2002, there are or have been any hedging arrangements that relate to some or all of the company's liabilities under the security.

(2) Subsection (1) above does not prevent subsection (3AA) of section 209 from applying in relation to a security at any time if—

(a) conditions 1 to 4 below are satisfied in relation to any such hedging arrangements at that time; and

(b) at all earlier times on or after 17th April 2002 when there have been hedging arrangements that relate to some or all of the company's liabilities under the security, conditions 1 to 4 below were satisfied in relation to those hedging arrangements.

(3) Where subsection (3AA) of section 209 at any time ceases to apply in relation to a security by virtue of this section, subsection (2)(d) of that section shall have effect in relation to the security as from that time as it would have had effect if subsection (3AA) had never applied in relation to the security.

(4) Condition 1 is that the hedging arrangements do not constitute, include, or form part of, any scheme or arrangement the purpose or one of the main purposes of which is the avoidance of tax **[**F1188(including stamp duty or stamp duty land tax)**]**.

(5) Condition 2 is that the hedging arrangements are such that, where for the purposes of corporation tax a deduction in respect of the security falls to be made at any time by the issuing company, then at that time, or within a reasonable time before or after it, any amounts intended under the hedging arrangements to offset some or all of that deduction arise—

(a) to the issuing company; or

(b) to a company which is a member of the same group of companies as the issuing company.

(6) Condition 3 is that the whole of every amount arising as mentioned in subsection (5) above is brought into charge to corporation tax—

(a) by a company falling within paragraph (a) or (b) of that subsection, or

(b) by two or more companies, taken together, each of which falls within paragraph (a) or (b) of that subsection.

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(7) Condition 4 is that for the purposes of corporation tax any deductions in respect of expenses of establishing or administering the hedging arrangements are reasonable, in proportion to the amounts required to be brought into charge to corporation tax by subsection (6) above.

(8) For the purposes of this section "hedging arrangements", in relation to a security, means any scheme or arrangement for the purpose, or for purposes which include the purpose, of securing that an amount of income or gain accrues, or is received or receivable, whether directly or indirectly, which is intended to offset some or all of the amounts which fall to be brought into account, in accordance with generally accepted accounting practice, in respect of amounts accruing or falling to be paid in accordance with the terms of the security.

(9) Any reference in this section to two companies being members of the same group of companies is a reference to their being members of the same group of companies for the purposes of Chapter 4 of Part 10 of this Act (group relief).**]**

Textual Amendments

F1187 Ss. 209A, 209B inserted (with effect in accordance with s. 102(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 102(2)**

F1188 Words in s. 209B(4) substituted (10.7.2003 subject to Sch. 19 to the amending Act) by Finance Act 2003 (c. 14), **Sch. 18 para. 3(2)**

210 Bonus issue following repayment of share capital.

[M221](1) Where a company—

(a) repays any share capital or has done so at any time after 6th April 1965, and

(b) at or after the time of that repayment issues any share capital as paid up otherwise than by the receipt of new consideration,

the amount so paid up shall, except as provided by any provision of the Corporation Tax Acts, be treated as a distribution made in respect of the shares on which it is paid up, except in so far as that amount exceeds the amount or aggregate amount of share capital so repaid less any amounts previously so paid up and treated by virtue of this subsection as distributions.

(2) Subsection (1) above shall not apply where the repaid share capital consists of fully paid preference shares—

(a) if those shares existed as issued and fully paid preference shares on 6th April 1965 and throughout the period from that date until the repayment those shares continued to be fully paid preference shares, or

(b) if those shares were issued after 6th April 1965 as fully paid preference shares wholly for new consideration not derived from ordinary shares and throughout the period from their issue until the repayment those shares continued to be fully paid preference shares.

(3) [M222]Except in relation to a company within paragraph D of section 704, subsection (1) above shall not apply if the issue of share capital mentioned in paragraph (b) of that subsection—

(a) is of share capital other than redeemable share capital; and

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(b) takes place after 5th April 1973 and more than ten years after the repayment of share capital mentioned in paragraph (a) of that subsection.

(4) [M223]In this section—

"ordinary shares" means shares other than preference shares;

"preference shares" means shares—

(a) which do not carry any right to dividends other than dividends at a rate per cent. of the nominal value of the shares which is fixed, and

(b) which carry rights in respect of dividends and capital which are comparable with those general for fixed-dividend shares **[**[F1189]listed in the Official List of**]** the Stock Exchange; and

"new consideration not derived from ordinary shares" means new consideration other than consideration—

(a) consisting of the surrender, transfer or cancellation of ordinary shares of the company or any other company or consisting of the variation of rights in ordinary shares of the company or any other company, or

(b) derived from a repayment of share capital paid in respect of ordinary shares of the company or of any other company.

Textual Amendments

F1189 Words in s. 210(4) substituted (with effect in accordance with Sch. 38 para. 7(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 7(1)(2)(a)**

Marginal Citations

M221 Source—1970 s.234(1), (2)

M222 Source—1972 Sch.22 5(2), (3)

M223 Source—1970 s.234(3); 1973 s.54

211 Matters to be treated or not to be treated as repayments of share capital.

(1) [M224]Where—

(a) a company issues any share capital as paid up otherwise than by the receipt of new consideration, or has done so after 6th April 1965; and

(b) any amount so paid up does not fall to be treated as a qualifying distribution or, where the issue took place before 6th April 1973, did not fall to be treated as a distribution;

then, except as otherwise provided by any provision of the Corporation Tax Acts, for the purposes of sections 209 and 210, distributions afterwards made by the company in respect of shares representing that share capital shall not be treated as repayments of share capital, except to the extent to which those distributions, together with any relevant distributions previously so made, exceed the amounts so paid up (then or previously) on such shares after 6th April 1965 and not falling to be treated as qualifying distributions or, where the share capital was issued before 6th April 1973, as distributions.

(2) [M225]Except in relation to a company within paragraph D of section 704, subsection (1) above shall not prevent a distribution being treated as a repayment of share capital if it is made—

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(a) more than ten years after the issue of share capital mentioned in paragraph (a) of that subsection; and

(b) in respect of share capital other than redeemable share capital.

(3) [M226]In subsection (1) above "relevant distribution" means so much of any distribution made in respect of shares representing the relevant share capital as apart from that subsection would be treated as a repayment of share capital, but by virtue of that subsection cannot be so treated.

(4) For the purposes of subsection (1) above all shares of the same class shall be treated as representing the same share capital, and where shares are issued in respect of other shares, or are directly or indirectly converted into or exchanged for other shares, all such shares shall be treated as representing the same share capital.

(5) Where share capital is issued at a premium representing new consideration, the amount of the premium is to be treated as forming part of that share capital for the purpose of determining under this Chapter whether any distribution made in respect of shares representing the share capital is to be treated as a repayment of share capital.

(6) Subsection (5) above shall not have effect in relation to any part of the premium after that part has been applied in paying up share capital.

(7) Subject to subsection (5) above, premiums paid on redemption of share capital are not to be treated as repayments of capital.

Marginal Citations
M224 Source—1970 s.235(1); 1972 Sch.22 6(1), (3)
M225 Source—1972 Sch.22 6(2)
M226 Source—1970 s.235 (2)-(5)

CHAPTER III

MATTERS WHICH ARE NOT DISTRIBUTIONS FOR THE PURPOSES OF THE CORPORATION TAX ACTS

Payments of interest

212 Interest etc. paid in respect of certain securities.

[M227](1) Any interest or other distribution—

(a) which is paid out of the assets of a company ("the borrower") to another company which is within the charge to corporation tax; and

(b) which is so paid in respect of securities of the borrower which fall within [F1190]. . . any of sub-paragraphs (i) to (iii) and (vi) **[**[F1191]and (vii)**]** of paragraph (e) of section 209(2); and

(c) which does not fall within paragraph (d) of section 209(2),

shall not be a distribution for the purposes of the Corporation Tax Acts unless the application of this subsection is excluded by subsection (2) or (3) below.

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(2) Subsection (1) above does not apply in the case of any interest or other distribution which is paid in respect of a security of the borrower falling within section 209(2)(e)(iii) if—

(a) the principal secured does not exceed £100,000; and

(b) the borrower is under an obligation to repay the principal and interest before the expiry of the period of five years beginning on the date on which the principal was paid to the borrower; and

(c) that obligation either was entered into before 9th March 1982 or was entered into before 1st July 1982 pursuant to negotiations which were in progress on 9th March 1982; and

(d) where the period for repayment of either principal or interest is extended after 8th March 1982 (but paragraph (b) above still applies), the interest or other distribution is paid within the period which was applicable immediately before that date;

and for the purposes of paragraph (c) above negotiations shall not be regarded as having been in progress on 9th March 1982 unless, before that date, the borrower had applied to the lender for a loan and had supplied the lender with any documents required by him to support the application.

(3) F1192. . . Subsection (1) above does not apply in a case where the company to which the interest or other distribution is paid is entitled under any enactment, other than section 208, to an exemption from tax in respect of that interest or distribution F1192. . . .

(4) F1193. . . . . .

Textual Amendments

F1190 Words in s. 212(1)(b) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

F1191 Words in s. 212(1)(b) inserted (16.7.1992 with application where the interest or other distribution is paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 31(3)(4)**.

F1192 Words in s. 212(3) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

F1193 S. 212(4) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

Marginal Citations

M227 Source—1982 s.60(1)-(4)

Demergers

213 Exempt distributions.

M228(1) The provisions of this section and sections 214 to 218 have effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by two or more companies not belonging to the same group or by two or more independent groups.

(2) References in the Corporation Tax Acts to distributions of a company shall not apply to any distribution—

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(a) which falls within subsection (3) below, and

(b) in respect of which the conditions specified in subsections (4) to (12) below are satisfied;

and any such distribution is referred to in this section as an "exempt distribution".

(3) The following distributions fall within this subsection—

(a) a distribution consisting of the transfer to all or any of its members by a company ("the distributing company") of shares in one or more companies which are its 75 per cent. subsidiaries;

(b) a distribution consisting of the transfer by a company ("the distributing company") to one or more other companies ("the transferee company or companies") of—

(i) a trade or trades; or

(ii) shares in one or more companies which are 75 per cent. subsidiaries of the distributing company,

and the issue of shares by the transferee company or companies to all or any of the members of the distributing company;

and in this section and sections 214 to 217 references to a relevant company are to the distributing company, to each subsidiary whose shares are transferred as mentioned in paragraph (a) or (b) (ii) above and to each transferee company mentioned in paragraph (b) above.

(4) Each relevant company must be resident in the United Kingdom at the time of the distribution.

(5) The distributing company must at the time of the distribution be either a trading company or a member of a trading group and each subsidiary whose shares are transferred as mentioned in subsection (3)(a) or (b)(ii) above must at that time be either a trading company or the holding company of a trading group.

(6) In a case within subsection **[**F1194(3)(a)**]** above—

(a) the shares must not be redeemable, must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary; and

(b) subject to subsections (7) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.

(7) Subsection (6)(b) above does not apply if the transfer relates to two or more 75 per cent. subsidiaries of the distributing company and that company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.

(8) In a case within subsection (3)(b) above—

(a) if a trade is transferred the distributing company must either not retain any interest or retain only a minor interest in that trade;

(b) if shares in a subsidiary are transferred those shares must constitute the whole or substantially the whole of the distributing company's holding of the ordinary share capital of the subsidiary and must confer the whole or substantially the whole of the distributing company's voting rights in the subsidiary;

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(c) the only or main activity of the transferee company or each transferee company after the distribution must be the carrying on of the trade or the holding of the shares transferred to it;

(d) the shares issued by the transferee company or each transferee company must not be redeemable, must constitute the whole or substantially the whole of its issued ordinary share capital and must confer the whole or substantially the whole of the voting rights in that company; and

(e) subject to subsections (9) and (12)(b) below, the distributing company must after the distribution be either a trading company or the holding company of a trading group.

(9) Subsection (8)(e) above does not apply if there are two or more transferee companies each of which has a trade or shares in a separate 75 per cent. subsidiary of the distributing company transferred to it and the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding up or otherwise.

(10) The distribution must be made wholly or mainly for the purpose of benefiting some or all of the trading activities which before the distribution are carried on by a single company or group and after the distribution will be carried on by two or more companies or groups.

(11) The distribution must not form part of a scheme or arrangements the main purpose or one of the main purposes of which is—

(a) the avoidance of tax (including **[**F1195stamp duty or stamp duty land tax**]**); or

(b) without prejudice to paragraph (a) above, the making of a chargeable payment, as defined by section 214, or what would be such a payment if any of the companies mentioned in that section were an unquoted company; or

(c) the acquisition by any person or persons other than members of the distributing company of control of that company, of any other relevant company or of any company which belongs to the same group as any such company; or

(d) the cessation of a trade or its sale after the distribution.

In paragraph (c) above "group" means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries.

(12) Where the distributing company is a 75 per cent. subsidiary of another company—

(a) the group (or, if more than one, the largest group) to which the distributing company belongs at the time of the distribution must be a trading group;

(b) subsections (6)(b) and (8)(e) above shall not apply; and

(c) the distribution must be followed by one or more other distributions falling within subsection (3)(a) or (b)(ii) above which satisfy the conditions of this section and result in members of the holding company of the group (or, if more than one, the largest group) to which the distributing company belonged at the time of the distribution becoming members of—

(i) the transferee company or each transferee company to which a trade was transferred by the distributing company; or

(ii) the subsidiary or each subsidiary whose shares were transferred by the distributing company; or

(iii) a company (other than that holding company) of which the company or companies mentioned in sub-paragraph (i) or (ii) above are 75 per cent. subsidiaries.

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Textual Amendments

F1194 1990 s.89*and* Sch.14 para.3 (*correction of errors*)*—deemed always to have had effect. Previously* "(3)(1)(a)".

F1195 Words in s. 213(11)(a) substituted (10.7.2003 subject to Sch. 19 to the amending Act) by Finance Act 2003 (c. 14), **Sch. 18 para. 3(3)**

Marginal Citations

M228 Source—1980 s.117, Sch.18 1-8, 23

VALID FROM 29/11/2007

[F1196 213A Exempt distributions: division of business

(1) A reference in the Corporation Tax Acts to distributions of a company shall not apply to a distribution if—

(a) it is a distribution consisting of—

(i) the transfer of part of a business by a company ("the distributing company") to one or more other companies ("the transferee company or companies"), and

(ii) the issue of shares by the transferee company or companies to the members of the distributing company, and

(b) the requirements of either section 140A(1A) of the 1992 Act (division of UK business) or section 140C(1A) of that Act (division of non-UK business) are satisfied in relation to the distribution.

(2) A distribution to which this section applies is an "exempt distribution" for the purposes of sections 214 to 217.

(3) The expression "relevant company" in sections 214 to 217 includes the distributing company and the transferee company or companies.**]**

Textual Amendments

F1196 S. 213A inserted (29.11.2007 with effect in accordance with reg. 3(1) of the amending S.I. (as retrospectively amended by S.I. 2008/1579, **reg. 4(1)**) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 1 para. 13**

214 Chargeable payments connected with exempt distributions.

(1) M229 If within five years after the making of an exempt distribution there is a chargeable payment—

(a) the amount or value of the payment shall be treated as income F1197 . . . ;

[F1198 (ab) that income shall be chargeable to tax;**]**

(b) unless the payment is a transfer of money's worth, sections 349(1) and 350 shall apply to the payment as if it were an annual sum payable otherwise than out of profits or gains charged to income tax;

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(c) the payment shall be regarded as a distribution for the purposes of **[**F1199section 337A(1)**]** ; and

(d) the payment shall not (if it otherwise would) be treated as a repayment of capital for the purposes of section 210 or 211.

[F1200(1A) Income tax chargeable by virtue of subsection (1) shall be charged on the full amount or value of the payment made in the year of assessment; and the person liable for any tax so charged is the person receiving or entitled to the payment.

(1B) Corporation tax chargeable by virtue of subsection (1) shall be charged under Case VI of Schedule D.**]**

(2) M230In this section "a chargeable payment" means any payment made otherwise than for bona fide commercial reasons or forming part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax (including **[**F1201stamp duty or stamp duty land tax**]**), being a payment which—

(a) a company concerned in an exempt distribution makes directly or indirectly to a member of that company or of any other company concerned in that distribution; and

(b) is made in connection with, or with any transaction affecting, the shares in that or any such company; and

(c) is not a distribution or exempt distribution or made to another company which belongs to the same group as the company making the payment.

(3) Where a company concerned in an exempt distribution is an unquoted company subsection (2)(a) above shall have effect as if any reference to the making of a payment by, or to a member of, a company concerned in the exempt distribution included a reference to the making of a payment by or to any other person in pursuance of a scheme or arrangements made with the unquoted company or, if the unquoted company is—

(a) under the control of five or fewer persons; and

(b) not under the control of (and only of) a company which is not itself under the control of five or fewer persons,

with any of the persons mentioned in paragraph (a) above.

(4) References in this section to a company concerned in an exempt distribution are to any relevant company and to any other company which was connected with any such company for the whole or any part of the period beginning with the exempt distribution and ending with the making of the payment which is in question under this section.

(5) For the purposes of subsection (4) above and this subsection a company shall be deemed to have been connected in the period referred to in that subsection with each company to which a company connected with it was connected in that period.

(6) References in this section to a payment include references to a transfer of money's worth including the assumption of a liability.

Textual Amendments

F1197 Words in s. 214(1)(a) repealed (with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 111(2)(a), **Sch. 3** (with Sch. 2)

F1198 S. 214(1)(ab) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 111(2)(b)** (with Sch. 2)

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F1199 Words in s. 214(1)(c) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 1(3)**

F1200 S. 214(1A)(1B) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 111(3)** (with Sch. 2)

F1201 Words in s. 214(2) substituted (10.7.2003 subject to Sch. 19 to the amending Act) by Finance Act 2003 (c. 14), **Sch. 18 para. 3(4)**

Marginal Citations

M229 Source—1980 Sch.18 14

M230 Source—1980 Sch.18 13

215 Advance clearance by Board of distributions and payments.

(1) [M231]A distribution shall be treated as an exempt distribution in any case in which, before the distribution is made, the Board have, on the application of the distributing company, notified that company that the Board are satisfied that it will be such a distribution.

(2) A payment shall not be treated as a chargeable payment in any case in which, before the payment is made, the Board have, on the application of the person intending to make it, notified him that they are satisfied that it will be made for bona fide commercial reasons and will not form part of any scheme or arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax (including **[**[F1202]stamp duty or stamp duty land tax**]**).

(3) A company which becomes or ceases to be connected with another company may make an application under subsection (2) above as respects any payments that may be made by it at any time after becoming or ceasing to be so connected (whether or not there is any present intention to make any payments); and where a notification is given by the Board on such an application no payment to which the notification relates shall be treated as a chargeable payment by reason only of the company being or having been connected with the other company.

(4) References in subsections (2) and (3) above to a payment shall be construed as in section 214.

(5) [M232]Any application under this section shall be in writing and shall contain particulars of the relevant transactions and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purposes of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(6) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of the notice being complied with.

(7) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) or (2) above or do not notify their decision to the applicant within the time required by subsection (6) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (5) above, to the Special Commissioners; and in that event any notification by the Special

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Commissioners shall have effect for the purposes of this section as if it were a notification by the Board.

(8) If any particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) or (2) above shall be void.

Textual Amendments

F1202 Words in s. 215(2) substituted (10.7.2003 subject to Sch. 19 to the amending Act) by Finance Act 2003 (c. 14), **Sch. 18 para. 3(5)**

Marginal Citations

M231 Source—1980 Sch.18 17

M232 Source—1980 Sch.18 18

216 Returns.

(1) [M233]Where a company makes an exempt distribution it shall within 30 days after the distribution make a return to the inspector giving particulars of the distribution and of the circumstances by reason of which it is exempt.

(2) [M234]Where within five years after the making of an exempt distribution a person makes a chargeable payment which consists of a transfer of money's worth, he shall within 30 days after the transfer make a return to the inspector giving particulars—

(a) of the transaction effecting the transfer;

(b) of the name and address of the recipient or each recipient and the value of what is transferred to him or each of them; and

(c) if the transfer is accompanied by a chargeable payment consisting of a payment of money, of that payment.

(3) Subject to subsection (4) below, where within five years after the making of an exempt distribution a person makes a payment or a transfer of money's worth which would be a chargeable payment but for the fact that it is made for bona fide commercial reasons and does not form part of any such scheme or arrangements as are mentioned in section 214(2), that person shall within 30 days after making the payment or transfer make a return to the inspector giving particulars—

(a) in the case of a transfer, of the transaction by which it is effected;

(b) of the name and address of the recipient or each recipient and the amount of the payment made, or the value of what is transferred, to him or each of them; and

(c) of the circumstances by reason of which the payment or transfer is not a chargeable payment.

(4) Subsection (3) above does not apply where the payment or transfer is one in relation to which a notification under section 215(3) has effect.

Marginal Citations

M233 Source—1980 Sch.18 19

M234 Source—1980 Sch.18 20

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217 Information.

(1) [M235]Where a distribution falling within section 213(3) has been made and the inspector has reason to believe that it may form part of any such scheme or arrangements as are mentioned in section 213(11), he may by notice require any relevant company or any person controlling any such company to furnish him within such time, not being less than 30 days, as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangements exist or have existed;

(b) such other information as the inspector may reasonably require for the purposes of section 213(11) and the company or that person has or can reasonably obtain.

(2) [M236]If the inspector has reason to believe that a person has not delivered an account or made a return which he is required to deliver or make by virtue of section 214(1)(b) or 216(2) or (3) in respect of any payment or transfer, he may by notice require that person to furnish him within such time, not being less than 30 days, as may be specified in the notice with such information relating to the payment or transfer as he may reasonably require for the purposes of section 214.

(3) If the inspector has reason to believe that a payment or transfer has been made within five years after the making of an exempt distribution and that the payment or transfer is a chargeable payment by reason of the existence of any such scheme or arrangements as are mentioned in section 214(3), he may by notice require the person making the payment or transfer or, if that person is a company, any person controlling it to furnish him within such time, not being less than 30 days, as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to information which that person has, or can reasonably obtain, any such scheme or arrangements exist or have existed;

(b) such other information as the inspector may reasonably require for the purposes of section 214 and that person has or can reasonably obtain.

(4) Any recipient of a chargeable payment and any person on whose behalf such a payment is received shall, if so required by the inspector, state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

Marginal Citations
M235 Source—1980 Sch.18 21
M236 Source—1980 Sch.18 22

218 Interpretation of sections 213 to 217.

[M237](1) In sections 213 to 217—

"chargeable payment" has the meaning given by section 214(2);

"control" shall be construed in accordance with section 416(2) to (6);

"distributing company" has the meaning given by section 213(3);

"exempt distribution" has the meaning given by section 213(2);

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"group", except in section 213(11)(c), means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

"member", where the reference is to a member of a company, does not, except in section 214(2)(a), include a person who is a member otherwise than by virtue of holding shares forming part of the company's ordinary share capital;

"relevant company" has the meaning given by section 213(3);

"shares" includes stock;

"trade", except in subsection (3) below, does not include dealing in shares, securities, land, trades or commodity futures and "trading activities" shall be construed accordingly;

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"trading group" means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades; and

"unquoted company" means a company which does not satisfy the condition that its shares or some class thereof (disregarding debenture or loan stock, preferred shares or preferred stock) are listed in the Official List of the Stock Exchange and are dealt in on the Stock Exchange regularly or from time to time, so however that this definition does not apply to a company under the control of (and only of) one or more companies to which this definition does not apply.

(2) In determining for the purposes of section 213(3) to (9) whether a company whose shares are transferred by the distributing company is a 75 per cent. subsidiary of the distributing company there shall be disregarded any share capital of the first-mentioned company which is owned indirectly by the distributing company.

(3) In determining for the purposes of sections 213 to 217 whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—

(a) any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

(4) Section 839 applies for the purposes of sections 213 to 217.

Marginal Citations

M237 Source—1980 Sch.18 23

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Purchase of own shares

219 Purchase by unquoted trading company of own shares.

M238(1) References in the Corporation Tax Acts to distributions of a company shall not include references to a payment made by a company on the redemption, repayment or purchase of its own shares if the company is an unquoted trading company or the unquoted holding company of a trading group and either—

(a) the redemption, repayment or purchase is made wholly or mainly for the purpose of benefiting a trade carried on by the company or by any of its 75 per cent. subsidiaries, and does not form part of a scheme or arrangement the main purpose or one of the main purposes of which is—

(i) to enable the owner of the shares to participate in the profits of the company without receiving a dividend, or

(ii) the avoidance of tax; and

the conditions specified in sections 220 to 224, so far as applicable, are satisfied in relation to the owner of the shares; or

(b) the whole or substantially the whole of the payment (apart from any sum applied in paying capital gains tax charged on the redemption, repayment or purchase) is applied by the person to whom it is made in discharging a liability of his for inheritance tax charged on a death and is so applied within the period of two years after the death;

and in sections 220 to 224—

"the purchase" means the redemption, repayment or purchase referred to in subsection (1)(a) above; and

"the vendor" means the owner of the shares at the time it is made.

(2) Where, apart from this subsection, a payment falls within subsection (1)(b) above, subsection (1) above shall not apply to the extent that the liability in question could without undue hardship have been discharged otherwise than through the redemption, repayment or purchase of shares in the company or another unquoted company which is a trading company or the holding company of a trading group.

Marginal Citations

M238 Source—1982 s.53(1)-(3); 1986 s.100

220 Conditions as to residence and period of ownership.

M239(1) The vendor must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and if the shares are held through a nominee the nominee must also be so resident and ordinarily resident.

(2) The residence and ordinary residence of trustees shall be determined for the purposes of this section as they are determined under section **[**F1203**]**69 of the 1992 Act**]** for the purposes of that Act.

(3) The residence and ordinary residence of personal representatives shall be taken for the purposes of this section to be the same as the residence and ordinary residence of the deceased immediately before his death.

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(4) The references in this section to a person's ordinary residence shall be disregarded in the case of a company.

(5) The shares must have been owned by the vendor throughout the period of five years ending with the date of the purchase.

(6) If at any time during that period the shares were transferred to the vendor by a person who was then his spouse **[**F1204or civil partner**]** living with him then, unless that person is alive at the date of the purchase but is no longer the vendor's spouse **[**F1204or civil partner**]** living with him, any period during which the shares were owned by that person shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor.

(7) Where the vendor became entitled to the shares under the will or on the intestacy of a previous owner or is the personal representative of a previous owner—

(a) any period during which the shares were owned by the previous owner or his personal representatives shall be treated for the purposes of subsection (5) above as a period of ownership by the vendor, and

(b) that subsection shall have effect as if it referred to three years instead of five.

(8) In determining whether the condition in subsection (5) above is satisfied in a case where the vendor acquired shares of the same class at different times—

(a) shares acquired earlier shall be taken into account before shares acquired later, and

(b) any previous disposal by him of shares of that class shall be assumed to be a disposal of shares acquired later rather than of shares acquired earlier.

(9) If for the purposes of capital gains tax the time when shares were acquired would be determined under any provision of Chapter II of Part IV of the **[**F1203**]** 1992 Act (reorganisation of share capital, conversion of securities, etc.) then, unless the shares were allotted for payment or were comprised in share capital to which section 249 applies, it shall be determined in the same way for the purposes of this section.

Textual Amendments

F1203 Words in s. 220(2)(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(14)** (with ss. 60, 101(1), 171, 201(3)).

F1204 Words in s. 220(6) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 49

Marginal Citations

M239 Source—1982 Sch.9 1, 2

221 Reduction of vendor's interest as shareholder.

(1) **M240**If immediately after the purchase the vendor owns shares in the company, then, subject to section 224, the vendor's interest as a shareholder must be substantially reduced.

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(2) [M241]If immediately after the purchase any associate of the vendor owns shares in the company then, subject to section 224, the combined interests as shareholders of the vendor and his associates must be substantially reduced.

(3) The question whether the combined interests as shareholders of the vendor and his associates are substantially reduced shall be determined in the same way as is (under the following subsections) the question whether a vendor's interest as a shareholder is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own.

(4) [M242]Subject to subsection (5) below, the vendor's interest as a shareholder shall be taken to be substantially reduced if and only if the total nominal value of the shares owned by him immediately after the purchase, expressed as a fraction of the issued share capital of the company at that time, does not exceed 75 per cent. of the corresponding fraction immediately before the purchase.

(5) The vendor's interest as a shareholder shall not be taken to be substantially reduced where—

(a) he would, if the company distributed all its profits available for distribution immediately after the purchase, be entitled to a share of those profits, and

(b) that share, expressed as a fraction of the total of those profits, exceeds 75 per cent. of the corresponding fraction immediately before the purchase.

(6) In determining for the purposes of subsection (5) above the division of profits among the persons entitled to them, a person entitled to periodic distributions calculated by reference to fixed rates or amounts shall be regarded as entitled to a distribution of the amount or maximum amount to which he would be entitled for a year.

(7) [M243]In subsection (5) above "profits available for distribution" has the same meaning as it has for the purposes of Part VIII of the [M244]Companies Act 1985, except that for the purposes of that subsection the amount of the profits available for distribution (whether immediately before or immediately after the purchase) shall be treated as increased—

(a) in the case of every company, by £100, and

(b) in the case of a company from which any person is entitled to periodic distributions of the kind mentioned in subsection (6) above, by a further amount equal to that required to make the distribution to which he is entitled in accordance with that subsection;

and where the aggregate of the sums payable by the company on the purchase and on any contemporaneous redemption, repayment or purchase of other shares of the company exceeds the amount of the profits available for distribution immediately before the purchase, that amount shall be treated as further increased by an amount equal to the excess.

(8) [M245]References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

Marginal Citations

M240 Source—1982 Sch.9 3(1)
M241 Source—1982 Sch.9 4
M242 Source—1982 Sch.9 3(2)-(4)
M243 Source—1982 Sch.9 3(5), (6)

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M244 1985 c.6
M245 Source—1982 Sch.9 3(7)

222 Conditions applicable where purchasing company is member of group.

(1) [M246]Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and—

(a) immediately after the purchase the vendor owns shares in one or more other members of the group (whether or not he then owns shares in the company making the purchase), or

(b) immediately after the purchase the vendor owns shares in the company making the purchase and immediately before the purchase he owned shares in one or more other members of the group,

the vendor's interest as a shareholder in the group must be substantially reduced.

(2) In subsections (5) to (7) below "relevant company" means the company making the purchase and any other member of the group in which the vendor owns shares immediately before or immediately after the purchase, but subject to subsection (4) below.

(3) [M247]Subject to section 224, where the company making the purchase is immediately before the purchase a member of a group and at that time an associate of the vendor owns shares in any member of the group, the combined interests as shareholders in the group of the vendor and his associates must be substantially reduced.

(4) [M248]The question whether the combined interests as shareholders in the group of the vendor and his associates are substantially reduced shall be determined in the same way as is (under the following subsections) the question whether a vendor's interest as a shareholder in a group is substantially reduced, except that the vendor shall be assumed to have the interests of his associates as well as his own (and references in subsections (5) to (7) below to a relevant company shall be construed accordingly).

(5) [M249]The vendor's interest as a shareholder in the group shall be ascertained by—

(a) expressing the total nominal value of the shares owned by him in each relevant company as a fraction of the issued share capital of the company,

(b) adding together the fractions so obtained, and

(c) dividing the result by the number of relevant companies (including any in which he owns no shares).

(6) Subject to subsection (7) below, the vendor's interest as a shareholder in the group shall be taken to be substantially reduced if and only if it does not exceed 75 per cent. of the corresponding interest immediately before the purchase.

(7) The vendor's interest as a shareholder in the group shall not be taken to be substantially reduced if—

(a) he would, if every member of the group distributed all its profits available for distribution immediately after the purchase (including any profits received by it on a distribution by another member), be entitled to a share of the profits of one or more of them, and

(b) that share, or the aggregate of those shares, expressed as a fraction of the aggregate of the profits available for distribution of every member of the group which is—

(i) a relevant company, or

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(ii) a 51 per cent. subsidiary of a relevant company,

exceeds 75 per cent. of the corresponding fraction immediately before the purchase.

(8) Subsections (6) and (7) of section 221 shall apply for the purposes of subsection (7) above as they apply for the purposes of subsection (5) of that section.

(9) [M250]Subject to the following subsections, in this section "group" means a company which has one or more 51 per cent. subsidiaries, but is not itself a 51 per cent. subsidiary of any other company, together with those subsidiaries.

(10) [M251]Where the whole or a significant part of the business carried on by an unquoted company ("the successor company") was previously carried on by—

(a) the company making the purchase, or

(b) a company which is (apart from this subsection) a member of a group to which the company making the purchase belongs, the successor company and any company of which it is a 51 per cent. subsidiary shall be treated as being a member of the same group as the company making the purchase (whether or not, apart from this subsection, the company making the purchase is a member of a group).

(11) Subsection (10) above shall not apply if the successor company first carried on the business there referred to more than three years before the time of the purchase.

(12) For the purposes of this section a company which has ceased to be a 51 per cent. subsidiary of another company before the time of the purchase shall be treated as continuing to be such a subsidiary if at that time there exist arrangements under which it could again become such a subsidiary.

Marginal Citations

M246 Source—1982 Sch.9 5(1), (2)
M247 Source—1982 Sch.9 6(1), (2)
M248 Source—1982 Sch.9 6(3)
M249 Source—1982 Sch.9 5(3)-(6)
M250 Source—1982 Sch.9 5(7), 6(4)
M251 Source—1982 Sch.9 5(8)-(10)

223 Other conditions.

(1) [M252]Subject to section 224, the vendor must not immediately after the purchase be connected with the company making the purchase or with any company which is a member of the same group as that company.

In this subsection "group" has the same meaning as it has for the purposes of section 222.

(2) [M253]Subject to section 224, the purchase must not be part of a scheme or arrangement which is designed or likely to result in the vendor or any associate of his having interests in any company such that, if he had those interests immediately after the purchase, any of the conditions in sections 221 and 222 and subsection (1) above could not be satisfied.

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(3) A transaction occurring within one year after the purchase shall be deemed for the purposes of subsection (2) above to be part of a scheme or arrangement of which the purchase is also part.

Marginal Citations
M252 Source—1982 Sch.9 7
M253 Source—1982 Sch.9 8

224 Relaxation of conditions in certain cases.

[M254]Where—

(a) any of the conditions in sections 221 to 223 which are applicable are not satisfied in relation to the vendor, but

(b) he proposed or agreed to the purchase in order that the condition in section 221(2) or 222(3) could be satisfied in respect of the redemption, repayment or purchase of shares owned by a person of whom he is an associate,

then, to the extent that that result is produced by virtue of the purchase, section 219(1)(a) shall have effect as if the conditions in sections 221 to 223 were satisfied in relation to the vendor.

Marginal Citations
M254 Source—1982 Sch.9 9

225 Advance clearance of payments by Board.

(1) [M255]A payment made by a company on the redemption, repayment or purchase of its own shares shall be deemed—

(a) to be one to which section 219 applies if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will apply; and

(b) to be one to which section 219 does not apply if, before it is made, the Board have on the application of the company notified the company that they are satisfied that the section will not apply.

(2) An application under this section shall be in writing and shall contain particulars of the relevant transactions; and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision.

(3) If a notice under subsection (2) above is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(4) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.

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(5) If particulars furnished under this section do not fully and accurately disclose all facts and circumstances material for the decision of the Board, any resulting notification by the Board shall be void.

Marginal Citations
M255 Source—1982 Sch.9 10

226 Returns and information.

(1) [M256]A company which treats a payment made by it as one to which section 219 applies shall within 60 days after making the payment make a return to the inspector giving particulars of the payment and of the circumstances by reason of which that section is regarded as applying to it.

(2) Where a company treats a payment made by it as one to which section 219(1)(a) applies, any person connected with the company who knows of any such scheme or arrangement affecting the payment as is mentioned in section 223(2) shall, within 60 days after he first knows of both the payment and the scheme or arrangement, give a notice to the inspector containing particulars of the scheme or arrangement.

(3) [M257]Where the inspector has reason to believe that a payment treated by the company making it as one to which section 219(1)(a) applies may form part of a scheme or arrangement of the kind referred to therein or in section 223(2), he may by notice require the company or any person who is connected with the company to furnish him within such time, not being less than 60 days, as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to information which the company or that person has or can reasonably obtain, any such scheme or arrangement exists or has existed, and

(b) such other information as the inspector may reasonably require for the purposes of the provision in question and the company or that person has or can reasonably obtain.

(4) The recipient of a payment treated by the company making it as one to which section 219 applies, and any person on whose behalf such a payment is received, shall if so required by the inspector state whether the payment received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

Marginal Citations
M256 Source—1982 Sch.9 11
M257 Source—1982 Sch.9 12

227 Associated persons.

[M258](1) Any question whether a person is an associate of another in relation to a company shall be determined for the purposes of sections 219 to 226 and 228 in accordance with the following provisions of this section.

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(2) A husband and wife living together **[**[F1205], or civil partners of each other living together,**]** are associates of one another, a person under the age of 18 is an associate of his parents, and his parents are his associates.

(3) A person connected with a company is an associate of the company and of any company controlled by it, and the company and any company controlled by it are his associates.

(4) Where a person connected with one company has control of another company, the second company is an associate of the first.

(5) Where shares in a company are held by trustees (other than bare trustees) then in relation to that company, but subject to subsection (8) below, the trustees are associates of—

(a) any person who directly or indirectly provided property to the trustees or has made a reciprocal arrangement for another to do so,

(b) any person who is, by virtue of subsection (2) above, an associate of a person within paragraph (a) above, and

(c) any person who is or may become beneficially entitled to a significant interest in the shares;

and any such person is an associate of the trustees.

(6) Where shares in a company are comprised in the estate of a deceased person, then in relation to that company the deceased's personal representatives are associates of any person who is or may become beneficially entitled to a significant interest in the shares, and any such person is an associate of the personal representatives.

(7) Where one person is accustomed to act on the directions of another in relation to the affairs of a company, then in relation to that company the two persons are associates of one another.

(8) Subsection (5) above shall not apply to shares held on trusts which—

(a) relate exclusively to an exempt approved scheme as defined in Chapter I of Part XIV, or

(b) are exclusively for the benefit of the employees, or the employees and directors, of the company referred to in that subsection or of companies in a group to which that company belongs, or their dependants (and are not wholly or mainly for the benefit of directors or their relatives);

and for the purposes of this subsection "group" means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries.

(9) For the purposes of subsections (5) and (6) above a person's interest is significant if its value exceeds 5 per cent. of the value of all the property held on the trusts or, as the case may be, comprised in the estate concerned, excluding any property in which he is not and cannot become beneficially entitled to an interest.

Textual Amendments

F1205 Words in s. 227(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 50

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Marginal Citations
M258 Source—1982 Sch.9 14

228 Connected persons.

M259(1) Any question whether a person is connected with a company shall be determined for the purposes of sections 219 to 227 in accordance with the following provisions of this section.

(2) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—

(a) the issued ordinary share capital of the company, or

(b) the loan capital and issued share capital of the company, or

(c) the voting power in the company.

(3) Where a person—

(a) acquired or became entitled to acquire loan capital of a company in the ordinary course of a business carried on by him, being a business which includes the lending of money, and

(b) takes no part in the management or conduct of the company,

his interest in that loan capital shall be disregarded for the purposes of subsection (2) above.

(4) A person is connected with a company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company which would then be available for distribution to equity holders of the company; and for the purposes of this subsection—

(a) the persons who are equity holders of the company, and

(b) the percentage of the assets of the company to which a person would be entitled,

shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company are available for distribution to its equity holders.

(5) A person is connected with a company if he has control of it.

(6) References in this section to the loan capital of a company are references to any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company, or

(b) for any right to receive income created in favour of the company, or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon).

(7) For the purposes of this section a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire.

(8) For the purposes of this section a person shall be assumed to have the rights or powers of his associates as well as his own.

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Marginal Citations
M259 Source—1982 Sch.9 15

229 Other interpretative provisions.

M260(1) In sections 219 to 228—

"control" has the meaning given by section 840;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

"personal representatives" means persons responsible for administering the estate of a deceased person;

"quoted company" means a company whose shares (or any class of whose shares) are listed in the official list of a stock exchange;

"shares" includes stock;

"trade" does not include dealing in shares, securities, land or futures and "trading activities" shall be construed accordingly;

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"trading group" means a group the business of whose members, taken together, consists wholly or mainly of the carrying on of a trade or trades, and for this purpose "group" means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and

"unquoted company" means a company which is neither a quoted company nor a 51 per cent. subsidiary of a quoted company.

(2) References in sections 219 to 228 to the owner of shares are references to the beneficial owner except where the shares are held on trusts (other than bare trusts) or are comprised in the estate of a deceased person, and in such a case are references to the trustees or, as the case may be, to the deceased's personal representatives.

(3) References in sections 219 to 228 to a payment made by a company include references to anything else that is, or would but for section 219 be, a distribution.

Marginal Citations
M260 Source—1982 Sch.9 16

Stock dividends

230 Stock dividends: distributions.

M261Any share capital to which section 249 applies and which is issued by a company F1206. . . **[**F1207in a case where section 410(2), (3) or (4) of ITTOIA 2005 applies**]**—

(a) shall, notwithstanding section 209(2)(c), not constitute a distribution within the meaning of section 209(2); and

(b) for purposes of sections 210 and 211 shall not be treated as issued "as paid up otherwise than by the receipt of new consideration".

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Textual Amendments

F1206 Words in s. 230 repealed (in relation to accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), s. 187, **Sch. 17 Part V**

F1207 Words in s. 230 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 112** (with Sch. 2)

Marginal Citations

M261 Source—1975 (No.2) Sch.8 6

VALID FROM 01/04/2009

[F1208 Industrial and provident society dividends etc

Textual Amendments

F1208 S. 230A and preceding cross-heading inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 100** (with Sch. 2 Pts. 1, 2)

230A Dividend or bonus granted by industrial and provident society

(1) This section applies if—

(a) a dividend or bonus is granted by a registered industrial and provident society, and

(b) section 132 (deduction for dividends etc granted by industrial and provident societies) of CTA 2009 allows the sum representing the dividend or bonus to be deducted in calculating the profits of a trade.

(2) The dividend, or the bonus, is not treated as a distribution for the purposes of the Corporation Tax Acts.**]**

CHAPTER IV

TAX CREDITS

231 Tax credits for certain recipients of qualifying distributions.

M262(1) Subject to **[**F1209sections 231AA and 231AB of this Act**][**F1210and section 219(4B) of the Finance Act 1994,**][**F1211for corporation tax purposes where**]** a company resident in the United Kingdom makes a qualifying distribution and the person receiving the distribution is another such company F1212. . . , the recipient of the distribution shall be entitled to a tax credit equal to such proportion of the amount or value of the distribution as corresponds to **[**F1213the tax credit fraction in force when**]** the distribution is made.

[F1214(1A) The tax credit fraction is one-ninth.**]**

(2) F1215. . . . . .

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(3) F1216. . . . . .

(3AA) F1216. . . . . .

(3A) F1217. . . . . .

(3B) F1217. . . . . .

(3C) F1217. . . . . .

(3D) F1217. . . . . .

(4) Where a distribution mentioned in subsection (1) above is, or falls to be treated as, or under any provision of the Tax Acts is deemed to be, the income of a person other than the recipient, that person shall be treated for the purposes of this section as receiving the distribution (and accordingly the question whether **[**F1218that person**]** is entitled to a tax credit in respect of it shall be determined by reference to where **[**F1218that person**]**, and not the actual recipient, is resident);*and where any such distribution is income of a United Kingdom trust the trustees shall be entitled to a tax credit in respect of it if no other person falls to be treated for the purposes of this section as receiving the distribution*F1219.

(5) *In subsection* (4)*above "United Kingdom trust" means a trust administered under the law of any part of the United Kingdom, not being a trust the general administration of which is ordinarily carried on outside the United Kingdom and the trustees, or a majority of the trustees, of which are resident or ordinarily resident outside the United Kingdom*F1219.

Textual Amendments

F1209 Words in s. 231(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch 1 para. 113(2)(a)** (with Sch. 2)

F1210 Words in s. 231(1) inserted (with effect in accordance with s. 22(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 22(6)**

F1211 Words in s. 231(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch 1 para. 113(2)(b)** (with Sch. 2)

F1212 Words in s. 231(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 113(2)(c), **Sch. 3** (with Sch. 2)

F1213 Words in s. 231(1) substituted (with effect in accordance with s. 30(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 30(2)(b)**

F1214 S. 231(1A) inserted (with effect in accordance with s. 30(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 30(3)**

F1215 S. 231(2) repealed (with effect in accordance with s. 30(11), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 30(4), **Sch. 8 Pt. 2(9)** (with savings in 1998 c. 36, **s. 90(1)** and S.I. 1998/1871, **reg. 4(1)**)

F1216 S. 231(3)(3AA) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 113(3), **Sch. 3** (with Sch. 2)

F1217 S. 231(3A)-(3D) repealed (with effect in accordance with s. 30(11), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 30(7), **Sch. 8 Pt. 2(9)**

F1218 Words in s. 231(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch 1 para. 113(4)** (with Sch. 2)

F1219 *Repealed by* 1989 s.187*and* Sch.17 Part IV*but in accordance with* 1989 ss.110*and* 111.

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Modifications etc. (not altering text)

C161 *See* 1989 s.107*and* Sch.12—*close companies.*

C162 S. 231 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **6(2)(b)**

C163 S. 231 excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 121(5), **Sch. 17 para. 18(2)**

C164 S. 231 excluded by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/694), **regs. 69Z18(5)**, 69Z19(2) (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1**, 5

C165 *See*—s.94—*taxation of dealer's receipts on purchase by company of own shares.*s.423*et seq—close company income.*s.448—*overseas life assurance companies.*

C166 S. 231(1) excluded by Finance Act 1993 (c. 34), s. 171(2B) (as inserted (with effect in accordance with s. 22(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 22(1)**)

C167 S. 231(1) excluded by Finance Act 1993 (c. 34), s. 171(4B) (as inserted (with effect in accordance with s. 22(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 22(4)**)

C168 S. 231(4) applied (31.7.1998) by Finance Act 1998 (c. 36), **s. 76(4)**

Marginal Citations

M262 Source—1972 s.86; 1972 s.110(1)

[F1220 231A Restrictions on the use of tax credits by pension funds.

F1221 . . . . . .]

Textual Amendments

F1220 S. 231A inserted (with effect in accordance with s. 19(3) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 19(2)**

F1221 S. 231A repealed (with effect in accordance with s. 30(11), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 30(8), **Sch. 8 Pt. 2(9)**

[F1222 231AA tax credit for borrower under stock lending arrangement or interim holder under repurchase agreement.

(1) A person shall not be entitled to a tax credit under section 231 [F1223 above or section 397(1) of ITTOIA 2005] in respect of a qualifying distribution if—

(a) he is the borrower under a stock lending arrangement or the interim holder under a repurchase agreement;

(b) the qualifying distribution is, or is a payment representative of, a distribution in respect of securities to which the arrangement or agreement relates; and

(c) a manufactured dividend representative of that distribution is paid by that person in respect of securities to which the arrangement or agreement relates.

F1224 [Where subsection (1) above applies to [F1225 a person resident in the United Kingdom] (1A) in respect of a qualifying distribution, [F1226 section 399(2) of ITTOIA 2005] (certain persons to be treated as having paid income tax at [F1227 dividend] ordinary rate on certain distributions etc) shall not apply in relation to that person in respect of that distribution.

F1228 . . . . . .]

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(2) In this section "stock lending arrangement" has the same meaning as in section 263B of the 1992 Act and, in relation to any such arrangement, any reference to the borrower, or the securities to which the arrangement relates, shall be construed accordingly.

(3) For the purposes of this section the cases where there is a repurchase agreement are the following—

(a) any case falling within subsection (1) of section 730A; and

(b) any case which would fall within that subsection if the sale price and the repurchase price were different;

and, in any such case, any reference to the interim holder, or the securities to which the agreement relates, shall be construed accordingly.

(4) For the purposes of this section "manufactured dividend" has the same meaning as in paragraph 2 of Schedule 23A (and any reference to a manufactured dividend being paid accordingly includes a reference to a payment falling by virtue of section 736B(2) or 737A(5) to be treated for the purposes of Schedule 23A as if it were made).**]**

Textual Amendments

F1222 S. 231AA inserted (with effect in accordance with s. 102(9) of the amending Act) by Finance Act 1998 (c. 36), **s. 102(1)**

F1223 Words in s. 231AA(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 114(2)** (with Sch. 2)

F1224 S. 231AA(1A) inserted (with effect in accordance with Sch. 24 para. 1(4)(5) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 1(1)**

F1225 Words in s. 231AA(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 114(3)(a)** (with Sch. 2)

F1226 Words in s. 231AA(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 114(3)(a)** (with Sch. 2)

F1227 Words in s. 231AA(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 114(3)(a)** (with Sch. 2)

F1228 Words in s. 231AA(1A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 114(3)(b), **Sch. 3** (with Sch. 2)

[F1229 231AB tax credit for original owner under repurchase agreement in respect of certain manufactured dividends.

(1) A person shall not be entitled to a tax credit under section 231 **[**F1230above or section 397(1) of ITTOIA 2005**]** in respect of a qualifying distribution if—

(a) he is the original owner under a repurchase agreement;

(b) the qualifying distribution is a manufactured dividend paid to that person by the interim holder under the repurchase agreement in respect of securities to which the agreement relates; and

(c) the repurchase agreement is not such that the actual dividend which the manufactured dividend represents is receivable otherwise than by the original owner.

F1231(1A) **[** Where subsection (1) above applies to **[**F1232a person resident in the United Kingdom**]** in respect of a qualifying distribution, **[**F1233section 399(2) of ITTOIA 2005**]** (certain persons to be treated as having paid income tax at **[**F1234dividend**]** ordinary rate on

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certain distributions etc) shall not apply in relation to that person in respect of that distribution.

F1235 . . . . . .**]**

(2) For the purposes of this section the cases where there is a repurchase agreement are the following—

(a) any case falling within subsection (1) of section 730A; and

(b) any case which would fall within that subsection if the sale price and the repurchase price were different;

and, in any such case, any reference to the original owner, the interim holder, or the securities to which the agreement relates, shall be construed accordingly.

(3) Subsection (4) of section 231AA applies for the purposes of this section as it applies for the purposes of that section.**]**

Textual Amendments

F1229 S. 231AB inserted (with effect in accordance with s. 102(10) of the amending Act) by Finance Act 1998 (c. 36), **s. 102(2)**

F1230 Words in s. 231AB(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 115(2)** (with Sch. 2)

F1231 S. 231AB(1A) inserted (with effect in accordance with Sch. 24 para. 1(6) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 1(2)**

F1232 Words in s. 231AB(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 115(3)(a)** (with Sch. 2)

F1233 Words in s. 231AB(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 115(3)(a)** (with Sch. 2)

F1234 Words in s. 231AB(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 115(3)(a)** (with Sch. 2)

F1235 Words in s. 231AB(1A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 115(3)(b), **Sch. 3** (with Sch. 2)

[F1236 231B Consequences of certain arrangements to pass on the value of a tax credit.

(1) This section applies in any case where—

(a) a person ("A") is entitled to a tax credit in respect of a qualifying distribution;

(b) arrangements subsist such that another person ("B") obtains, whether directly or indirectly, a payment representing any of the value of the tax credit;

(c) the arrangements (whether or not made directly between A and B) were entered into for an unallowable purpose; and

(d) the condition in subsection (2) below is satisfied.

(2) The condition is that if B had been the person entitled to the tax credit and the qualifying distribution to which it relates, and had received the distribution when it was made, then—

(a) B would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and

(b) if B is a company, B could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.

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(3) This section does not apply if and to the extent that any other provision of the Tax Acts has the effect of cancelling or reducing the tax advantage which would otherwise be obtained by virtue of the arrangements.

(4) Where this section applies—

(a) no claim shall be made under section 231(2) for payment of the amount of the tax credit;

(b) no claim shall be made under **[**[F1237]section 397(2) of ITTOIA 2005**]**[F1238]. . . in respect of the tax credit;

(c) the income consisting of the distribution in respect of which A is entitled to the tax credit shall not be regarded for the purposes of section 241 as franked investment income; and

(d) no claim shall be made under section 35 of the Finance (No. 2) Act 1997 (transitional relief) for payment of an amount determined by reference to that distribution.

(5) For the purposes of this section, the question whether any arrangements were entered into for an "unallowable purpose" shall be determined in accordance with subsections (6) and (7) below.

(6) Arrangements are entered into for an unallowable purpose if the purposes for which at least one person is a party to the arrangements include a purpose which is not amongst the business or other commercial purposes of that person.

(7) Where one of the purposes for which a person enters into any arrangements is the purpose of securing that that person or another obtains a tax advantage, that purpose shall be regarded as a business or other commercial purpose of the person only if it is neither the main purpose, nor one of the main purposes, for which the person enters into the arrangements.

(8) Any reference in this section to a person obtaining a tax advantage includes a reference to a person obtaining a payment representing any of the value of a tax credit in circumstances where, had the person obtaining the payment been entitled to the tax credit and the qualifying distribution to which it relates, that person—

(a) would not have been entitled to obtain any payment under section 231(2) or (3) in respect of the tax credit; and

(b) if that person is a company, could not have used the income consisting of the distribution to frank a distribution actually made in the accounting period in which it would have received the distribution to which the tax credit relates.

(9) If an amount representing any of the value of a tax credit to which a person is entitled is applied at the direction of, or otherwise in favour of, some other person (whether by way of set off or otherwise), the case shall be treated for the purposes of this section as one where that other person obtains a payment representing any of the value of the tax credit.

(10) In determining for the purposes of subsections (2)(b) and (8)(b) b above whether a company could have used the income consisting of the distribution in question to frank a distribution of the company, the company shall be taken to use its actual franked investment income to frank distributions before using the income consisting of the distribution in question.

(11) References in this section to using franked investment income to frank a distribution of a company have the same meaning as in Chapter V of Part VI.

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(12) In this section—

"arrangements" means arrangements of any kind, whether in writing or not (and includes a series of arrangements, whether or not between the same parties);

"business or other commercial purposes" includes the efficient management of investments;

"franked investment income" has the same meaning as in Chapter V of Part VI and references to income consisting of a distribution shall be construed accordingly;

"tax advantage" has the same meaning as in Chapter I of Part XVII.**]**

Textual Amendments

F1236 S. 231B inserted (with effect in accordance with s. 28(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 28(1)**

F1237 Words in s. 231B(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 116** (with Sch. 2)

F1238 Words in s. 231B(4)(b) repealed (with effect in accordance with Sch. 4 para. 26(2), Sch. 8 Pt. 2(10) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para 26(1), **Sch. 8 Pt. 2(10)**

232 Tax credits for non-U.K. residents.

F1239 . . . . . .

Textual Amendments

F1239 S. 232 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 117, **Sch. 3** (with Sch. 2)

233 Taxation of certain recipients of distributions and in respect of non-qualifying distributions.

F1240 . . . . . .

Textual Amendments

F1240 S. 233 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 118, **Sch. 3** (with Sch. 2)

234 Information relating to distributions.

(1) **M263** Without prejudice to **[F1241** section 234A**]**. . . , a company which makes a qualifying distribution shall, if the recipient so requests in writing, furnish to him a statement in writing showing the amount or value of the distribution and (whether or not the recipient is a person entitled to a tax credit in respect of the distribution) the amount of the tax credit to which a recipient who is such a person is entitled in respect of that distribution.

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(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

F1242(3) . . . . . .

F1242(4) . . . . . .

(5) M264Where a company makes a distribution which is not a qualifying distribution it shall make a return to the inspector—

(a) within 14 days from the end of the accounting period in which the distribution is made; or

(b) if the distribution is made on a date not falling in an accounting period, within 14 days from that date.

(6) A return under subsection (5) above shall contain—

(a) particulars of the transaction giving rise to the distribution; and

(b) the name and address of the person, or each of the persons, receiving the distribution, and the amount or value of the distribution received by him or by each of them.

(7) Where it is not in the circumstances apparent whether a transaction gives rise to a distribution in respect of which a return is required to be made under subsection (5) above, the company shall—

(a) within the time within which such a return would be required to be made if the transaction did give rise to such a distribution, make a return to the inspector containing particulars of the transaction in question; and

(b) if required by a notice served on the company by the inspector, furnish him within the time specified in the notice with such further information in relation to the transaction as he may reasonably require.

(8) If it appears to the inspector that particulars of any transaction ought to have been and have not been included in a return under subsection (5) or (7) above, he may by a notice served on the company require the company to furnish him within the time specified in the notice with such information relating thereto as he may reasonably require.

(9) Any power which the inspector may exercise under **[**F1243paragraphs 2 to 4 of Schedule 12 to the Finance Act 1989 for the purposes of the relevant provisions (as defined in paragraph 1 of that Schedule)**]** may be exercised by him for the purposes of subsections (5) to (8) above.

Textual Amendments

F1241 Words in s. 234(1) substituted (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(2)(a)(4)**.

F1242 S. 234(3)(4) repealed (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 32(2)(b)(4), 82, **Sch. 18 Pt.VII**.

F1243 1989 s.107*and* Sch.12 para.11.*Previously*
"paragraph 17 of Schedule 19 for the purposes of that Schedule".

Modifications etc. (not altering text)

C169 S. 234 applied (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), **reg. 21(2)**

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Marginal Citations
M263 Source—1970 s.232(4); 1972 Sch.24 18
M264 Source—1972 Sch.21

[F1244][234A Information relating to distributions: further provisions.

(1) This section applies where dividend or interest is distributed by a company which is—
(a) a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986, or
(b) a company created by letters patent or by or in pursuance of an Act.

(2) If the company makes a payment of dividend or interest to any person, and subsection (3) below does not apply, within a reasonable period the company shall send an appropriate statement to that person.

(3) If the company makes a payment of dividend or interest into a bank or building society account held by any person, within a reasonable period the company shall send an appropriate statement to either—
(a) the bank or building society concerned, or
(b) the person holding the account.

(4) In a case where—
(a) a statement is received by a person under subsection (2) or (3)(b) above,
(b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and
(c) the nominee makes a payment of the sum or part to the other person and subsection (5) below does not apply,
within a reasonable period the nominee shall send an appropriate statement to that person.

(5) In a case where—
(a) a statement is received by a person under subsection (2) or (3)(b) above,
(b) the whole or part of the sum concerned is paid to or on behalf of the person as nominee for another person, and
(c) the nominee makes a payment of the sum or part into a bank or building society account held by the other person,
within a reasonable period the nominee shall send an appropriate statement to either the bank or building society concerned or the other person.

(6) In the case of a payment of interest which is not a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—
(a) the gross amount which, after deduction of the income tax appropriate to the interest, corresponds to the net amount actually paid,
(b) the rate and the amount of income tax appropriate to such gross amount,
(c) the net amount actually paid, and
(d) the date of the payment.

(7) In the case of a payment of dividend or interest which is a qualifying distribution or part of a qualifying distribution, references in this section to an appropriate statement are to a written statement showing—

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(a) the amount of the dividend or interest paid,

(b) the date of the payment, and

(c) the amount of the tax credit to which a person is entitled in respect of the dividend or interest, or to which a person would be so entitled if he had a right to a tax credit in respect of the dividend or interest.

(8) In this section "send" means send by post.

F1245(8A) **[** In this section "bank" has the meaning given by section 840A.**]**

(9) If a person fails to comply with subsection (2), (3), (4) or (5) above, the person shall incur a penalty of £60 in respect of each offence, except that the aggregate amount of any penalties imposed under this subsection on a person in respect of offences connected with any one distribution of dividends or interest shall not exceed £600.

(10) The Board may by regulations provide that where a person is under a duty to comply with subsection (2), (3), (4) or (5) above, the person shall be taken to comply with the subsection if the person either—

(a) acts in accordance with the subsection concerned, or

(b) acts in accordance with rules contained in the regulations;

and subsection (9) above shall be construed accordingly.

(11) Regulations under subsection (10) above may make different provision for different circumstances.**]**

Textual Amendments

F1244 S. 234A inserted (with application in relation to distributions begun after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(1)(4)**.

F1245 S. 234A(8A) inserted (with application in accordance with Sch. 37 para. 7 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(1)(2)(a)**

Modifications etc. (not altering text)

C170 S. 234A applied (with modifications) (1.4.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **regs. 1(1)**, 70 (as amended (1.9.2009) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2009 (S.I. 2009/2036), **regs. 1**, 2, 25)

C171 S. 234A applied (1.9.2009 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Investment Trusts (Dividends) (Optional Treatment as Interest Distributions) Regulations 2009 (S.I. 2009/2034), **regs. 1(1)**, 21

C172 S. 234A(4) excluded (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 493(3)** (with s. 493(5), Sch. 7)

C173 S. 234A(4)-(11) applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 2 para. 80(4)** (with Sch. 7)

F1246 235 Distributions of exempt funds etc.

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Textual Amendments

F1246 Ss. 235-237 repealed (with effect in accordance with Sch. 4 para. 7(2), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 7(1), **Sch. 8 Pt. 2(9)**

F1247 236 Provisions supplementary to section 235.

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Textual Amendments

F1247 Ss. 235-237 repealed (with effect in accordance with Sch. 4 para. 7(2), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 7(1), **Sch. 8 Pt. 2(9)**

F1248 237 Disallowance of reliefs in respect of bonus issues.

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Textual Amendments

F1248 Ss. 235-237 repealed (with effect in accordance with Sch. 4 para. 7(2), Sch. 8 Pt. 2(9) Note 3 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 7(1), **Sch. 8 Pt. 2(9)**

CHAPTER V

ADVANCE CORPORATION TAX AND FRANKED INVESTMENT INCOME

238 Interpretation of terms and collection of ACT.

F1249 . . . . . .

Textual Amendments

F1249 S. 238 repealed (with effect in accordance with Sch. 3 para. 11(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 11(1), **Sch. 27 Pt. 3(2)**, Note

239 Set-off of ACT against liability to corporation tax.

F1250 . . . . . .

Textual Amendments

F1250 S. 239 repealed (with effect in accordance with Sch. 3 para. 12(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 12(1), **Sch. 27 Pt. 3(2)**, Note (with Sch. 3 para. 12(3)-(6))

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240 Set-off of company's surplus ACT against subsidiary's liability to corporation tax.

F1251 . . . . . .

Textual Amendments

F1251 S. 240 repealed (with effect in accordance with Sch. 3 para. 13(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 13(1), **Sch. 27 Pt. 3(2)**, Note

241 Calculation of ACT where company receives franked investment income.

F1252 . . . . . .

Textual Amendments

F1252 S. 241 repealed (with effect in accordance with Sch. 3 para. 14(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 14(1), **Sch. 27 Pt. 3(2)**, Note

242 Set-off of losses etc. against surplus of franked investment income.

F1253 . . . . . .

Textual Amendments

F1253 Ss. 242-244 repealed (with effect in accordance with s. 20(1)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 20(5), **Sch. 8 Pt. 2(4)**, Note

243 Set-off of loss brought forward, or terminal loss.

F1254 . . . . . .

Textual Amendments

F1254 Ss. 242-244 repealed (with effect in accordance with s. 20(1)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 20(5), **Sch. 8 Pt. 2(4)**, Note

244 Further provisions relating to claims under section 242 or 243.

F1255 . . . . . .

Textual Amendments

F1255 Ss. 242-244 repealed (with effect in accordance with s. 20(1)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 20(5), **Sch. 8 Pt. 2(4)**, Note

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245 Calculation etc. of ACT on change of ownership of company.

F1256 . . . . . .

Textual Amendments

F1256 S. 245 repealed (with effect in accordance with Sch. 3 para. 15(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 15(1), **Sch. 27 Pt. 3(2)**, Note

[F1257 245A Restriction on application of section 240 in certain circumstances.

F1258 . . . . . .]

Textual Amendments

F1257 Ss. 245A, 245B inserted (in relation to changes in ownership on or after 14 March 1989) by Finance Act 1989 (c. 26), **s. 98**

F1258 S. 245A repealed (with effect in accordance with Sch. 3 para. 16(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 16(1), **Sch. 27 Pt. 3(2)**, Note

245B Restriction on set-off where asset transferred after change in ownership of company.

F1259 . . . . . .

Textual Amendments

F1259 S. 245B repealed (with effect in accordance with Sch. 3 para. 17(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 17(1), **Sch. 27 Pt. 3(2)**, Note

246 Charge of ACT at previous rate until new rate fixed, and changes of rate.

F1260 . . . . . .

Textual Amendments

F1260 S. 246 repealed (with effect in accordance with Sch. 3 para. 18(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 18(1), **Sch. 27 Pt. 3(2)**, Note

[F1261 F1262 CHAPTER VA

FOREIGN INCOME DIVIDENDS

Textual Amendments

F1261 Pt. 6 Ch. 5A (ss. 246A-246Y) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 1**

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F1262 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

Election by company paying dividend

246A Election by company paying dividend.

F1263

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Textual Amendments

F1263 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246B Procedure for making election.

F1264

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Textual Amendments

F1264 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

Recipient of foreign income dividend

246C No tax credit for recipient.

F1265

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Textual Amendments

F1265 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246D Individuals etc.

F1266

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Textual Amendments

F1266 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

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Companies: payments and receipts

246E Foreign income dividend not franked payment.

F1267

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Textual Amendments

F1267 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246F Calculation of ACT where company receives foreign income dividend.

F1268

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Textual Amendments

F1268 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246G Information relating to foreign income dividends.

F1269

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Textual Amendments

F1269 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246H Power of inspector to require information.

F1270

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Textual Amendments

F1270 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

Foreign source profit and distributable foreign profit

246I Foreign source profit and distributable foreign profit.

F1271

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Textual Amendments

F1271 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

Matching of dividend with distributable foreign profit

246J Matching of dividend with distributable foreign profit.

F1272 . . . . . .

Textual Amendments

F1272 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246K Matching: subsidiaries.

F1273 . . . . . .

Textual Amendments

F1273 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246L Requirement as to subsidiaries.

F1274 . . . . . .

Textual Amendments

F1274 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246M Matching: further provisions.

F1275 . . . . . .

Textual Amendments

F1275 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

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Repayment or set-off of advance corporation tax

246N ACT to be repaid or set off against corporation tax liability.

F1276 . . . . . .

Textual Amendments

F1276 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246P Notional foreign source advance corporation tax.

F1277 . . . . . .

Textual Amendments

F1277 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246Q Repayment or set-off: supplementary.

F1278 . . . . . .

Textual Amendments

F1278 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246R Supplementary claims.

F1279 . . . . . .

Textual Amendments

F1279 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

International headquarters companies

246S International headquarters companies.

F1280 . . . . . .

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Textual Amendments

F1280 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246T Liability to pay ACT displaced.

F1281

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Textual Amendments

F1281 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246U Settlement of liability by IHC as to ACT.

F1282

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Textual Amendments

F1282 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246V Settlement of liability by non-IHC as to ACT.

F1283

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Textual Amendments

F1283 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

246W Payments and repayments where further matching takes place.

F1284

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Textual Amendments

F1284 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

Adjustments

246X Adjustments where profits or foreign tax altered.

F1285

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Textual Amendments

F1285 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

Application of this Chapter

246Y Application of this Chapter.

F1286 . . . . . .]

Textual Amendments

F1286 Ss. 246A-246Y (Pt. 6 Ch. 5A) repealed (with effect in accordance with Sch. 6 para. 3(2)-(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 3(1), **Sch. 8 Pt. 2(11)**, Note

CHAPTER VI

MISCELLANEOUS AND SUPPLEMENTAL

Group income

247 Dividends etc. paid by one member of a group to another.

F1287 . . . . . .

Textual Amendments

F1287 S. 247 repealed (with application in accordance with s. 85(6), Sch. 33 Pt. 2(10) Note of the repealing Act) by Finance Act 2001 (c. 9), s. 85(5), **Sch. 33 Pt. 2(10)**

248 Provisions supplementary to section 247.

F1288 . . . . . .

Textual Amendments

F1288 S. 248 repealed (with application in accordance with s. 85(6), Sch. 33 Pt. 2(10) Note of the repealing Act) by Finance Act 2001 (c. 9), s. 85(5), **Sch. 33 Pt. 2(10)**

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Stock dividends

249 Stock dividends treated as income.

(1) [M265]Subject to **[**[F1289]subsections (8) and (9) below, this section applies (and accordingly section 230 above and section 410 of ITTOIA 2005 apply)**]** to any of the following share capital, that is to say—

(a) any share capital issued by a company resident in the United Kingdom in consequence of the exercise by any person of an option conferred on him to receive in respect of shares in the company (whether the last-mentioned shares were issued before or after the coming into force of this section) either a dividend in cash or additional share capital; and

(b) any bonus share capital issued by a company so resident in respect of any shares in the company of a relevant class (whether the last-mentioned shares were issued before or after the coming into force of this section).

(2) For the purposes of subsection (1)(b) above a class of shares is a relevant class if—

(a) shares of that class carry the right to receive bonus share capital in the company of the same or a different class; and

(b) that right is conferred by the terms on which shares of that class were originally issued or by those terms as subsequently extended or otherwise varied.

(3) Where a company issues any share capital in a case in which two or more persons are entitled thereto, the following provisions of this section*and paragraph* 12(1)*to* (3)*of Schedule* 19 [F1290] shall have effect as if the company had issued to each of those persons separately a part of that share capital proportionate to his interest therein on the due date of issue.

(4) [F1291]. . . . . .

(5) [F1291]. . . . . .

(6) [F1291]. . . . . .

(7) [F1291]. . . . . .

(8) Where, in a case within **[**[F1292]section 410(2), (3) or (4) of ITTOIA 2005**]**, the share capital in question is issued in respect of shares in the company issued before 6th April 1975 which confer on the holder a right to convert or exchange them into or for shares of a different class, this section shall not apply to so much (if any) of any bonus share capital issued by the company after 5th April 1976 in connection with an exercise of that right as would have been issued if that right had been exercised so as to effect the conversion or exchange of the shares on the earliest possible date after 5th April 1975; [F1293]. . . .

(9) Where any bonus share capital falling within subsection (1)(b) above is after 5th April 1975 converted into or exchanged for shares in the company in question of a different class, then—

(a) this section shall not apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the cancellation, extinguishment or acquisition by the company of that bonus share capital; but

(b) section 230(a) and (b) shall apply to any shares in the company issued, in connection with the conversion or exchange, in consideration of the

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cancellation, extinguishment or acquisition by the company of so much of that bonus share capital as caused **[**[F1294]income to be treated as arising to an individual as a result of section 410(2) of ITTOIA 2005**]** on the due date of issue (or would have done so if the case had been one in which an individual was beneficially entitled to that share capital).

Textual Amendments

F1289 Words in s. 249(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch 1 para. 119(2)**

F1290 *Words repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F1291 S. 249(4)-(7) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 119(3), **Sch. 3** (with Sch. 2)

F1292 Words in s. 249(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 119(4)(a)** (with Sch. 2)

F1293 Words in s. 249(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 119(4)(b), **Sch. 3** (with Sch. 2)

F1294 Words in s. 249(9)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 119(5)** (with Sch. 2)

Modifications etc. (not altering text)

C174 *See* Sch.10 para.5—*profit sharing schemes.*

Marginal Citations

M265 Source—1975 (No.2) s.34(1)-(6)

250 Returns.

(1) [M266]A company shall for each of its accounting periods make, in accordance with this section, returns to the inspector of all share capital to which section 249 applies ("relevant share capital") and which was issued by it in that period.

(2) [M267]A return shall be made for—

(a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September or 31st December which falls within that period;

(b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;

(c) if none of those dates falls within the accounting period, the whole accounting period.

(3) A return for any period for which a return is required to be made under this section (a "return period") shall be made within 30 days from the end of that period.

(4) [M268]No return need be made under this section by a company for any period in which it has issued no relevant share capital.

(5) The return made by a company for any return period shall state—

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(a) the date on which any relevant share capital issued by it in the period was issued and, if different, the date on which the company was first required to issue it;

(b) particulars of the terms on which any such share capital so issued by it was issued; and

(c) what is, in relation to any such share capital so issued, **[**F1295the cash equivalent of the share capital in accordance with section 412 of ITTOIA 2005**]**.

(6) If it appears to the inspector that a company ought to have, but has not, made a return for any return period, he may (notwithstanding subsection (4) above) by notice require the company to make a return for that period within such time (not being less than 30 days) as may be specified in the notice; and a return required to be made under this subsection shall, if such be the case, state that no relevant share capital was issued in the period in question.

(7) As regards any share capital included in a return made under this section by a company, the inspector may by notice require the company to furnish him within such time (not being less than 30 days) as may be specified in the notice with such further information relating thereto as he may reasonably require for the purposes of sections 230 and 249, this section and section 251 F1296. . . **[**F1297of this Act or Chapter 5 of Part 4 of ITTOIA 2005**]**.

Textual Amendments

F1295 Words in s. 250(5)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 120(2)** (with Sch. 2)

F1296 Words in s. 250(7) repealed by Finance Act 1989 (c. 26), s. 187, **Sch. 17 Part V** (in relation to accounting periods beginning after 31 March 1989).

F1297 Words in s. 250(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 120(3)** (with Sch. 2)

Marginal Citations

M266 Source—1975 (No.2) Sch.8 7(1)

M267 Source—1975 (No.2) Sch.8 7(2)

M268 Source—1975 (No.2) Sch.8 7(3)-(6)

251 Interpretation of sections 249 and 250.

M269(1) For the purposes of sections 249 and 250 —

(a) "bonus share capital", in relation to a company, means share capital issued by the company otherwise than wholly for new consideration or such part of any share capital so issued as is not properly referable to new consideration;

(b) "due date of issue", in relation to any share capital issued by a company, means the earliest date on which the company was required to issue that share capital;

(c) an option to receive either a dividend in cash or additional share capital is conferred on a person not only where he is required to choose one or the other, but also where he is offered the one subject to a right, however expressed, to choose the other instead, and a person's abandonment of, or failure to exercise, such a right is to be treated as an exercise of the option;

and in section 254 the definition of "security" (in subsection (1)) and subsections (5) and (11) shall not apply.

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(2) F1298 . . . . . .

(3) F1298 . . . . . .

(4) F1298 . . . . . .

(5) F1298 . . . . . .

(6) F1298 . . . . . .

Textual Amendments

F1298 S. 251(2)-(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 121, **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C175 S. 251(1)(c) applied (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 7 para. 4(2)**

Marginal Citations

M269 Source—1975 (No.2) s.34(8)(a)-(d)

[F1299 Approved share incentive plans

Textual Amendments

F1299 Ss. 251A-251D and preceding cross-heading inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 34** (with Sch. 7)

251A Application of sections 251B and 251C

F1300 . . . . . .

Textual Amendments

F1300 Ss. 251A-251D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 122, **Sch. 3** (with Sch. 2)

251B Treatment of cash dividend retained and then later paid out

F1301 . . . . . .

Textual Amendments

F1301 Ss. 251A-251D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 122, **Sch. 3** (with Sch. 2)

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251C Charge on dividend shares ceasing to be subject to plan

F1302 . . . . . .

Textual Amendments

F1302 Ss. 251A-251D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 122, **Sch. 3** (with Sch. 2)

251D Interpretation of sections 251A to 251C

F1303 . . . . . .]

Textual Amendments

F1303 Ss. 251A-251D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 122, **Sch. 3** (with Sch. 2)

Supplemental

M270 252. Rectification of excessive set-off etc. of ACT or tax credit.

(1) If an inspector discovers that—

(a) F1304 . . . . . .

(b) any set-off or payment of tax credit,

ought not to have been made, or is or has become excessive, the inspector may make any such assessments as may in his judgment be required for recovering any tax that ought to have been paid or any payment of tax credit that ought not to have been made and generally for securing that the resulting liabilities to tax (including interest on unpaid tax) of the persons concerned are what they would have been if only such set-offs or payments had been made as ought to have been made.

(2) In any case where—

(a) interest has been paid under section 826 on a payment of tax credit; and

(b) interest ought not to have been paid on that payment, either at all or to any extent,

an assessment under this section may be made for recovering any interest that ought not to have been paid.

(3) Where—

(a) an assessment is made under this section to recover tax credit paid to a company in respect of franked investment income received by the company in an accounting period; and

(b) more than one payment of tax credit has been made in respect of that period,

any sum recovered shall as far as possible be treated as relating to a payment of tax credit made later rather than to a payment made earlier.

(4) Subsections (2) and (3) above shall have effect in relation to payments of tax credit claimed in respect of accounting periods ending after such day as may be appointed

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for the purpose of those subsections by order made by the Treasury, not being earlier than 31st March 1992.

(5) The Management Act shall apply to any assessment under this section for recovering a payment of tax credit or interest on such a payment as if it were an assessment to income tax for the year of assessment, or in the case of a company, corporation tax for the accounting period, in respect of which the payment was claimed, and as if that payment represented a loss of tax to the Crown; and any sum charged by any such assessment shall, subject to any appeal against the assessment, be due within 14 days after the issue of the notice of assessment.

Subordinate Legislation Made

P1 S. 252(4) power exercised: 30.9.1993 appointed for the purposes of s. 252(2)(3) by S.I. 1992/3066, **art. 2(2)(b)**.

Textual Amendments

F1304 S. 252(1)(a) repealed (with effect in accordance with Sch. 3 para. 21(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 21(2), **Sch. 27 Pt. 3(2)**, Note

Modifications etc. (not altering text)

C176 S. 252 modified (27.7.1993) by 1993 c. 34, **s. 80(8)**

C177 S. 252 modified (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), **reg. 15(4)(5)**

C178 S. 252 applied (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), **reg. 20**

C179 S. 252 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 35(10)**

C180 *See* 1989 s.157(1)*for reckonable date for interest charge under* 1970(M) s.86*where assessment made to recover corporation tax payable as the result of a claim under* s.240*made on or after* 14*March* 1989. (*Ceases to have effect for accounting periods ending after the day appointed for the purposes of* s.86).

Marginal Citations

M270 Source—1972 s.102; (No.2) s.88(5)-(7)

253 Power to modify or replace section 234(5) to (9) and Schedule 13.

M271(1) The Board may by regulations—

(a) modify, supplement or replace any of the provisions of subsections (5) to (9) of section 234 for the purpose of requiring companies resident in the United Kingdom to make returns and give information to the inspector in respect of distributions made by them, whether before or after the passing of this Act, which are not qualifying distributions;

(b) F1305 . . . . . .

and references in this Act and in any other enactment to section 234(5) to (9) F1306 . . . shall be construed as including references to any such regulations.

(2) F1307 . . . . . .

(3) Regulations under this section may—

(a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements

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as respects [F1308]. . . the repayment of income tax borne by a company or the payment to a company of amounts in respect of any tax credit to which it is entitled;

(b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.

(4) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F1305 S. 253(1)(b) repealed (with effect in accordance with Sch. 3 para. 22(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 22(2)(a), **Sch. 27 Pt. 3(2)**, Note

F1306 Words in s. 253(1) repealed (with effect in accordance with Sch. 3 para. 22(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 22(2)(b), **Sch. 27 Pt. 3(2)**, Note

F1307 S. 253(2) repealed (with effect in accordance with Sch. 3 para. 22(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 22(3), **Sch. 27 Pt. 3(2)**, Note

F1308 Words in s. 253(3)(a) repealed (with effect in accordance with Sch. 3 para. 22(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 22(4), **Sch. 27 Pt. 3(2)**, Note

Marginal Citations

M271 Source—1972 s.108

254 Interpretation of Part VI.

(1) [M272]In this Part, except where the context otherwise requires—

"new consideration" means, subject to subsections (5) and (6) below, consideration not provided directly or indirectly out of the assets of the company, and in particular does not include amounts retained by the company by way of capitalising a distribution;

"security" includes securities not creating or evidencing a charge on assets, and interest paid by a company on money advanced without the issue of a security for the advance, or other consideration given by a company for the use of money so advanced, shall be treated as if paid or given in respect of a security issued for the advance by the company;

"share" includes stock, and any other interest of a member in a company;

and in this section "a 90 per cent. group" means a company and all of its 90 per cent. subsidiaries.

(2) [M273]In this Part, the expressions "in respect of shares in the company" and "in respect of securities of the company", in relation to a company which is a member of a 90 per cent. group, mean respectively in respect of shares in that company or any other company in the group and in respect of securities of that company or any other company in the group.

(3) Without prejudice to section 209(2)(b) as extended by subsection (2) above, in relation to a company which is a member of a 90 per cent. group, "distribution" includes anything distributed out of assets of the company (whether in cash or otherwise) in respect of shares in or securities of another company in the group.

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(4) Nothing in subsections (2) and (3) above shall require a company to be treated as making a distribution to any other company which is in the same group and is resident in the United Kingdom.

(5) [M274]Where share capital has been issued at a premium representing new consideration, any part of that premium afterwards applied in paying up share capital shall be treated as new consideration also for that share capital, except in so far as the premium has been taken into account under section 211(5) so as to enable a distribution to be treated as a repayment of share capital.

(6) [M275]Subject to subsection (7) below, no consideration derived from the value of any share capital or security of a company, or from voting or other rights in a company, shall be regarded for the purposes of this Part as new consideration received by the company unless the consideration consists of—

(a) money or value received from the company as a qualifying distribution;

(b) money received from the company as a payment which for those purposes constitutes a repayment of that share capital or of the principal secured by the security; or

(c) the giving up of the right to the share capital or security on its cancellation, extinguishment or acquisition by the company.

(7) No amount shall be regarded as new consideration by virtue of subsection (6)(b) or (c) above in so far as it exceeds any new consideration received by the company for the issue of the share capital or security in question or, in the case of share capital which constituted a qualifying distribution on issue, the nominal value of that share capital.

(8) [M276]Where two or more companies enter into arrangements to make distributions to each other's members, all parties concerned (however many) may for the purposes of this Part be treated as if anything done by any one of those companies had been done by any of the others.

(9) [M277]A distribution shall be treated under this Part as made, or consideration as provided, out of assets of a company if the cost falls on the company.

(10) [M278]References in this Part to issuing share capital as paid up apply also to the paying up of any issued share capital.

(11) [M279]Where securities are issued at a price less than the amount repayable on them, and are not **[**[F1309]listed**]** on a recognised stock exchange, the principal secured shall not be taken for the purposes of this Part to exceed the issue price, unless the securities are issued on terms reasonably comparable with the terms of issue of securities so **[**[F1309]listed**]**.

(12) [M280]For the purposes of this Part a thing is to be regarded as done in respect of a share if it is done to a person as being the holder of the share, or as having at a particular time been the holder, or is done in pursuance of a right granted or offer made in respect of a share; and anything done in respect of shares by reference to share holdings at a particular time is to be regarded as done to the then holders of the shares or the personal representatives of any share holder then dead.

This subsection shall apply in relation to securities as it applies in relation to shares.

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Textual Amendments

F1309 Words in s. 254(11) substituted (with effect in accordance with Sch. 38 para. 6(6) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(d)**

Marginal Citations

M272 Source—1970 s.237(1), (3), (5); 1972 Sch.22 10(4)
M273 Source—1972 Sch.22 10(1)-(3)
M274 Source—1970 s.237(1)
M275 Source—1972 Sch.22 8
M276 Source—1972 Sch.22 9
M277 Source—1970 s.237 (2)
M278 Source—1970 s.237(4)
M279 Source—1970 s.237(6)
M280 Source—1970 s.237(7)

255 "Gross rate" and "gross amount" of distributions to include ACT.

F1310 . . . . . .

Textual Amendments

F1310 S. 255 repealed (with effect in accordance with Sch. 3 para. 23(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 23(1), **Sch. 27 Pt. 3(2)**, Note

PART VII

GENERAL PROVISIONS RELATING TO TAXATION OF INCOME OF INDIVIDUALS

CHAPTER I

PERSONAL RELIEFS

The reliefs

256 General.

[F1311(1)**]** M281An individual who makes a claim in that behalf or, in the case of relief under section 266, who satisfies the conditions of that section, shall be entitled to such relief as is specified in sections 257 to 274, subject however to the provisions of sections 275 to 278 and **[**F1312287 and 288**]**.

[F1313(2) Where under any provision of this Chapter the relief to which a person is entitled for any year of assessment consists in an income tax reduction calculated by reference to a specified amount, the effect of that relief shall be that the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from that provision less whichever is the smaller of—

(a) the amount equal to **[**F1314**]**10 per cent.**]** of the specified amount; and

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(b) the amount which reduces his liability to nil.

(3) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from any provision providing for an income tax reduction, no account shall be taken—

(a) where that provision is **[**F1315section 257AA**]**, of any income tax reduction under any of the other provisions of this Chapter;

(b) F1316. . . . . or

(c) whatever that provision—

(i) of any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or

(ii) of any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment;

F1317. . . . . **]**

Textual Amendments

F1311 S. 256 renumbered as s. 256(1) (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 c. 9, **s. 77(1)**

F1312 "287 and 288"
repealed by 1988(F) Sch.14 Part. VIII*for* 1990-91*and subsequent years. And see* 1970(M) ss.42*and* 43*—procedure on claims and appeals.*

F1313 S. 256(2)(3) inserted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 c. 9, **s. 77(2)**

F1314 Words in s. 256(2)(a) substituted (1999-2000 and subsequent years of assessment) by Finance Act 1998 (c. 36), **s. 27(1)(a)**

F1315 Words in s. 256(3)(a) substituted (with effect in accordance with s. 35(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 35(1)(a)**

F1316 S. 256(3)(b) repealed (with effect in accordance with s. 35(2) of the repealing Act) by Finance Act 1999 (c. 16), s. 35(1)(b), **Sch. 20 Pt. 3(5)**, Note 2

F1317 S. 256(3): words after para. (c) repealed (with effect in accordance with s. 35(3) of the repealing Act) by Finance Act 1999 (c. 16), s. 35(1)(c), **Sch. 20 Pt. 3(4)**, Note

Modifications etc. (not altering text)

C181 S. 256(3) modified (2000-2001) by Finance Act 1999 (c. 16), **s. 35(4)**

Marginal Citations

M281 Source-1970 s.5; 1971 Sch.4 3; 1975 (No.2) s.31(3); 1976 Sch.4 3(1), 18(1)

VALID FROM 06/04/2007

[F1318**256A Meaning of "adjusted net income"**

(1) For the purposes of this Chapter an individual's adjusted net income for a year of assessment is calculated as follows.

Step 1

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Take the amount of the individual's net income for the year of assessment.

Step 2

If in the year of assessment the individual makes, or is treated under section 426 of ITA 2007 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 of that Act (gift aid) deduct the grossed up amount of the gift.

Step 3

If the individual is given relief in accordance with section 192 of FA 2004 (relief at source) in respect of any contribution paid in the year of assessment under a pension scheme, deduct the gross amount of the contribution.

Step 4

Add back any relief under section 266 of this Act given by virtue of subsection (7) of that section (payments for life insurance etc) that was deducted in calculating the individual's net income for the year of assessment.

The result is the individual's adjusted net income for the year of assessment.

(2) The grossed up amount of a gift is the amount of the gift grossed up by reference to the basic rate for the year of assessment.

(3) The gross amount of a contribution is the amount of the contribution before deduction of tax under section 192(1) of FA 2004.**]**

Textual Amendments

F1318 Ss. 256A, 256B inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 28** (with Sch. 2)

VALID FROM 06/04/2007

[F1318 256B Meaning of "the minimum amount"

In this Chapter "the minimum amount" means £2,350.**]**

Textual Amendments

F1318 Ss. 256A, 256B inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 28** (with Sch. 2)

Modifications etc. (not altering text)

C182 S. 256B amended (2008-09) by S.I. 2008/673, **art. 2(2)**
S. 256B amended (2009-10) by S.I. 2008/3024, **art. 2(a)**

[F1319 257 Personal allowance.

(1) The claimant shall be entitled to a deduction from his total income of **[**F1320£3,005,**]**.

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(2) If the claimant F1321. . . is at any time within the year of assessment of the age of 65 or upwards, he shall be entitled to a deduction from his total income of **[**F1320£3,670**]** (instead of the deduction provided for by subsection (1) above).

(3) If the claimant F1321. . . is at any time within the year of assessment of the age of **[**F132275**]** or upwards, he shall be entitled to a deduction from his total income of **[**F1320£3,820**]** (instead of the deduction provided for by subsection (1) or (2) above).

(4) For the purposes of subsections (2) and (3) above a person who would have been of or over a specified age within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.

(5) In relation to a claimant whose total income for the year of assessment exceeds **[**F1320£12,300**]**, subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by **[**F1322one half**]** of the excess (but not so as to reduce those amounts below that specified in subsection (1) above).]**]**

Textual Amendments

F1319 Ss. 257-257F substituted for s. 257 (1990-91 and subsequent years) by Finance Act 1988 (c. 39), **s. 33**

F1320 S.I. 1990 No.677, **arts.2(1)(3)** (*in* Part III Vol.5)*for* 1990-91.

F1321 Words in s. 257(2)(3) repealed (with effect as mentioned in s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 13, **Sch. 41 Pt. 5(10)**, Note

F1322 1989 s.33 for 1990-91*and subsequent years.*

Modifications etc. (not altering text)

C183 S. 257 amended (1991-92) by S.I. 1991/732, **art. 2(3)**
S. 257 amended (1992-93) by S.I. 1992/622, **art. 2(3)**
S. 257 amounts specified (1993-94) by 1993 c. 34, **s. 52** (in place of S.I. 1993/755, **art. 2(3)**)
S. 257 amounts specified (1994-95) by 1994 c. 9, **s. 76** (in place of S.I. 1993/2948, **art. 2(3)**)
S. 257(1)(5) amended (1995-96) by S.I. 1994/3012, **art. 2(3)(a)(d)**
S. 257(2)(3) amended (1995-96) by 1995 c. 4, **s. 36** (in place of S.I. 1994/3012, **art. 2(3)(b)(c)**)
S. 257(5) amended (1996-97) by S.I. 1995/3031, **art. 2(3)(d)**
S. 257(1)(2)(3) amended (1996-97) by 1996 c. 8, **s. 74(2)** (in place of S.I. 1995/3031, **art. 2(3)(a)-(c)**)
S. 257(5) amended (1997-98) by S.I. 1996/2952, **art. 2(3)(d)**
S. 257(1)(2)(3) amended (1997-98) by 1997 c. 16, **s. 55(2)** (in place of S.I. 1996/2952, **art. 2(3)(a)-(c)**)
S. 257 amended (1998-99) by S.I. 1998/755, **art. 2(3)**
S. 257(1) amended (1999-00) by S.I. 1998/2704, **art. 2**
S. 257(5) amended (1999-00) by S.I. 1999/597, **art. 2(3)(c)**
S. 257(2)(3) amended (1999-00) by 1999 c. 16, **s. 24(1)** (in place of S.I. 1999/597, **art. 2(3)(a)(b)**)
S. 257(1) amended (2000-01) by S.I. 1999/3038, **art. 2**
S. 257(2)(3)(5) amended (2000-01) by S.I. 2000/806, **art. 2(3)**
S. 257 amended (2001-02) by S.I. 2000/2996, **art. 2(2)**
S. 257 amended (2002-03) by S.I. 2001/3773, **art. 2(2)**
S. 257(1) amended (2003-04) by 2002 c. 23, **s. 28(1)**
S. 257(2)(3) amended (2003-04) by 2002 c. 23, **s. 29(1)**
S. 257(5) amended (2003-04) by S.I. 2002/2930, **art. 2(2)**
S. 257(1)(5) amended (2004-05) by S.I. 2003/3215, **art. 2(2)(a)(d)**
S. 257(2)(3) amended (2004-05) by 2004 c. 12, **s. 24(1)** (in place of S.I. 2003/3215, **art. 2(2)(b)(c)**)
S. 257(1)(5) amended (2005-06) by S.I. 2004/3161, **art. 2(2)(a)(d)**
S. 257(2)(3) amended (2005-06) by 2005 c. 7, **s. 9(1)** (in place of S.I. 2004/3161, **art. 2(2)(b)(c)**)
S. 257(1)(2)(3)(5) amended (2006-07) by S.I. 2005/3327, **art. 2(2)**
S. 257(1)(2)(3)(5) amended (2007-08) by S.I. 2006/3241, **art. 2(2)**

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S. 257(5) amended (2008-09) by S.I. 2008/673, **art. 2(3)(d)**
S. 257(1)(2)(3) amended (2008-09) by 2008 c. 9, **ss. 2(1)(b)**, 3(1) (in place of S.I. 2008/673, **art. 2(3)(a)-(c)**)
S. 257(2)(3)(5) amended (2009-10) by S.I. 2008/3024, **art. 2(b)(ii)-(iv)**
S. 257(1) amended (2009-10) by 2009 c. 10, **s. 3(1)(b)** (in place of S.I. 2008/3024, **art. 2(b)(i)**)

C184 S. 257(5) modified (6.4.2006) by Finance Act 2004 (c. 12), **ss. 192(5)**, 284(1) (with Sch. 36)

[F1323257AChildren's tax credit.

F1324. . . . . .]

Textual Amendments

F1323 S. 257AA inserted (with effect in accordance with s. 30(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 30(1)**

F1324 S. 257AA repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), **Sch. 1** (with arts. 3, 5)

257A Married couple's allowance[F1325(pre-5th December 2005 marriages)].

(1) F1326. . . . . .

(2) [F1327If the claimant is, for the whole or any part of the year of assessment, a married man whose wife is living with him [F1328and whose marriage was entered into before 5th December 2005], and] either of them [F1329was born before 6th April 1935], he shall [F1330(subject to subsection (3A) below)] be entitled [F1331for that year to an income tax reduction calculated by reference to £2,665]. . . .

(3) [F1327If the claimant is, for the whole or any part of the year of assessment, a married man whose wife is living with him [F1332and whose marriage was entered into before 5th December 2005], and] either of them

[F1333(a)] is at any time within that year of the age of [F133475] or upwards,[F1335 and

(b) was born before 6th April 1935,]

he shall [F1336(subject to subsection (3A) below)] be entitled [F1337for that year to an income tax reduction calculated by reference to £2,705 (instead of to the reduction] provided for by subsection F1338. . . (2) above).

[F1339(3A) Subsections (2) and (3) above shall not apply in relation to the claimant for any year of assessment if an election made by the claimant and his wife under section 257AB(1)(c) has effect for that year.]

(4) For the purposes of [F1340subsection (3)] above a person who would have been of or over [F1341the age of 75] within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.

(5) In relation to a claimant whose total income for the year of assessment exceeds [F1342£12,300], subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by—

(a) [F1334one half] of the excess, less

(b) any reduction made in his allowance under section 257 by virtue of subsection (5) of that section,

F1343. . .

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[F1344(5A) The amounts specified in subsections (2) and (3) above shall not by virtue of subsection (5) above be treated as reduced below £1,970.**]**

(6) A man shall not be entitled by virtue of this section to more than one **[**F1345income tax reduction**]** for any year of assessment; and in relation to a claim by a man who becomes married in the year of assessment and has not previously in the year been entitled to relief under this section, this section shall have effect as if the amounts specified in **[**F1346subsections (2) and (3)**]** above were reduced by one twelfth for each month of the year ending before the date of the marriage.

In this subsection "month" means a month beginning with the 6th day of a month of the calendar year.

[F1347(7) F1348. . . . . .

(8) F1348. . . . . .

(9) F1348. . . . . .**]**

Textual Amendments

F1325 Words in s. 257A heading inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 51(5)

F1326 S. 257A(1) repealed (with effect as mentioned in s. 31(10), Sch. 20 Pt. 3(3) Note 2 of the repealing Act) by Finance Act 1999 (c. 16), **s. 31(2)**, Sch. 20 Pt. 3(3)

F1327 Words in s. 257A(2)(3) substituted (with effect in as mentioned in s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 14(3)**

F1328 Words in s. 257A(2) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 51(2)(a)

F1329 Words in s. 257A(2) substituted (with effect as mentioned in s. 31(10) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(3)(a)**

F1330 Words in s. 257A(2) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 51(2)(b)

F1331 Words in s. 257A(2) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **s. 77(2)(b)**

F1332 Words in s. 257A(3) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 51(3)(a)

F1333 Word in s. 257A(3) inserted (with effect as mentioned in s. 31(10) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(4)(a)**

F1334 1989 s.33 for 1990-91 *and subsequent years.*

F1335 S. 257A(3)(b) and preceding word inserted (with effect as mentioned in s. 31(10) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(4)(b)**

F1336 Words in s. 257A(3) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 51(3)(b)

F1337 Words in s. 257A(3) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **s. 77(2)(c)**

F1338 Words in s. 257A(3) repealed (with effect as mentioned in s. 31(10), Sch. 20 Pt. 3(3) Note 2 of the repealing Act) by Finance Act 1999 (c. 16), **s. 31(4)(c)**, Sch. 20 Pt. 3(3)

F1339 S. 257A(3A) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 51(4)

F1340 Words in s. 257A(4) substituted (with effect as mentioned in s. 31(10) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(5)(a)**

F1341 Words in s. 257A(4) substituted (with effect as mentioned in s. 31(10) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(5)(b)**

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F1342 S.I. 1990 No.677, **arts.2(1)(4)** (*in* Part III Vol.5)*for* 1990-91.
F1343 Words in s. 257A(5) repealed (with effect as mentioned in s. 31(11), Sch. 20 Pt. 3(3) Note 1 of the repealing Act) by Finance Act 1999 (c. 16), **s. 31(6)**, Sch. 20 Pt. 3(3) (with s. 32(5))
F1344 S. 257A(5A) inserted (with effect as mentioned in s. 31(11) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(7)** (with s. 32(5))
F1345 Words in s. 257A(6) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 1**
F1346 Words in s. 257A(6) substituted (with effect as mentioned in s. 31(10) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(8)**
F1347 S. 257A(7)-(9) inserted (with effect as mentioned in s. 31(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 31(9)**
F1348 S. 257A(7)-(9) repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), **Sch. 1** (with arts. 3, 5)

Modifications etc. (not altering text)
C185 Ss. 257A-262 restricted (with effect as mentioned in s. 77(7) of the restricting Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**
C186 S. 257A(2)(3)(5) amended (1991-92) by S.I. 1991/732, **art. 2(4)(b)-(d)**
S. 257A(1) amended (1991-92) by 1991 c. 31, **s. 22(2)** (in place of S.I. 1991/732, **art. 2(4)(a)**)
S. 257A(2)(3)(5) amended (1992-93) by S.I. 1992/622, **art. 2(4)(b)-(d)**
S. 257A(1) amended (1992-93) by 1992 c. 20, **s. 10(3)(5)** (in place of S.I. 1992/622, **art. 2(4)(a)**)
S. 257A amounts specified (1993-94) by 1993 c. 34, **s. 52** (in place of S.I. 1993/755, **art. 2(4)**)
S. 257A(1)(2)(3) amended (1994-95) by S.I. 1993/2948, **art. 2(4)(a)-(c)**
S. 257A(5) amount specified (1994-95) 1994 c. 9, **s. 78** (in place of S.I. 1993/2948, **art. 2(4)(d)**)
S. 257A(1)(2)(3) amended (1995-96) by 1994 c. 9, **s. 77(9)**
S. 257A(5) amended (1995-96) by S.I. 1994/3012, **art. 2(4)**
S. 257A amended (1996-97) by S.I. 1995/3031, **art. 2(4)**
S. 257A amended (1997-98) by S.I. 1996/2952, **art. 2(4)**
S. 257A amended (1998-99) by S.I. 1998/755, **art. 2(4)**
S. 257A(2)(3) amended (1999-00) by 1998 c. 36, **s. 27(2)**
S. 257A amended (1999-00) by S.I. 1999/597, **art. 2(4)**
S. 257A amended (2000-01) by S.I. 2000/806, **art. 2(4)**
S. 257A amended (2001-02) by S.I. 2000/2996, **art. 2(3)**
S. 257A amended (2002-03) by S.I. 2001/3773, **art. 2(3)**
S. 257A amended (2003-04) by S.I. 2002/2930, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2004-05) by S.I. 2003/3215, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2005-06) by S.I. 2004/3161, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2006-07) by S.I. 2005/3327, **art. 2(3)**
S. 257A(2)(3)(5)(5A) amended (2007-08) by S.I. 2006/3241, **art. 2(3)**
S. 257A(2)(3)(5) amended (2008-09) by S.I. 2008/673, **art. 2(4)**
S. 257A(2)(3)(5) amended (2009-10) by S.I. 2008/3024, **art. 2(c)**
C187 S. 257A(5) modified (6.4.2006) by Finance Act 2004 (c. 12), **ss. 192(5)**, 284(1) (with Sch. 36)

[F1349 257AB Married couple's allowance (post-5th December 2005 marriages and civil partnerships etc.)

(1) This section applies if—

(a) the claimant is, for the whole or any part of the year of assessment, living with his spouse or civil partner,

(b) either the claimant or his spouse or civil partner was born before 6th April 1935,

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(c) the marriage or civil partnership was entered into on or after 5th December 2005 or, if the marriage was entered into before that date, an election for this section to apply has effect for that year, and

(d) the claimant's total income for that year exceeds that of his spouse or civil partner or, if they have the same amount of total income for that year, the claimant is specified in an election as the person to be entitled to relief under this section for that year.

(2) The claimant shall be entitled for that year to an income tax reduction —

(a) calculated by reference to £5,975 (if either the claimant or his spouse or civil partner is at any time within that year of the age of 75 or upwards), or

(b) calculated by reference to £5,905 (in any other case).

(3) For the purposes of subsection (2)(a) above an individual who would have been of or over the age of 75 within the year of assessment if he had not died in the course of it shall be treated as having been of that age within that year.

(4) In relation to a claimant whose total income for the year of assessment exceeds £19,500, subsection (2) above applies as if the amounts specified in it were reduced by—

(a) one half of the excess, less

(b) any reduction made in his allowance under section 257 by virtue of subsection (5) of that section.

(5) The amounts specified in subsection (2) above shall not by virtue of subsection (4) above be treated as reduced below £2,280.

(6) An individual shall not be entitled by virtue of this section to more than one income tax reduction for any year of assessment.

(7) In relation to a claim by an individual who —

(a) becomes a spouse or civil partner in the year of assessment, and

(b) has not previously in the year been entitled to relief under this section,

this section shall have effect as if the amounts specified in subsection (2) above were reduced by one twelfth for each month of the year ending before the date of the marriage or civil partnership.

In this subsection "month" means a month beginning with the 6th day of a month of the calendar year.

(8) An election under subsection (1)(c) —

(a) shall be made jointly by the parties to the marriage,

(b) shall be made before the first year of assessment for which it is to have effect,

(c) shall have effect for that and each succeeding year of assessment for which any party to the marriage is entitled to relief under this section, and

(d) shall be irrevocable.

(9) An election under subsection (1)(d) —

(a) shall be made jointly by the parties to the marriage or civil partnership, and

(b) shall be made on or before the 5th anniversary of the 31st January next following the end of the year of assessment to which the election relates.**]**

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Textual Amendments

F1349 S. 257AB inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 52

Modifications etc. (not altering text)

C188 S. 257AB(2)(4)(5) amended (2006-07) by S.I. 2005/3327, **art. 2(4)**
S. 257AB(2)(4)(5) amended (2007-08) by S.I. 2006/3241, **art. 2(4)**
S. 257AB(2)(4) amended (2008-09) by S.I. 2008/673, **art. 2(5)**
S. 257AB(2)(4) amended (2009-10) by S.I. 2008/3024, **art. 2(d)**

[F1350 257BA Elections as to transfer of relief under section 257A [F1351 or 257AB].

(1) [F1352 An individual may elect that for any year of assessment for which the individual's spouse or civil partner is entitled to relief under section 257A or 257AB—]

(a) [F1353 the individual] shall be entitled (on making a claim) [F1354 to an income tax reduction calculated by reference to] one half of the amount specified in [F1355 section 257A(5A)] [F1356 or 257AB(5)] for that year, and

(b) the amount [F1357 by reference to which the calculation of the income tax reduction to which [F1358 the individual's spouse or civil partner] is entitled under section 257A [F1359 or 257AB] is to be made] shall be reduced accordingly.

(2) [F1360 An individual and the individual's spouse or civil partner may jointly elect that for any year of assessment for which the individual is entitled to relief under section 257A or 257AB—]

(a) [F1361 the individual's spouse or civil partner] shall be entitled (on making a claim) [F1354 to an income tax reduction calculated by reference to] the amount specified in [F1355 section 257A(5A)] [F1362 or 257AB(5)] for that year, and

(b) the amount that [F1357 by reference to which the calculation of the income tax reduction to which [F1363 the individual] is entitled under section 257A [F1364 or 257AB] is to be made] shall be reduced accordingly F1365 . . . .

(3) [F1366 An individual may elect that for any year of assessment for which the individual's spouse or civil partner] is entitled to relief by virtue of an election under subsection (2) above—

(a) [F1367 the individual] shall be entitled (on making a claim) to [F1368 to an income tax reduction calculated by reference to] one half of the amount specified in [F1355 section 257A(5A)] [F1369 or 257AB(5)] for that year (in addition to [F1370 any income tax reduction to which [F1367 the individual] is already entitled] under section 257A [F1371 or 257AB]), and

(b) the amount [F1372 by reference to which the calculation of the income tax reduction to which [F1373 the individual's spouse or civil partner] is entitled by virtue of that election is to be made] shall be reduced accordingly.

(4) An election under this section shall be made by giving notice to the inspector in such form as the Board may determine and—

(a) subject to subsections (5) and (7) below, shall be made before the first year of assessment for which it is to have effect, and

(b) shall have effect for that and each succeeding year of assessment for which [F1374 the individual concerned] is entitled to relief under section 257A [F1375 or

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257AB**]**, subject to its withdrawal under subsection (8) below or a subsequent election under this section.

(5) An election may be made during the first year of assessment for which it is to have effect if that is the year of assessment in which the marriage **[**[F1376]or civil partnership**]** takes place.

(6) Where subsection (5) above applies, the references in subsections (1)(a), (2)(a) and (3)(a) above to the amount specified for the year of assessment in **[**[F1355]section 257A(5A)**][**[F1377]or 257AB(5)**]** shall be read as references to that amount reduced in accordance with section 257A(6) **[**[F1378]or (as the case may be) 257AB(7)**]**.

(7) An election may be made within the first thirty days of the first year of assessment for which it is to have effect if before that year the inspector has been given written notification that it is intended to make the election.

(8) The person or persons by whom an election was made may withdraw it by giving notice to the inspector in such form as the Board may determine; but the withdrawal shall not have effect until the year of assessment after the one in which the notice is given.

(9) **[**[F1379]An individual**]** shall not be entitled by virtue of an election under this section to more than one **[**[F1380]income tax reduction**]** for any year of assessment.**]**

Textual Amendments

F1350 Ss. 257BA, 257BB substituted for s. 257B (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.2, **10**.

F1351 Words in s. 257BA heading inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(9)

F1352 Words in s. 257BA(1) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(2)(a)

F1353 Words in s. 257BA(1)(a) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(2)(b)(i)

F1354 Words in s. 257BA(1)(2) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 2(1)(a)** (with Sch. 8 para. 2(3))

F1355 Words in s. 257BA(1)(a)(2)(a)(3)(a)(6) substituted (with effect as mentioned in s. 32(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 32(1)(a)**

F1356 Words in s. 257BA(1)(a) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(2)(b)(ii)

F1357 Words in s. 257BA(1)(2) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 2(1)(b)** (with Sch. 8 para. 2(3))

F1358 Words in s. 257BA(1)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(2)(c)(i)

F1359 Words in s. 257BA(1)(b) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(2)(c)(ii)

F1360 Words in s. 257BA(2) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(3)(a)

F1361 Words in s. 257BA(2)(a) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(3)(b)(i)

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F1362 Words in s. 257BA(2)(a) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(3)(b)(ii)
F1363 Words in s. 257BA(2)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(3)(c)(i)
F1364 Words in s. 257BA(2)(b) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(3)(c)(ii)
F1365 Words in s. 257BA(2) repealed (with effect as mentioned in s. 32(4), Sch. 20 Pt. 3(3) Note 2 of the repealing Act) by Finance Act 1999 (c. 16), s. 32(1)(b), **Sch. 20 Pt. 3(3)**
F1366 Words in s. 257BA(3) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(4)(a)
F1367 Words in s. 257BA(3)(a) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(4)(b)(i)
F1368 Words in s. 257BA(3) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 2(2)(a)** (with Sch. 8 para. 2(3))
F1369 Words in s. 257BA(3)(a) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(4)(b)(ii)
F1370 Words in s. 257BA(3) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 2(2)(b)** (with Sch. 8 para. 2(3))
F1371 Words in s. 257BA(3)(a) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(4)(b)(iii)
F1372 Words in s. 257BA(3) substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 2(2)(c)** (with Sch. 8 para. 2(3))
F1373 Words in s. 257BA(3)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(4)(c)
F1374 Words in s. 257BA(4)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(5)(a)
F1375 Words in s. 257BA(4)(b) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(5)(b)
F1376 Words in s. 257BA(5) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(6)
F1377 Words in s. 257BA(6) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(7)(a)
F1378 Words in s. 257BA(6) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(7)(b)
F1379 Words in s. 257BA(9) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 53(8)
F1380 Words in s. 257BA(9) substituted (with effect as mentioned in s. 32(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 32(1)(c)**

Modifications etc. (not altering text)
C189 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**

[F1382]257BB Transfer of relief under section 257A where relief exceeds income[F1381 or 257AB.]

(1) Where—

(a) **[**F1383an individual**]** is entitled to relief under section 257A **[**F1384or 257AB**]**, but

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[F1385(b) the amount of the reduction to which **[**F1386the individual**]** is entitled is determined in accordance with section 256(2)(b) **[**F1387 (read with section 25(6)(c) of the M282Finance Act 1990 where applicable)**]** or, by virtue of **[**F1388the individual's**]** having no income tax liability to which that reduction is applicable, is nil,

[F1389the individual's spouse or civil partner**]** shall be entitled (in addition to any reduction to which **[**F1390that spouse or civil partner**]** is entitled by virtue of an election under section 257BA) to an income tax reduction calculated by reference to an amount equal to the unused part of the amount by reference to which **[**F1391the individual's**]** income tax reduction fell to be calculated in pursuance of section 257A **[**F1392or 257AB**]** and any election under section 257BA.**]**

(2) Subsection (1) above shall not apply for a year of assessment unless the claimant's **[**F1393spouse or civil partner**]** gives notice to the inspector that it is to apply.

(3) Where—

(a) **[**F1394an individual**]** is entitled to relief by virtue of an election under section 257BA, but

[F1395(b) the amount of the reduction to which **[**F1396the individual**]** is entitled is determined in accordance with section 256(2)(b) **[**F1387 (read with section 25(6)(c) of the M282Finance Act 1990 where applicable)**]** or, by virtue of **[**F1397the individual's**]** having no income tax liability to which that reduction is applicable, is nil,

[F1398the individual's spouse or civil partner**]** shall be entitled (in addition to any other reduction to which **[**F1399that spouse or civil partner**]** is entitled by virtue of section 257A **[**F1400or 257AB**]**) to an income tax reduction calculated by reference to an amount equal to the unused part of the amount by reference to which **[**F1401the individual's**]** income tax reduction fell to be calculated in pursuance of that election.**]**

[F1402(3A) In this section references, in relation to such an amount as is mentioned in subsection (1)(b) or (3)(b), to the unused part of an amount by reference to which any income tax reduction fell to be calculated are references to so much of it (including, where the amount so mentioned is nil, all of it) as has no practical effect on the determination of the amount so mentioned.**]**

(4) Subsection (3) above shall not apply for a year of assessment unless the claimant's **[**F1403spouse or civil partner**]** gives notice to the inspector that it is to apply.

(5) Any notice under subsection (2) or (4) above—

(a) shall be given **[**F1404on or before the fifth anniversary of the 31st January next following**]** the end of the year of assessment to which it relates,

(b) shall be in such form as the Board may determine, and

(c) shall be irrevocable.

(6) F1405. . . . . .

Textual Amendments

F1381 Words in s. 257BB heading inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(6)

F1382 Ss. 257BA, 257BB substituted for s. 257B (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.2, **10**.

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F1383 Words in s. 257BB(1)(a) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(a)(i)

F1384 Words in s. 257BB(1)(a) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(a)(ii)

F1385 S. 257BB(1)(b) and words substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 3(1)**

F1386 Words in s. 257BB(1)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(b)(i)

F1387 Words in s. 257BB(1)(b)(3)(b) inserted (with effect in accordance with s. 39(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 39(8)**

F1388 Words in s. 257BB(1)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(b)(ii)

F1389 Words in s. 257BB(1) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(c)(i)

F1390 Words in s. 257BB(1) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(c)(ii)

F1391 Words in s. 257BB(1) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(c)(iii)

F1392 Words in s. 257BB(1) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(2)(c)(iv)

F1393 Words in s. 257BB(2) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(3)

F1394 Words in s. 257BB(3)(a) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(a)

F1395 S. 257BB(3)(b) and words substituted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 3(2)**

F1396 Words in s. 257BB(3)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(b)(i)

F1397 Words in s. 257BB(3)(b) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(b)(ii)

F1398 Words in s. 257BB(3) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(c)(i)

F1399 Words in s. 257BB(3) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(c)(ii)

F1400 Words in s. 257BB(3) inserted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(c)(iii)

F1401 Words in s. 257BB(3) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(4)(c)(iv)

F1402 S. 257BB(3A) inserted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 3(3)**

F1403 Words in s. 257BB(4) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 54(5)

F1404 Words in s. 257BB(5)(a) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 4**

F1405 S. 257BB(6) repealed (with effect as mentioned in s. 77(7) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 8 para. 3(4), **Sch. 26 Pt. 5(1)**, Note

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Modifications etc. (not altering text)

C190 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**

C191 S. 257BB(5) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

Marginal Citations

M282 1990 c. 29.

257C Indexation of amounts in sections 257 [F1410, 257A and 257AB].

(1) If the retail prices index for the month of **[**F1411September**]** preceding a year of assessment is higher than it was for the previous **[**F1411September**]**, then, unless Parliament otherwise determines, **[**F1412sections 257 **[**F1413F1414. . . **][**F1415, 257A and 257AB**]]** shall apply for that year as if for each amount specified in them as they applied for the previous year (whether by virtue of this section or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index, and—

(a) if in the case of an amount specified in sections 257(5) **[**F1416, 257A(5) and 257AB(4)**]** the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple;

(b) if in the case of any other amount the increase is not a multiple of £10, rounding the increase up to the nearest amount which is such a multiple.

F1417(2) . . . . . .

[F1418(2A) Subsection (1) above shall not require any change to be made in the amounts deductible or repayable under **[**F1419PAYE regulations**]** during the period beginning with 6th April and ending with 17th May in the year of assessment.**]**

(3) The Treasury shall in each year of assessment make an order specifying the amounts which by virtue of subsection (1) above will be treated as specified for the following year of assessment in **[**F1412sections 257 **[**F1413F1414. . . **][**F1420, 257A and 257AB**]]**.

[F1421(4) *This section shall have effect in relation to reliefs for the year* 1990-91 (*as well as for later years*)*;and for that purpose it shall be assumed that sections* 257*and* 257A*applied for the year* 1989-90*as they apply, apart from this section, for the year* 1990-91.**]**

Textual Amendments

F1410 Words in s. 257C sidenote substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 55(d)

F1411 Words in s. 257C(1) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(3)(a)(8)**

F1412 Words in s. 257C(1)(3) substituted (2002-03 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 30(3)(6)**

F1413 Words in s. 257C(1)(3) substituted (2003-04 and subsequent years of assessment in accordance with s. 53(7) of the amending Act) by Finance Act 2001 (c. 9), **s. 53(4)**

F1414 Words in s. 257C(1)(3) repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), **Sch. 1** (with arts. 3, 5)

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F1415 Words in s. 257C(1) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 55(a)
F1416 Words in s. 257C(1)(a) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 55(b)
F1417 S. 257C(2) repealed (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, ss. 107(3)(b)(8), 213, **Sch. 23 Pt.III**
F1418 S. 257C(2A) inserted (1999-00 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 25(3)(4)**
F1419 Words in s. 257C(2A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 35** (with Sch. 7)
F1420 Words in s. 257C(3) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 55(c)
F1421 *Repealed by* 1990 s.132*and* Sch.19 Part IV.

Modifications etc. (not altering text)
C193 S. 257B-262 restricted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 4(1)**
C194 S. 257C applied (2000-01 and subsequent years of assessment) by Finance Act 1999 (c. 16), **s. 32(5)**
C195 S. 257C(1) excluded (1991-92) by Finance Act 1991 (c. 31, SIF 63:1), **s. 22(1)**
S. 257C(1) excluded (1992-93) by Finance Act 1992 (c. 20), **s. 10(3)(5)**
S. 257C(1) excluded (1993-94) by Finance Act 1993 c. 34, **s. 52**
S. 257C(1) excluded (1994-95) by Finance Act 1994 (c. 9), **s. 76**
S. 257C(1) excluded (1994-95, 1995-96) by Finance Act 1994 (c. 9), **s. 77(10)**
S. 257C(1) excluded (1994-95) by Finance Act 1994 (c. 9), **s. 78**
S. 257C(1) excluded (1995-96) by Finance Act 1995 (c. 4), **s. 36**
S. 257C(1) excluded (1996-97) by Finance Act 1996 (c. 8), **s. 74(1)**
S. 257C(1) excluded (1997-98) by Finance Act 1997 (c.16), **s. 55(1)**
S. 257C(1) excluded (1999-00) by Finance Act 1999 (c. 16), **s. 24(2)**
S. 257C(1) excluded (2003-04) by Finance Act 2002 (c. 23), **ss. 28(2)**, 29(2)
S. 257C(1) excluded (2004-05) by Finance Act 2004 (c. 12), **s. 24(2)**
S. 257C(1) excluded (2005-06) by Finance Act 2005 (c. 7), **s. 9**
S. 257C excluded (2008-09) by Finance Act 2008 (c. 9), **ss. 2(2)(b)**, 3(2)(b)
S. 257C excluded (2009-10) by Finance Act 2009 (c. 10), **s. 3(2)(b)**
C196 S. 257C(2A) modified (2002-03) by Finance Act 2002 (c. 23), **s. 27(b)**
C197 *See* S.I. 1990 No.677*in* Part III Vol.5*for* 1990-91.

257D Transitional relief: husband with excess allowances.

F1422 . . . . . .

Textual Amendments
F1422 Ss. 257D-257F repealed (with effect in accordance with s. 32(4), Sch. 20 Pt. 3(3) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 32(2), **Sch. 20 Pt. 3(3)**

257E Transitional relief: the elderly.

F1423 . . . . . .

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Textual Amendments

F1423 Ss. 257D-257F repealed (with effect in accordance with s. 32(4), Sch. 20 Pt. 3(3) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 32(2), **Sch. 20 Pt. 3(3)**

257F Transitional relief: separated couples.

F1424 . . . . . .

Textual Amendments

F1424 Ss. 257D-257F repealed (with effect in accordance with s. 32(4), Sch. 20 Pt. 3(3) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 32(2), **Sch. 20 Pt. 3(3)**

F1425 258 Widower's or widow's housekeeper.

. . . . . .

Textual Amendments

F1425 S. 258 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 25(3), **Sch.14 Part IV**

259 Additional relief in respect of children.

F1426 . . . . . .

Textual Amendments

F1426 Ss. 259-261A repealed (with effect in accordance with s. 33(2), Sch. 20 Pt. 3(4) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 33(1), **Sch. 20 Pt. 3(4)**

260 Apportionment of relief under section 259.

F1427 . . . . . .

Textual Amendments

F1427 Ss. 259-261A repealed (with effect in accordance with s. 33(2), Sch. 20 Pt. 3(4) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 33(1), **Sch. 20 Pt. 3(4)**

261 Claims under section 259 for year of marriage.

F1428 . . . . . .

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Textual Amendments

F1428 Ss. 259-261A repealed (with effect in accordance with s. 33(2), Sch. 20 Pt. 3(4) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 33(1), **Sch. 20 Pt. 3(4)**

[F1429 261A Additional relief in respect of children for year of separation.

F1430 . . . . . .]

Textual Amendments

F1429 S. 261A inserted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras.6, **10**.

F1430 Ss. 259-261A repealed (with effect in accordance with s. 33(2), Sch. 20 Pt. 3(4) Note of the repealing Act) by Finance Act 1999 (c. 16), s. 33(1), **Sch. 20 Pt. 3(4)**

262 Widow's bereavement allowance.

F1431 . . . . . .

Textual Amendments

F1431 S. 262 repealed (with effect in accordance with s. 34(2), Sch. 20 Pt. 3(5) Note 1 of the repealing Act) by Finance Act 1999 (c. 16), s. 34(1), **Sch. 20 Pt. 3(5)** (with s. 34(3))

F1432 263 Dependent relatives.

. . . . . .

Textual Amendments

F1432 S. 263 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 25(3), **Sch.14 Part IV**

F1433 264 Claimant depending on services of a son or daughter.

. . . . . .

Textual Amendments

F1433 S. 264 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 25(3), **Sch.14 Part IV**

[F1434 265 Blind person's allowance.

(1) If the claimant F1435 . . . is a registered blind person for the whole or any part of the year of assessment, he shall be entitled to a deduction of **[**F1436 £1,280**]** from his total income.

F1437 (1A) **[** Section 257C (indexation) shall have effect (using the rounding up rule in subsection (1)(b) of that section) for the application of this section for the year 1998-99

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and any subsequent year of assessment as it has effect for the application of sections 257 and 257A.**]**

(2) Where—

(a) a person entitled to relief under subsection (1) above is a **[**F1438person whose spouse or civil partner**]** is living with him for the whole of any part of the year of assessment, but

(b) the amount which he is entitled to deduct from his total income by virtue of that subsection exceeds what is left of his total income after all other deductions have been made from it,

his **[**F1439spouse or civil partner**]** shall be entitled to a deduction from F1440. . . total income of an amount equal to the excess.

(3) In determining for the purposes of subsection (2)(b) above the amount that is left of a person's total income for a year of assessment after other deductions have been made from it, there shall be disregarded any deduction made—

(a) F1441. . . . . .

(b) under F1442. . . section 289 **[**F1443 or

(c) on account of any payments to which section 593(2) or 639(3) applies,**][**F1444or

(d) F1445. . . . . .**][**F1446F1447 . . .

(e) F1447. . . . . .**]**

(4) F1448. . . . . .

(5) Subsections **[**F1449(2) and (3)**]** above shall not apply for a year of assessment unless the person entitled to relief under subsection (1) has given to the inspector written notice that they are to apply; and any such notice—

(a) shall be given **[**F1450on or before the fifth anniversary of the 31st January next following**]** the end of the year of assessment to which it relates,

(b) shall be in such form as the Board may determine, and

(c) shall be irrevocable.

(6) A notice given under subsection (5) above in relation to a year of assessment by **[**F1451a spouse or civil partner**]** shall have effect also as a notice under **[**F1452section 257BB(2)**]**.

(7) In this section "registered blind person" means a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or, in the case of a person ordinarily resident in Scotland or Northern Ireland, a person who is a blind person within the meaning of section 64(1) of that Act**]**.

Textual Amendments

F1434 1988(F) s.35*and* Sch.3 para.8*for* 1990-91*and subsequent years. Previously*

"Relief for blind persons.**265.**—(1) Subject to subsection (3) below, if the claimant proves—(a) that he is a married man who for the year of assessment has his wife living with him, and that one of them was, and the other was not, a registered blind person for the whole or part of the year; or (b) that, not being such a married man, he was a registered blind person for the whole or part of the year, he shall be entitled to a deduction of £540 from his total income. (2) Subject to subsection (3) below, if the claimant proves—(a) that he is a married man who for the year of assessment has his wife living with him, and (b) that he was a registered blind person for the whole or part of the year and his wife was also a registered blind person for the whole or part of the year, he shall be entitled to a deduction of £1,080 from his total income. (3)*Unless a claimant who is entitled to relief for the year of assessment under section* 264*in respect of the services of a son or daughter relinquishes his claim to that relief,*

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he shall not be allowed relief under this section for that year (*Repealed by* 1988(F) ss.25(3), 148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*). (4) In this section "registered blind person" means a person registered as a blind person in a register compiled under section 29 of the National Assistance Act 1948 or, in the case of a person ordinarily resident in Scotland or in Northern Ireland, a person who is a blind person within the meaning of section 64(1) of that Act."*.And see* Table E Vol.1*for previous years.*

F1435 Words in s. 265(1) repealed (with effect as mentioned in s. 134(2) of the repealing Act) by Finance Act 1996, Sch. 20 para. 19, Sch. 41 Pt. 5(10), Note

F1436 Words in s. 265(1) substituted (with effect in accordance with s. 56(3) of the amending Act) by Finance Act 1997 (c. 16), **s. 56(1)**

F1437 S. 265(1A) inserted (19.3.1997) by Finance Act 1997 (c. 16), **s. 56(2)**

F1438 Words in s. 265(2)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 56(2)

F1439 Words in s. 265(2)(b) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 56(3)(a)

F1440 Word in s. 265(2)(b) omitted (5.12.2005) by virtue of The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 56(3)(b)

F1441 S. 265(3)(a) repealed (with effect in accordance with s. 81(6) of the repealing Act) by Finance Act 1994 (c. 9), **Sch. 26 Pt. 5(2)**, Note

F1442 Words in s. 265(3)(b) repealed (with effect as mentioned in s. 77(7) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 8 para. 10, **Sch. 26 Pt. 5(1)**, Note

F1443 1989 s.33(10).

F1444 1989 s.57(4)

F1445 S. 265(3)(d) repealed (with effect as mentioned in Sch. 10 para. 3(2) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 10 para. 3(1), **Sch. 26 Pt. 5(3)**, Note 1

F1446 S. 265(3)(e) and ' ,or' preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 33(4)**

F1447 S. 265(3)(e) and preceding word repealed (with effect in accordance with s. 59(3)(b) of the repealing Act) by Finance Act 1999 (c. 16), s. 139, **Sch. 20 Pt. 3(15)**, Note; S.I. 2000/2004, **art. 2**

F1448 S. 265(4) omitted (5.12.2005) by virtue of The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 56(4)

F1449 Words in s. 265(5) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 56(5)

F1450 Words in s. 265(5)(a) substituted (with effect as mentioned in s. 135(2) of the amending Act) by Finance Act 1996, Sch. 21 para. 6

F1451 Words in s. 265(6) substituted (5.12.2005 with effect in accordance with reg. 1(4) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 56(6)

F1452 Words in s. 265(6) substituted (16.7.1992 with application in relation to tax for the year 1993-94 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), s. 20, Sch. 5 paras. 8(4), **10**.

Modifications etc. (not altering text)

C198 S. 265(1) amended (1999-00) by S.I. 1999/597, **art. 2(5)**
S. 265(1) amended (2000-01) by S.I. 2000/806, **art. 2(5)**
S. 265(1) amended (2001-02) by S.I. 2001/638, **art. 2(3)**
S. 265(1) amended (2002-03) by S.I. 2002/707, **art. 2(4)**
S. 265(1) amended (2003-04) by S.I. 2002/2930, **art. 2(4)**
S. 265(1) amended (2004-05) by S.I. 2003/3215, **art. 2(4)**
S. 265(1) amended (2005-06) by S.I. 2004/3161, **art. 2(4)**
S. 265(1) amended (2006-07) by S.I. 2005/3327, **art. 2(5)**
S. 265(1) amended (2007-08) by S.I. 2006/3241, **art. 2(5)**
S. 265(1) amended (2008-09) by S.I. 2008/673, **art. 3**
S. 265(1) amended (2009-10) by S.I. 2008/3024, **art. 3**

C199 S. 265(5) modified (1990-91) by The Lloyd's Underwriters (Tax) (1990-91) Regulations 1993 (S.I. 1993/415), regs. 1, 9, **Sch. 2**

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C200 S. 265(5) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**
S. 265(5) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

266 Life assurance premiums.

(1) [M283]Subject to the provisions of this section, sections 274 and 619(6) and Schedules 14 and 15, an individual who pays any such premium as is specified in subsection (2) below or makes a payment falling within subsection (7) below shall (without making any claim) be entitled to relief under this section.

(2) [M284]The premiums referred to in subsection (1) above are any premiums paid by an individual under a policy of insurance or contract for a deferred annuity, where—

(a) the payments are made to —

[[F1453](i) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 or under paragraph 15 of Schedule 3 to that Act (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to effect or carry out contracts of long-term insurance; or

(ii) a member of the Society who effects or carries out contracts of long-term insurance in accordance with Part 19 of the Financial Services and Markets Act 2000;**]**

(iv) in the case of a deferred annuity, the National Debt Commissioners; and

(b) the insurance or, as the case may be, the deferred annuity is on the life of the individual or on the life of his spouse **[**[F1454]or civil partner**]**; and

(c) the insurance or contract was made by him or his spouse **[**[F1454]or civil partner**]**.

(3) Subject to subsections (7), (10) and (11) below, no relief under this section shall be given—

(a) [M285]except in respect of premiums payable under policies for securing a capital sum on death, whether in conjunction with any other benefit or not;

(b) [M286]in respect of premiums payable under any policy issued in respect of an insurance made after 19th March 1968 unless the policy is a qualifying policy;

(c) [M287]in respect of premiums payable under any policy issued in respect of an insurance made after 13th March 1984, except where the relief relates to part only of any such payment as falls within subsection (6) below;

(d) [M288]in respect of premiums payable during the period of deferment in respect of a policy of deferred assurance.

(4) [M289]Subject to subsections (6) to (8) below, relief under this section in respect of any premiums paid by an individual in a year of assessment shall be given by making good to the person to whom they are paid any deficiency arising from the deductions authorised under subsection (5) below; and this section and Schedule 14 shall have effect in relation to any premium or part of a premium which is paid otherwise than in the year of assessment in which it becomes due and payable as if it were paid in that year.

(5) Subject to the provisions of Schedule 14—

(a) an individual resident in the United Kingdom who is entitled to relief under this section in respect of any premium may deduct from any payment in

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respect of the premium and retain an amount equal to **[**F1455 12.5 per cent.**]** of the payment; and

(b) the person to whom the payment is made shall accept the amount paid after the deduction in discharge of the individual's liability to the same extent as if the deduction had not been made and may recover the deficiency from the Board.

(6) M290 Where—

(a) a person is entitled to relief under this section in respect of part only of a payment made to a **[**F1456 friendly society**]**; and

(b) the insurance or contract was made by the society in the course of tax exempt life or endowment business (as defined in section 466(2)), **[**F1457 and

(c) the insurance or contract is not excluded by subsection (6A) below,**]**

subsection (4) above shall not apply with respect to that relief but there shall be deducted from his total income an amount equal to one-half of that part of the payment.

[F1458 (6A) For the purposes of subsection (6)(c) above, an insurance or contract is excluded by this subsection if it is made on or after 1st September 1996 and affords provision for sickness or other infirmity (whether bodily or mental), unless—

(a) it also affords assurance for a gross sum independent of sickness or other infirmity;

(b) not less than 60 per cent. of the amount of the premiums is attributable to the provision afforded during sickness or other infirmity; and

(c) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum.**]**

(7) M291 Where a person makes a payment to a trade union as defined in section 28(1) of the M292 Trade Union and Labour Relations Act 1974, and part of that payment is attributable to the provision of superannuation, life insurance or funeral benefits, he shall be entitled to relief under this section in respect of that part of the payment, but—

(a) subsection (4) above shall not apply; and

(b) there shall be deducted from his total income an amount equal to one-half of that part of the payment.

This subsection shall also apply in relation to any payment made to an organisation of persons in police service but only where the annual amount of the part of the payment attributable to the provision of the benefits in question is £20 or more.

(8) M293 Where the individual is not resident in the United Kingdom but is entitled to relief by virtue of section 278(2), subsection (4) above shall not apply but (subject to section 278(3)) the like relief shall be given to him under paragraph 6 of Schedule 14.

(9) M294 Subsections (5) and (8) above shall apply in relation to an individual who is not resident in the United Kingdom but is a member of the armed forces of the Crown or the **[**F1459 spouse**][**F1460 or civil partner**]** of such a member as if the individual were so resident.

(10) M295 Subsection (3)(b) above shall not apply—

(a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals; or

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(b) to any policy of life insurance issued in connection with an approved scheme as defined in Chapter I of Part XIV.

In the application of this subsection to Scotland, for any reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the [M296]Conveyancing (Scotland) Act 1924 (but including a security constituted by ex facie absolute disposition or assignation).

(11) [M297]Subsection (3)(a) and (d) above shall not affect premiums payable—

(a) under policies or contracts made in connection with any superannuation or bona fide pension scheme for the benefit of the employees of any employer, or of persons engaged in any particular trade, profession, vocation or business, or for the benefit of the **[**[F1461]spouse, **[**[F1462]civil partner,**]** widow, widower **[**[F1463], surviving civil partner**]** or children or other dependants of any such employee or person,**]** or

(b) under policies taken out by teachers in the schools known in the year 1918 as secondary schools, pending the establishment of a superannuation or pension scheme for those teachers.

(12) Schedule 14 shall have effect for the purpose of modifying, for certain cases, and supplementing the provisions of this section.

[[F1464](13) In this section and Schedule 14, "friendly society" means the same as in the Friendly Societies Act 1992 (and includes any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act).**]**

[[F1465](14) In subsection (2)(a)—

"contracts of long-term insurance" means contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; and

"member of the society" has the same meaning as in Lloyd's Act 1982 [M298].**]**

Textual Amendments

F1453 S. 266(2)(a)(i)(ii) substituted for s. 266(2)(a)-(iii) (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 18(2)**

F1454 Words in s. 266(2)(b)(c) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 57(2)

F1455 Words in s. 266(5)(a) substituted (from 6.4.1989) by Finance Act 1988 (c. 39), **s. 29**

F1456 Words in s. 266(2)(a)(iii)(6)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 paras. 2(2)**; S.I. 1993/236, **art.2**

F1457 S. 266(6)(c) and preceding word inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 171(3)**

F1458 S. 266(6A) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 171(4)**

F1459 Words in s. 266(9) substituted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 35, **Sch. 3 para. 9(a)**

F1460 Words in s. 266(9) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 57(3)

F1461 Words in s. 266(11)(a) substituted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 35, **Sch. 3 para. 9(b)**

F1462 Words in s. 266(11)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 57(4)(a)

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F1463 Words in s. 266(11)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 57(4)(b)

F1464 S. 266(13) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 paras. 2(3)**; S.I. 1993/236, **art.2**

F1465 S. 266(14) added (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 18(3)**

Marginal Citations

M283 Source-1970 s.19(1); 1976 Sch.4 3(1)
M284 Source-1970 s.19(2); 1976 s.36(5), Sch.4 3(2)
M285 Source-1970 s.19(3)(a)
M286 Source-1970 s.19(4)
M287 Source-1984 s.72(1)
M288 Source-1970 s.19(3)(b)
M289 Source-1976 Sch.4 4(1) 5; 1978 Sch.3 2; 1980 s.29(2)(b)
M290 Source-1978 Sch.3 11
M291 Source-1978 Sch.3 12; 1981 s.33
M292 1974 c. 52.
M293 Source-1976 Sch.4 4(2)
M294 Source-1976 Sch.4 5A; 1978 Sch.3 5
M295 Source-1970 s.19(4)(a), (c); 1971 Sch.3 11
M296 1924 c. 27.
M297 Source-1970 s.19(3)(i)(ii)
M298 1982 c. xiv.

[F1466 266A Life assurance premiums paid by employer

(1) This section applies if—

(a) pursuant to a non-approved retirement benefits scheme, the employer in any year of assessment pays a sum with a view to the provision of any relevant benefits for or in respect of any employee of that employer, and

(b) the payment is made under such an insurance or contract as is mentioned in section 266.

This section applies whether or not the accrual of the relevant benefits is dependent on any contingency.

(2) Relief, if not otherwise allowable, shall be given to that employee under section 266 in respect of the payment to the extent, if any, to which such relief would have been allowable to him if—

(a) the payment had been made by him, and

(b) the insurance or contract under which the payment is made had been made with him.

(3) For the purposes of subsection (1)(a)—

(a) a retirement benefits scheme is "non-approved" unless it is—

(i) an approved scheme,

(ii) a relevant statutory scheme, or

(iii) a scheme set up by a government outside the United Kingdom for the benefit of its employees or primarily for their benefit, and

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(b) benefits are provided in respect of an employee if they are provided for the employee's spouse **[**F1467or civil partner**]**, widow or widower **[**F1468or surviving civil partner**]**, children, dependants or personal representatives.

(4) Sections 611, 611A and 612 apply for the purposes of this section as they apply for the purposes of Chapter 1 of Part 14.

(5) Section 388 of ITEPA 2003 (apportionment of payments in respect of more than one employee) applies in relation to a sum within subsection (1) as it applies in relation to a sum within section 386 of that Act (charge on payments to non-approved retirement benefits schemes).

(6) This section does not apply in any case where either of the following provisions of ITEPA 2003 provides for section 386 of that Act not to apply—

(a) section 389 (employments where earnings charged on remittance basis), and

(b) section 390 (non-domiciled employees with foreign employers).**]**

Textual Amendments

F1466 S. 266A inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 36** (with Sch. 7)

F1467 Words in s. 266A(3)(b) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 58

F1468 Words in s. 266A(3)(b) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 58

267 Qualifying policies.

Schedule 15, Part I of which contains the basic rules for determining whether or not a policy is a qualifying policy, Part II of which makes provision for the certification etc. of policies as qualifying policies and Part III of which modifies Parts I and II in their application to certain policies issued by non-resident companies, shall have effect for the purpose of determining whether or not a policy is a qualifying policy; and, accordingly, any reference in this Act to a qualifying policy shall be construed in accordance with that Schedule.

268 Early conversion or surrender of life policies.

M299(1) Where a policy of life insurance to which this section applies has been issued and, within four years from the making of the insurance in respect of which it was issued, any of the following events happens, that is to say—

(a) the surrender of the whole or part of the rights conferred by the policy;

(b) the falling due (otherwise than on death) of a sum payable in pursuance of a right conferred by the policy to participate in profits; and

(c) the conversion of the policy into a paid-up or partly paid-up policy;

the body by whom the policy was issued shall pay to the Board, out of the sums payable by reason of the surrender or, as the case may be, out of the sum falling due or out of the fund available to pay the sums which will be due on death or on the maturity of the policy, a sum determined in accordance with the following provisions of this section, unless the body is wound up and the event is a surrender or conversion effected in connection with the winding-up.

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(2) The sum payable under subsection (1) above shall, subject to the following provisions of this section, be equal to the lower of the following, that is to say—

(a) the appropriate percentage of the premiums payable under the policy up to the happening of the event; and

(b) the surrender value of the policy at the time of the happening of the event less the complementary percentage of the premiums mentioned in paragraph (a) above.

(3) If the event is one of those mentioned below, the sum payable to the Board shall not exceed the following limit, that is to say—

(a) if it is the surrender of part of the rights conferred by the policy, the value of the rights surrendered at the time of the surrender;

(b) if it is the conversion of the policy into a partly paid-up policy, the surrender value at the time of the conversion, of so much of the policy as is paid up; and

(c) if it is the falling due of a sum, that sum.

(4) If the event was preceded by the happening of such an event as is mentioned in subsection (1) above, subsection (2) above shall apply—

(a) as if the lower of the amounts mentioned therein were reduced by the sum paid under this section in respect of the earlier event; and

(b) if the earlier event was such an event as is mentioned in paragraph (a) or (c) of subsection (3) above, as if the surrender value of the policy were increased by the amount which, under that paragraph, limited or might have limited the sum payable under this section in respect of the earlier event.

(5) For the purposes of this section the appropriate percentage, in relation to any event, is the percentage equal to the following fraction of the percentage found by doubling that mentioned in section 266(5)(a) as in force for the year of assessment in which the event happened, that is to say—

(a) if the event happens in the first two of the four years mentioned in subsection (1) above, three-sixths;

(b) if it happens in the third of those years, two-sixths; and

(c) if it happens in the last of those years, one-sixth;

and the complementary percentage, in relation to any event, is 100 per cent. less the appropriate percentage.

(6) Where the annual amount of the premiums payable under a policy of life insurance is at any time increased (whether under the policy or by any contract made after its issue) so as to exceed by more than 25 per cent.—

(a) if the insurance was made on or before 26th March 1974, the annual amount as at that date, or

(b) in the case of any other insurance, the first annual amount so payable,

the additional rights attributable to the excess shall be treated for the purposes of this section as conferred by a new policy issued in respect of an insurance made at that time, and the excess shall be treated as premiums payable under the new policy.

(7) This section applies to any policy of life insurance which is a qualifying policy unless—

(a) it is a policy in respect of the premiums on which relief under section 266 is not available by virtue of subsection (3)(c) of that section; or

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(b) it is a policy of life insurance issued in connection with an approved scheme, as defined in Chapter I of Part XIV;

and in relation to a policy of life insurance issued in respect of an insurance made before 27th March 1974 applies only in accordance with subsection (6) above.

Marginal Citations

M299 Source-1975 s.7; 1976 Sch.4 19(1); 1984 s.72(5)

269 Surrender etc. of policies after four years.

M300(1) Where a policy of life insurance to which this section applies has been issued and, in the fifth or any later year from the making of the insurance in respect of which it was issued, either of the following events happens, that is to say—

(a) the surrender of the whole or part of the rights conferred by the policy; and

(b) the falling due (otherwise than on death or maturity) of a sum payable in pursuance of a right conferred by the policy to participate in profits;

then, if either of those events has happened before, the body by whom the policy was issued shall pay to the Board, out of the sums payable by reason of the surrender, or, as the case may be, out of the sum falling due, a sum determined in accordance with the following provisions of this section.

(2) The sum payable under subsection (1) above shall, subject to the following provisions of this section, be equal to the applicable percentage of the lower of the following—

(a) the total of the premiums which are payable in that year under the policy; and

(b) the sums payable by reason of the surrender or, as the case may be, the sum falling due;

and the percentage to be applied for this purpose shall be a percentage equal to that mentioned in section 266(5)(a) as in force for the year of assessment in which the event happens.

(3) Where, after a sum has become payable under subsection (1) above, and within the same year from the making of the insurance, another such event happens as is mentioned therein, the sums payable under that subsection in respect of both or all of the events shall not exceed the applicable percentage of the total mentioned in subsection (2)(a) above.

(4) Where, on the happening of an event in the fifth or any later year from the making of the insurance, any sum is payable under subsection (1) of section 268 as applied by subsection (6) of that section as well as under subsection (1) above, subsection (2) above shall apply as if the sums or sum mentioned in paragraph (b) thereof were reduced by the sum payable under that section.

(5) This section applies to any policy of life insurance which is a qualifying policy unless—

(a) it is a policy in respect of the premiums on which relief under section 266 is not available by virtue of subsection (3)(c) of that section; or

(b) it is a policy issued in the course of an industrial insurance business; or

(c) it was issued in respect of an insurance made before 27th March 1974.

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Marginal Citations
M300 Source-1975 s.8; 1976 Sch.4 19(2); 1984 s.72(5)

270 Provisions supplementary to sections 268 and 269.

M301(1) Where on the happening of an event in relation to a policy of life insurance a sum is payable under section 268 or 269, relief under section 266 in respect of the relevant premiums paid under the policy shall be reduced by the sum so payable or, as the case may be, by so much of the sum as does not exceed the amount of that relief (or as does not exceed so much of that amount as remains after any previous reduction under this section).

(2) For the purposes of this section the relevant premiums are—

(a) in relation to a sum payable under section 268, the premiums payable under the policy up to the happening of the event by reason of which the sum is payable; and

(b) in relation to a sum payable under section 269, the premiums payable in the year (from the making of the insurance) in which the event happens by reason of which the sum is payable.

(3) Where the relevant premiums are payable in more than one year of assessment the reduction in relief under this section shall, so far as possible, reduce relief for an earlier year of assessment before reducing relief for a later one.

(4) Any sum paid under section 268 or 269 by reason of any event shall be treated—

(a) as between the parties, as received by the person by whom the premiums under the policy were paid; and

(b) for the purposes of section 266, as a sum paid by that person in satisfaction of his liability resulting from the reduction of relief under this section;

and where that sum exceeds that liability he shall be entitled, on a claim made by him not later than six years after the end of the year of assessment in which the event happens, to repayment of the excess.

Marginal Citations
M301 Source-1975 s.9(1)-(4); 1976 Sch.4 19(3)

271 Deemed surrender in cases of certain loans.

M302(1) Where—

(a) **[**F1469by virtue of section 465 of ITTOIA 2005**]** a gain arising in connection with a policy F1470. . . would be treated as forming part of an individual's total income; and

(b) the policy was issued in respect of an insurance made after 26th March 1974 F1471. . .; and

(c) any sum is at any time after the making of the insurance F1470. . . lent to or at the direction of that individual by or by arrangement with the body issuing the policy F1472. . .;

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then, subject to subsection (2) below, the same results shall follow under sections 268 to 270 as if at the time the sum was lent there had been a surrender of part of the rights conferred by the policy [F1470]. . . and the sum had been paid as consideration for the surrender (and if the policy is a qualifying policy, whether or not the premiums under it are eligible for relief under section 266, those results shall follow under section 269, whether or not a gain would be treated as arising on the surrender).

(2) Subsection (1) above does not apply—

(a) in relation to a policy if—

(i) it is a qualifying policy; and

(ii) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling used or to be used as his only or main residence; [F1473]. . .

[F1473](b) . . . . . .

Textual Amendments

F1469 Words in s. 271(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 123** (with Sch. 2)

F1470 Words in s. 271(1) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(1)(a), **Sch. 26 Pt. 5(22)**

F1471 Words in s. 271(1)(b) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(1)(b), **Sch. 26 Pt. 5(22)**

F1472 Words in s. 271(1)(c) repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(1)(c), **Sch. 26 Pt. 5(22)**

F1473 S. 271(2)(b) and preceding word repealed (retrospectively) by Finance Act 1994 (c. 9), Sch. 17 para. 2(2), **Sch. 26 Pt. 5(22)**

Marginal Citations

M302 Source-1975 Sch.2 16(1), (3); 1976 s.35

272 Collection of sums payable under sections 268 and 269.

[M303](1) Any body by whom a policy to which section 268 or 269 applies has been issued shall, within 30 days of the end of each period of 12 months ending with 31st March in every year, make a return to the collector of the sums which, in that period, have become payable by it under either of those sections.

(2) Any sum which is to be included in a return made under subsection (1) above shall be due at the time by which the return is to be made and shall be paid without being demanded.

(3) Where any sum which was or ought to have been included in such a return is not paid by the end of the period for which the return was to be made, it may be recovered by an assessment as if it were income tax for the year of assessment in which that period ends; and where it appears to the inspector that a sum which ought to have been so included had not been included or that a return is not correct he may make such an assessment to the best of his judgment.

(4) All the provisions of the Income Tax Acts relating to the assessment and collection of tax, interest on unpaid tax, appeals and penalties shall, with the necessary

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modifications, apply in relation to sums due under this section; and for the purposes of those provisions so far as they relate to interest on unpaid tax, a sum assessed in pursuance of this section shall be treated as having been payable when it would have been payable had it been included in a return under subsection (1) above.

(5) Where, on an appeal against an assessment made in pursuance of this section, it is determined that a greater sum has been assessed than was payable, the excess, if paid, shall be repaid.

(6) Where a body has paid a sum which is payable under section 268 or 269 it shall give within 30 days to the person by whom the sum is, under section 270(4), treated as received a statement specifying that sum and showing how it has been arrived at.

(7) The Board or an inspector may, by notice served on the body by whom a policy to which section 268 or 269 applies has been issued, require the body, within such time, not being less than 30 days, as may be specified in the notice—

(a) to furnish such particulars; or

(b) to make available for inspection by an officer authorised by the Board such books and other documents in the possession or under the control of the body;

as the Board or officer may reasonably require for the purposes of those sections or this section.

Marginal Citations

M303 Source-1975 Sch.1

[F1474 273 Payments securing annuities.

[Subject to **[**F1476 subsection (2) and **]** sections 274 F1477 . . . and 619(6), if the claimant F1475 (1) **]** is, under any Act of Parliament or under any terms and conditions of employment, liable to the payment of any sum, or to the deduction from any salary or stipend of any sum, for the purpose of securing a deferred annuity to a widow or widower **[**F1478 or surviving civil partner **]** of the claimant or provision for the claimant's children after the claimant dies, the claimant shall be entitled to a deduction from the amount of income tax on which he or she is chargeable equal to income tax at the basic rate on the amount of the sum which he or she has paid or which has been deducted from his or her salary or stipend.

[F1479 (2) No deduction may be made under this section in respect of any contribution paid by any person under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.**]]**

Textual Amendments

F1474 1988(F) s.35 *and* Sch.3 para.10 *for* 1990-91 *and subsequent years. Previously*

"Payments securing widows' and children's annuities.**273.** Subject to sections 274, 617(3) and 619(6), if the claimant is, under any Act of Parliament or under the terms or conditions of his employment, liable to the payment of any sum, or to the deduction from his salary or stipend of any sum, for the purpose of securing a deferred annuity to his widow or provision for his children after his death, he shall be entitled to a deduction from the amount of income tax with which he is chargeable equal to income tax at the basic rate on the amount of the sum paid by him or deducted from his salary or stipend.".

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F1475 S. 273 renumbered as s. 273(1) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 124(a)** (with Sch. 2)
F1476 Words in s. 273(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 124(b)** (with Sch. 2)
F1477 Words in s. 273(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 124(c), **Sch. 3** (with Sch. 2)
F1478 Words in s. 273(1) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 59
F1479 S. 273(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 124(d)** (with Sch. 2)

274 Limits on relief under sections 266 and 273.

(1) [M304]The aggregate of the premiums or other sums in respect of which relief is given to any person under section 266 shall not exceed £1,500 in any year of assessment or one-sixth of that person's total income, whichever is the greater.

(2) [M305]The aggregate of the relief given under sections 266 and 273 in respect of premiums or sums payable for securing any benefits other than capital sums on death shall not exceed the amount of the income tax calculated at the appropriate rate on £100.

(3) [M306]In subsection (2) above "the appropriate rate"—

(a) in relation to premiums to which section 266 applies, means **[**[F1480]12.5 per cent.**]**;

(b) in relation to other payments, means the basic rate of income tax.

(4) [M307]War insurance premiums shall not be taken into account in calculating the limits of one-sixth of total income or of £100 mentioned in this section.

In this subsection "war insurance premiums" means any additional premium or other sum paid in order to extend an existing life insurance policy to risks arising from war or war service abroad, and any part of any premium or other sum paid in respect of a life insurance policy covering those risks, or either of them, which **[**[F1481]is**]** attributable to those risks, or either of them.

Textual Amendments

F1480 1988(F) s.29—*from* 6*April* 1989.*Previously*
"15 per cent.".
F1481 Word in s. 274(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 20**

Marginal Citations

M304 Source-1970 s.21(1); 1976 Sch.4 21
M305 Source-1970 s.21(3); 1975 Sch.2 6
M306 Source-1970 s.21(4); 1975 Sch.2 6; 1980 s.29; 1976 Sch.4 21; 1987 Sch.15 2(5)
M307 Source-1970 s.21(5)

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Supplemental

F1482 275 Meaning of "relative".

. . . . . .

Textual Amendments

F1482 S. 275 repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part IV**

276 Effect on relief of charges on income.

M308 (1) Where any of the claimant's income is income the income tax on which (at the basic rate) he is entitled to charge against any other person, or to deduct, retain or satisfy out of any payment, he shall not be entitled to relief under this Chapter in respect of that income, except to the extent, if any, that the relief would exceed tax at the basic rate on that income.

[F1483 (1A) In subsection (1) above the references to relief under this Chapter do not include references to relief consisting in such an income tax reduction as is mentioned in section 256(2).**]**

(2) Notwithstanding subsection (1) above, relief under section 273 may be given to the extent that the deduction from tax provided for by that section can be made from so much of the income tax with which the claimant is chargeable as exceeds what would be the amount of that tax if all income tax were chargeable at the basic rate to the exclusion of any other rate.

Textual Amendments

F1483 S. 276(1A) inserted (with effect as mentioned in s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 11**

Marginal Citations

M308 Source-1970 s.25; 1971 s.33(5)

277 Partners.

M309 (1) F1484 . . . The following persons having joint interests, that is to say—

(a) coparceners, joint tenants, or tenants in common of the profits of any property, and

(b) joint tenants, or tenants of land or tenements in partnership, being in the actual and joint occupation thereof in partnership, who are entitled to the profits thereof in shares, F1485 . . .

(c) F1485 . . . . . .

may claim any relief under this Chapter according to their respective shares and interests, and any such claims which are proved may be dealt with in the same manner as in the case of several interests.

(2) F1486 . . . . . .

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Textual Amendments

F1484 Words in s. 277(1) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 215(3)(c), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F1485 S. 277(1)(c) and preceding word repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 215(3)(c), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F1486 S. 277(2) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 215(3)(c), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

Marginal Citations

M309 Source-1970 s.26

278 Non-residents.

(1) [M310]Subject to the provisions of this section, no relief under this Chapter shall be given in the case of any individual who is not resident in the United Kingdom.

(2) *Subject to subsection* (3)*below*[F1487], subsection (1) above shall not apply in the case of any individual who [F1488]. . . —

(a) is a Commonwealth citizen or **[**[F1489]an EEA national**]**; or

(b) is a person who is or who has been employed in the service of the Crown, or who is employed in the service of any missionary society or in the service of any territory under Her Majesty's protection; or

(c) is resident in the Isle of Man or the Channel Islands; or

(d) has previously resided within the United Kingdom, and is resident abroad for the sake of his or her health, or the health of a member of his or her family resident with him or her; or

(e) is a widow whose late husband **[**[F1490], a widower whose late wife or a surviving civil partner whose late civil partner,**]** was in the service of the Crown.

[[F1491F1492](2A) . . . . . .**]**

(3) *No relief under this Chapter shall be given so as to reduce the amount of the income tax payable by the individual below the amount which results from applying the fraction—*

$$\frac{A}{B}$$

to the amount which would have been payable by him by way of income tax if the tax were chargeable on his total income from all sources (including income which is not subject to income tax charged in the United Kingdom) where—

A*is the amount of his income subject to income tax charged in the United Kingdom; and*

B*is the amount of his total income*[F1493].

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(4) [M311]*Subsection* (3)*above shall have effect as if the amount of any relief to which an individual is entitled under section* 266(4)*were an amount by which his liability to income tax is reduced*[F1491].

(5) [M312]*For the purposes of subsection* (3)*above as it applies to an individual whose income includes income eligible for double taxation relief—*

(a) *in computing the amount of the income tax payable by the individual, the tax chargeable in respect of the income eligible for double taxation relief shall be disregarded;*

(b) *in computing the amount of his income subject to income tax charged in the United Kingdom, the income eligible for double taxation relief shall be disregarded; and*

(c) *in computing his total income from all sources, including income which is not subject to income tax charged in the United Kingdom, income eligible for double taxation relief shall be included, and the income tax which would be chargeable on that total income shall be computed without regard to the double taxation relief available in respect of the income eligible for double taxation relief;*

and, accordingly, where this subsection applies, the amount of the tax chargeable in respect of the income eligible for double taxation relief shall not be affected by subsections (2)*and* (3)*above*[F1493].

(6) *Subsection* (5)*shall not operate so as to make the tax payable by an individual for a year of assessment higher than it would have been if the double taxation relief had not been available*[F1493].

(7) *In subsection* (5)*above "income eligible for double taxation relief" means any dividends, interest, royalties or other profits which are chargeable to income tax but in respect of which relief (other than credit) is available under an Order in Council under section* 788*so as to limit the rate of income tax so chargeable (but not so as to confer an exemption and make it income which is not subject to income tax charged in the United Kingdom)*[F1493].

(8) Any claim which an individual is entitled to make by virtue of subsection (2) above shall be made to the Board.

[[F1494](9) In this section "EEA national" means a national of any State, other than the United Kingdom, which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.**]**

Textual Amendments

F1487 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1990-91*and subsequent years.*

F1488 Words in s. 278(2) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 21, **Sch. 41 Pt. 5(10)**, Note

F1489 Words in s. 278(2)(a) substituted (with effect in accordance with s. 145(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 145(1)**

F1490 Words in s. 278(2)(e) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 60(1)

F1491 1988(F) s.31*for* 1990-91*and subsequent years.*

F1492 S. 278(2A) repealed (with effect in accordance with Sch. 20 Pt. 3(3) Note 2 of the repealing Act) by Finance Act 1999 (c. 16), **Sch. 20 Pt. 3(3)**

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F1493 *Repealed by* 1988(F) ss.31, 148*and* Sch.14 Part IV*for* 1990-91*and subsequent years.*
F1494 S. 278(9) added (with effect in accordance with s. 145(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 145(2)**

Modifications etc. (not altering text)
C201 *See* British Nationality Act 1981 ss.37*and* 51(1)*for definition.*

Marginal Citations
M310 Source-1970 s.27(1), (2)
M311 Source-1976 Sch.4 18(3)
M312 Source-1970 s.27(3)-(5)

CHAPTER II

TAXATION OF INCOME OF SPOUSES[F1495 AND CIVIL PARTNERS]

Textual Amendments
F1495 Words in Pt. 7 Ch. 2 heading inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 61

General rules

F1496279 Aggregation of wife's income with husband's.

. . . . . .

Textual Amendments
F1496 S. 279 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), ss. 32, 148, **Sch. 14 Part VIII**

F1497280 Transfer of reliefs.

. . . . . .

Textual Amendments
F1497 S. 280 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

F1498281 Tax repayments to wives.

. . . . . .

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Textual Amendments

F1498 S. 281 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

[F1499 282 Construction of references to [F1500 spouses or civil partners] living together.

[F1501 Individuals who are married to, or are civil partners of, each other**]** shall be treated for income tax purposes as living together unless—

(a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or

(b) they are in fact separated in such circumstances that the separation is likely to be permanent.**]**.

Textual Amendments

F1499 1988(F) s.35*and* Sch.3 para.11*for* 1990-91*and subsequent years. Previously*
"Construction of references to married women living with their husbands.**282.**—(1) A married woman shall be treated for income tax purposes as living with her husband unless—(a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or (b) they are in fact separated in such circumstances that the separation is likely to be permanent (*See* 1988(F) s.40(3) —*application of* s.282(1)*to certain maintenance payments.*). (2) Where a married woman is living with her husband and either—(a) one of them is, and the other is not, resident in the United Kingdom for a year of assessment, or (b) both of them are resident in the United Kingdom for a year of assessment, but one of them is, and the other is not, absent from the United Kingdom throughout that year, the same consequences shall follow for income tax purposes as would have followed if, throughout that year of assessment, they had been in fact separated in such circumstances that the separation was likely to be permanent. (3) Where subsection (2) above applies and the net aggregate amount of income tax falling to be borne by the husband and the wife for the year is greater than it would have been but for that subsection, the Board shall cause such relief to be given (by the reduction of such assessments on the husband or the wife or the repayment of such tax paid, by deduction or otherwise, by the husband or the wife, as the Board may direct) as will reduce that net aggregate amount by the amount of the excess.".

F1500 Words in s. 282 heading substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 62(b)

F1501 Words in s. 282 substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 62(a)

Modifications etc. (not altering text)

C202 *See* 1979(C) s.155(2)—*capital gains—references to a married woman living with her husband to be construed in accordance with* s.282.

C203 S. 282 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 288(3)**, 289 (with ss. 60, 101(1), 171, 201(3)).

[F1502 282A Jointly held property.

(1) Subject to the following provisions of this section, income arising from property held in the names of a husband and his wife **[**F1503, or in the names of civil partners of each other,**]** shall for the purposes of income tax be regarded as income to which they are beneficially entitled to equal shares.

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(2) Subsection (1) above shall not apply to income to which neither the husband nor the wife **[**F1504, or neither of the civil partners,**]** is beneficially entitled.

(3) Subsection (1) above shall not apply to income—

(a) to which either the husband or the wife **[**F1505, or one of the civil partners,**]** is beneficially entitled to the exclusion of the other, or

(b) to which they are beneficially entitled in unequal shares,

if a declaration relating to it has effect under section 282B.

(4) Subsection (1) above shall not apply to—

(a) earned income, or

(b) income which is not earned income but to which **[**F1506Part 9 of ITTOIA 2005 (partnerships)**]** applies.

F1507**[** (4A) Subsection (1) above shall not apply to income consisting of a distribution arising from property consisting of—

(a) close company shares to which either the husband or the wife **[**F1508, or one of the civil partners,**]** is beneficially entitled to the exclusion of the other, or

(b) close company shares to which they are beneficially entitled in equal or unequal shares.

In this subsection "close company shares" means shares in or securities of a close company; and for this purpose "shares" and "securities" have the same meaning as in Part 6 (see section 254).**]**

(5) Subsection (1) above shall not apply to income to which the husband or the wife **[**F1509, or one of the civil partners,**]** is beneficially entitled if or to the extent that it is treated by virtue of any other provision of the Income Tax Acts as the income of the other of them or of a third party.

(6) References in this section to a husband and his wife are references to a husband and wife living together **[**F1510, and references in this section to civil partners of each other are references to civil partners of each other living together**].]**

Textual Amendments

F1502 Ss. 282A, 282B inserted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), **s. 34**

F1503 Words in s. 282A(1) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 63(2)

F1504 Words in s. 282A(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 63(3)

F1505 Words in s. 282A(3)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 63(4)

F1506 Words in s. 282A(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 125** (with Sch. 2)

F1507 S. 282A(4A) inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 2004 (c. 12), **s. 91(2)**

F1508 Words in s. 282A(4A)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 63(5)

F1509 Words in s. 282A(5) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 63(6)

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F1510 Words in s. 282A(6) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 63(7)

282B Jointly held property: declarations.

(1) The declaration referred to in section 282A (3) is a declaration by both the husband and the wife **[**F1511, or both the civil partners,**]** of their beneficial interests in—

(a) the income to which the declaration relates, and

(b) the property from which that income arises.

(2) Subject to the following subsections, a declaration shall have effect under this section in relation to income arising on or after the date of the declaration; but a declaration made before 6th June 1990 shall also have effect in relation to income arising before that date.

(3) A declaration shall not have effect under this section unless notice of it is given to the inspector, in such form and manner as the Board may prescribe, within the period of 60 days beginning with the date of the declaration.

(4) A declaration shall not have effect under this section in relation to income from property if the beneficial interests of the husband and the wife **[**F1512, or of the civil partners,**]** in the property itself do not correspond to their beneficial interests in the income.

(5) A declaration having effect under this section shall continue to have effect unless and until the beneficial interests of the husband and wife **[**F1513, or of the civil partners,**]** in either the income to which it relates, or the property from which the income arises, cease to accord with the declaration.

Textual Amendments

F1511 Words in s. 282B(1) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 64(2)

F1512 Words in s. 282B(4) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 64(3)

F1513 Words in s. 282B(5) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 64(4)

Separate assessments

F1514283 Option for separate assessment.

. . . . . .

Textual Amendments

F1514 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

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F1515 284 Effect of separate assessment on personal reliefs.

. . . . . .

Textual Amendments

F1515 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

F1516 285 Collection from wife of tax assessed on husband but attributable to her income.

. . . . . .

Textual Amendments

F1516 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

F1517 286 Right of husband to disclaim liability for tax on deceased wife's income.

. . . . . .

Textual Amendments

F1517 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

Separate taxation

F1518 287 Separate taxation of wife's earnings.

. . . . . .

Textual Amendments

F1518 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

F1519 288 Elections under section 287.

. . . . . .

Textual Amendments

F1519 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Part VIII**

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CHAPTER III

[F1520ENTERPRISE INVESTMENT SCHEME]

Textual Amendments

F1520 Pt. 7 Ch. 3 heading substituted (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**

Modifications etc. (not altering text)

C204 Pt. 7 Ch. 3 applied (with effect in accordance with Sch. 13 para. 4(4) of the 1995 amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 5B para. 6(4)** (as inserted by Finance Act 1995 (c. 4), **Sch. 13 para. 4(3)**)

[F1521289 Eligibility for relief.

(1) For the purposes of this Chapter, an individual is eligible for relief, subject to the following provisions of this Chapter, if—

(a) eligible shares in a qualifying company for which he has subscribed F1522. . . are issued to him and, under section 291, he qualifies for relief in respect of those shares,

[F1523(aza) he subscribed for the shares (other than any of them which are bonus shares) wholly in cash,]

[F1524(aa) at the time when they are issued the shares [F1525(other than any of them which are bonus shares) are fully paid up],]

(b) the shares [F1526(other than any of them which are bonus shares)] are issued in order to raise money for the purpose of a qualifying business activity,

[F1527(ba) the requirements of subsection (1A) below are satisfied in relation to the company,]F1528. . .

[F1529[F1530(c) at least 80 per cent. of the money raised by the issue of—

(i) the shares, and

(ii) all other eligible shares (if any) in the company of the same class which are issued on the same day,

is employed wholly for the purpose of the activity mentioned in paragraph (b) above not later than the time mentioned in subsection (3) below, and]

(d) all of the money so raised is employed wholly for that purpose not later than 12 months after that time.]

[F1531(1A) The requirements of this subsection are satisfied in relation to the qualifying company if at no time in the relevant period is any of the following, namely—

(a) the relevant qualifying trade,

(b) relevant preparation work (if any), and

(c) relevant research and development (if any),

being carried on by a person other than the qualifying company or a qualifying 90% subsidiary of that company.

(1B) In a case where relevant preparation work is carried on by the qualifying company or a qualifying 90% subsidiary of that company, there is to be disregarded, for the purpose of determining whether the requirements of subsection (1A) above are satisfied in

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relation to the qualifying company, the carrying on of the relevant qualifying trade by a company other than—

(a) the qualifying company, or

(b) a subsidiary of that company,

at any time in the relevant period before the qualifying company or any qualifying 90% subsidiary of that company carries on that trade.

(1C) The requirements of subsection (1A) above are not to be regarded as failing to be satisfied in relation to the qualifying company if—

(a) by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership, or

(b) by reason only of the qualifying company or any other company being wound up or dissolved without winding up,

the relevant qualifying trade ceases to be carried on in the relevant period by the qualifying company or any qualifying 90% subsidiary of that company and is subsequently carried on in that period by a person who is not at any time in the period of restriction connected with the qualifying company.

(1D) Subsection (1C) above applies only if (as the case may be)—

(a) the entry into administration or receivership and everything done as a consequence of the company concerned being in administration or receivership, or

(b) the winding up or dissolution,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.

(1E) In this section—

"relevant preparation work" means preparations falling within subsection (2)(a)(ii) below which are the subject of the qualifying business activity mentioned in subsection (1) above,

"the relevant qualifying trade" means the qualifying trade which is the subject of that qualifying business activity,

"relevant research and development" means—

(a) research and development falling within subsection (2)(b) below which is the subject of that qualifying business activity, and

(b) any other preparations for the carrying on of the qualifying trade which is the subject of that activity.**]**

(2) In this Chapter "qualifying business activity", in relation to a company, means—

(a) the company or any **[**F1532qualifying 90% subsidiary of that company**]**—

(i) carrying on a qualifying trade which, on the date the shares are issued, **[**F1533the company or any such subsidiary**]** is carrying on, or

(ii) **[**F1534preparing to carry on, or carrying on,**]** a qualifying trade which, on that date, **[**F1535is intended to be carried**]** on wholly or mainly in the United Kingdom **[**F1536by the company or any such subsidiary and which is begun to be carried on by the company or any such subsidiary**]** within two years after that date,

but only if, at any time in the relevant period when the qualifying **[**F1537trade is so**]** carried on, it is carried on wholly or mainly in the United Kingdom, **[**F1538or**]**

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(b) the company or any **[**F1539qualifying 90% subsidiary of that company**]** carrying on research and development—

(i) which, on the date the shares are issued, **[**F1540the company or any such subsidiary is carrying on or which the company or any such subsidiary**]** begins to carry on immediately afterwards, and

(ii) from which it is intended that a qualifying trade which the company or any **[**F1541such subsidiary**]** will carry on wholly or mainly in the United Kingdom will be derived,

but only if, at any time in the relevant period when the research and development or the qualifying trade derived from it is carried on, it is carried on wholly or mainly in the United Kingdom.F1542. . .

(c) F1543. . . . . .

(3) The time referred to in subsection (1)(c) above is—

(a) the end of the period of twelve months beginning with the issue of the eligible shares, or

(b) in the case of money raised only for the purpose referred to in subsection (2)(a) above, the end of that period or, if later, the end of the period of twelve months beginning when the company or **[**F1544a qualifying 90% subsidiary of that company**]** begins to carry on the qualifying trade,

and for the purposes of this Chapter, the **[**F1545conditions in subsection (1)(c) and (d) above do**]** not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.

F1546(3A) **[** In determining—

(a) for the purposes of subsection (2)(a)(ii) or (3)(b) above when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company, or

(b) for the purposes of subsection (2)(b)(i) above when research and development is begun to be carried on by such a subsidiary of a company,

there shall be disregarded any carrying on of the trade or, as the case may be, the research and development by it before it became such a subsidiary of the company.**]**

(4) F1547. . . . . .

(5) F1547. . . . . .

(6) An individual is not eligible for relief in respect of any shares unless the shares are subscribed **[**F1548for**]**, and issued, for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(7) In this Chapter "eligible shares" means new ordinary shares which, throughout **[**F1549 the period—

(a) beginning with the issue of the shares, and

(b) ending immediately before the termination date relating to those shares,**]**

carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future F1550. . . right to be redeemed.

(8) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section.

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[Shares are not fully paid up for the purposes of subsection (1)(aa) above if there is F1551(8A) any undertaking to pay cash to any person at a future date in respect of the acquisition of the shares.**]**

[F1552(9) For the purposes of this Chapter, a company ("the relevant subsidiary") is a qualifying 90% subsidiary of another company ("the holding company") if the following conditions are met—

(a) the holding company possesses not less than 90% of the issued share capital of, and not less than 90% of the voting power in, the relevant subsidiary;

(b) the holding company would—

(i) in the event of a winding up of the relevant subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to receive not less than 90% of the assets of the relevant subsidiary which would then be available for distribution to the equity holders of the subsidiary;

(c) the holding company is beneficially entitled to not less than 90% of any profits of the relevant subsidiary which are available for distribution to the equity holders of the subsidiary;

(d) no person other than the holding company has control of the relevant subsidiary within the meaning of section 840; and

(e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) above would cease to be met.

(10) Subsections (3), (3A) and (4) of section 308 apply in relation to the conditions in subsection (9) above as they apply in relation to the conditions in subsection (2) of that section, but with the following modifications.

(11) Those modifications are—

(a) that references in subsections (3), (3A) and (4) of that section to the subsidiary are to be read as references to the relevant subsidiary, and

(b) that subsection (4) of that section is to be read as if the words the holding company were substituted for the words "the qualifying company or (as the case may be) by another subsidiary".

(12) For the purposes of subsection (9) above—

(a) the persons who are equity holders of the relevant subsidiary, and

(b) the percentage of the assets of the relevant subsidiary to which an equity holder would be entitled,

are to be determined in accordance with paragraphs 1 and 3 of Schedule 18.

(13) But in making that determination—

(a) references in paragraph 3 of Schedule 18 to the first company are to be read as references to an equity holder, and

(b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the relevant subsidiary are available for distribution to its equity holders.**]]**

Textual Amendments

F1521 Ss. 289-289B substituted for s. 289 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**

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F1522 Words in s. 289(1)(a) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 1(2)(a), **Sch. 42 Pt. 2(13)**, Note 6

F1523 S. 289(1)(aza) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(b)**

F1524 S. 289(1)(aa) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 1(1)(b)**

F1525 Words in s. 289(1)(aa) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(c)**

F1526 Words in s. 289(1)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(d)**

F1527 S. 289(1)(ba) inserted (with effect in accordance with Sch. 8 para. 1 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 8 para. 2(1)**

F1528 Word at the end of s. 289(1)(ba) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

F1529 S. 289(1)(c)(d) substituted for s. 289(1)(c) (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 6(a)**

F1530 S. 289(1)(c) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(2)(e)**

F1531 S. 289(1A)-(1E) substituted for s. 289(1A)-(1D) (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para 1(3)**

F1532 Words in s. 289(2)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(a)**

F1533 Words in s. 289(2)(a)(i) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(b)**

F1534 Words in s. 289(2)(a)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(c)(i)**

F1535 Words in s. 289(2)(a)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(c)(ii)**

F1536 Words in s. 289(2)(a)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(c)(iii)**

F1537 Words in s. 289(2)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(d)**

F1538 Word at the end of s. 289(2)(a) inserted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 2(b)(i)**

F1539 Words in s. 289(2)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(e)(i)**

F1540 Words in s. 289(2)(b)(i) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(e)(ii)**

F1541 Words in s. 289(2)(b)(ii) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(4)(e)(iii)**

F1542 Word preceding s. 289(2)(c) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

F1543 S. 289(2)(c) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 2(b)(ii), **Sch. 33 Pt. 2(3)**, Note 6

F1544 Words in s. 289(3)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(5)**

F1545 Words in s. 289(3) substituted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 6(b)**

F1546 S. 289(3A) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(6)**

F1547 S. 289(4)(5) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 2(c), **Sch. 33 Pt. 2(3)**, Note 6

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F1548 Word in s. 289(6) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 1(3)**

F1549 Words in s. 289(7) substituted (with effect in accordance with Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 1**

F1550 Word in s. 289(7) repealed (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 1(4), **Sch. 27 Pt. 3(14)**, Note 4

F1551 S. 289(8A) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(7)**

F1552 S. 289(9)-(13) substituted for s. 289(9) (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 1(8)**

Modifications etc. (not altering text)

C205 S. 289 amended (as it has effect in relation to shares issued before 1st January 1994) by Finance Act 1995 (c. 4), **s. 68(1)(2)**

[F1553 289A Form of relief.

(1) Where an individual eligible for relief in respect of any amount subscribed for eligible shares makes a claim, then, subject to the following provisions of this Chapter, the amount of his liability for the year of assessment in which the shares were issued ("the current year") to income tax on his total income shall be the following amount.

(2) That amount is the amount to which he would be so liable apart from this section less whichever is the smaller of—

(a) an amount equal to tax at the lower rate for the current year on the amount or, as the case may be, the aggregate of the amounts subscribed for eligible shares issued in that year in respect of which he is eligible for relief, and

(b) the amount which reduces his liability to nil.

(3) Subject to subsection (4) below, if in the case of any issue of relevant shares, that is, shares—

(a) which are issued before 6th October in the current year, and

(b) in respect of the amount subscribed for which the individual is eligible for relief,

the individual so requests in his claim, subsection (1) above shall apply as if, in respect of such part of that issue as may be specified in his claim, the shares had been issued in the preceding year of assessment; and his liability to income tax for both years of assessment shall be determined accordingly.

(4) Not more than half of the relevant shares comprised in any issue may be treated by virtue of subsection (3) above as issued in the previous year; and the number of relevant shares (comprised in any issues) so treated as issued in a particular year shall not be such that the total amount subscribed for them exceeds **[**F1554£25,000**]**.

(5) In determining for the purposes of subsection (2) above the amount of income tax to which a person would be liable apart from this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII of this Act or under section 347B,

(b) any income tax reduction under section 353(1A),

(c) any income tax reduction under section 54(3A) of the Finance Act 1989,

[F1555(ca) any income tax reduction under paragraph 19(2) of Schedule 16 to the Finance Act 2002 (community investment tax relief),**]**

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(d) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1), or

(e) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.

(6) **[**F1556A claim for relief in respect of eligible shares issued by a company shall not be allowed unless subsection (7) below is complied with in relation to the issue of shares in question**]** but, where it is complied with, the relief may be given at any time when it appears that the conditions for the relief may be satisfied.

(7) This subsection is complied with if—

(a) in **[**F1557a case where the money raised by an issue of eligible shares is raised wholly**]** for the purpose of a qualifying business activity falling within paragraph (a) of section 289(2), the **[**F1558trade concerned has been carried on for four months by no person other than the qualifying company or a qualifying 90% subsidiary of that company**]**, **[**F1559and**]**

(b) in **[**F1560a case where the money raised by an issue of eligible shares is raised wholly or partly**]** for the purpose of a qualifying business activity falling within paragraph (b) of that subsection **[**F1561the research and development concerned has been carried on for four months by no person other than the qualifying company or a qualifying 90% subsidiary of that company**]**. F1562. . .

(c) F1563. . . . . .

(8) Where—

[F1564(a) by reason only of the qualifying company or any other company being wound up or dissolved without winding up—

(i) the trade concerned is carried on as mentioned in subsection (7)(a) above, or

(ii) the research and development concerned is carried on as mentioned in subsection (7)(b) above,

for a period shorter than four months, and**]**

(b) F1565. . . the winding up or dissolution **[**F1566is for**]** bona fide commercial reasons and **[**F1567is not**]** part of a scheme or arrangement the main purpose or one of the main purposes of **[**F1568which is**]** the avoidance of tax,

subsection (7)(a) **[**F1569or, as the case may be, (7)(b)**]** above shall have effect as if it referred to that shorter period.

[F1570(8A) **[**F1571 Where, by reason only of anything done as a consequence of the qualifying company or any other company being in administration or receivership—

(a) the trade concerned is carried on as mentioned in subsection (7)(a) above for a period shorter than four months, or

(b) the research and development concerned is carried on as mentioned in subsection (7)(b) above for a period shorter than four months,

subsection (7)(a) or, as the case may be, (7)(b) above shall have effect as if it referred to that shorter period.**]**

This applies only if—

(a) **[**F1572the entry into administration or receivership**]**, and

(b) everything done as a consequence of the company **[**F1573concerned**]** being in administration or receivership,

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is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.**]**

(9) **F1574** . . . . . .**]**

Textual Amendments

F1553 Ss. 289-289B substituted for s. 289 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**

F1554 Words in s. 289A(4) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 2**

F1555 S. 289A(5)(ca) inserted (with effect in accordance with s. 57(4)(b) of the amending Act) by Finance Act 2002 (c. 23), s. 57(3), **Sch. 17 para. 2**; S.I. 2003/88, **art. 2**

F1556 Words in s. 289A(6) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(2)**

F1557 Words in s. 289A(7)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(3)(a)(i)**

F1558 Words in s. 289A(7)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(3)(a)(ii)**

F1559 Word after s. 289A(7)(a) inserted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 3(a)**

F1560 Words in s. 289A(7)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(3)(b)(i)**

F1561 Words in s. 289A(7)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(3)(b)(ii)**

F1562 Word preceding s. 289A(7)(c) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

F1563 S. 289A(7)(c) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 3(b), **Sch. 33 Pt. 2(3)**, Note 6

F1564 S. 289A(8)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(4)(a)**

F1565 Words in s. 289A(8)(b) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 2(4)(b)(i), **Sch. 42 Pt. 2(13)**, Note 6

F1566 Words in s. 289A(8)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(4)(b)(ii)**

F1567 Words in s. 289A(8)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(4)(b)(iii)**

F1568 Words in s. 289A(8)(b) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(4)(b)(iv)**

F1569 Words in s. 289A(8) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(4)(c)**

F1570 S. 289A(8A) inserted (with effect in accordance with Sch. 17 para. 12 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 9(3)**

F1571 Words in s. 289A(8A) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(5)(a)**

F1572 Words in s. 289A(8A)(a) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 16** (with art. 6)

F1573 Word in s. 289A(8A)(b) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 2(5)(b)**

F1574 S. 289A(9) repealed (with effect in accordance with Sch. 15 para. 9(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 9(1), **Sch. 33 Pt. 2(3)**, Note 1

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[F1575 289B Attribution of relief to shares.

(1) References in this Chapter, in relation to any individual, to the relief attributable to any shares or issue of shares shall be read, subject to the provisions of this Chapter providing for the reduction or withdrawal of relief, as references to any reduction made in the individual's liability to income tax which is attributed to those shares or that issue in accordance with this section.

(2) Where an individual's liability to income tax is reduced in any year of assessment ("the current year") under section 289A, then—

(a) where the reduction is given by reason of an issue of shares made (or treated as made) in the current year, the amount of the reduction shall be attributed to that issue, and

(b) where the reduction is given by reason of two or more issues of shares made (or treated as made) in the current year, the reduction—

(i) shall be apportioned between those issues in the same proportions as the amounts subscribed by the individual for each issue, and

(ii) shall be attributed to those issues accordingly.

(3) Where under this section an amount of any reduction of income tax is attributed to an issue of shares ("the original issue") in a company to an individual—

(a) a proportionate part of that amount shall be attributed to each share comprised in the original issue, and

(b) if any **[**F1576corresponding bonus shares in that company**]** are issued to him at any subsequent time—

(i) a proportionate part of the total amount attributed immediately before that time to shares comprised in the original issue shall be attributed to each of the shares in the holding comprising those shares and the bonus shares, and

(ii) this Chapter shall apply as if the original holding had comprised all those shares.

F1577(3A) **[** In subsection (3) above "corresponding bonus shares" means bonus shares which—

(a) are issued in respect of the shares comprised in the original issue; and

(b) are of the same class, and carry the same rights, as those shares.**]**

[F1578(4) Subject to subsection (5) below, in this Chapter references (however expressed) to an issue of eligible shares in any company to an individual are references to any eligible shares in the company that are of the same class and are issued to him on the **[**F1579same day, but this subsection does not apply in relation to section 289A(6) and (7)**].]**

(5) Where section 289A(1) applies in the case of any issue of shares as if part of the issue had been issued in a previous year, this section and **[**F1580sections 299(4) and 306(1)**]** shall have effect as if that part and the remainder were separate issues of shares (and that part had been issued on a day in the previous year).

(6) Where, at a time when any relief is attributable to, or to any part of, any issue of shares, the relief falls to be withdrawn or reduced under this Chapter—

(a) where it falls to be withdrawn, the relief attributable to each of the shares in question shall be reduced to nil, and

(b) where it falls to be reduced by any amount, the relief attributable to each of the shares in question shall be reduced by a proportionate part of that amount.**]**

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Textual Amendments

F1575 Ss. 289-289B substituted for s. 289 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 2**

F1576 Words in s. 289B(3)(b) substituted (with effect in accordance with Sch. 13 para. 3(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 3(1)**

F1577 S. 289B(3A) inserted (with effect in accordance with Sch. 13 para. 3(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 3(2)**

F1578 S. 289B(4) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 3(3)**

F1579 Words in s. 289B(4) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 3**

F1580 Words in s. 289B(5) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 3(4)**

290 Minimum and maximum subscriptions.

M313(1) Subject to section 311(3), the relief shall not be given in respect of any amount subscribed by an individual for eligible shares issued to him by any company in any year of assessment unless the amount or total amount subscribed by him for the eligible shares issued to him by the company in that year is £500 or more.

[F1581(2) An individual shall not be eligible for relief in any year of assessment in respect of any amount subscribed for eligible shares exceeding **[**F1582£200,000**]** (whether the shares are issued in that or a subsequent year).**]**

Textual Amendments

F1581 S. 290(2) substituted (with effect as mentioned in s. 137(2), Sch. 15 para. 3(2)-(4) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 3(1)**

F1582 Words in s. 290(2) substituted (with effect in accordance with Sch. 18 para. 4(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 4(1)**

Modifications etc. (not altering text)

C206 *See* 1988(F) s.35*and* Sch.3 para.12(3)(b)*for application to husband and wife where amounts are subscribed in* 1990-91.

Marginal Citations

M313 Source-1983 Sch.5 3; 1987 s.42(3)

[F1583F1584**290A** Restriction of relief where amounts raised exceed permitted maximum.

. . . . . .**]**

Textual Amendments

F1583 S. 290A inserted (retrospectively) by Finance Act 1988 (c. 39) s. 51(1)(b)

F1584 S. 290A repealed (with effect in accordance with s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 5, **Sch. 27 Pt. 3(14)**

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[F1585 291 Individuals qualifying for relief.

(1) An individual qualifies for relief in respect of eligible shares in a company (referred to in this section and sections 291A and 291B as the "issuing company") if—

(a) he subscribes for the shares on his own behalf, and

[F1586 (b) subject to section 291A(4), he is not at any time in the period—

(i) beginning two years before the issue of the shares, and

(ii) ending immediately before the termination date relating to those shares,

connected with the company (whether before or after its incorporation).]

(2) For the purposes of this section F1587 . . . , an individual is connected with the issuing company if he, or an associate of his, is—

(a) an employee of, or of a partner of, the issuing company or any subsidiary,

(b) a partner of the issuing company or any subsidiary, or

(c) subject to section 291A, a director of, or of a company which is a partner of, the issuing company or any subsidiary,

or if he, or an associate of his, is so connected by virtue of section 291B.

[F1588 (3) In subsection (2) above "subsidiary", in relation to the issuing company, means a company which at any time in the relevant period is a 51 per cent subsidiary of the issuing company, whether or not it is such a subsidiary while the individual concerned or his associate is such an employee, partner or director as is mentioned in that subsection.]

(4) For the purposes of subsections (2) and (3) above and section 291A, in the case of a person who is both a director and an employee of a company—

(a) references (however expressed) to him in his capacity as a director of the company include him in his capacity as an employee of the company, but

(b) (apart from that) he is not to be treated as an employee of the company.

(5) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section and sections 291A and 291B.

F1589 [F1590 (6) [F1591 . . . . . .]]]

Textual Amendments

F1585 Ss. 291-291B substituted for s. 291 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 5**

F1586 S. 291(1)(b) substituted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 10**

F1587 Words in s. 291(2) repealed (with effect in accordance with s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 6(2), **Sch. 27 Pt. 3(14)**

F1588 S. 291(3) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 6(3)**

F1589 S. 291(6) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 6(4)**

F1590 S. 291(6) substituted (with effect in accordance with Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 2(b)**

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F1591 S. 291(6) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

[F1592 291A Connected persons: directors.

(1) An individual is not connected with the issuing company by reason only that he, or an associate of his, is a director of that or another company unless he or his associate (or a partnership of which he or his associate is a member)—

(a) receives a payment from the issuing company or a related person during **[**F1593 the period mentioned in section 291(1)(b)**]**, or

(b) is entitled to receive such a payment in respect of that period or any part of it.

(2) In this section—

(a) "related person", in relation to the issuing company, means—

(i) any company of which the individual or his associate is a director and which is a subsidiary or a partner of the issuing company or of a subsidiary, and

(ii) any person connected with the issuing company or with a company falling within sub-paragraph (i) above, and

(b) any reference to a payment to an individual includes a payment made to him indirectly or to his order or for his benefit.

(3) For the purposes of subsection (1) above there shall be disregarded—

(a) any payment or reimbursement of travelling or other expenses wholly, exclusively and necessarily incurred by him or his associate in the performance of his duties as a director,

(b) any interest which represents no more than a reasonable commercial return on money lent to the issuing company or a related person,

(c) any dividend or other distribution which does not exceed a normal return on the investment,

(d) any payment for the supply of goods which does not exceed their market value,

(e) any payment of rent for any property occupied by the issuing company or a related person which does not exceed a reasonable and commercial rent for the property, and

(f) any reasonable and necessary remuneration which —

(i) is paid for services rendered to the issuing company or related person in the course of a trade or profession **[**F1594 carried on wholly or partly in the United Kingdom **]**(not being secretarial or managerial services or services of a kind provided by the person to whom they are rendered), and

(ii) is taken into account **[**F1595 in calculating for tax purposes the profits of that trade or profession**]**.

(4) An individual ("the subscriber") who subscribes for eligible shares ("the relevant shares") may qualify for the relief notwithstanding his connection with the company at any time in the relevant period if—

(a) he is so connected by reason only of his, or his associate's, being a director of, or of a company which is a partner of, the issuing company or a subsidiary in receipt of, or entitled to receive, remuneration as such, and

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(b) the following conditions are satisfied;

and in this subsection and subsection (5) below "remuneration" includes any benefit or facility.

(5) The conditions are that—

(a) in relation to the director (whether he is the subscriber or his associate), his remuneration, or the remuneration to which he is entitled, (leaving out of account any reasonable and necessary remuneration falling within subsection (3)(f) above) consists only of remuneration which is reasonable remuneration for services rendered to the company of which he is a director in his capacity as such,

(b) the subscriber was issued with eligible shares (whether the relevant shares or a previous issue of eligible shares) at a time when he had never been—

(i) connected with the issuing company, or

[F1596(ii) involved in carrying on (whether on his own account or as a partner, director or employee) the whole or any part of the trade carried on by the issuing company or a subsidiary, and**]**

(c) where the issue of the relevant shares did not satisfy paragraph (b) above, they were not issued after the end of the period—

[F1597(i)**]** beginning with the date of the latest issue of eligible shares which satisfied that paragraph, **[**F1598and

(ii) ending immediately before the termination date relating to those eligible shares,**]**

and in paragraph (b) above "trade" includes any business, profession or vocation F1599. . . .

(6) In this section "subsidiary", in relation to the issuing company, means a 51 per cent. subsidiary of the issuing company.**]**

Textual Amendments

F1592 Ss. 291-291B substituted for s. 291 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 5**

F1593 Words in s. 291A(1)(a) substituted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 11**

F1594 Words in s. 291A(3)(f)(i) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 126(a)** (with Sch. 2)

F1595 Words in s. 291A(3)(f)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 126(b)** (with Sch. 2)

F1596 S. 291A(5)(b)(ii) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 7(2)(a)**

F1597 Word in s. 291A(5)(c) substituted (with effect in accordance with Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 3(3)(a)**

F1598 S. 291A(5)(c)(ii) and preceding word inserted (with effect in accordance with Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 3(3)(b)**

F1599 Words in s. 291A(5) repealed (with effect in accordance with s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 7(2)(b), **Sch. 27 Pt. 3(14)**

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[F1600 291B Connected persons: persons interested in capital etc. of company.

(1) An individual is connected with the issuing company if he directly or indirectly possesses or is entitled to acquire more than 30 per cent. of—

(a) the issued ordinary share capital of the company or any subsidiary,

(b) the loan capital and issued share capital of the company or any subsidiary, or

(c) the voting power in the company or any subsidiary.

(2) An individual is connected with the issuing company if he directly or indirectly possesses or is entitled to acquire such rights as would, in the event of the winding up of the company or any subsidiary or in any other circumstances, entitle him to receive more than 30 per cent. of the assets of the company or subsidiary (the "company in question") which would then be available for distribution to equity holders of the company in question.

(3) For the purposes of subsection (2) above—

(a) the persons who are equity holders of the company in question, and

(b) the percentage of the assets of the company in question to which the individual would be entitled,

shall be determined in accordance with paragraphs 1 and 3 of Schedule 18, taking references in paragraph 3 to the first company as references to an equity holder and references to a winding up as including references to any other circumstances in which assets of the company in question are available for distribution to its equity holders.

(4) An individual is connected with a company if he has control of it or of any subsidiary.

(5) Where an individual subscribes for shares in a company with which (apart from this subsection) he is not connected, he shall nevertheless be treated as connected with it if he subscribes for the shares as part of any arrangement which provides for another person to subscribe for shares in another company with which (assuming it to be an issuing company) that or any other individual who is a party to the arrangement is connected.

[F1601 (5A) An individual is not connected with a company by reason only of the fact that one or more shares in the company are held by him, or by an associate of his, at a time when the company—

(a) has not issued any shares other than subscriber shares; and

(b) has not begun to carry on, or to make preparations for carrying on, any trade or business.]

[F1602 (6) In this section "subsidiary", in relation to the issuing company, means a company which at any time in the relevant period is a 51 per cent. subsidiary of the issuing company, whether or not it is such a subsidiary while the individual concerned has, or is entitled to acquire, such capital, voting power, rights or control as are mentioned in this section.]

(7) For the purposes of this section the loan capital of a company shall be treated as including any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company,

(b) for any right to receive income created in favour of the company, or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium on it).

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(8) For the purposes of this section an individual shall be treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire, and there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(9) In determining for the purposes of this section whether an individual is connected with a company, no debt incurred by the company or any subsidiary by overdrawing an account with a person carrying on a business of banking shall be treated as loan capital of the company or subsidiary if the debt arose in the ordinary course of that business.

(10) Section 840 applies for the purposes of this section.**]**

Textual Amendments

F1600 Ss. 291-291B substituted for s. 291 (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 5**

F1601 S. 291B(5A) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 8(1)**

F1602 S. 291B(6) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 8(2)**

292 Parallel trades. [F1603]

[M314](1) **[**[F1604]An individual is not eligible for relief in respect of any shares in a company if, at the date mentioned in subsection (2) below**]**—

(a) he is one of a group of persons—

(i) who control the company; or

(ii) to whom belongs an interest amounting in the aggregate to more than a half share in the trade carried on by the company;

(b) he is also an individual, or one of a group of persons—

(i) controlling another company; or

(ii) to whom belongs an interest amounting in the aggregate to more than a half share in another trade; and

(c) the trade carried on by the company, or a substantial part of it—

(i) is concerned with the same or similar types of property or parts thereof or provides the same or similar services or facilities; and

(ii) serves substantially the same or similar outlets or markets;

as the other trade or (as the case may be) the trade carried on by the other company.

(2) The date mentioned in subsection (1) above is—

(a) the date on which the shares are issued; or

(b) if later, the date on which the company begins to carry on the trade.

(3) For the purposes of subsection (1) above—

(a) the persons to whom a trade belongs, and (where a trade belongs to two or more persons) their respective shares in that trade, shall be determined in accordance with section 344(1)(a) and (b), (2) and (3); and

(b) any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person.

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(4) For the purposes of this section—

(a) references to a company's trade include references to the trade of **[**F1605any company which is a 51 per cent. subsidiary of that company on the date referred to in subsection (2) above**]**; and

(b) "trade" in the expressions "another trade", "other trade" and "trade carried on by the other company" includes any business, profession or vocation.

[F1606(5) This section shall not apply where the shares mentioned in subsection (1) above are issued on or after 29th November 1994.**]**

Textual Amendments

F1603 S.292 *omitted by* 1988(F) Sch.4 para.5 *where* s.50 (*changes applicable in respect of shares issued on or after* 29 *July* 1988 *and before the end of* 1993 *in respect of private rented housing*) *applies.*

F1604 Words in s. 292(1) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 6(a)**

F1605 Words in s. 292(4)(a) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 6(b)**

F1606 S. 292(5) inserted (1.5.1995) by Finance Act 1995 c. 4, **s. 66(2)**

Marginal Citations

M314 Source-1983 Sch.5 10A; 1986 Sch.9 12

293 Qualifying companies.

[F1607(1) Subject to section 294, a company is a qualifying company (whether it is resident in the United Kingdom or elsewhere) if it complies with the requirements of this section.

[F1608(1A) At the beginning of the relevant period, the company must be—

(a) an unquoted company, and

(b) a company to which subsection (1B) below does not apply.

(1B) This subsection applies to a company—

(a) if arrangements are in existence for it to cease to be an unquoted company; or

(b) if—

(i) arrangements are in existence for it to become a subsidiary of another company ("the new company") by virtue of an exchange of shares, or shares and securities, in relation to which section 304A (certain exchanges resulting in acquisition of share capital by new company) applies, and

(ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.**]**

(2) The company must, throughout the relevant period, F1609. . . be—

(a) a company which exists wholly for the purpose of carrying on one or more qualifying trades or which so exists apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company's activities, or

[F1610(aa) the parent company of a trading group.**]**

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(3) In this section "qualifying subsidiary", in relation to a company, means a subsidiary of a kind which that company may hold by virtue of section 308.**]**

[F1611(3A) For the purposes of this section a company is the parent company of a trading group if—

(a) it has one or more subsidiaries;

(b) each of its subsidiaries is a qualifying subsidiary of the company; and

(c) the requirements of subsection (3B) below are fulfilled by what would be the business of the company and its subsidiaries if all the activities, taken together, of the company and its subsidiaries were regarded as one business.

(3B) A business fulfils the requirements of this subsection if neither the business nor a substantial part of it consists in, or in either of, the following, that is to say—

(a) activities falling within section 297(2)(a) to (g) but not within subsection (3C) below; and

(b) activities **[**F1612(other than research and development F1613. . .)**]** carried on otherwise than in the course of a trade.

(3C) The activities falling within this subsection are—

(a) the receiving of royalties or licence fees in circumstances where **[**F1614the requirement mentioned in section 297(4) is**]** satisfied in relation to the company receiving them;

(b) the letting of ships, other than **[**F1615offshore installations**]** or pleasure craft, on charter in circumstances where the requirements mentioned in paragraphs (a) to (d) of section 297(6) are satisfied in relation to the company so letting them.

(3D) Activities of a company or of any of its subsidiaries shall be disregarded for the purposes of subsections (3A) to (3C) above to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, one or more of the company's subsidiaries; or

(b) the holding and managing of property used by the company or any of its subsidiaries for the purposes of—

(i) research and development from which it is intended that a qualifying trade to be carried on by the company or any of its subsidiaries will be derived; or

(ii) one or more qualifying trades so carried on.

(3E) Activities of a subsidiary of a company shall also be disregarded for the purposes of subsections (3A) to (3C) above to the extent that they consist in—

(a) the making of loans to the company; or

(b) in the case of a mainly trading subsidiary, activities carried on otherwise than in pursuance of its main purpose.

(3F) For the purposes of subsection (3E) above—

(a) "mainly trading subsidiary" means a subsidiary which, apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, exists wholly for the purpose of carrying on one or more qualifying trades; and

(b) that purpose shall be taken to be its main purpose.**]**

F1616(4) F1617. . . . . .

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[F1618(4A) A company F1619. . . shall not be regarded as ceasing to comply with subsection (2) above by reason **[**F1620only**]** of anything done as a consequence of **[**F1621the company, or any of its subsidiaries,**]** being in administration or receivership.

This subsection has effect subject to subsection (4B) and subsection (5) below.

(4B) Subsection (4A) applies only if—

(a) **[**F1622the entry into administration or receivership**]**, and

(b) everything done as a consequence of the company **[**F1623concerned**]** being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.**]**

(5) M315Without prejudice to the generality of subsection (2) above, but subject to subsection (6) below, a company ceases to comply with that subsection if before the end of the relevant period a resolution is passed, or an order is made, for the winding up of the company **[**F1624or any of its subsidiaries**]** (or, in the case of a winding up otherwise than under the M316Insolvency Act 1986 or the M317Companies (Northern Ireland) Order 1986, any other act is done for the like purpose) or the company **[**F1625or any of its subsidiaries**]** is dissolved without winding up.

(6) A company shall not be regarded as ceasing to comply with subsection (2) above if it does so **[**F1626by reason only of the company or any of its subsidiaries**]** being wound up or dissolved without winding up and—

(a) F1627. . . the winding up or dissolution is for bona fide commercial reasons **[**F1628and is not**]** part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax; F1629. . .

(b) F1629. . . . . .

[F1630(6ZA) The company must not at any time in the relevant period have a property managing subsidiary which is not a qualifying 90% subsidiary of the company.

(6ZB) "Property managing subsidiary" means a subsidiary of the company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.

(6ZC) In subsection (6ZB) above, "land" and "property deriving its value from land" have the same meaning as in section 776.**]**

[F1631(6A) The value of the relevant assets—

(a) must not exceed £15 million immediately before the issue of the eligible shares; and

(b) must not exceed £16 million immediately afterwards.

(6B) Subject to subsection (6C) below, the reference in subsection (6A) above to the value of the relevant assets is a reference—

(a) in relation to a time when the company did not have any qualifying subsidiaries, to the value of the gross assets of the company at that time; and

(b) in relation to any other time, to the aggregate value at that time of the gross assets of all the companies in the company's group.

(6C) For the purposes of subsection (6B) above assets of any member of the company's group that consist in rights against, or in shares in or securities of, another member of the group shall be disregarded.

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(6D) In subsections (6B) and (6C) above references, in relation to any time, to the company's group are references to the company and its qualifying subsidiaries at that time.**]**

(7) F1632 . . . . . .

[F1633**[**F1634(8) Subject to section 304A, the company must not at any time in the relevant period—

(a) control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary, or

(b) be—

(i) a 51% subsidiary of another company, or

(ii) under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company,

and no arrangements must be in existence at any time in that period by virtue of which the company could fall within paragraph (a) or (b) above (whether during that period or otherwise).

(8AA) In subsection (8)(b) above "control" has the meaning given by section 840.**]**

(8A) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section and sections 294, 295 and 296.**]**

[F1635(8B) In arriving at the relevant period for the purposes of sections 294 to 296 any time falling on or after 29th November 1994 shall be ignored; and subsection (8A) above shall have effect subject to the preceding provisions of this subsection.**]**

F1636(9) F1617 . . . . . .

F1636(10) F1617 . . . . . .

F1636(11) F1617 . . . . . .

Textual Amendments

F1607 S. 293(1)-(3) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 4(7)(a)**

F1608 S. 293(1A)(1B) inserted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 12(1)**

F1609 Words in s. 293(2) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 12(2), **Sch. 33 Pt. 2(3)**, Note 6

F1610 S. 293(2)(aa) substituted for s. 293(2)(b) (with effect as mentioned in Sch. 8 para. 1 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 8 para. 4(1)**

F1611 S. 293(3A)-(3F) inserted (with effect as mentioned in Sch. 8 para. 1 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 8 para. 4(2)**

F1612 Words in s. 293(3)(b) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 9(1)**

F1613 Words in s. 293(3B)(b) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 4, **Sch. 33 Pt. 2(3)**, Note 6

F1614 Words in s. 293(3C) subsituted for specified purposes (retrospectively) by Finance Act 2001 (c. 9), **Sch. 15 para. 14**

F1615 Words in s. 293(3C)(b) substituted (with effect in accordance with Sch. 27 para. 4(5) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 4(2)** (with Sch. 27 para. 4(6))

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F1616 S.293(4)*omitted by* 1988(F) Sch.4 para.6(2)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

F1617 S. 293(4)(9)-(11) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 7(b)(e), **Sch. 26 Pt. 5(17)**

F1618 S. 293(4A)(4B) inserted (with effect in accordance with Sch. 17 para. 12 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 9(1)**

F1619 Words in s. 293(4A) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 5(2)(a), **Sch. 42 Pt. 2(13)**, Note 6

F1620 Word in s. 293(4A) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(2)(b)**

F1621 Words in s. 293(4A) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(2)(c)**

F1622 Words in s. 293(4B)(a) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 17** (with art. 6)

F1623 Word in s. 293(4B)(b) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(3)**

F1624 Words in s. 293(5) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(4)(a)**

F1625 Words in s. 293(5) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(4)(b)**

F1626 Words in s. 293(6) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(5)(a)**

F1627 Words in s. 293(6)(a) repealed (with effect as mentioned in Sch. 13 para. 9(6), Sch. 27 Pt. 3(14) Note 1 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 9(2), **Sch. 27 Pt. 3(14)**

F1628 Words in s. 293(6)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(5)(b)**

F1629 S. 293(6)(b) and preceding word repealed (with effect in accordance with Sch. 17 para. 12 of the repealing Act) by Finance Act 2000 (c. 17), Sch. 17 para. 10, **Sch. 40 Pt. 2(5)**, Note 1

F1630 S. 293(6ZA)-(6ZC) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 5(6)**

F1631 S. 293(6A)-(6D) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 9(3)**

F1632 S. 293(7) repealed (with effect as mentioned in s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 9(4), **Sch. 27 Pt. 3(14)**

F1633 S. 293(8)(8A) substituted for s. 293(8) (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 4(7)(d)**

F1634 S. 293(8)(8AA) substituted for s. 293(8) (with effect in accordance with Sch. 17 para. 12 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 11**

F1635 S. 292(8B) inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 66(3)**

F1636 Subss.(9)-(11)*omitted by* 1988(F) Sch.4 para.6(2)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Modifications etc. (not altering text)

C207 S. 293 applied (with effect in accordance with Sch. 13 para. 4(4) of the 1995 amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 5B para. 3(2)(c)** (as inserted by Finance Act 1995 (c. 4), **Sch. 13 para. 4(3)**)

C208 *See* Insolvency (Northern Ireland) Order 1989 art.381(2)*and* Sch.9 para.59 (S.I.1989 No.2405—*not reproduced*)*for change from a day to be appointed.*

C209 S. 293(8) excluded (with effect as mentioned in s. 74(3) of the 1998 amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 5B para. 8(7)** (as inserted by Finance Act 1998 (c. 36), **Sch. 13 para. 34**)

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M315 Source-1983 Sch.5(4)-(7)

M316 1986 c. 45.

M317 S.I. 1986/1032 (N.I. 6).

294 Companies with interests in land. [F1637]

M318(1) **[**F1638Subject to section 296, a company is not a qualifying company in relation to any shares if at any time during the relevant period**]**—

(a) the value of the interests in land held by the company at that time; or

(b) where lower, the value of the interests in land which were held by the company immediately after the issue of the shares (adjusted in accordance with section 295);

is greater than half the value of the company's assets as a whole.

(2) For the purposes of this section, the value of the interests in land held by a company on any date shall be arrived at by first aggregating the market value on that date of each of those interests and then deducting—

(a) the amount of any debts of the company which are secured on any of those interests (including any debt secured by a floating charge on property which comprises any of those interests);

(b) the amount of any unsecured debts of the company which do not fall due for payment before the expiry of the period of 12 months beginning with that date; and

(c) the amount paid up in respect of those shares of the company (if any) which carry a present or future preferential right to the company's assets on its winding up.

(3) For the purposes of this section, the value of a company's assets as a whole shall be arrived at by first aggregating the market value of each of those assets and then deducting the amount of the debts and liabilities of the company.

(4) For the purposes of subsection (3) above, the amount paid up in respect of those shares of a company (if any) which carry a present or future preferential right to the company's assets on its winding up shall be treated as a debt of the company, but otherwise a company's share capital, share premium account and reserves shall not be treated for those purposes as debts or liabilities of the company.

(5) In this section "interest in land" means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other's ability to grant the estate, interest or right in question, except that it does not include—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land; or

(b) in Scotland, the interest of a creditor in a charge or security of any kind over land.

[F1639(5A) For the purposes of this section, the value of an interest in any building or other land shall be adjusted by deducting the market value of any machinery or plant which is so installed or otherwise fixed in or to the building or other land as to become, in law, part of it.**]**

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(6) In arriving at the value of any interest in land for the purposes of this section—

(a) it shall be assumed that there is no source of mineral deposits in the land of a kind which it would be practicable to exploit by extracting them from underground otherwise than by means of opencast mining or quarrying; and

(b) any borehole on the land shall be disregarded if it was made in the course of oil exploration.

(7) Where a company is a member of a partnership which holds any interest in land—

(a) that interest shall, for the purposes of this section and sections 295 and 296, be treated as an interest in land held by the company; but

(b) its value at any time shall, for those purposes, be taken to be such fraction of its value (apart from this subsection) as is equal to the fraction of the assets of the partnership to which the company would be entitled if the partnership were dissolved at that time.

(8) Where a qualifying company has one or more subsidiaries, the company and its subsidiaries ("the group") shall be treated as a single company for the purposes of this section and sections 295 and 296; but any debt owed by, or liability of, one member of the group to another shall be disregarded for those purposes.

(9) The Treasury may by order amend subsection (1) above by substituting a different fraction for the fraction for the time being specified there.

Textual Amendments

F1637 Ss.294-296 *omitted by* 1988(F) Sch.4 para. 70 *where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988 *and before the end of* 1993 *in respect of private rented housing*) *applies.*

F1638 Words in s. 294(1) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 8**

F1639 1988(F) s.52 *in respect of valuations falling to be made on or after* 29*July* 1988.

Marginal Citations

M318 Source-1983 Sch.5 5A(1)-(9), 5B, 5C; 1986 Sch.9 1(2), (7)

295 Valuation of interests in land for purposes of section 294(1)(b).

M319(1) For the purposes of section 294(1)(b), the value of the interests in land held by a company immediately after the issue of the shares in question ("the original interests") shall be adjusted by—

(a) adding—

(i) the cost of any interests in land subsequently acquired by the company ("the later interests"); and

(ii) any expenditure (whenever payable) incurred by the company wholly and exclusively in enhancing the value of any of the original or later interests;

(b) deducting any consideration received by the company on the disposal of any of the original or later interests or on the grant by the company of any interest in land out of any of those interests;

(c) deducting any consideration otherwise derived by the company from its ownership of any of the original or later interests.

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(2) Any sum which is received by a company by way of rent, or which is attributable to the use of any premises by the company, shall be disregarded for the purposes of subsection (1)(c) above.

(3) For the purposes of this section—

(a) the cost of an interest in land acquired by a company shall be taken to be the amount or value of the consideration given by the company, or on its behalf, wholly and exclusively for the acquisition of the interest;

(b) consideration shall be brought into account without any discount for the postponement of the right to receive any part of it; and

(c) the grant of an interest in land out of any of the original interests shall be treated as a disposal of the original interest in question.

(4) Where—

(a) the interest of a company as lessee under a lease ("the lease") falls to be valued at any time for the purposes of section 294 or the cost of acquiring that interest falls to be calculated for the purposes of this section; and

(b) the aggregate amount of the rent payable by the lessee under the lease before the end of the relevant period exceeds that which would be so payable under a lease of the premises at a full market rent (but otherwise on the same terms and conditions as the lease);

the value of the company's interest at that time shall be calculated on the assumption that the aggregate amount payable as mentioned in paragraph (b) above is a nominal amount and, where the interest was acquired after the issue of the shares in question, it shall be assumed that the company paid the appropriate premium when acquiring the interest.

(5) In determining, for the purposes of this section, the consideration for the disposal or acquisition of an interest in land, no account shall be taken in the first instance of any contingent liability assumed by the company or by any other person.

(6) If it is subsequently shown to the satisfaction of the Board that a contingent liability which was not taken into account in determining the consideration for a disposal or acquisition has become enforceable and is being or had been enforced, such adjustment, whether by way of a further assessment or the discharge or repayment of tax or otherwise, shall be made as is required in consequence.

(7) Where the relief obtainable under subsection (6) above requires a discharge or repayment of tax, it shall be given on a claim to the Board and such a claim may be made at any time.

Modifications etc. (not altering text)

C210 Ss.294-296*omitted by* 1988(F) Sch.4 para.8*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M319 Source-1983 Sch.5 5A(1)-(9), 5B, 5C; 1986 Sch.9 1(2), 7

296 Section 294 disapplied where amounts raised total £50,000 or less. [F1640]

[M320](1) Where a company raises any amount through the issue of eligible shares, section 294—

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(a) shall not have effect to deny relief in relation to those shares if the aggregate of that amount and of all other amounts (if any) so raised within the period of 12 months ending with the date of that issue does not exceed £50,000; and

(b) where that aggregate exceeds £50,000, shall have effect to deny relief only in relation to the excess.

(2) Where—

(a) at any time within the relevant period, the company in question or any of its subsidiaries carries on any trade or part of a trade in partnership, or as a party to a joint venture, with one or more other persons; and

(b) that other person, or at least one of those other persons, is a company;

each reference to £50,000 in subsection (1)(a) and (b) above shall have effect as if it were a reference to—

$$\frac{£50{,}000}{1+A}$$

where A is the total number of companies (apart from the company in question or any of its subsidiaries) which are members of any such partnership or parties to any such joint venture during the relevant period.

(3) Where section 294, as read with this section, requires a restriction to be placed on the relief given on claims in respect of shares issued to two or more individuals, the available relief shall be divided between them in proportion to the amounts which have been respectively subscribed by them for the shares to which their claims relate and which would, apart from the restrictions, be eligible for the relief.

(4) A claimant who is dissatisfied with the manner in which the available relief is divided under this section between him and any other claimant or claimants may apply to the appropriate Commissioners who shall, after giving the other claimant or claimants an opportunity to appear and be heard or to make representations in writing, determine the question for all the claimants in the same way as an appeal.

(5) In this section "the appropriate Commissioners" means—

(a) in a case where the same body of General Commissioners has jurisdiction with respect to all the claimants, those Commissioners, unless all the claimants agree that the question should be determined by the Special Commissioners;

(b) in a case where different bodies of General Commissioners have jurisdiction with respect to the claimants, such of those bodies as the Board may direct, unless all the claimants agree that the question should be determined by the Special Commissioners;

(c) in any other case, the Special Commissioners.

(6) F1641 . . . . . .

Textual Amendments

F1640 Ss.294-296 *omitted by* 1988(F) Sch.4 para.8 *where* s.50 (*changes applicable in respect of shares issued on or after* 29 *July* 1988 *and before the end of* 1993 *in respect of private rented housing*) *applies.*

F1641 S. 296(6) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 9, **Sch. 26 Pt. 5(17)**

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Marginal Citations

M320 Source-1983 Sch.5 5A(1)-(9), 5B, 5C; 1986 Sch.9 1(2), 7

297 Qualifying trades. F1642

(1) M321F1643. . . A trade is a qualifying trade if it complies with the requirements of this section.

(2) M322Subject to subsection (9) below, the trade must not at any time in the relevant period consist of one or more of the following activities if that activity amounts, or those activities when taken together amount, to a substantial part of the trade—

(a) dealing in **[**F1644land, in commodities or futures or in shares, securities or other financial instruments**]**;

(b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;

(c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;

(d) F1645. . . . . .

(e) leasing (including letting ships on charter or other assets on hire) or receiving royalties or licence fees;

(f) providing legal or accountancy services;

[F1646(fa) property development;

(fb) farming or market gardening;

(fc) holding, managing or occupying woodlands, any other forestry activities or timber production;

(fd) operating or managing hotels or comparable establishments or managing property used as an hotel or comparable establishment;

(fe) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home;**]**

(g) providing services or facilities for any trade carried on by another person **[**F1647(other than a company of which the company providing the services or facilities is the subsidiary)**]** which consists to any substantial extent of activities within any of paragraphs (a) to **[**F1648(fe)**]** above and in which a controlling interest is held by a person who also has a controlling interest in the trade carried on by the company;

(h) F1649. . . . . .

(j) F1649. . . . . .

(3) M323For the purposes of subsection (2)(b) above—

(a) a trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption;

(b) a trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption;

(c) a trade is not an ordinary trade of wholesale or retail distribution if—

(i) it consists to a substantial extent of dealing in goods of a kind which are collected or held as an investment or of that activity and any other activity of a kind falling within subsection **[**F1650(2)(a) to (g)**]** above, taken together; and

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(ii) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value; and

(d) in determining whether a trade is an ordinary trade of wholesale or retail distribution regard shall be had to the extent to which it has the following features, that is to say—

(i) the goods are bought by the trader in quantities larger than those in which he sells them;

(ii) the goods are bought and sold by the trader in different markets;

(iii) the trader employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, in addition to any remuneration paid to any person connected with it;

(iv) there are purchases or sales from or to persons who are connected with the trader;

(v) purchases are matched with forward sales or vice versa;

(vi) the goods are held by the trader for longer than is normal for goods of the kind in question;

(vii) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;

(viii) the trader does not take physical possession of the goods;

those features in sub-paragraphs (i) to (iii) being regarded as indications that the trade is such an ordinary trade and those in sub-paragraphs (iv) to (viii) being regarded as indications of the contrary.

[[F1651](3A) For the purposes of this Chapter the activities of a person shall not be taken to fall within paragraph (fd) or (fe) of subsection (2) above except where that person has an estate or interest in, or is in occupation of, the hotels or comparable establishments or, as the case may be, the nursing homes or residential care homes.**]**

[[F1652](4) A trade shall not be treated as failing to comply with this section by reason only that at some time in the relevant period it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(5) For this purpose an intangible asset is a "relevant intangible asset" if the whole or greater part (in terms of value) of it has been created—

(a) by the company carrying on the trade, or

(b) by a company which at all times during which it created the intangible asset was—

(i) the parent company of the company carrying on the trade, or

(ii) a qualifying subsidiary of that parent company.

(5A) For the purposes of subsection (5) above—

(a) in the case of an intangible asset that is intellectual property, references to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others);

(b) "parent company" means a company that—

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(i) has one or more 51% subsidiaries, but

(ii) is not itself a 51% subsidiary of another company; and

(c) a subsidiary of the parent company referred to in subsection (5)(b) above is a "qualifying subsidiary" of that company if it is a subsidiary of a kind which the parent company may hold by virtue of section 308.

For the purposes of paragraph (c) above, section 308 shall have effect as if the references in that section to the qualifying company were to that parent company.

(5B) For the purposes of subsections (4) to (5A) above "intangible asset" means any asset which falls to be treated as an intangible asset in accordance with **[**F1653generally accepted accounting practice**]**.

F1654 . . . . . .

(5C) In subsection (5A)(a) above "intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a) above.**]**

(6) M324A trade shall not be treated as failing to comply with this section by reason only of its consisting of letting ships, other than **[**F1655offshore installations**]** or pleasure craft, on charter if—

(a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom; and

(c) throughout the relevant period the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in subsection (7) below are satisfied in relation to every letting on charter by the company;

but where any of the requirements mentioned in paragraphs (a) to (d) above are not satisfied in relation to any lettings of such ships, the trade shall not thereby be treated as failing to comply with this section if those lettings and any other activity of a kind falling within subsection **[**F1650(2)(a) to (g)**]** above do not, when taken together, amount to a substantial part of the trade.

(7) The conditions are that—

(a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the lease or otherwise) for extending it beyond that period otherwise than at the option of the lessee;

(b) during the period of the letting there is no provision in force (whether made in the lease or otherwise) for the grant of a new letting to end, otherwise than at the option of the lessee, more than 12 months after that provision is made;

(c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;

(d) under the terms of the charter the company is responsible as principal—

(i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and

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(ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period; and

(e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) above on behalf of the company;

but this subsection shall have effect, in relation to any letting between the company in question and its subsidiary, or between it and another company of which it is a subsidiary or between it and a company which is a subsidiary of the same company of which it is a subsidiary, as if paragraph (c) were omitted.

(8) [M325]The trade must, during the relevant period, be conducted on a commercial basis and with a view to the realisation of profits.

(9) [F1656]. . . . . .

Textual Amendments

F1642 Ss.297-298 *omitted by* 1988(F) Sch.4 para.8 *where* s.50 (*changes applicable in respect of shares issued on or after* 29 *July* 1988 *and before the end of* 1993 *in respect of private rented housing*) *applies.*

F1643 Words in s. 297(1) repealed (with effect as mentioned in s. 74(3), Sch. 27 Pt. 3(14) Note of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para 10, **Sch. 27 Pt. 3(14)**

F1644 Words in s. 297(2)(a) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 10(b)(i)**

F1645 S. 297(2)(d) repealed (with effect as mentioned in Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 5(a), **Sch. 33 Pt. 2(3)**, Note 6

F1646 S. 297(2)(fa)-(fe) inserted (with effect as mentioned in Sch. 12 para. 5(1) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 1(1)**

F1647 Words in s. 297(2)(g) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 10(b)(ii)**

F1648 Word in s. 297(2)(g) substituted (with effect as mentioned in Sch. 12 para. 5(1) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 1(2)**

F1649 S. 297(2)(h)(j) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 10(b)(iii), **Sch. 26 Pt. 5(17)**

F1650 Words in s. 297(3)(c)(i)(6) substituted (with effect as mentioned in Sch. 8 para. 1 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 8 para. 5**

F1651 S. 297(3A) inserted (with effect as mentioned in Sch. 12 para. 5(1) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 1(3)**

F1652 S. 297(4)-(5C) substituted for s. 297(4)(5) (with effect as mentioned in Sch. 17 para. 13(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 13(1)**

F1653 Words in s. 297(5B) substituted (24.7.2002) by Finance Act 2002 (c. 23), **s. 103(4)(a)**

F1654 Words in s. 297(5B) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

F1655 Words in s. 297(6) substituted (with effect in accordance with Sch. 27 para. 4(5) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 4(3)** (with Sch. 27 para. 4(6))

F1656 S. 297(9) repealed (with effect as mentioned in Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 5(b), **Sch. 33 Pt. 2(3)**, Note 6

Marginal Citations

M321 Source-1983 Sch.5 6(1)

M322 Source-1983 Sch.5 6(2); 1986 Sch.9 8(2)

M323 Source-1983 Sch.5 6(4); 1986 Sch.9 8(4); 1981 s.56(3), Sch.11

M324 Source-1983 Sch.5 6(2B), (2C); 1984 s.37(2); 1986 Sch.9 8(3)

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M325 Source-1983 Sch.5 6(3)

298 Provisions supplementary to sections 293 and 297. F1657

(1) M326For the purposes of **[**F1658section 297**]** a person has a controlling interest in a trade—

(a) in the case of a trade carried on by a company, if—

(i) he controls the company;

(ii) the company is a close company and he or an associate of his is a director of the company and the beneficial owner of, or able directly or through the medium of other companies or by any other indirect means to control, more than 30 per cent. of the ordinary share capital of the company; or

(iii) not less than half of the trade could in accordance with section 344(2) be regarded as belonging to him;

(b) in any other case, if he is entitled to not less than half of the assets used for, or the income arising from, the trade.

(2) For the purposes of subsection (1) above, there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(3) References in this section and section 297 to a trade shall be construed without regard to so much of the definition of "trade" in section 832(1) as relates to adventures or concerns in the nature of trade; but the foregoing provisions do not affect the construction of references in section 297(2)(g) or subsection (1) above to a trade carried on by a person other than the company and those references shall be construed as including a reference to any business, profession or vocation.

[F1659(4) The Treasury may by order amend **[**F1660sections 293 and 297**]** and this section in such manner as they consider expedient**]**.

(5) M327In section 297—

"film" means an original master negative of a film, an original master film disc or an original master film tape;

[F1661"nursing home" means any establishment which exists wholly or mainly for the provision of nursing care for persons suffering from sickness, injury or infirmity or for women who are pregnant or have given birth to children;**]**

F1662 . . . . . .

"pleasure craft" means any ship of a kind primarily used for sport or recreation;

F1663 . . . . . .

[F1664"property development" means the development of land—

(a) by a company which has, or at any time has had, an interest in the land, and

(b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed;

"residential care home" means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of old age, mental or physical disabilities, past or present dependence on alcohol or drugs or any past illnesses or past or present mental disorders;**]** and

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"sound recording" means, in relation to a film, its sound track, original master audio disc or, as the case may be, original master audio tape,

[F1665and section 312(1A)(b) shall apply to determine the relevant period for the purposes of that section**]**.

[F1666(5A) References in this section, in relation to an hotel, to a comparable establishment are references to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (whether with or without catering services).

(5B) Subject to subsection (5C) below, the reference in subsection (5) above to an interest in land is a reference to—

(a) any estate, interest or right in or over land, including any right affecting the use or disposition of land; or

(b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant the estate, interest or right.

(5C) References in this section to an interest in land do not include references to—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land; or

(b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.**]**

(6) F1667. . . . . .

(7) F1667. . . . . .

(8) F1667. . . . . .

Textual Amendments

F1657 Ss.297-298 *omitted by* 1988(F) Sch.4 para.8 *where* s.50 (*changes applicable in respect of shares issued on or after* 29 *July* 1988 *and before the end of* 1993 *in respect of private rented housing*) *applies.*

F1658 Words in s. 298(1) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 11**

F1659 S. 298(4) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 11(a)**

F1660 Words in s. 298(4) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 70(2)** (with s. 70(4))

F1661 S. 298(5): definition of "nursing home" inserted (with effect as mentioned in Sch. 12 para. 5(1) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 2(1)**

F1662 S. 298(5): definition of "oil rig" repealed (with effect in accordance with Sch. 27 para. 4(5) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 27 para. 4(4), **Sch. 42 Pt. 2(19)**, Note 1 (with Sch. 27 para. 4(6))

F1663 S. 298(5): definition of "property development" repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 11(b), **Sch. 26 Pt. 5(17)**

F1664 S. 298(5): definitions of "property development" and "residential care home" inserted (with effect as mentioned in Sch. 12 para. 5(1) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 2(2)**

F1665 Words in s. 298(5) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 11(c)**

F1666 S. 298(5A)-(5C) inserted (with effect as mentioned in Sch. 12 para. 5(1) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 2(3)**

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F1667 S. 298(6)-(8) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 11(d), **Sch. 26 Pt. 5(17)**

Marginal Citations

M326 Source-1981 s.56(8)-(10); 1983 Sch.5 5(9), 6(2), (3), 6(5)-(7); 1986 Sch.9 1(2), 8(4)

M327 Source-1983 Sch.5 6(2B), (10); 1984 s.37(2); 1985 s.44(5); 1986 Sch.9 4

[F1668F1669299 Disposal of shares.

(1) **[**F1670Subject to section 304(1), where an individual makes, before the end of the relevant period, any disposal of eligible shares to which relief is attributable**]**, then—

(a) if the disposal is made otherwise than by way of a bargain made at arm's length, **[**F1671the relief**]** attributable to those shares shall be withdrawn, and

(b) in the case of any disposal made by way of a bargain made at arm's length—

(i) if, apart from this subsection, the relief attributable to those shares is greater than the amount mentioned in subsection (2) below, it shall be reduced by that amount, and

(ii) if sub-paragraph (i) above does not apply, **[**F1671the relief**]** attributable to those shares shall be withdrawn.

(2) The amount referred to in subsection (1) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount or value of the consideration which the individual receives for the shares.

(3) Where, in relation to **[**F1672any issue of eligible shares held by any individual**]**, the disposal referred to in subsection (1) above is a disposal of part of **[**F1673the issue**]**, that subsection shall apply to the relief that was attributable to that part.

(4) Where an individual's liability to income tax has been reduced in any year of assessment under section 289A in respect of any issue of **[**F1674eligible**]** shares **[**F1675issued in that year (or treated by section 289B(5) as so issued)**]** and the amount of the reduction ("A") is less than the amount ("B") which is equal to tax at the lower rate for that year on the amount subscribed for the issue, subsection (2) above shall have effect as if the amount or value referred to in that subsection were reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

(5) Where an option, the exercise of which would bind the grantor to purchase any shares, is granted to an individual during the relevant period, any relief attributable to the shares to which the option relates shall be withdrawn.

[F1676(5A) The shares to which such an option relates shall be taken to be those which, if—

(a) the option were exercised immediately after the grant, and

(b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,

would be treated for the purposes of this section as disposed of in pursuance of the option.**]**

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[F1677(6) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated for the purposes of this section as relating to those acquired on an earlier day rather than to those acquired on a later day.

(6A) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated for the purposes of this section as disposed of in the following order, namely—

(a) first any to which neither relief under this Chapter nor deferral relief is attributable;

(b) next any to which deferral relief, but not relief under this Chapter, is attributable;

(c) next any to which relief under this Chapter, but not deferral relief, is attributable; and

(d) finally any to which both relief under this Chapter and deferral relief are attributable;

and in this subsection and subsection (6C) below "deferral relief" has the same meaning as in Schedule 5B to the 1992 Act.

(6B) Any shares falling within paragraph (c) or (d) of subsection (6A) above which are treated by section 289B(5) as issued on an earlier day shall be treated as disposed of before any other shares falling within that paragraph.

(6C) The following, namely—

(a) any shares to which relief under this Chapter is attributable and which were transferred to an individual as mentioned in section 304, and

(b) any shares to which deferral relief, but not relief under this Chapter, is attributable and which were acquired by an individual on a disposal to which section 58 of the 1992 Act applies,

shall be treated for the purposes of subsections (6) and (6A) above as acquired by him on the day on which they were issued.

(6D) In a case to which section 127 of the 1992 Act applies **[**F1678(including a case where that section applies by virtue of any enactment relating to chargeable gains)**]**, shares comprised in the new holding shall be treated for the purposes of subsections (6) and (6A) above as acquired when the original shares were acquired.

In this subsection "new holding" and "original shares"**[**F1679have the same meaning as in section 127 of the 1992 Act (or, as the case may be, that section as applied by virtue of the enactment concerned)**].]**

(7) F1680. . . . . .

(8) For the purposes of this section—

(a) F1681. . . . . .

(b) references to a disposal of shares include references to the grant of an option the exercise of which would bind the grantor to sell the shares, and

(c) section 312(1A)(a) applies to determine the relevant period.**]**

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Textual Amendments

F1668 S. 299 substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 12**

F1669 S. 299 (as it has effect in relation to shares issued before 1st January 1994) amended (with effect as mentioned in Sch. 13 para. 39(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 39(1)(2)**; and s. 299 (as it applies to shares issued before 1st January 1994) further amended (with effect as mentioned in Sch. 9 paras. 7, 8(1) of the further amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(2)**

F1670 Words in s. 299(1) substituted (with effect as mentioned in s. 74(3), Sch. 13 para. 12(8) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(1)(a)**

F1671 Words in s. 299(1)(a)(b)(ii) substituted (with effect as mentioned in s. 74(3), Sch. 13 para. 12(8) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(1)(b)**

F1672 Words in s. 299(3) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(2)(a)**

F1673 Words in s. 299(3) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(2)(b)**

F1674 Word in s. 299(4) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(3)(a)**

F1675 Words in s. 299(4) inserted (with effect as mentioned in s. 74(3), Sch. 13 para. 12(8) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(3)(b)**

F1676 S. 299(5A) inserted (with effect as mentioned in s. 74(3), Sch. 13 para. 12(9) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(4)**

F1677 S. 299(6)-(6D) substituted for s. 299(6) (with effect as mentioned in s. 74(3), Sch. 13 para. 12(8) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 12(5)**

F1678 Words in s. 299(6D) (as s.299 applies to shares issued after 31.12.1993) substituted (with effect as mentioned in Sch. 9 paras. 7, 8(1) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(2)**

F1679 Words in s. 299(6D) (as s.299 applies to shares issued after 31.12.1993) substituted (with effect as mentioned in Sch. 9 paras. 7, 8(1) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(2)**

F1680 S. 299(7) repealed (with effect as mentioned in s. 74(3), Sch. 13 para. 12(8), Sch. 27 Pt. 3(14) Note 2 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 12(6), **Sch. 27 Pt. 3(14)**

F1681 S. 299(8)(a) repealed (with effect as mentioned in s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 12(6), **Sch. 27 Pt. 3(14)**

Modifications etc. (not altering text)

C211 S. 299 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 150(4)**, 289 (with ss. 60, 101(1), 171, 201(3)).

[F1682 299A Loan linked investments.

(1) [F1683 An individual is not eligible for relief in respect of any shares in a company if]—

(a) there is a loan made by any person, at any time in the relevant period, to that individual or any associate of his; and

(b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not subscribed for those shares or had not been proposing to do so.

(2) References in this section to the making by any person of a loan to any individual or an associate of his include references—

(a) to the giving by that person of any credit to that individual or any associate of his; and

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(b) to the assignment or assignation to that person of any debt due from that individual or any associate of his;

and the references in section 307(6)(ca) to the making of a loan shall be construed accordingly.

[Section 312(1A)(a) applies to determine the relevant period for the purposes of this [F1684](3) section.**]]**

Textual Amendments

F1682 S. 299A inserted (27.7.1993 with application in relation to any case in which the claim for relief is made on or after 16.3.1993) by 1993 c. 34, **s. 111(1)(4)**

F1683 Words in s. 299A(1) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 13(a)**

F1684 S. 299A(3) Inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 13(b)**

[F1685299B Pre-arranged exits.

(1) An individual is not eligible for relief in respect of any shares in a company if the relevant arrangements include—

(a) arrangements with a view to the subsequent repurchase, exchange or other disposal of those shares or of other shares in or securities of the same company;

(b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;

(c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;

(d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.

(2) The arrangements referred to in subsection (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in section 304A(1).

(3) The arrangements referred to in subsection (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—

(a) the relevant arrangements include arrangements for the company to be wound up; or

(b) the company is wound up otherwise than for bona fide commercial reasons.

(4) The arrangements referred to in subsection (1)(d) above do not include any arrangements which are confined to the provision—

(a) for the company itself, or

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(b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,

of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.

(5) The reference in subsection (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 in that section.

(6) In this section "the relevant arrangements" means—

(a) the arrangements under which the shares are issued to the individual; and

(b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

(7) F1686 . . . . . .]

Textual Amendments

F1685 S. 299B inserted (with effect in accordance with s. 71(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 71(1)**

F1686 S. 299B(7) repealed (with effect in accordance with Sch. 17 para. 14(2)(3) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(5)**, Note 3

300 Value received from company.

[F1687[F1688(1) Subsection (1A) below applies where an individual who subscribes for eligible shares in a company receives any value [F1689(other than insignificant value)] from the company at any time in the [F1690period of restriction].]

(1A) Where any relief is attributable to those shares, then (unless the amount of the relief has already been reduced on account of the value received)—

(a) if it is greater than the amount mentioned in subsection (1B) below, it shall be reduced by that amount, and

(b) if paragraph (a) above does not apply, the relief shall be withdrawn.

[F1691(1AA) This section is subject to section 300A.]

(1B) The amount referred to in subsection (1A) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount of the value received; and section 299(4) above applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.

[F1692(1BA) Where—

(a) an individual subscribes for two or more issues of eligible shares in a company, being issues comprising shares in respect of which the individual obtains relief, and

(b) the individual receives any value from the company at any time in the periods of restriction relating to the shares comprised in two or more of those issues,

this section has effect in relation to the shares comprised in each of the issues referred to in paragraph (b) above as if the amount of the value received were reduced by multiplying it by the fraction specified in subsection (1BB) below.

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(1BB) The fraction is—

$$\frac{A}{B}$$

where—

A is the amount subscribed by the individual for the eligible shares comprised in the issue in question, and

B is the aggregate of that amount and the corresponding amount or amounts for eligible shares comprised in the other issue or issues.

(1BC) Where—

(a) an individual who subscribes for eligible shares in a company receives value ("the relevant receipt") from the company during the period of restriction,

(b) the individual has received from the company one or more receipts of insignificant value at a time or times—

(i) during that period, but

(ii) not later than the time of the relevant receipt, and

(c) the aggregate amount of the value of the receipts within paragraphs (a) and (b) above is not an amount of insignificant value,

the individual shall be treated for the purposes of this Chapter as if the relevant receipt had been a receipt of an amount of value equal to the aggregate amount.

For this purpose a receipt does not fall within paragraph (b) above if it has previously been aggregated under this subsection.**]**

[[F1693](1C) **[**[F1694]Any reference in subsection (1), (1BA) or (1BC) above to the receipt of value (however expressed) from a company includes a reference**]** to the receipt of value from a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the time when the individual concerned receives the value from him; and other references to the company in this section and section 301 shall be read accordingly.**]**

(1D) Notwithstanding anything in subsection (2) below, for the purposes of this section an individual is not to be treated as receiving value from a company by reason only of the payment to him, or any associate of his, of any remuneration for services rendered to the company as a director if the remuneration is reasonable remuneration.

(1E) Section 291(4) applies for the purposes of subsection (1D) above as it applies for the purposes of section 291A, and the reference in subsection (1D) above to the payment of remuneration includes the provision of any benefit or facility**]**

(2) [M328]For the purposes of this section an individual receives value from the company if the company—

(a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company's share capital or any security on its cancellation or extinguishment;

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[F1695(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares in respect of which the relief is claimed, any debt owed to the individual other than a debt which was incurred by the company—

(a) on or after the date of issue of those shares; and

(b) otherwise than in consideration of the extinguishment of a debt incurred before that date;**]**

(c) makes to the individual any payment for giving up his right to any debt (other than a debt in respect of a payment of the kind mentioned in section **[**F1696291A(3)(a) or (f)**]** or an ordinary trade debt) on its extinguishment;

(d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;

(e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares in respect of which relief is claimed;

(f) provides a benefit or facility for the individual;

(g) transfers an asset to the individual for no consideration or for consideration less than its market value or acquires an asset from him for consideration exceeding its market value; or

(h) makes to him any other payment except a payment of the kind mentioned in **[**F1697any of the paragraphs of section 291A(3)**]** or a payment in discharge of an ordinary trade debt.

(3) For the purposes of this section an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6).

(4) The value received by an individual is—

(a) in a case within paragraph (a), (b) or (c) of subsection (2) above, the amount **[**F1698received**]** by the individual or, if greater, the market value of the shares, securities or debt in question;

(b) in a case within paragraph (d) of that subsection, the amount of the liability;

(c) in a case within paragraph (e) of that subsection, the amount of the loan or advance reduced by the amount of any repayment made before the issue of the shares in respect of which relief is claimed;

(d) in a case within paragraph (f) of that subsection, the cost to the company of providing the benefit or facility less any consideration given for it by the individual;

(e) in a case within paragraph (g) of that subsection, the difference between the market value of the asset and the consideration (if any) given for it;

(f) in a case within paragraph (h) of that subsection, the amount of the payment; and

(g) in a case within subsection (3) above, the amount of the payment or, as the case may be, the market value of the asset.

(5) M329For the purposes of this section an individual also receives value from the company if any person who would, for the purposes of section 291, be treated as connected with the company—

(a) purchases any of its share capital or securities which belong to the individual; or

(b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities;

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and the value received by the individual is the amount **[**F1698received**]** by the individual or, if greater, the market value of the shares or securities in question.

[F1699(6) Where by reason of an individual's disposal of shares in a company any relief attributable to those shares is withdrawn or reduced under section 299, the individual shall not be treated for the purposes of this section as receiving value from the company in respect of the disposal.**]**

Textual Amendments

F1687 S. 300(1)-(1E) substituted for s. 300(1) (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 14(a)**

F1688 S. 300(1) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 13(1)**

F1689 Words in s. 300(1) inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 15(1)**

F1690 Words in s. 300(1) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 15(2)**

F1691 S. 300(1A) inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 15(3)**

F1692 S. 300(1BA)-(1BC) inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 15(4)**

F1693 S. 300(1C) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 13(2)**

F1694 Words in s. 300(1C) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 15(5)**

F1695 S. 300(2)(b) substituted (with effect in accordance with Sch. 18 para. 6(2)(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 6(1)**

F1696 Words in s. 300(2)(c) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 14(b)(i)**

F1697 Words in s. 300(2)(h) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 14(b)(ii)**

F1698 Words in s. 300(4)(a)(5) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 15(6)**

F1699 S. 300(6) inserted (with effect as mentioned in s. 74(3), Sch. 13 para. 13(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 13(3)**

Marginal Citations

M328 Source-1983 Sch.5 8(2); 1981 s.58(2)-(4); 1986 Sch.9 10(3)

M329 Source-1983 Sch.5 8(3); 1983 (No.2) Sch.1 5

[F1700300A Receipt of replacement value

(1) Where—

(a) any relief attributable to any eligible shares comprised in an issue of shares subscribed for by an individual ("the individual") would, in the absence of this section, be reduced or withdrawn under section 300 by reason of a receipt of value within subsection (2) or (5) of that section ("the original value"),

(b) the original supplier receives value ("the replacement value") from the original recipient by virtue of a qualifying receipt, and

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(c) the amount of the replacement value is not less than the amount of the original value,

the receipt of the original value shall be disregarded for the purposes of section 300.

This is subject to subsections (7) and (8) below.

(2) For the purposes of this section—

"the original recipient" means the person who receives the original value, and

"the original supplier" means the person from whom that value was received.

(3) Where the amount of the original value is, by virtue of subsection (1BA) of section 300, treated as reduced for the purposes of that section as it applies in relation to the eligible shares in question, the reference in subsection (1)(c) above to the amount of the original value shall be read as a reference to the amount of that value disregarding the reduction.

(4) A receipt of the replacement value is a qualifying receipt for the purposes of subsection (1) above if it arises—

(a) by reason of the original recipient doing one or more of the following—

(i) making a payment to the original supplier, other than a payment which falls within paragraph (c) below or to which subsection (5) below applies;

(ii) acquiring any asset from the original supplier for a consideration the amount or value of which is more than the market value of the asset;

(iii) disposing of any asset to the original supplier for no consideration or for a consideration the amount or value of which is less than the market value of the asset;

(b) where the receipt of the original value was within section 300(2)(d), by reason of an event the effect of which is to reverse the event which constituted the receipt of the original value; or

(c) where the receipt of the original value was within section 300(5), by reason of the original recipient repurchasing the share capital or securities in question, or (as the case may be) reacquiring the right in question, for a consideration the amount or value of which is not less than the amount of the original value.

(5) This subsection applies to—

(a) any payment for any goods, services or facilities, provided (whether in the course of a trade or otherwise) by—

(i) the original supplier, or

(ii) any other person who, at any time in the period of restriction, is an associate of, or connected with, that supplier (whether or not he is such an associate, or so connected, at the material time),

which is reasonable in relation to the market value of those goods, services or facilities;

(b) any payment of any interest which represents no more than a reasonable commercial return on money lent to—

(i) the original recipient, or

(ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time);

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(c) any payment for the acquisition of an asset which does not exceed its market value;

(d) any payment, as rent for any property occupied by—

(i) the original recipient, or

(ii) any person who, at any time in the period of restriction, is an associate of his (whether or not he is such an associate at the material time),

of an amount not exceeding a reasonable and commercial rent for the property;

(e) any payment in discharge of an ordinary trade debt; and

(f) any payment for shares in or securities of any company in circumstances that do not fall within subsection (4)(a)(ii) above.

(6) For the purposes of this section, the amount of the replacement value is—

(a) in a case within paragraph (a) of subsection (4) above, the aggregate of—

(i) the amount of any payment within sub-paragraph (i) of that paragraph, and

(ii) the difference between the market value of any asset to which sub-paragraph (ii) or (iii) of that paragraph applies and the amount or value of the consideration (if any) received for it,

(b) in a case within subsection (4)(b) above, the same as the amount of the original value, and

(c) in a case within subsection (4)(c) above, the amount or value of the consideration received by the original supplier,

and section 300(4) and (5) shall apply for the purposes of determining the amount of the original value.

(7) The receipt of the replacement value by the original supplier shall be disregarded for the purposes of this section, as it applies in relation to the eligible shares, to the extent to which that receipt has previously been set (under this section) against any receipts of value which are, in consequence, disregarded for the purposes of section 300 as that section applies in relation to those shares or any other shares subscribed for by the individual.

(8) The receipt of the replacement value by the original supplier ("the event") shall be disregarded for the purposes of this section if—

(a) the event occurs before the start of the period of restriction, or

(b) in a case where the event occurs after the time the original recipient receives the original value, it does not occur as soon after that time as is reasonably practicable in the circumstances, or

(c) where an appeal has been brought by the individual against an assessment to withdraw or reduce any relief attributable to the eligible shares by reason of the receipt of the original value, the event occurs more than 60 days after the amount of relief which falls to be withdrawn has been finally determined.

But nothing in this section requires the replacement value to be received after the original value.

(9) Subsection (10) below applies where—

(a) the receipt of the replacement value by the original supplier is a qualifying receipt (for the purposes of subsection (1) above) in consequence of which any receipts of value are disregarded for the purposes of section 300 as that section

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applies in relation to the shares in question or any other shares subscribed for by the individual in question, and

(b) the event which gives rise to the receipt is (or includes) a subscription for shares by—

(i) the individual, or

(ii) any person who, at any time in the period of restriction, is an associate of his, whether or not he is such an associate at the material time.

(10) Where this subsection applies, the person who subscribes for the shares as mentioned in subsection (9)(b) above shall not—

(a) be eligible for any relief under this Chapter in relation to those shares or any other shares in the same issue, or

(b) by virtue of his subscription for those shares or any other shares in the same issue, be treated as making a qualifying investment for the purposes of Schedule 5B to the 1992 Act (enterprise investment scheme: reinvestment).

(11) In this section—

(a) any reference to a payment to a person (however expressed) includes a reference to a payment made to him indirectly or to his order or for his benefit, and

(b) references to "the period of restriction" are to the period of restriction relating to the shares mentioned in subsection (1)(a) above.**]**

Textual Amendments

F1700 S. 300A inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 16**

301 Provisions supplementary to section 300.

(1) [F1701] . . . . . .

(2) [F1701] . . . . . .

(3) [M330] For the purposes of section 300(2)(d) a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(4) For the purposes of section 300(2)(e) there shall be treated as if it were a loan made by the company to the individual—

(a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and

(b) the amount of any debt due from the individual to a third person which has been assigned to the company.

[[F1702] (4A) For the purposes of this section and **[**[F1703] sections 300 and 300A**]**, an individual who acquires any eligible shares on such a transfer as is mentioned in section 304 shall be treated as if he subscribed for those shares.**]**

(5) In this section and **[**[F1703] sections 300 and 300A**]**, "an ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business where **[**[F1704] any credit**]** given does not exceed six months and is not longer than that normally given to the customers of the person carrying on the trade or business.

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(6) In this section and section 300—

(a) any reference to a payment or transfer to an individual includes a reference to a payment or transfer made to him indirectly or to his order or for his benefit; and

(b) any reference to an individual includes a reference to an associate of his and any reference to the company includes a reference to any person connected with the company.

[F1705(6A) Section 312(1A)(a) applies to determine the relevant period for the purposes of section 300.**]**

(7) F1706. . . . . .

Textual Amendments

F1701 S. 301(1)(2) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 15(a), **Sch. 26 Pt. 5(17)**

F1702 S. 301(4A) inserted (with effect as mentioned in s. 74(3), Sch. 13 para. 14(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 14(1)**

F1703 Words in s. 301(4A)(5) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 17**

F1704 Words in s. 301(5) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 14(2)**

F1705 S. 301(6A) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 15(b)**

F1706 S. 301(7) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 15(c), **Sch. 26 Pt. 5(17)**

Marginal Citations

M330 Source-1981 s.58(6)-(9); 1983 Sch.5 8(2); 1986 Sch.9 10(3); 1987 Sch.15 14(2)

[F1707301A Receipts of insignificant value: supplementary provision

(1) In this section and section 300 references to a receipt of insignificant value (however expressed) are references to a receipt of an amount of insignificant value.

This is subject to subsection (3) below.

(2) For the purposes of this section and section 300 "an amount of insignificant value" means an amount of value which—

(a) does not exceed £1,000, or

(b) if it exceeds that amount, is insignificant in relation to the amount subscribed by the individual in question for the eligible shares in question.

(3) For the purposes of section 300, if, at any time in the period—

(a) beginning one year before the eligible shares in question are issued, and

(b) expiring at the end of the issue date,

arrangements are in existence which provide for the individual in question to receive or to be entitled to receive, at any time in the period of restriction relating to those shares, any value from the company that issued those shares, no amount of value received by the individual shall be treated as a receipt of insignificant value.

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(4) For the purposes of this section—

(a) references to the individual include references to any person who, at any time in the period of restriction relating to the shares in question, is an associate of his (whether or not he is such an associate at the material time), and

(b) the reference in subsection (3) above to the company includes a reference to any person who, at any time in the period of restriction relating to the shares in question, is connected with the company (whether or not that person is so connected at the material time).

(5) For the purposes of this section, an individual who acquires any eligible shares on such a transfer as is mentioned in section 304 shall be treated as if he subscribed for those shares.**]**

Textual Amendments

F1707 S. 301A inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 18**

302 Replacement capital.

[F1708M331(1) Any relief attributable to any shares in a company held by an individual shall be withdrawn if—

(a) at any time in the relevant period, the company or any subsidiary—

(i) begins to carry on as its trade or as part of its trade a trade which was previously carried on at any time in that period otherwise than by the company or any subsidiary, or

(ii) acquires the whole, or a greater part, of the assets used for the purposes of a trade previously so carried on, and

(b) subsection (2) below applies in relation to that individual**]**

(2) This subsection applies in relation to an individual where—

(a) any person or group of persons to whom an interest amounting in the aggregate to more than a half share in the trade (as previously carried on) belonged, at any time in the relevant period, is or are a person or group of persons to whom such an interest in the trade carried on by the company belongs or has, at any such time, belonged; or

(b) any person or group of persons who control or, at any such time, have controlled the company is or are a person or group of persons who, at any such time, controlled another company which previously carried on the trade;

and the individual is that person or one of those persons.

(3) **[**F1709Any relief attributable to any shares in a company held by an individual shall be withdrawn if**]**—

(a) the company comes to acquire all of the issued share capital of another company, at any time in the relevant period; and

(b) any person or group of persons who control or have, at any such time, controlled the company is or are a person or group of persons who, at any such time, controlled that other company;

and that individual is that person or one of those persons.

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(4) For the purposes of subsection (2) above—

(a) the persons to whom a trade belongs and, where a trade belongs to two or more persons, their respective shares in that trade shall be determined in accordance with section 344(1)(a) and (b), (2) and (3); and

(b) any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person.

[F1710(4A) In determining whether any relief attributable to any shares in a company (the "issuing company") held by a person who—

(a) is a director of, or of a company which is a partner of, the issuing company or any subsidiary, and

(b) is in receipt of, or entitled to receive, remuneration as such a director falling within section 291A(5)(a),

is to be withdrawn, the second reference in paragraph (b) of each of subsections (2) and (3) above and, so far as relating to those paragraphs, in subsection (1)(a)(i) above to any time in the relevant period shall be read as a reference to any time before the end of the relevant period.

(4B) Section 291(4) applies for the purposes of subsection (4A) above as it applies for the purposes of section 291A, and in subsection (4A) above "remuneration" includes any benefit or facility.**]**

(5) In this section—

[F1711"subsidiary" means a company which would be a subsidiary if the relevant period for the purposes of section 308 were the period referred to in section 312(1A)(a)**]**; and

"trade" includes any business, profession or vocation, and references to a trade previously carried on include references to part of such a trade;

[F1712and section 312(1A)(a) applies to determine the relevant period for the purposes of this section**]**.

Textual Amendments

F1708 S. 302(01) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 16(a)**

F1709 Words in s. 302(3) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 16(b)**

F1710 S. 302(4A)(4B) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 16(c)**

F1711 S. 302(5): definition of "subsidiary" substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 16(d)(i)**

F1712 Words in s. 302(5) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 16(d)(ii)**

Modifications etc. (not altering text)

C212 *See* 1988(F) s.50*and* Sch.4 para.9(1), (2)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C213 *See* 1988(F) s.50*and* Sch.4 para.9(3)*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

C214 *Definition of* "trade"

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omitted by 1988(F) Sch.4 para.9(4)*where* s.50 (*changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing*)*applies.*

Marginal Citations

M331 Source-1983 Sch.5 9; 1983 (No.2) Sch.1 6

303 Value received by persons other than claimants.

[F1713(1) Where, in the case of an issue of eligible shares in a company, any relief is attributable to any shares comprised in the issue which are held by an individual, subsection (1A) below shall apply if at any time in the **[**F1714period of restriction**]** the company or any subsidiary—

(a) repays, redeems or repurchases any of its share capital which belongs to any member other than that individual or a person who falls within subsection (1B) below, or

(b) makes any payment to any such member for giving up his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(1A) The relief—

(a) if it is greater than the amount mentioned in subsection (1C) below, shall be reduced by that amount, and

(b) if paragraph (a) above does not apply, shall be withdrawn.

[F1715(1AA) This section is subject to **[**F1716sections 303AA and 303A**]**.**]**

(1B) A person falls within this subsection if the repayment, redemption, repurchase or payment in question—

(a) causes any relief attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a), or

(b) gives rise to a qualifying chargeable event (within the meaning of paragraph 14(4) of Schedule 5B to the 1992 Act) in respect of him **[**F1717; or

(c) causes any investment relief **[**F1718attributable to shares held by that person**]** (within the meaning of Schedule 15 to the Finance Act 2000) to be withdrawn or reduced by virtue of paragraph 46 (disposal of shares) or 49(1)(a) (repayment etc. of share capital or securities) of that Schedule;**]**

[F1719or it would have the effect mentioned in paragraph (a), (b) or (c) above were it not a receipt of insignificant value for the purposes of section 300 above, paragraph 13 of Schedule 5B to the 1992 Act or paragraph 47 of the Finance Act 2000, as the case may be**]**.

(1C) The amount referred to in subsection (1A) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given—

(a) where subsection (1) above does not apply in the case of any other individual, on the amount **[**F1720received**]** by the member;

(b) where that subsection also applies in the case of one or more other individuals, on the appropriate fraction of that amount;

and subsection (4) of section 299 applies for the purposes of this subsection as it applies for the purposes of subsection (2) of that section.

(1D) In subsection (1C) above "the appropriate fraction" is—

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$$\frac{A}{B}$$

where—

A is the amount subscribed by the individual for eligible shares which are comprised in the issue and to which relief is or, but for subsection (1A)(b) above, would be attributable;

B is the aggregate of that amount and the amount or amounts subscribed by the other individual or individuals for such shares.

(2) Where the repayment, redemption, repurchase or payment mentioned in subsection (1) above falls within **[**F1721the applicable periods**]** for two or more issues of eligible shares in the company, subsection (1A) above shall have effect in relation to each of those issues as if the amount receivable by the member were reduced by multiplying it by the fraction—

$$\frac{C}{D}$$

where—

C is the amount subscribed by individuals for eligible shares which are comprised in the issue and to which relief is or, but for subsection (1A)(b) above, would be attributable;

D is the aggregate of that amount and the corresponding amount or amounts for the other issue or issues.**]**

[F1722(2A) For the purposes of subsection (2) above "the applicable period" for an issue of eligible shares is—

(a) if the shares were issued before 6th April 2000, the period beginning two years before the issue of the shares and ending immediately before the fifth anniversary of the issue date,

[F1723(b) if the shares were issued on or after 6th April 2000 but before 7th March 2001, the period beginning two years before the issue of the shares and ending immediately before the termination date relating to those shares,

(c) in any other case, the period of restriction for the issue.**]]**

(3) F1724. . . . . .

(4) F1724. . . . . .

(5) F1724. . . . . .

(6) F1724. . . . . .

[F1725(6A) F1724. . . . . .**]**

(7) F1724. . . . . .

(8) F1726. . . . . .

(9) Where—

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(a) a company issues share capital ("the original shares") of nominal value equal to the authorised minimum (within the meaning of the [M332]Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with); and

(b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares;

subsection (1) above shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

In relation to companies incorporated under the law of Northern Ireland references in this subsection to the Companies Act 1985 and to section 117 of that Act shall have effect as references to the [M333]Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.

[[F1727]**[**[F1728](9A) References in this section **[**[F1729]and **[**[F1730]sections 303AA and 303A**]]** to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question [F1731]. . . .**]**

(9B) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section.**]**

(10) [F1732]. . . . . .

(11) [F1732]. . . . . .

Textual Amendments

F1713 S. 303(1)(1A)-(1D)(2) substituted for s. 303(1)-(2) (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 15(1)**

F1714 Words in s. 303(1) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(1)**

F1715 S. 303(1AA) inserted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 2(2)(a)**

F1716 Words in s. 303(1AA) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(2)**

F1717 S. 303(1B)(c) and preceding word inserted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 2(2)(b)**

F1718 Words in s. 303(1B)(c) inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(3)(a)**

F1719 Words in s. 303(1B) inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(3)(b)**

F1720 Word in s. 303(1C)(a) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(4)**

F1721 Words in s. 303(2) substituted (with effect as mentioned in Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 5(3)**

F1722 S. 300(2A) inserted (with effect as mentioned in Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), s. 64, **Sch. 17 para. 5(4)**

F1723 S. 303(2A)(b)(c) substituted for s. 303(2A)(b) (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(5)**

F1724 S. 303(3)-(7) repealed (with effect in accordance with Sch. 15 para. 40(3) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 19(6), **Sch. 33 Pt. 2(3)**, Note 2

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F1725 S. 303(6A) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 17(c)**

F1726 S. 303(8) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 17(d), **Sch. 26 Pt. 5(17)**

F1727 S. 303(9A)(9B) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 17(e)**

F1728 S. 303(9A) substituted) (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 15(3)**

F1729 Words in s. 303(9A) inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 19(7)**

F1730 Words in s. 303(9A) substituted (with effect in accordance with Sch. 18 para. 7(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 7(1)**

F1731 Words in s. 303(9A) repealed (with effect in accordance with Sch. 15 para. 40(3) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 2

F1732 S. 303(10)(11) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 17(f), **Sch. 26 Pt. 5(17)**

Marginal Citations

M332 1985 c. 6.

M333 S.I. 1986/1032 (N.I. 6)

[F1733 303A Insignificant repayments disregarded for purposes of s.303(1)

(1) Any repayment shall be disregarded for the purposes of section 303(1) (repayments etc. which cause withdrawal or reduction of relief) if whichever is the greater of—

(a) the market value of the shares to which it relates ("the target shares") immediately before the event occurs, and

(b) the amount received by the member in question,

is insignificant in relation to the market value of the remaining issued share capital of the company in question (or, as the case may be, subsidiary in question) immediately after the event occurs.

This is subject to subsection (4) below.

(2) For the purposes of this section "repayment" means a repayment, redemption, repurchase or payment mentioned in section 303(1) (repayments etc. which cause withdrawal or reduction of relief).

(3) For the purposes of subsection (1) above it shall be assumed that the target shares are cancelled at the time the repayment is made.

(4) Where an individual subscribes for eligible shares in a company, subsection (1) above does not apply to prevent section 303(1) having effect in relation to those shares if, at a relevant time, arrangements are in existence that provide—

(a) for a repayment by the company or any subsidiary of the company (whether or not it is such a subsidiary at the time the arrangements are made), or

(b) for anyone to be entitled to such a repayment,

at any time in the period of restriction relating to those shares.

(5) For the purposes of subsection (4) above "a relevant time" means any time in the period—

(a) beginning one year before the eligible shares were issued, and

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(b) expiring at the end of the issue date.**]**

Textual Amendments

F1733 S. 303AA inserted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 20**

[F1734 303A Restriction on withdrawal of relief under section 303.

(1) Subsections (4) and (7) below apply where, by reason of a repayment, any investment relief which is attributable under Schedule 15 to the Finance Act 2000 to any shares is withdrawn under paragraph 56(2) of that Schedule.

[F1735 (2) For the purposes of this section "repayment" has the meaning given in section 303AA(2) above.**]**

(3) For the purposes of this section "the relevant amount" is the amount determined by the formula—

$$X - 5Y$$

Where—

X is the amount of the repayment, and

Y is the aggregate amount of investment relief withdrawn by reason of the repayment.

(4) Where the relevant amount does not exceed £1,000 the repayment shall be disregarded for the purposes of section 303(1), unless repayment arrangements are in existence at any time in the period—

(a) beginning one year before the shares mentioned in subsection (1) above are issued, and

(b) expiring at the end of the issue date of those shares.

(5) For this purpose "repayment arrangements" means arrangements which provide—

(a) for a repayment by the company that issued the shares ("the issuing company") or any subsidiary of that company, or

(b) for anyone to be entitled to such a repayment,

at any time.

(6) Subsection (5)(a) above applies in relation to a subsidiary of the issuing company whether or not it is such a subsidiary—

(a) **F1736** . . . . . .

(b) when the arrangements were made.

(7) Where the repayment is not disregarded by virtue of subsection (4) above, the amount receivable by reason of the repayment shall be treated for the purposes of section 303(1C)(a) as an amount equal to the relevant amount.

(8) **F1737** . . . . . .

(9) In this section—

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(a) "investment relief" has the same meaning as in **[**F1738Schedule 15 to the Finance Act 2000 (corporate venturing scheme)**]**; and

(b) references to the withdrawal of investment relief include its reduction.**]**

Textual Amendments

F1734 S. 303A inserted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 2(3)**

F1735 S. 303A(2) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 21(a)**

F1736 S. 303A(6)(a) repealed (with effect in accordance with Sch. 18 para. 8(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 8(1), **Sch. 42 Pt. 2(13)**, Note 1

F1737 S. 303A(8) repealed (with effect in accordance with Sch. 15 para. 40(3) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 21(b), **Sch. 33 Pt. 2(3)**, Note 2

F1738 Words in s. 303A(9)(a) substituted (with effect in accordance with Sch. 15 para. 40(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 21(c)**

[F1739**304[**F1740**Spouses and civil partners.]**

(1) Section 299(1) shall not apply to a disposal of shares to which an amount of relief is attributable made by **[**F1741an individual to his spouse or civil partner**]** at a time when they are living together.

(2) Where such shares issued to one of them ("the transferor") are transferred to the other ("the transferee") by a transaction inter vivos to which that section does not apply, this Chapter shall have effect, in relation to any subsequent disposal or other event, as if—

(a) the transferee were the person who had subscribed for the shares,

(b) the transferee's liability to income tax had been reduced under section 289A in respect of those shares for the same year of assessment as that for which the transferor's liability was so reduced and, accordingly, that amount of relief had continued to be attributable to the shares notwithstanding the transfer.

(3) Any assessment for reducing or withdrawing the relief by reason of any such disposal or other event shall be made on the transferee.

[F1742(4) Subsections (6) to (6D) of section 299 shall apply for the purposes of this section as they apply for the purposes of that section.**]]**

Textual Amendments

F1739 S. 304 substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 18**

F1740 S. 304 heading substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 65(c)

F1741 Words in s. 304(1) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 65(b); and that same substitution of words is made in s. 304(5) (as s. 304 applies to shares issued on or before 31.12.1993) (5.12.2005) by reg. 65(a) of that amending S.I.

F1742 S. 304(4) inserted (with effect in accordance with s. 74(3), Sch. 13 para. 16(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 16(1)**; and see also the s. 304(7) inserted (with effect in accordance with s. 74(3), Sch. 13 para. 40(2) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 paras. 37, **40(1)**

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[F1743 04A Acquisition of share capital by new company.

(1) This section applies where—

(a) a company ("the new company") in which the only issued shares are subscriber shares acquires all the shares ("old shares") in another company ("the old company");

(b) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;

(e) at some time before the issue of the new shares—

(i) the old company issued eligible shares; and

(ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 and in accordance with that section; and

(f) before the issue of the new shares, the Board have, on the application of the new company or the old company, notified that company that the Board are satisfied that the exchange of shares—

(i) will be effected for bona fide commercial reasons; and

(ii) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.

(2) For the purposes of this Chapter—

(a) the exchange of shares shall not be regarded as involving any disposal of the old shares or any acquisition of the new shares; and

(b) any relief under this Chapter which is attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.

(3) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Chapter shall have effect as if—

(a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;

(b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company;

(c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and

(d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which his liability was so reduced in respect of the old shares.

(4) Where, in the case of any new shares held by an individual to which relief becomes so attributable, the old shares for which they are exchanged were transferred to the individual as mentioned in section 304, this Chapter shall have effect in relation to any subsequent disposal or other event as if—

(a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for;

(b) the new shares had been issued by the new company at the time when the old shares were issued by the old company;

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(c) the claim for relief made in respect of the old shares had been made in respect of the new shares; and

(d) his liability to income tax had been reduced under section 289A in respect of the new shares for the same year of assessment as that for which the liability of the individual who subscribed for the old shares was so reduced in respect of those shares.

(5) Where relief becomes so attributable to any new shares—

(a) this Chapter shall have effect as if anything which, under section 306(2), 307(1A) or 310, has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

(b) any appeal brought by the old company against a notice under section 307(1A)(b) may be prosecuted by the new company as if it had been brought by that company.

(6) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in subsection (1) above references to shares, except in the expressions "eligible shares" and "subscriber shares", include references to securities.

(7) Nothing in section 293(8) shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1) above or arrangements with a view to such an exchange.

(8) Subsection (2) of section 138 of the 1992 Act shall apply for the purposes of subsection (1)(f) above as it applies for the purposes of subsection (1) of that section.**]**

Textual Amendments

F1743 S. 304A inserted (with effect in accordance with s. 74(3), Sch. 13 para. 17(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 17(1)**; and see also the s. 304A inserted (with effect in accordance with s. 74(3), Sch. 13 para. 41(2) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 paras. 37, **41(1)**

[F1744 305 Reorganisation of share capital.

(1) Subsection (2) below applies where—

(a) there is by virtue of any allotment in the relevant period, being such an allotment for payment as is mentioned in section 126(2)(a) of the 1992 Act, a reorganisation affecting ordinary shares,

(b) immediately before the reorganisation an amount of relief ("X") is attributable to the shares, and

(c) both—

(i) the amount subscribed for the shares ("Z"), and

(ii) the market value of the shares immediately before the reorganisation,

exceed the market value of the shares immediately after the reorganisation.

(2) Where this subsection applies, the relief attributable to the shares shall be reduced by the following amount—

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$$\frac{X \times Y}{Z}$$

where "Y" is whichever is the smaller of the amounts by which Z, and the market value of the shares immediately before the reorganisation, exceed the market value of the shares immediately after the reorganisation.

(3) Subsection (2) above also applies where—

(a) an individual, who at any time in the relevant period has received, or become entitled to receive, in respect of any ordinary shares in a company, a provisional allotment of shares in or debentures of the company, disposes of his rights, and

(b) that subsection would have applied if he had not disposed of the rights but the allotment had been made to him by virtue of those rights.

(4) Section 312(1A)(a) applies to determine the relevant period for the purposes of this section

[[F1745](5) Subsection (2) above shall not apply where the reorganisation occurs on or after 29th November 1994.

(6) Subsection (2) above shall not apply by virtue of subsection (3) above where the rights are disposed of on or after 29th November 1994.**]]**

Textual Amendments

F1744 S. 305 substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 19**

F1745 S. 305(5)(6) inserted (with effect in accordance with ss. 66(1), 68(1) of the amending Act) by Finance Act 1995 (c. 4), **ss. 66(4)**, 68(3)

[[F1746]305A Relief for loss on disposal of shares.

(1) Section 574 shall apply on the disposal by an individual of shares to which relief is attributable as it applies to a disposal by him of shares in a qualifying trading company for which he has subscribed ("qualifying trading company" and "subscribed" having for this purpose the same meaning as in that section).

(2) For the purposes of that section (as applied by this) sections 575(1) and (3) and **[**[F1747]576(1) to (3)**]** shall apply**]**

Textual Amendments

F1746 S. 305A inserted (with effect in accordance with s. 137(2) of the amending Act) by Finance Act 1994 (c. 9), s. 137(1), **Sch. 15 para. 20**

F1747 Words in s. 305A(2) substituted (with effect in accordance with s. 74(3), Sch. 13 para. 18(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 18(1)**

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306 Claims.

M334(1) A claim for relief in respect of eligible shares issued by a company in any year of assessment **[**F1748(or treated by section 289B(5) as so issued)**]** shall be made—

[F1749(a) not earlier than the time the requirement in section 289A(6) is first satisfied; and**]**

[F1750(b) not later than the fifth anniversary of the 31st January next following that year of assessment**]**.

(2) **[**F1751No claim for relief in respect of eligible shares in a company may be made unless the person making the claim has received from the company**]** a certificate issued by the company in such form as the Board may direct and certifying that **[**F1752, except so far as they fall to be satisfied by that person, the conditions for the relief**]** are satisfied in relation to those shares.

[F1753(3) Before issuing a certificate for the purposes of subsection (2) above a company shall furnish the inspector with a statement to the effect that, except so far as they fall to be satisfied by the persons to whom eligible shares comprised in the share issue have been issued, the conditions for the relief—

(a) are satisfied in relation to that issue; and

(b) have been so satisfied at all times since the beginning of the relevant period.**]**

[F1754(3A) A company may not furnish an inspector with a statement in respect of any shares issued in any year of assessment—

(a) later than two years after the end of that year of assessment, or

(b) if the period of four months referred to in subsection (1)(a) above ended after the end of that year, later than two years after the end of that period

F1755. . . . . ..**]**

[F1756(4) No certificate shall be issued for the purposes of subsection (2) above without the authority of the inspector; but where the company, or a person connected with the company, has given notice to the inspector under section 310(2) or paragraph 16(2) or (4) of Schedule 5B to the 1992 Act, the authority must be given or renewed after the receipt of the notice.

(5) Any statement under subsection (3) above shall be in such form as the Board may direct and shall contain—

(a) such additional information as the Board may reasonably require, including in particular information relating to the persons who have requested the issue of certificates under subsection (2) above;

(b) a declaration that the statement is correct to the best of the company's knowledge and belief; and

(c) such other declarations as the Board may reasonably require.**]**

(6) Where a company has issued a certificate for the purposes of subsection (2) above, or furnished a statement under subsection (3) above and—

(a) the certificate or statement is made fraudulently or negligently; or

(b) the certificate was issued in contravention of subsection (4) above;

the company shall be liable to a penalty not exceeding **[**F1757£3,000**]**.

(7) For the purposes of regulations made under **[**F1758PAYE regulations**]** no regard shall be had to the relief unless a claim for it has been duly made and admitted.

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(8) No application shall be made under section 55(3) or (4) of the Management Act (application for postponement of payment of tax pending appeal) on the ground that the applicant is **[**F1759eligible for**]** the relief unless a claim for the relief has been duly made by him.

(9) For the purposes of section 86 of the Management Act (interest on overdue tax), tax charged by an assessment—

(a) shall be regarded as due and payable notwithstanding that relief from the tax (whether by discharge or repayment) is subsequently given on a claim for the relief; but

(b) shall, unless paid earlier or due and payable later, be regarded as paid on the date of the making of the claim on which the relief is given;

and section 91 of that Act (effect on interest of reliefs) shall not apply in consequence of any discharge or repayment for giving effect to the relief.

(10) M335For the purposes of the provisions of the Management Act relating to appeals against decisions on claims, the refusal of the inspector to authorise the issue of a certificate under subsection (2) above shall be taken to be a decision refusing a claim made by the company.

F1760 . . . . . .

[F1761(11) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section.**]**

Textual Amendments

F1748 Words in s. 306(1) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 19(1)**

F1749 S. 306(1)(a) substituted (with effect in accordance with Sch. 15 para. 22(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 22(1)**

F1750 S. 306(1)(b) substituted (with effect in as mentioned in s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 7**

F1751 Words in s. 306(2) substituted (with effect in as mentioned in s. 134(2)(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 22**

F1752 Words in s. 306(2) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 19(2)**

F1753 S. 306(3) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 19(3)**

F1754 S. 306(3A) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 21(b)**

F1755 Words in s. 306(3A) repealed (with effect as mentioned in s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 19(4), **Sch. 27 Pt. 3(14)**

F1756 S. 306(4)(5) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 19(5)**

F1757 1989 s.170(3)*in relation to things done or omitted on or after* 27*July* 1989.*Previously* "£250 or, in the case of fraud, £500.".

F1758 Words in s. 306(7) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 37** (with Sch. 7)

F1759 Words in s. 306(8) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 21(c)**

F1760 Words in s. 306(10) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 21(d), **Sch. 26 Pt. 5(17)**

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F1761 S. 306(11) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 21(e)**

Modifications etc. (not altering text)

C215 S. 306 applied (with effect as mentioned in s. 74(3) of the 1998 amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 5B para. 6** (as substituted by Finance Act 1998 (c. 36), **Sch. 13 para. 33**)

C216 S. 306(1)(b) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**

C217 S. 306(1)(b) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

C218 *See* 1988(F) s.50*and* Sch.4 para.10*for changes applicable in respect of shares issued on or after* 29*July* 1988*and before the end of* 1993*in respect of private rented housing.*

Marginal Citations

M334 Source-1983 Sch.5 13(1)-(9); 1981 s.61(6)

M335 Source-1983 Sch.5 13(10); 1986 Sch.9 1(2), 13

307 Withdrawal of relief.

(1) **M336**Where any relief has been given which is subsequently found not to have been due, it shall be withdrawn by the making of an assessment **[**F1762to income tax**]** for the year of assessment for which the relief was given F1763. . . .

[F1764(1A) Relief may not be withdrawn, in relation to shares issued by a company on any date, on the ground that the company is not a qualifying company or that the requirements of **[**F1765section 289(1)(b), (ba), (c) or (d)**]** are not met unless—

(a) the company has given notice under section 310 **[**F1766or paragraph 16(2) or (4) of Schedule 5B to the 1992 Act**]**, or

(b) an inspector has given notice to the company stating that, by reason of that ground, the whole or any part of the relief given to individuals to whom the shares were issued on that date was not, in his opinion, due.

(1B) The giving of notice by an inspector under subsection (1A) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.

[F1767(1C) Where any issue has been determined on an appeal brought by virtue of paragraph 1A(6) of Schedule 5B to the 1992 Act (appeal against notice that shares never have been, or have ceased to be, eligible shares), the determination shall be conclusive for the purposes of any appeal brought by virtue of subsection (1B) above on which that issue arises.**]**

(2) Subject to subsections (3) to (7) below, no assessment for withdrawing relief may be made, and no notice may be given under subsection (1A) above, more than six years after the end of the year of assessment—

(a) in which the time mentioned in section 289(3) falls, or

(b) in which the event by reason of which the claimant ceases to be eligible for relief occurs,

whichever is the later**]**

(3) No assessment for withdrawing relief in respect of shares issued to any person shall be made by reason of any event occurring after his death.

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(4) Where a person has, by a disposal or disposals to which section 299(1)(b) applies, disposed of all the **[**F1768eligible shares**]** issued to him by a company, no assessment for withdrawing relief in respect of any of those shares shall be made by reason of any subsequent event unless it occurs at a time when he is connected with the company within the meaning of section 291.

(5) Subsection (2) above is without prejudice to section 36 of the Management Act (**[**F1769fraudulent or negligent conduct**]**).

(6) In its application to an assessment made by virtue of this section, section 86 of the Management Act (interest on overdue tax) shall have effect as if **[**F1770the relevant date**]** were—

(a) M337in the case of relief withdrawn by virtue of section **[**F1771289(6)**][**F1772or 299B(1)**]**—

(i) so far as effect has been given to the relief in accordance with **[**F1773PAYE regulations**]**, 5th April in the year of assessment in which effect was so given;

(ii) so far as effect has not been so given, the date on which the relief was granted.

[F1774(aa) in the case of relief withdrawn by virtue of **[**F1775section 289(1)(c) or (d)**]**, the date on which the relief was granted**]**

(b) M338in the case of relief withdrawn by virtue of **[**F1776section 289(1)(ba), 291**]**, 293, 297, 302, 303(1) or 305 in consequence of any event after the grant of the relief, the date of that event;

(c) in the case of relief withdrawn by virtue of section 299(1) in consequence of a disposal after the grant of the relief, the date of the disposal;

[F1777(cca) in the case of relief withdrawn by virtue of section 299(5), the date on which the option was granted**]**

[F1778(ca) in the case of relief withdrawn by virtue of section 299A in consequence of the making of any loan after the grant of the relief, the date of the making of the loan;**]**

(d) in the case of relief withdrawn by virtue of section 300 in consequence of a receipt of value after the grant of the relief, the date of the receipt.

(7) M339For the purposes of subsection (6) above the date on which the relief is granted is the date on which a repayment of tax for giving effect to the relief was made or, if there was no such repayment, the date on which the inspector issued a notice to the claimant showing the amount of tax payable after giving effect to the relief.

[F1779(8A) References in this section to the withdrawal of relief include its reduction**]**

(8) M340Where a company has ceased to be a qualifying company in consequence of the operation of section 294, subsection (6) above shall apply as if the relief was withdrawn in consequence of an event which occurred at the time when the company so ceased to be a qualifying company.

(9) F1780. . . . . .

Textual Amendments

F1762 Words in s. 307(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 127** (with Sch. 2)

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F1763 Words in s. 307(1) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 22(a), **Sch. 26 Pt. 5(17)**

F1764 S. 307(1A)(1B)(2) substituted for s. 307(2) (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 22(b)**

F1765 Words in s. 307(1A) substituted (with effect as mentioned in Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 7(a)**

F1766 Words in s. 307(1A) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 20(1)(b)**

F1767 S. 307(1C) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 20(2)**

F1768 Words in s. 307(4) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 20(3)**

F1769 1989 s.149(4)(b)*but does not affect the making of assessments for years before* 1983-84*or for accounting periods ending before* 1*April* 1983.*Previously*
"fraud and wilful default) and section 37 of that Act (neglect.".

F1770 Words in s. 307(6) substituted (with effect as mentioned in Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 5**

F1771 Words in s. 307(6)(a) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 22(c)(i)**

F1772 Words in s. 307(6)(a) inserted (with effect as mentioned in s. 71(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 71(2)**

F1773 Words in s. 307(6)(a)(i) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 38** (with Sch. 7)

F1774 S. 307(6)(aa) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 22(c)(ii)**

F1775 Words in s. 307(6)(aa) substituted (with effect as mentioned in Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 7(b)**

F1776 Words in s. 307(6)(b) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 20(4)**

F1777 S. 307(6)(cca) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 22(c)(iii)**

F1778 S. 307(6)(ca) inserted (27.7.1993 with application in relation to any case in which the claim for relief is made on or after 16.3.1993) by 1993 c. 34, **s. 111(3)(4)**

F1779 S. 307(8A) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 22(d)**

F1780 S. 307(9) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 22(e), **Sch. 26 Pt. 5(17)**

Marginal Citations

M336 Source-1983 Sch.5 14(1), (1A); 1987 s.42(5)

M337 Source-1981 s.62(6)(d); 1983 Sch.5 14(2)

M338 Source-1981 s.62(6)(a)-(c); 1983 Sch.5 14(2); 1983 Sch.1 8; 1986 Sch.9 14

M339 Source-1981 s.62(7)

M340 Source-1983 Sch.5 5A(10); 1986 Sch.9 7

308 Application to subsidiaries.

M341(1) A qualifying company may, in the relevant period, have one or more subsidiaries if—

(a) the conditions mentioned in subsection (2) below are satisfied in respect of the subsidiary or, as the case may be, each subsidiary **F1781**. . . ; **F1782**. . .

(b) **F1782** . . . . . .

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(2) The conditions referred to are—

(a) F1783. . . . . .

(b) F1783. . . . . .

(c) F1783. . . . . .

[F1784(ca) that more than 50 per cent. of the ordinary share capital of the subsidiary is owned directly or indirectly by the qualifying company;**]**

(d) that no person other than the qualifying company or another of its subsidiaries has control of the subsidiary within the meaning of section 840; and

(e) that no arrangements are in existence by virtue of which **[**F1785either of the conditions in paragraphs (ca) and **]**(d) above **[**F1785would**]** cease to be satisfied.

(3) The conditions shall not be regarded as ceasing to be satisfied by reason only of the subsidiary or **[**F1786any other company**]** being wound up, or dissolved without winding up, if—

(a) F1787. . . the winding up or dissolution is for bona fide commercial reasons **[**F1788and is not**]** part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax; F1789. . .

(b) F1789. . . . . .

[F1790(3A) The conditions shall not be regarded as ceasing to be satisfied by reason only of anything done as a consequence of the subsidiary or any other company being in administration or receivership if—

(a) the entry into administration or receivership, and

(b) everything done as a consequence of the company concerned being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.**]**

(4) The conditions shall not be regarded as ceasing to be satisfied by reason only of **[**F1791arrangements being in existence for**]** the disposal by the qualifying company or (as the case may be) by another subsidiary, F1792. . . of all its interest in the subsidiary if F1792. . . the disposal is **[**F1793to be**]** for bona fide commercial reasons **[**F1794and is not to be**]** part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(5) F1795. . . . . .

[F1796(5A) Section 312(1A)(b) applies to determine the relevant period for the purposes of this section.**]**

[F1797(5B) Subsections (2) to (10) of section 838 apply for the purposes of subsection (2)(ca) above as they apply for the purposes of subsection (1) of that section.**]**

(6) F1798. . . . . .

Textual Amendments

F1781 Words in s. 308(1) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 9(a), **Sch. 42 Pt. 2(13)**, Note 6

F1782 S. 308(1)(b) and preceding word repealed (with effect as mentioned in Sch. 8 para. 1 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 8 para. 6(a), **Sch. 18 Pt. 6**, Note

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F1783 S. 308(2)(a)-(c) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 9(b)(i), **Sch. 42 Pt. 2(13)**, Note 6
F1784 S. 308(2)(ca) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(b)(ii)**
F1785 Words in s. 308(2)(e) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(b)(iii)**
F1786 Words in s. 308(3) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(c)**
F1787 Words in s. 308(3)(a) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 9(d)(i), **Sch. 42 Pt. 2(13)**, Note 6
F1788 Words in s. 308(3)(a) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(d)(ii)**
F1789 S. 308(3)(b) and preceding word repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 9(e), **Sch. 42 Pt. 2(13)**, Note 6
F1790 S. 308(3A) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(f)**
F1791 Words in s. 308(4) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(g)(i)**
F1792 Words in s. 308(4) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 9(g)(ii)(iii), **Sch. 42 Pt. 2(13)**, Note 6
F1793 Words in s. 308(4) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(g)(iv)**
F1794 Words in s. 308(4) substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(g)(v)**
F1795 S. 308(5) repealed (with effect in accordance with Sch. 18 para. 21 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 18 para. 9(h), **Sch. 42 Pt. 2(13)**, Note 6
F1796 S. 308(5A) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 23(a)**
F1797 S. 308(5B) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 9(i)**
F1798 S. 308(6) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 23(b), **Sch. 26 Pt. 5(17)**

Marginal Citations
M341 Source-1983 Sch.5 17(1)-(10); 1986 Sch.9 18; 1987 Sch.15 15(2)

309 Further provisions as to subsidiaries.

F1799 . . . . . .

Textual Amendments
F1799 S. 309 repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 24, **Sch. 26 Pt. 5(17)**

310 Information.

(1) **M342** Where an event occurs by reason of which any relief given to an individual falls to be withdrawn by virtue of sections 291, 299, **[**F1800 299A or 300**]**, **[**F1801 or would fall to be withdrawn under section 300 were it not for the application of section 300A,**]**

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the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the event.

(2) Where an event occurs by reason of which any relief in respect of any shares in a company falls to be withdrawn by virtue of section **[**F1802**[**F1803289(1)(ba), (c) or (d)**]**, 293**]**, 300, 302 or 303 **[**F1804, or would fall to be withdrawn under section 300 were it not for the application of section 300A,**]**—

(a) the company; and

(b) any person connected with the company who has knowledge of that matter;

shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the event F1805. . . .

[F1806(2A) Where—

(a) a person is required to give notice under subsection (1) or (2) above of an event by reason of which any relief in respect of any shares in a company—

(i) falls to be withdrawn under section 300, or

(ii) would fall to be so withdrawn were it not for the application of section 300A, and

(b) that person has knowledge of the replacement value received (or expected to be received) from the original recipient by the original supplier by reason of a qualifying receipt,

the notice shall include particulars of that receipt of the replacement value (or expected receipt).

In this subsection "the replacement value", "the original recipient", "the original supplier" and "qualifying receipt" shall be construed in accordance with section 300A.**]**

(3) M343Where—

(a) a company has issued a certificate under section 306(2) in respect of any eligible shares in the company; and

(b) it appears to the company, or to any person connected with the company who has knowledge of the matter, that section 294 may have effect to deny relief in respect of those shares;

the company or (as the case may be) that person or (where it so appears to each of them) both the company and that person shall give notice to the inspector setting out the particulars of the case.

(4) M344If the inspector has reason to believe—

[F1807(a)**]** that a person has not given a notice which he is required to give under subsection (1) or (2) above in respect of any event, or under subsection (3) above in respect of any particular case **[**F1808, or

(b) that a person has given or received value (within the meaning of section 300(2) or (5)) which, but for the fact that the amount given or received was an amount of insignificant value (within the meaning of section 301A(2)), would have triggered a requirement to give a notice under subsection (1) or (2) above, or

(c) that a person has made or received any repayment (within the meaning of section 303AA(2)) which, but for the fact that it falls to be disregarded for the purposes of section 303(1) by virtue of section 303AA(1), would have triggered a requirement to give a notice under subsection (2) above,

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the inspector may**]** by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Chapter.

(5) [M345]Where relief is claimed in respect of shares in a company and the inspector has reason to believe that it may not be due by reason of any such arrangement or scheme as is mentioned in section **[**[F1809]**[**[F1810]289(1D), (6) or (9)(e), 289A(8)(b) or (8A),**]** 291B(5)**]**, **[**[F1811]293(4B), (6) or (8), **][**[F1812]299B(1)**][**[F1813]or 308(2)(e), (3), (3A) or (4)**]**, he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangement or scheme exists or has existed;

(b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.

[[F1814](6) For the purposes of subsection (5) above the persons who are persons concerned are—

(a) in relation to section 289(6) **[**[F1815]or 293(4B) or (6)**]**, the claimant, the company and any person controlling the company;

[[F1816](aa) in relation to section 289(1D), 289A(8)(b) or (8A) or 308(3), (3A) or (4), the claimant, the company, any other company in question and any person controlling the company or any other company in question;**]**

(b) in relation to section 291B(5), the claimant;

(c) in relation to section **[**[F1817]289(9)(e),**]** 293(8) or 308(2)(e), the company and any person controlling the company; and

(d) in relation to section 299B(1), the claimant, the company and any person connected with the company;

and for those purposes references in this subsection to the claimant include references to any person to whom the claimant appears to have made a transfer such as is mentioned in section 304(1) of any of the shares in question.**]**

[[F1818](6A) The references in subsections (5) and (6) above to subsections (3), (3A) and (4) of section 308 are to be read as including those provisions as applied by section 289(10) and (11).**]**

(7) [M346]Where relief has been given in respect of shares in a company—

(a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of sections **[**[F1819]300 and 303(3)**]**; and

(b) any person on whose behalf such a payment or asset is received,

shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

(8) Where relief has been claimed in respect of shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself and, if so, the name and address of that person.

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(9) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

[F1820(9A) References in this section to withdrawal of relief include its reduction.**]**

F1821(10) . . . . . .

F1821(11) . . . . . .

Textual Amendments

F1800 Words in s. 310(1) substituted (with effect in accordance with s. 74(3), Sch. 13 para. 22(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 22(1)**

F1801 Words in s. 310(1) inserted (with effect in accordance with Sch. 15 para. 23(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 23(1)**

F1802 Words in s. 310(2) substituted (with effect in accordance with s. 74(3), Sch. 13 para. 22(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 22(2)(a)**

F1803 Words in s. 310(2) substituted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 8**

F1804 Words in s. 310(2) inserted (with effect in accordance with Sch. 15 para. 23(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 23(2)**

F1805 Words in s. 310(2) repealed (with effect in accordance with s. 74(3), Sch. 13 para. 22(5), Sch. 27 Pt. 14 Note 1 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 22(2)(b), **Sch. 27 Pt. 14**

F1806 S. 310(2A) inserted (with effect in accordance with Sch. 15 para. 23(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 23(3)**

F1807 Word in s. 310(4) inserted (with effect in accordance with Sch. 15 para. 23(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 23(4)**

F1808 S. 310(4)(b)(c) and words substituted for words in s. 310(4) (with effect in accordance with Sch. 15 para. 23(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 23(4)**

F1809 Words in s. 310(5) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 25(c)**

F1810 Words in s. 310(5) substituted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(a)(i)**

F1811 Words in s. 310(5) substituted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(a)(ii)**

F1812 Words in s. 310(5) inserted (with effect in accordance with s. 71(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 71(3)**

F1813 Words in s. 310(5) substituted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(a)(iii)**

F1814 S. 310(6) substituted (with effect in accordance with s. 71(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 71(4)**

F1815 Words in s. 310(6)(a) inserted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(b)(i)**

F1816 S. 310(6)(aa) inserted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(b)(ii)**

F1817 Words in s. 310(6)(c) inserted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(b)(iii)**

F1818 S. 310(6A) inserted (with effect in accordance with Sch. 18 para. 10(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 10(1)(c)**

F1819 Words in s. 310(7) substituted (with effect in accordance with s. 74(3), Sch. 13 para. 22(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 22(3)**

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F1820 S. 310(9A) inserted (with effect in accordance with s. 74(3), Sch. 13 para. 22(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 22(4)**

F1821 S. 310(10)(11) repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 25(e), **Sch. 26 Pt. 5(17)**

Marginal Citations

M342 Source-1983 Sch.5 15(1), (2)

M343 Source-1983 Sch.5 15A(1); 1986 Sch.9 15

M344 Source-1983 Sch.5 15(3), 15A(2); 1986 Sch.9 15

M345 Source-1983 Sch.5 15(4), (5), 18(4); 1986 Sch.9 19(2)

M346 Source-1981 s.63(7)-(9); 1983 Sch.5 15(6)

311 Nominees, bare trustees and approved investment funds.

(1) M347Shares subscribed for, issued to, held by or disposed of for an individual by a nominee shall be treated for the purposes of this Chapter as subscribed for, issued to, held by or disposed of by that individual.

(2) **[**F1822M348Where eligible shares are held on a bare trust for two or more beneficiaries**]**, this Chapter shall have effect (with the necessary modifications) as if—

(a) each beneficiary had subscribed as an individual for all of those shares; and

(b) the amount subscribed by each beneficiary was equal to the total amount subscribed on the issue of those shares divided by the number of beneficiaries.

[F1823(2A) Subsection (2B) below applies where an individual claims relief in respect of eligible shares in a company and—

(a) the shares have been issued to the managers of an approved fund as nominee for the individual;

(b) the fund has closed, that is to say, no further investments in the fund are to be accepted; and

(c) the amounts which the managers have, as nominee for the individual, subscribed for eligible shares issued within six months after the closing of the fund represent not less than 90 per cent. of his investment in the fund;

and in this section "the managers of an approved fund" means the person or persons having the management of an investment fund approved for the purposes of this section by the Board.

(2B) **[**F1824In any case where this subsection applies, sections 289A and 289B shall have effect as if**]**—

(a) any reference to the year of assessment or other period in which the shares are issued were a reference to the year of assessment or other period in which the fund closes; and

(b) any reference to the time of the issue of the shares, or the time of the subscription for the shares, were a reference to the time of the closing of the fund.

(3) Section 290(1) shall not apply where the amount is subscribed as nominee for an individual by the managers of an approved fund.**]**

(4) Where an individual claims relief in respect of eligible shares in a company which have been issued to the managers of an approved fund as nominee for that individual, section 306(2) shall apply—

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[F1825(a) as if it required the certificate referred to in that section to be issued by the company to the managers; and

(b) as if it provided that no claim for relief may be made unless the person making the claim has received from the managers**]** a certificate issued by the managers, in such form as the Board may authorise, certifying that the managers hold certificates issued to them by the companies concerned, for the purposes of sections 306(2), in respect of the holdings of eligible shares shown on the managers' certificate.

(5) The managers of an approved fund may be required by a notice given to them by an inspector or other officer of the Board to deliver to the officer, within the time limited by the notice, a return of the holdings of eligible shares shown on certificates issued by them in accordance with subsection (4) above in the year of assessment to which the return relates.

(6) Section 306(6) shall not apply in relation to any certificate issued by the managers of an approved fund for the purposes of subsection (4) above.

Textual Amendments

F1822 Words in s. 311(2) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 26(a)**

F1823 1988(F) s.53*in respect of funds closing after* 15*March* 1988.

F1824 Words in s. 311(2B) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 26(b)**

F1825 Words in s. 311(4) substituted (with effect in accordance with s. 134(2)(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 23**

Marginal Citations

M347 Source-1983 Sch.5 19(1)

M348 Source-1983 Sch.5 19A; 1986 Sch.9 20

312 Interpretation of Chapter III.

(1) M349In this Chapter—

[F1826"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;**]**

"associate" has the meaning given in subsections (3) and (4) of section 417 except that in those subsections "relative" shall not include a brother or sister;

F1827 . . . . . .

[F1828"bonus shares" means shares which are issued otherwise than for payment (whether in cash or otherwise);**]**

"control", except in sections **[**F1829289(9),**][**F1830291B(4) **[**F1831, 293(8)(b)**]** and 308(2)**]**, shall be construed in accordance with section 416(2) to (6);

"debenture" has the meaning given by section 744 of the M350Companies Act 1985;

[F1832F1827 . . . . . .**]**

F1827 . . . . . .

"director" shall be construed in accordance with section 417(5);

[F1833"eligible for relief" has the meaning given by section 289(1),

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"eligible shares" has the meaning given by section 289(7),**]**

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"ordinary shares" means shares forming part of a company's ordinary share capital;

[F1836**"**"the period of restriction", in relation to any eligible shares issued by a company, means the period—

(a) beginning one year before the shares are issued, and

(b) ending immediately before the termination date relating to the shares;**]**

F1834 . . . . . .

[F1837**[**F1838**"**relief" means relief under this Chapter;

[F1839**"**"research and development" has the meaning given by section 837A;**]**

[F1840**"**"qualifying 90% subsidiary", in relation to any company, is to be construed in accordance with section 289(9) to (13);**]**

F1841 . . . . . .**]**

"subsidiary", in relation to any company (except in the expression "51 per cent. subsidiary" or where otherwise defined), means a subsidiary of that company of a kind which that company may hold under section 308,

"51 per cent. subsidiary", in relation to any company, means (except in the case of references to a company which is a 51 per cent. subsidiary on a particular date or at a particular time) a company which is a 51 per cent. subsidiary of that company at any time in the relevant period (applying subsection (1A)(a) below),**]**

[F1842**"**"termination date" in relation to any eligible shares issued by a company, means the third anniversary of the issue date or if—

(a) **[**F1843the money raised by the issue was raised wholly or mainly**]** for the purpose of a qualifying business activity falling within section 289(2)(a) (company meeting trading activities requirement by reason of the company or a **[**F1844qualifying 90% subsidiary of the company**]** carrying on or preparing to carry on a qualifying trade), and

(b) **[**F1845neither the company nor any of its qualifying 90% subsidiaries had**]** begun to carry on the trade in question on the issue date,

the third anniversary of the date on which **[**F1846the company or any qualifying 90% subsidiary of the company**]** begins to carry on that trade; and**]**

[F1847**"**"unquoted company" means a company none of whose shares, stocks, debentures or other securities are marketed to the general public,

F1827 . . . . . .**]**

[F1848**[**F1849(1A) In any provision of this Chapter "relevant period", in relation to any eligible shares issued by a company, means whichever of the following periods is applied for the purposes of that provision—

(a) the period beginning either—

(i) with the incorporation of the company, or

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(ii) if the company was incorporated more than two years before the date on which the shares were issued, two years before that date,

and ending immediately before the termination date relating to the shares, and

(b) the period beginning with the issue of the shares and ending immediately before the termination date relating to them.**]**

[F1850(1ZA) In determining, for the purposes of the definition of "termination date" in subsection (1) above, when a qualifying trade is begun to be carried on by a qualifying 90% subsidiary of a company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary of the company.**]**

(1B) For the purposes of the definition of "unquoted company" in subsection (1) above, shares, stocks, debentures or other securities are marketed to the general public if they are—

(a) listed on a recognised stock exchange,

(b) listed on a designated exchange in a country outside the United Kingdom, or

(c) F1851. . . dealt in outside the United Kingdom by such means as may be designated.

(1C) In subsection (1B) above "designated" means designated by an order made by the Board for the purposes of that subsection; and an order made for the purposes of paragraph (b) of that subsection may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.

(1D) Section 828(1) does not apply to an order made for the purposes of subsection (1B) above.

(1E) Where a company is an unquoted company at the time when any shares are issued **[**F1852 ("the relevant time")**]**, it shall not be treated for the purposes of this Chapter as ceasing to be an unquoted company in relation to those shares at any subsequent time by reason only that any shares, stocks, debentures or other securities of the company are at that time—

[F1853(a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 841, or

(b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of subsection (1B) above,

if the order was made after the relevant time.**]]**

(2) M351Section 839 applies for the purposes of this Chapter other than **[**F1854section 291, section 291A(1), (4) and (5) and section 291B**]**.

[F1855(2A) References in this Chapter to a company being in administration or receivership shall be construed as follows—

[F1856(a) references to a company being "in administration" are to a company being in administration within the meaning of Schedule B1 to the Insolvency Act 1986, or to there being in force in relation to it—

(i) an administration order under Part III of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom;**]**

(b) references to a company being "in receivership" are to there being in force in relation to it—

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(i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the M352Insolvency Act 1986 or Part IV of the M353Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom.**]**

(3) References in this Chapter to a disposal of shares include references to a disposal of an interest or right in or over the shares and an individual shall be treated for the purposes of this Chapter as disposing of any shares which he is treated by virtue of section **[**F1857**[**F1858136**]** of the 1992 Act**]** as exchanging for other shares.

[F1859(4) In this Chapter—

(a) references in any provision to the reduction of any relief attributable to any shares include a reference—

(i) to the reduction of the relief to nil, and

(ii) where no relief has yet been given, to the reduction of the amount which apart from that provision would be the relief, and

(b) references to the withdrawal of any relief, in respect of any shares, are to the withdrawal of the relief attributable to those shares or, in a case where no relief has yet been given, to ceasing to be eligible for relief in respect of those shares.

[F1860(4A) In this Chapter references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day.

(4B) For the purposes of this Chapter shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.**]**

(5) For the purposes of this Chapter, the market value at any time of any asset shall be taken to be the price which it might reasonably be expected to fetch on a sale at that time in the open market free from any interest or right which exists by way of security in or over it.**]**

(6) References in this Chapter to relief given to an individual in respect of eligible shares, and to the withdrawal of such relief, include respectively references to relief given to him in respect of those shares at any time after he has disposed of them and references to the withdrawal of such relief at any such time.

F1861(7) . . . . . .

F1861(8) . . . . . .

Textual Amendments

F1826 S. 312(1): definition of "arrangements" inserted (with effect as mentioned in Sch. 17 para. 14(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 14(1)(a)**

F1827 S. 312(1): definitions repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

F1828 S. 312(1): definition of "bonus shares" inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(a)**

F1829 S. 312(1): words in definition of "control" inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(b)**

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F1830 S. 312(1): words in definition of "control" substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 27(a)(i)**

F1831 S. 312(1): words in definition of "control" inserted (with effect as mentioned in Sch. 17 para. 14(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 14(1)(b)**

F1832 S. 312(1): definition of "the designated period" inserted (with effect as mentioned in Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 6(2)**

F1833 S. 312(1): definitions of "eligible for relief" and "eligible shares" inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 27(a)(ii)**

F1834 S. 312(1): definitions of "fixed-rate preference share capital" and "the relevant period" repealed (with effect as mentioned in s. 137(1)(2), Sch. 26 Pt. 5(17) Note of the repealing Act) by Finance Act 1994 (c. 9), Sch. 15 para. 27(a)(iii)(iv), **Sch. 26 Pt. 5(17)**

F1835 S. 312(1): definition of "new consideration" repealed (with effect as mentioned in s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 23(1)(a), **Sch. 27 Pt. 3(14)**

F1836 S. 312(1): definition of "the period of restriction" inserted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 24**

F1837 S. 312(1): definitions of "relief", "subsidiary" and "51 per cent. subsidiary" substituted for "the relief" and "relief" (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 27(a)(v)**

F1838 S. 312(1): definitions of "relief", "research and development" and "the seven year period" substituted for definitions of "research and development" and "relief" (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 23(1)(b)**

F1839 S. 312(1): definition of "research and development" substituted (with effect as mentioned in Sch. 17 para. 15(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 15(1)** (with Sch. 15 para. 15(3))

F1840 S. 312(1): definition of "qualifying 90% subsidiary" inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(c)**

F1841 S. 312(1): definition of "the seven year period" repealed (with effect as mentioned in Sch. 17 para. 8 of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(5)**, Note 4

F1842 S. 312(1): definition of "termination date" substituted for word (with effect as mentioned in Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 6(3)**

F1843 S. 312(1): words in para. (a) of definition of "termination date" substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(d)(i)**

F1844 S. 312(1): words in para. (a) of definition of "termination date" substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(d)(ii)**

F1845 S. 312(1): words in para. (b) of definition of "termination date" substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(d)(iii)**

F1846 S. 312(1): words in definition of "termination date" substituted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(2)(d)(iv)**

F1847 S. 312(1): definition of "unquoted company" substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 27(a)(vi)**

F1848 S. 312(1A)-(1E) inserted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 27(b)**

F1849 S. 312(1A) substituted (with effect as mentioned in Sch. 17 para. 8 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 6(4)**

F1850 S. 312(1ZA) inserted (with effect in accordance with Sch. 18 para. 21 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 18 para. 11(3)**

F1851 Words in s. 312(1B)(c) repealed (with effect as mentioned in s. 74(3), Sch. 27 Pt. 3(14) Note 4 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 13 para. 23(3), **Sch. 27 Pt. 3(14)**

F1852 Words in s. 312(1E) inserted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 13(a)**

F1853 Words in s. 312(1E) substituted (with effect in accordance with Sch. 15 para. 40(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 13(b)**

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F1854 Words in s. 312(2) substituted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 23(4)**

F1855 S. 312(2A) inserted (with effect as mentioned in Sch. 17 para. 12 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 17 para. 9(4)**

F1856 S. 312(2A)(a) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 18** (with art. 6)

F1857 Words in s. 312(3)(5)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(18)** (with ss. 60, 101(1), 171, 201(3)).

F1858 Words in s. 312(3) substituted (with effect in accordance with Sch. 9 paras. 7, 8(1) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(3)**

F1859 S. 312(4)(5) substituted (with effect as mentioned in s. 137(1)(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 15 para. 27(d)**

F1860 S. 312(4A)(4B) inserted (with effect as mentioned in s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 23(5)**

F1861 S. 312(7)(8) repealed (with effect in accordance with Sch. 15 para. 40(2) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 6

Modifications etc. (not altering text)

C219 S. 312(2A) applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 5 para. 11(10)** (as inserted (with effect in accordance with s. 96(6) of the 2004 amending Act) by Finance Act 2004 (c. 12), **s. 96(4)(f)**)

Marginal Citations

M349 Source-1981 s.67; 1983 Sch.5 20(1), (2); 1985 s.44(6); 1986 Sch.9 21(1), (2)

M350 1985 c. 6.

M351 Source-1981 s.67(2)-(4); 1983 Sch.5 20(1)

M352 1986 c. 45.

M353 S.I. 1989/2405 (N.I. 19).

CHAPTER IV

SPECIAL PROVISIONS

313 Taxation of consideration for certain restrictive undertakings.

F1862 . . . . . .

Textual Amendments

F1862 S. 313 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 39, **Sch. 8 Pt. 1**(with Sch. 7)

314 Divers and diving supervisors.

F1863 . . . . . .

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Textual Amendments

F1863 S. 314 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 128, **Sch. 3** (with Sch. 2)

315 Wounds and disability pensions.

F1864

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Textual Amendments

F1864 Ss. 315-318 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 41, **Sch. 8 Pt. 1** (with Sch. 7)

316 Allowances, bounties and gratuities.

F1865

. . . . . .

Textual Amendments

F1865 Ss. 315-318 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 41, **Sch. 8 Pt. 1** (with Sch. 7)

317 Victoria Cross and other awards.

F1866

. . . . . .

Textual Amendments

F1866 Ss. 315-318 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 41, **Sch. 8 Pt. 1** (with Sch. 7)

318 Other pensions in respect of death due to war service etc.

F1867

. . . . . .

Textual Amendments

F1867 Ss. 315-318 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 41, **Sch. 8 Pt. 1** (with Sch. 7)

319 Crown servants: foreign service allowance.

F1868

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Textual Amendments

F1868 S. 319 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 42, **Sch. 8 Pt. 1** (with Sch. 7)

320 Commonwealth Agents-General and official agents etc.

M354(1) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from income tax as that to which the head of a mission so resident is entitled under the M355Diplomatic Privileges Act 1964.

(2) Any person having or exercising any employment to which this subsection applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from income tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.

(3) The employments to which subsection (2) above applies are the employment in the United Kingdom as—

(a) a member of the personal staff of any Agent-General; or

(b) an official agent for, or for any state or province of, any of the countries for the time being mentioned in Schedule 3 to the M356British Nationality Act 1981 or the Republic of Ireland; or

(c) an official agent for any self-governing colony,

of a person certified by the High Commissioner of the country in question or, as the case may be, by the Agent-General for the state, province or self-governing colony in question to be ordinarily resident outside the United Kingdom and to be resident in the United Kingdom solely for the purpose of the performance of his duties as such member or official agent.

(4) In this section—

"Agent-General" means the Agent-General for any state or province of a country within subsection (3)(b) above or for any self-governing colony;

"High Commissioner" includes the head of the mission of a country within subsection (3)(b) above by whatever name called;

"mission" has the same meaning as in the Diplomatic Privileges Act 1964, and references to the head of a mission and a member of the staff of a mission shall be construed in accordance with that Act;

"self-governing colony" means any colony certified by a Secretary of State to be a self-governing colony.

Modifications etc. (not altering text)

C220 *The countries mentioned in the* British Nationality Act 1981 Sch.3 (*as amended*)*are—Countries whose citizens are Commonwealth citizens*Antigua and Barbuda, Australia, The Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei, Canada, Republic of Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Nauru, New Zealand, Nigeria, Papua New Guinea, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, Vanuatu, Western Samoa, Zambia, Zimbabwe.

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Marginal Citations

M354 Source-1970 s.372

M355 1964 c. 81.

M356 1981 c. 81.

321 Consuls and other official agents.

F1869 . . . . . .

Textual Amendments

F1869 S. 321 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 43, **Sch. 8 Pt. 1** (with Sch. 7)

322 Consular officers and employees.

F1870 . . . . . .

Textual Amendments

F1870 S. 322 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 129, **Sch. 3** (with Sch. 2)

323 Visiting forces.

M357(1) F1871 . . . . . .

(2) A period during which a member of a visiting force to whom **[**F1872section 303(1) of ITEPA 2003 (exemption for earnings of visiting forces etc.)**]** applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of income tax either as a period of residence in the United Kingdom or as creating a change of his residence or domicile.

(3) Subsection (2) above shall not affect the operation of section 278 in relation to any person for any year of assessment.

(4) In **[**F1873subsection (2)**]** above references to a visiting force shall apply to a civilian component of such a force as they apply to the force itself; and **[**F1874that subsection**]** shall be construed as one with the **[**F1875Part 1 of**]**M358Visiting Forces Act 1952, but so that, for the purposes of this section, references to a designated country shall be substituted in that Act for references to a country to which a provision of that Act applies.

(5) For the purpose of conferring on persons attached to any designated allied headquarters the like benefits as are conferred by **[**F1876subsection (2)**]** above on members of a visiting force or civilian component, any members of the armed forces of a designated country shall, while attached to any such headquarters, be deemed to constitute a visiting force of that country, and there shall be a corresponding extension of the class of persons who may be treated as members of a civilian component of such a visiting force.

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(6) In the case of persons of any category for the time being agreed between Her Majesty's government in the United Kingdom and the other members of the North Atlantic Council—

(a) employment by a designated allied headquarters shall be treated for the purposes of subsection (2) above as if it were service as a member of a visiting force of a designated country; [F1877]. . .

(b) [F1877] . . . . . .

(7) [F1878] . . . . . .

(8) For the purposes of this section—

"allied headquarters" means any international military headquarters established under the North Atlantic Treaty, and

"designated" means designated for the purpose in question by or under any Order in Council made for giving effect to any international agreement.

Textual Amendments

F1871 S. 323(1) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 45(2), **Sch. 8 Pt. 1** (with Sch. 7)

F1872 Words in s. 323(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 45(3)** (with Sch. 7)

F1873 Words in s. 323(4) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 45(4)(a)** (with Sch. 7)

F1874 Words in s. 323(4) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 45(4)(b)** (with Sch. 7)

F1875 Words in s. 323(4) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 45(4)(c)** (with Sch. 7)

F1876 Words in s. 323(5) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 45(5)** (with Sch. 7)

F1877 S. 323(6)(b) and preceding word repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 45(6), **Sch. 8 Pt. 1** (with Sch. 7)

F1878 S. 323(7) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 45(7), **Sch. 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C221 *For orders see* Part III Vol.5*under* "Securities".

Marginal Citations

M357 Source-1970 s.367

M358 1952 c. 67.

324 Designated international organisations.

[F1879] . . . . . .

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Textual Amendments

F1879 S. 324 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 130, **Sch. 3** (with Sch. 2)

325 Interest on deposits with National Savings Bank.

F1880 . . . . . .

Textual Amendments

F1880 S. 325 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 131, **Sch. 3** (with Sch. 2)

326 Interest etc. under contractual savings schemes.

F1881 . . . . . .

Textual Amendments

F1881 S. 326 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 132, **Sch. 3** (with Sch. 2)

[F1882 326A Tax-exempt special savings accounts.

F1883 . . . . . .]

Textual Amendments

F1882 Ss. 326A-326C inserted by Finance Act 1990 (c. 29), **s. 28(1)**

F1883 Ss. 326A-326D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 133, **Sch. 3** (with Sch. 2)

[F1884 326B Loss of exemption for special savings accounts.

F1885 . . . . . .]

Textual Amendments

F1884 Ss. 326A-326C inserted by Finance Act 1990 (c. 29), **s. 28(1)**

F1885 Ss. 326A-326D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 133, **Sch. 3** (with Sch. 2)

[F1886 326BB Follow-up TESSAs.

F1887 . . . . . .]

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Textual Amendments

F1886 S. 326BB inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 62(2)**

F1887 Ss. 326A-326D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 133, **Sch. 3** (with Sch. 2)

[F1888 326C Tax-exempt special savings accounts: supplementary.

F1889 . . . . . .]

Textual Amendments

F1888 Ss. 326A-326C inserted by Finance Act 1990 (c. 29), **s. 28(1)**

F1889 Ss. 326A-326D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 133, **Sch. 3** (with Sch. 2)

[F1890 326D Tax-exempt special savings accounts: tax representatives.

F1891 . . . . . .]

Textual Amendments

F1890 S. 326D inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 63(4)**

F1891 Ss. 326A-326D repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 133, **Sch. 3** (with Sch. 2)

327 Disabled person's vehicle maintenance grant.

F1892 . . . . . .

Textual Amendments

F1892 S. 327 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 134, **Sch. 3** (with Sch. 2)

[F1893 327A Payments to adopters

F1894 . . . . . .]

Textual Amendments

F1893 S. 327A inserted (with effect in accordance with s. 175(2) of the amending Act) by Finance Act 2003 (c. 14), **s. 175(1)**

F1894 S. 327A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 135, **Sch. 3** (with Sch. 2)

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F1895 328 Funds in court.

. . . . . .

Textual Amendments

F1895 S. 328 repealed (with effect in accordance with s. 68(3)-(5) of the repealing Act) by Finance Act 1999 (c. 16), s. 68(2), **Sch. 20 Pt. 3(17)**, Note

329 Interest on damages for personal injuries.

F1896 . . . . . .

Textual Amendments

F1896 Ss. 329-329AB repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 136, **Sch. 3** (with Sch. 2)

[F1897 329A Personal injury damages in the form of periodical payments.

F1898 . . . . . .

Textual Amendments

F1897 Ss. 329AA, 329AB inserted (with effect in accordance with s. 150(2)-(4) of the amending Act) by Finance Act 1996 (c. 8), s. 150(1), **Sch. 26**

F1898 Ss. 329-329AB repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 136, **Sch. 3** (with Sch. 2)

329AB Compensation for personal injury under statutory or other schemes.

F1899 . . . . . .]

Textual Amendments

F1897 Ss. 329AA, 329AB inserted (with effect in accordance with s. 150(2)-(4) of the amending Act) by Finance Act 1996 (c. 8), s. 150(1), **Sch. 26**

F1899 Ss. 329-329AB repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 136, **Sch. 3** (with Sch. 2)

[F1900 F1901 329A Annuities purchased for certain persons.

. . . . . .

Textual Amendments

F1900 Ss. 329A, 329B inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 142**

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F1901 Ss. 329A-329C repealed and superseded (29.4 1996) by Finance Act 1996 (c. 8), s. 150(2)(3), **Sch. 41 Pt. 5(16)** (with s. 150(4))

F1902 329B Annuities assigned in favour of certain persons.

. . . . . .]

Textual Amendments

F1900 Ss. 329A, 329B inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 142**

F1902 Ss. 329A-329C repealed and superseded (29.4 1996) by Finance Act 1996 (c. 8), s. 150(2)(3), **Sch. 41 Pt. 5(16)** (with s. 150(4))

[F1903 F1904 329C Annuities: criminal injuries.

. . . . . .]

Textual Amendments

F1903 S. 329C inserted (8.11.1995) by Criminal Injuries Compensation Act 1995 (c. 53), **s. 8**

F1904 Ss. 329A-329C repealed and superseded (29.4 1996) by Finance Act 1996 (c. 8), s. 150(2)(3), **Sch. 41 Pt. 5(16)** (with s. 150(4))

330 Compensation for National-Socialist persecution.

F1905 . . . . . .

Textual Amendments

F1905 S. 330 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 46, **Sch. 8 Pt. 1** (with Sch. 7)

331 Scholarship income.

F1906 . . . . . .

Textual Amendments

F1906 S. 331 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 137, **Sch. 3** (with Sch. 2)

[F1907 331A Student loans: certain interest to be disregarded.

F1908 . . . . . .]

Textual Amendments

F1907 S. 331A inserted (27.7.1999) by Finance Act 1999 (c. 16), **s. 60**

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F1908 S. 331A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 138, **Sch. 3** (with Sch. 2)

332 Expenditure and houses of ministers of religion.

(1) F1909 . . . . . .

(2) F1909 . . . . . .

(3) F1910 . . . . . .

[F1911 (3A) F1912 . . . . . .

(3B) F1912 . . . . . .]

(4) F1912 . . . . . .

Textual Amendments

F1909 S. 332(1)(2) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 47(2), **Sch. 8 Pt. 1** (with Sch. 7)

F1910 S. 332(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 139, **Sch. 3** (with Sch. 2)

F1911 S. 332(3A)(3B) inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 12 para. 10**

F1912 S. 332(3A)(3B)(4) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 47(4), **Sch. 8 Pt. 1** (with Sch. 7)

[F1913 332A Venture capital trusts: relief.

Schedule 15B shall have effect for conferring relief from income tax in respect of investments in venture capital trusts F1914 . . . .]

Textual Amendments

F1913 S. 332A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 71(1)**

F1914 Words in s. 332A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 140, **Sch. 3** (with Sch. 2)

[F1915 333 Investment plan regulations

Regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) may include provision generally for the purpose of the administration of corporation tax in relation to plans.]

Textual Amendments

F1915 S. 333 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 141** (with Sch. 2)

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[F1916 333A Personal equity plans: tax representatives.

F1917 . . . . . .]

Textual Amendments

F1916 S. 333A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 64(1)**

F1917 S. 333A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 142, **Sch. 3** (with Sch. 2)

[F1918 333B Involvement of insurance companies with plans and accounts.

(1) The Treasury may make regulations providing exemption from tax for income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company's **[**F1919 long-term insurance fund**]** as is referable to **[**F1920 plan business**]**.

(2) The Treasury may by regulations modify the effect of section 30(4) of the M359 Finance (No. 2) Act 1997 (which repeals section 231(2) of the Taxes Act 1988 with effect from 6th April 1999) in relation to distributions which—

(a) are made before 6th April 2004; and

(b) are received by an insurance company in respect of investments of so much of its **[**F1919 long-term insurance fund**]** as is referable to **[**F1920 plan business**]**.

(3) Regulations under this section may make provision for insurance companies that are not resident in the United Kingdom to be treated, in relation to investments of so much of their **[**F1919 long-term insurance funds**]** as are referable to **[**F1920 plan business**]**—

(a) as if they were so resident for the purposes of any enactment conferring an entitlement to, or to the payment of, tax credits in respect of investments; and

(b) as if such other conditions of any entitlement to, or to the payment of, tax credits were also satisfied.

(4) Regulations under section 333 or this section **[**F1921 or Chapter 3 of Part 6 of ITTOIA 2005 (except sections 697 and 698)**]** may include provision which, in relation to insurance companies that are not resident in the United Kingdom—

(a) requires a person to be appointed to be responsible for securing the discharge of any duties to which such an insurance company is subject under the regulations; and

(b) confers rights and powers, and imposes liabilities, on a person so appointed;

and, without prejudice to the generality of paragraphs (a) and (b) above, regulations made by virtue of this subsection may include any provision corresponding to any that, in relation to a European institution, may be made under **[**F1922 section 697 or 698 of ITTOIA 2005 (requirements concerning foreign plan managers)**]**.

(5) Regulations under this section may provide that an insurance company—

(a) shall comply with any notice served on it by the Board which requires it, within a prescribed period, to make available for the Board's inspection documents (of a prescribed kind) relating to, or to matters connected with, its past or present **[**F1923 plan business**]**; and

(b) shall, within a prescribed period of being required to do so by the Board, furnish to the Board information (of a prescribed kind) about its past or present **[**F1923 plan business**]** or any matters connected with it.

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(6) Any power of the Treasury under this section to make provision by regulations in relation to insurance companies shall include power by regulations to make such corresponding provision in relation to friendly societies as the Treasury think fit.

(7) Regulations under this section may—

(a) for purposes connected with any exemption from tax conferred by virtue of subsection (1) above, apply or modify any provision made by or under the Tax Acts;

(b) make different provision for different cases;

(c) include such incidental, supplemental, consequential and transitional provision as the Treasury may consider appropriate.

(8) Without prejudice to the generality of the powers conferred by subsection (7) above, the provision that may be made in connection with an exemption from tax conferred by virtue of subsection (1) above shall include provision for section 436 to apply (with any such modifications as may be prescribed) in relation to **[**F1924plan business**]** as it applies in relation to pension business.

(9) In this section—

"friendly society" has the same meaning as in Chapter II of Part XII;

[F1925"insurance company" means an undertaking carrying on the business of effecting or carrying out contracts of insurance and, for the purposes of this definition, "contract of insurance" has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;**]**

"**[**F1919long-term insurance fund**]**" has the same meaning as in Chapter I of Part XII;

[F1926"plan business", in relation to an insurance company, means the business of the company that is attributable to the making of investments with that company under plans for which provision is made by regulations under Chapter 3 of Part 6 (except sections 697 and 698) of ITTOIA 2005 (income from individual investment plans)**]**

"prescribed" means prescribed by regulations under this section;

F1927 . . . . . .**]**

Textual Amendments

F1918 S. 333B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 77(1)**

F1919 Words in s. 333B(1)(2)(b)(3)(9) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(a)**

F1920 Words in s. 333B(1)(2)(b)(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 143(2)** (with Sch. 2)

F1921 Words in s. 333B(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 143(3)(a)** (with Sch. 2)

F1922 Words in s. 333B(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 143(3)(b)** (with Sch. 2)

F1923 Words in s. 333B(5)(a)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 143(4)** (with Sch. 2)

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F1924 Words in s. 333B(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 143(5)** (with Sch. 2)
F1925 S. 333B(9): definition of "insurance company" substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 22**
F1926 S. 333B(9): definition of "plan business" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 143(6)(a)** (with Sch. 2)
F1927 S. 333B(9): definition of "section 333 business" repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 143(6)(b), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)
C222 S. 333B(1)(5)-(9) modified (6.4.2005) by Child Trust Funds Act 2004 (c. 6), **ss. 14**, 27; S.I. 2004/3369, **art. 2**

Marginal Citations
M359 1997 c. 58.

CHAPTER V

RESIDENCE OF INDIVIDUALS

334 Commonwealth citizens and others temporarily abroad.

Every Commonwealth citizen or citizen of the Republic of Ireland—

(a) shall, if his ordinary residence has been in the United Kingdom, be assessed and charged to income tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad, and

(b) shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains, whether they arise from property in the United Kingdom or elsewhere, or from any allowance, annuity or stipend, or from any trade, profession, employment or vocation in the United Kingdom or elsewhere.

335 Residence of persons working abroad.

M360(1) Where—

(a) a person works full-time in one or more of the following, that is to say, a trade, profession, vocation, office or employment; and

(b) no part of the trade, profession or vocation is carried on in the United Kingdom and all the duties of the office or employment are performed outside the United Kingdom;

the question whether he is resident in the United Kingdom shall be decided without regard to any place of abode maintained in the United Kingdom for his use.

(2) Where an office or employment is in substance one of which the duties fall in the year of assessment to be performed outside the United Kingdom there shall be treated for the purposes of this section as so performed any duties performed in the United

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Kingdom the performance of which is merely incidental to the performance of the other duties outside the United Kingdom.

Marginal Citations
M360 Source-1970 s.50

336 Temporary residents in the United Kingdom.

M361(1) A person shall not be charged to income tax under **[**F1928a charge to which subsection (1A) applies**]** as a person residing in the United Kingdom, in respect of profits or gains received in respect of possessions or securities out of the United Kingdom, if—

(a) he is in the United Kingdom for some temporary purpose only and not with any view or intent of establishing his residence there, and

(b) he has not actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment,

but if any such person resides in the United Kingdom for such a period he shall be so chargeable for that year.

[F1929(1A) This subsection applies to—

[F1930(a) any charge under ITTOIA 2005 on relevant foreign income,**]**

(b) the charge under Part 9 of ITEPA 2003 (pension income) in respect of—

(i) income to which section 573, 605, 609, 610, 611, 623 or 629 of that Act applies,

(ii) any annual payment to which section 633 of that Act applies which is made by or on behalf of a person who is outside the United Kingdom, or

(iii) income to which section 583 of that Act applies if the paying scheme (see subsection (3) of that section) is a pilots' benefit fund (see section 587 of that Act), and

(c) the charge under Part 10 of ITEPA 2003 (social security income) in respect of benefits to which section 678 of that Act applies (foreign benefits).**]**

(2) For the purposes of **[**F1931determining taxable earnings from an employment under Chapters 4 and 5 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: charge to tax)**]**, a person who is in the United Kingdom for some temporary purpose only and not with the intention of establishing his residence there shall not be treated as resident in the United Kingdom if he has not in the aggregate spent at least six months in the United Kingdom in the year of assessment, but shall be treated as resident there if he has.

[F1932(3) The question whether—

(a) a person falls within subsection (1)(a) above, or

(b) for the purposes of subsection (2) above a person is in the United Kingdom for some temporary purpose only and not with the intention of establishing his residence there,

shall be decided without regard to any living accommodation available in the United Kingdom for his use.**]**

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Textual Amendments

F1928 Words in s. 336(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 48(2)** (with Sch. 7)

F1929 S. 336(1A) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 48(3)** (with Sch. 7)

F1930 S. 336(1A)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 144** (with Sch. 2)

F1931 Words in s. 336(2) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 17 para. 10(2)**

F1932 S. 336(3) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 208(1)(4)**

Modifications etc. (not altering text)

C223 *See* 1979(C) s.18(3)—*corresponding provision for capital gains.*

Marginal Citations

M361 Source-1970 s.51

PART VIII

TAXATION OF INCOME AND CHARGEABLE GAINS OF COMPANIES

Taxation of income

337 Company beginning or ceasing to carry on trade

(1) Where a company begins or ceases—

(a) to carry on a trade, or

(b) to be within the charge to corporation tax in respect of a trade,

the company's income shall be computed **[**[F1933]for the purposes of corporation tax**]** as if that were the commencement or, as the case may be, the discontinuance of the trade, whether or not the trade is in fact commenced or discontinued.

(2) Subsection (1) applies to a Schedule A business or overseas property business **[**[F1934](within the meaning given by section 70A(4))**]** as it applies to a trade.

Textual Amendments

F1933 Words in s. 337(1) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 145(2)** (with Sch. 2)

F1934 Words in s. 337(2) inserted (with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 145(3)** (with Sch. 2)

337A Computation of company's profits or income: exclusion of general deductions

(1) For the purposes of corporation tax, subject to any provision of the Corporation Tax Acts expressly authorising a deduction—

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(a) a company's profits shall be computed without any deduction in respect of dividends or other distributions, and

(b) a company's income from any source shall be computed without any deduction in respect of charges on income.

(2) In computing a company's income from any source for the purposes of corporation tax—

(a) no deduction shall be made in respect of interest except in accordance with Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships); and

(b) no deduction shall be made in respect of losses from intangible fixed assets within Schedule 29 to the Finance Act 2002 except in accordance with that Schedule.

338 Charges on income deducted from total profits

(1) Charges on income are allowed as deductions from a company's total profits in computing the corporation tax chargeable for an accounting period.

(2) They are deducted from the company's total profits for the period as reduced by any other relief from tax other than group relief.

(3) The amount of the deduction is limited to the amount that reduces the company's total profits for the period to nil.

(4) Except as otherwise provided, a deduction is allowed only in respect of payments made by the company in the accounting period concerned.

(5) The above provisions are subject to any express exceptions in the Corporation Tax Acts.

Modifications etc. (not altering text)

C224 S. 338 restricted (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 4 para. 3**; S.I. 2004/2575, art. 2(1), **Sch. 1**

338A Meaning of "charges on income"

(1) This section defines what payments or other amounts are "charges on income" for the purposes of corporation tax.

This section has effect subject to any express exceptions in the Corporation Tax Acts.

(2) Subject to the following provisions of this section, the following (and only the following) are charges on income—

(a) F1935 . . . . . .

(b) qualifying donations within the meaning of section 339 (qualifying donations to charity);

(c) amounts allowed as charges on income under section 587B(2)(a)(ii) (gifts of shares etc to charity).

(3) No payment that is deductible in computing profits or any description of profits for the purposes of corporation tax shall be treated as a charge on income.

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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F1936(4) . . . . . .

Textual Amendments

F1935 S. 338A(2)(a) repealed (with effect in accordance with s. 38(7) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), s. 38(2), **Sch. 11 Pt. 2(7)**, Note

F1936 S. 338A(4) repealed (with effect in accordance with s. 38(7) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

[F1937338B Charges on income: annuities or other annual payments

F1938 . . . . . .]

Textual Amendments

F1937 Ss. 338-338B substituted for s. 338 (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 1(2)**

F1938 S. 338B repealed (with effect in accordance with s. 38(7) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

339 Charges on income: donations to charity.

(1) M362A qualifying donation is a payment made by a company to a charity, other than—

[F1939(a) a payment which, by reason of any provision of the Taxes Acts (within the meaning of the Management Act) except section 209(4), is to be regarded as a distribution; and]

(b) a payment which is deductible in computing profits or any description of profits for purposes of corporation tax.

(2) F1940 . . . . . .

(3) F1940 . . . . . .

[F1941(3A) F1940 . . . . . .

(3B) A payment made by a close company is not a qualifying donation if—

(a) it is made subject to a condition as to repayment, or

(b) the company or a connected person receives a benefit in consequence of making it and either the relevant value in relation to the payment exceeds [F1942the limit imposed by subsection (3DA) below] or the amount to be taken into account for the purposes of this paragraph in relation to the payment exceeds £250.

(3C) For the purposes of subsections (3B) above and (3D) below, the relevant value in relation to a payment to a charity is—

(a) where there is one benefit received in consequence of making it which is received by the company or a connected person, the value of that benefit;

(b) where there is more than one benefit received in consequence of making it which is received by the company or a connected person, the aggregate value of all the benefits received in consequence of making it which are received by the company or a connected person.

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(3D) The amount to be taken into account for the purposes of subsection (3B)(b) above in relation to a payment to a charity is an amount equal to the aggregate of—

(a) the relevant value in relation to the payment, and

(b) the relevant value in relation to each payment already made to the charity by the company in the accounting period in which the payment is made which is a qualifying donation within the meaning of this section.

[The limit imposed by this subsection is—

F1943(3DA) (a) where the amount of the payment does not exceed £100, 25 per cent of the amount of the payment;

(b) where the amount of the payment exceeds £100 but does not exceed £1,000, £25;

(c) where the amount of the payment exceeds £1,000, 2.5 per cent of the amount of the payment.

(3DB) Where a benefit received in consequence of making a payment—

(a) consists of the right to receive benefits at intervals over a period of less than twelve months;

(b) relates to a period of less than twelve months; or

(c) is one of a series of benefits received at intervals in consequence of making a series of payments at intervals of less than twelve months,

the value of the benefit shall be adjusted for the purposes of subsection (3C) above and the amount of the payment shall be adjusted for the purposes of subsection (3DA) above.

(3DC) Where a benefit, other than a benefit which is one of a series of benefits received at intervals, is received in consequence of making a payment which is one of a series of payments made at intervals of less than twelve months, the amount of the payment shall be adjusted for the purposes of subsection (3DA) above.

(3DD) Where the value of a benefit, or the amount of a payment, falls to be adjusted under subsection (3DB) or (3DC) above, the value or amount shall be multiplied by 365 and the result shall be divided by—

(a) in a case falling within subsection (3DB)(a) or (b) above, the number of days in the period of less than twelve months;

(b) in a case falling within subsection (3DB)(c) or (3DC) above, the average number of days in the intervals of less than twelve months;

and the reference in subsection (3DB) to subsection (3C) above is a reference to that subsection as it applies for the purposes of subsection (3B) above.**]**

(3E) A payment made by a close company is not a qualifying donation if it is conditional on, or associated with, or part of an arrangement involving, the acquisition of property by the charity, otherwise than by way of gift, from the company or a connected person.

(3F) F1940. . . . . .

(3G) A payment made by a company is not a qualifying donation if the company is itself a charity.**]**

[F1944(4) Where a company gives a sum of money to a charity, the gift shall in the hands of the charity be treated for the purposes of this Act as if it were an annual payment.**]**

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F1945(5) *In any accounting period of a company, the maximum amount allowable under section* 338*by virtue of subsection* (2)(b)*of that section in respect of qualifying donations made by the company shall be a sum equal to* 3*per cent. of the dividends paid on the company's ordinary share capital in that accounting period* .

(6) F1940. . . . . .

(7) F1940. . . . . .

[F1946**[**F1947(7AA) Where—

(a) a qualifying donation to a charity is made by a company which is wholly owned by a charity, and

(b) the company makes a claim for the donation, or any part of it, to be deemed for the purposes of section 338 to be a charge on income paid in an accounting period falling wholly or partly within the period of nine months ending with the date of the making of the donation,

the donation or part shall be deemed for those purposes to be a charge on income paid in that accounting period, and not in any later period.

A claim under this subsection must be made within the period of two years immediately following the accounting period in which the donation is made, or such longer period as the Board may allow.**]**

(7AB) For the purposes of this section a company is wholly owned by a charity if it is either—

(a) a company with an ordinary share capital every part of which is owned by a charity (whether or not the same charity); or

(b) a company limited by guarantee in whose case every person who—

(i) is beneficially entitled to participate in the divisible profits of the company, or

(ii) will be beneficially entitled to share in any net assets of the company available for distribution on its winding up,

is or must be a charity or a company wholly owned by a charity.

(7AC) For the purposes of subsection (7AB) above ordinary share capital of a company shall be taken to be owned by a charity if there is a charity which—

(a) within the meaning of section 838 directly or indirectly owns that share capital; or

(b) would be taken so to own that share capital if references in that section to a body corporate included references to a charity which is not a body corporate.**]**

[F1948(7A) In subsections (3B) to (3E) above references to a connected person are to a person connected with—

(a) the company, or

(b) a person connected with the company;

and section 839 applies for the purposes of this subsection.**]**

(8) F1940. . . . . .

(9) M363For the purposes of this section "charity" includes **[**F1949each of the bodies mentioned in section 507, and F1950. . . **]** any Association of a description specified in section 508, but, subject to that, in this section "charity" has the same meaning as in section 506.

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Textual Amendments

F1939 S. 339(1)(a) substituted (with effect in accordance with s. 40(11) of the amending Act) by Finance Act 2000 (c. 17), **s. 40(2)**

F1940 S. 339(2)(3)(3A)(3F)(6)(7)(8) repealed (with effect in accordance with s. 40(11) of the repealing Act) by Finance Act 2000 (c. 17), s. 40(3), **Sch. 40 Pt. 2(1)**, Note 2

F1941 1990 s.26(4)*in relation to payments made on or after* 1*October* 1990.

F1942 Words in s. 339(3B)(b) substituted (with effect in accordance with s. 40(11) of the amending Act) by Finance Act 2000 (c. 17), **s. 40(4)**

F1943 S. 339(3DA)-(3DD) inserted (with effect in accordance with s. 40(11) of the amending Act) by Finance Act 2000 (c. 17), **s. 40(5)**

F1944 S. 339(4) substituted (with effect in accordance with s. 40(11) of the amending Act) by Finance Act 2000 (c. 17), **s. 40(6)**

F1945 *Repealed by* 1990 ss.27(2)*and* 132*and* Sch.19 Part IV*in relation to accounting periods ending on or after* 1*October* 1990.

F1946 S. 337(7AA)-(7AC) inserted (with effect in accordance with s. 64(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 64(1)**

F1947 S. 339(7AA) substituted (with effect in accordance with s. 40(11) of the amending Act) by Finance Act 2000 (c. 17), **s. 40(7)**

F1948 1990 s.26(5)*in relation to payments made on or after* 1*October* 1990.

F1949 1989 s.60(2)*in respect of payments due on or after* 14*March* 1989.*Previously*
"the Trustees of the National Heritage Memorial Fund and the Historic Buildings and Monuments Commission for England and, additionally, in subsections (1) to (5) above includes the Trustees of the British Museum, the Trustees of the British Museum (Natural History) and".

F1950 Words in s. 339(9) repealed (with effect in accordance with s. 40(11) of the repealing Act) by Finance Act 2000 (c.17), s. 40(8), **Sch. 40 Pt. 2(1)**, Note 2

Modifications etc. (not altering text)

C225 *See* 1990 s.94*re production of books etc. in respect of repayment claims in respect of payments made on or after* 1*October* 1990.

Marginal Citations

M362 Source-1986 s.29(1), (2)

M363 Source-1981 s.49; 1983 s.46(3); 1986 s.29(6)

[F1951F1952339A. . . . . .

. . . . . .]

Textual Amendments

F1951 S. 339A inserted (in relation to accounting periods ending on or after 1 October 1990) by Finance Act 1990 (c. 29), **s. 27(3)(4)**

F1952 S. 339A repealed (in relation to accounting periods beginning on or after 19.3.1991) by Finance Act 1991 (c. 31), ss. 71(1)(3), 123, **Sch. 19 Pt. V**, Note 5; and s. 339A modified in its application to accounting periods beginning before 19.3.1991 and ending on or after that date by s. 71(4) of that repealing Act

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[F1953]340 Charges on income: interest payable to non-residents.

. . . . . .

Textual Amendments

F1953 S. 340 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 17, **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

[F1954]341 Payments of interest etc. between related companies.

. . . . . .

Textual Amendments

F1954 S. 341 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 17, **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

342 Tax on company in liquidation.

(1) [M364]In this section references to a company's final year are references to the financial year in which the affairs of the company are completely wound up, and references to a company's penultimate year are references to the last financial year preceding its final year.

(2) [M365]Subject to subsection (3) **[**[F1955]or (3A)**]** below—

(a) corporation tax shall be charged on the profits of the company arising in the winding-up in its final year at the rate of corporation tax fixed or proposed for the penultimate year; but

(b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.

(3) If, before the affairs of the company are completely wound up, any of the rates or fractions mentioned in subsection (2) above has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.

[[F1956](3A) If, in the case of the company's final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.

In this subsection "the company's final accounting period" means the accounting period of the company which, in accordance with section 12(7), ends by reason of the completion of the winding up.**]**

(4) [M366]An assessment on the company's profits for an accounting period which falls after the commencement of the winding-up shall not be invalid because made before the end of the accounting period.

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(5) In making an assessment after the commencement of the winding-up of the company but before the date when its affairs are completely wound up, **[**F1957the liquidator may**]** act on an assumption as to when that date will fall, so far as it governs section 12(7).

(6) The assumption of the wrong date shall not alter the company's final and penultimate year, and, if the right date is later, an accounting period shall end on the date assumed, and a new accounting period shall begin and section 12(7) shall thereafter apply **[**F1958as if the winding-up had commenced with the beginning of that new accounting period**]**.

(7) M367References in this section to a rate or fraction fixed or proposed are references to a rate or fraction fixed by an Act passed before the completion of the winding-up or, if not so fixed, proposed by a Budget resolution (and without regard to any subsequent Act); except that if a rate or fraction so fixed is proposed to be altered by a Budget resolution any such reference to it is a reference to it as proposed to be so altered.

In this subsection "Budget resolution" means a resolution of the House of Commons for fixing any such rate or fraction as is mentioned in this section.

(8) Where the winding-up commenced before the company's final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) above shall apply in relation to the company's profits arising at any time in its penultimate year.

(9) Any assessment made by virtue of section 8(4) shall be subject to any such adjustment by discharge or repayment of tax or by a further assessment as may be required to give effect to this section.

Textual Amendments

F1955 Words in s. 342(2) inserted (with effect in accordance with Sch. 4 para. 6(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 6(2)**; S.I. 1998/3173

F1956 S. 342(3A) inserted (with effect in accordance with Sch. 4 para. 6(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 6(3)**; S.I. 1998/3173

F1957 Words in s. 342(5) substituted (with effect in accordance with Sch. 24 para. 12(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 24 paras. 8(1), 9, **12(2)**; S.I. 1998/3173

F1958 Words in s. 342(6) substituted (with effect in accordance with Sch. 24 para. 12(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 24 paras. 8(1), 9, **12(3)**; S.I. 1998/3173

Marginal Citations

M364 Source-1970 s.245(1)

M365 Source-1970 s.245(2), (3); 1974 s.37(1)

M366 Source-1970 s.245(4)-(6)

M367 Source-1970 s.245(7)-(9); 1974 s.37(1)

[F1959**342A Tax on companies in administration**

(1) In this section—

(a) references to the relevant event, in relation to a company in administration, are references—

(i) to the administrator sending a notice in respect of the company under paragraph 84(1) of Schedule B1 to the Insolvency Act 1986 (company moving from administration to dissolution), or

(ii) in the case of a company which enters administration otherwise than under that Act, to the doing of any other act for a like purpose, and

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(b) references to a company's final year are references to the financial year in which the relevant event occurs, and references to the company's penultimate year are references to the last financial year preceding its final year.

(2) Subject to subsections (3) and (4)—

(a) corporation tax shall be charged on the profits of the company arising in the administration in its final year at the rate of corporation tax fixed or proposed for the penultimate year, but

(b) where the corporation tax charged on the company's income included in those profits falls to be calculated or reduced in accordance with section 13, it shall be so calculated or reduced in accordance with such rate or fraction fixed or proposed for the penultimate year as is applicable under that section.

(3) If, before the relevant event, any of the rates or fractions mentioned in subsection (2) has been fixed or proposed for the final year, that subsection shall have effect in relation to that rate or fraction as if for the references to the penultimate year there were substituted references to the final year.

(4) If, in the case of the company's final accounting period, the income (if any) which consists of interest received or receivable by the company under section 826 does not exceed £2,000, that income shall not be subject to corporation tax.

(5) In subsection (4) "the company's final accounting period" means the last accounting period of the company before the relevant event.

(6) An assessment on the company's profits for an accounting period in which the company is in administration shall not be invalid because made before the end of the accounting period.

(7) In making an assessment after the company enters administration and before the date of the relevant event, the administrator may act on an assumption as to when that date will fall so far as it governs section 12(3).

(8) The assumption of the wrong date shall not alter the company's final and penultimate year and, if the right date is later—

(a) an accounting period shall end on the date assumed and a new accounting period shall begin, and

(b) thereafter, section 12(3) shall apply as if the company had entered administration at the beginning of that new accounting period.

(9) Subsections (7) and (9) of section 342 apply in relation to this section as they apply in relation to that section, except that in subsection (7) of that section the reference to the completion of the winding up is to be read as a reference to the relevant event.

(10) Where the company entered administration before its final year, paragraphs (a) and (b) of subsection (2) (but not subsection (3)) apply in relation to the company's profits arising at any time in its penultimate year.**]**

Textual Amendments

F1959 S. 342A inserted (with effect in accordance with Sch. 41 para. 5(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 41 para. 3**

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343 Company reconstructions without a change of ownership.

(1) [M368]Where, on a company ("the predecessor") ceasing to carry on a trade, another company ("the successor") begins to carry it on, and—

(a) on or at any time within two years after that event the trade or an interest amounting to not less than a three-fourths share in it belongs to the same persons as the trade or such an interest belonged to at some time within a year before that event; and

(b) the trade is not, within the period taken for the comparison under paragraph (a) above, carried on otherwise than by a company which is within the charge to tax in respect of it;

then the Corporation Tax Acts shall have effect subject to subsections (2) to (6) below.

In paragraphs (a) and (b) above references to the trade shall apply also to any other trade of which the activities comprise the activities of the first mentioned trade.

(2) [M369]The trade shall not be treated as permanently discontinued nor a new trade as set up and commenced for the purpose of the allowances and charges provided for by **[**[F1960]the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]**; but—

(a) there shall be made to or on the successor in accordance with those Acts all such allowances and charges as would, if the predecessor had continued to carry on the trade, have fallen to be made to or on it; and

(b) the amount of any such allowance or charge shall be computed as if—

(i) the successor had been carrying on the trade since the predecessor began to do so, and

(ii) everything done to or by the predecessor had been done to or by the successor (but so that no sale or transfer which on the transfer of the trade is made to the successor by the predecessor of any assets in use for the purpose of the trade shall be treated as giving rise to any such allowance or charge).

The preceding provisions of this subsection shall not apply if the successor is a dual resident investing company (within the meaning of section 404) which begins to carry on the trade after 31st March 1987.

(3) [M370][F1961] . . ., subject to subsection (4) below and to any claim made by the predecessor under section **[**[F1962]393A(1)**]**, the successor shall be entitled to relief under section 393(1), as for a loss sustained by the successor in carrying on the trade, for any amount for which the predecessor would have been entitled to [F1963]. . . relief if it had continued to carry on the trade.

(4) [M371]Where the amount of relevant liabilities exceeds the value of relevant assets, the successor shall be entitled to relief by virtue of subsection (3) above only if, and only to the extent that, the amount of that excess is less than the amount mentioned in that subsection.

This subsection does not apply where the predecessor ceased to carry on the trade or part of a trade before 19th March 1986 nor, in a case where subsection (7) below applies, in relation to any earlier event, within the meaning of that subsection, which occurred before that date (but without prejudice to its application in relation to any later event which occurred on or after that date).

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[F1964(4A) Subsection (2A) of section 393A shall not apply to any loss which (but for this subsection) would fall within subsection (2B) of that section by virtue of the predecessor's ceasing to carry on the trade, and subsection (7) of that section shall not apply for the computation of any such loss.**]**

(5) M372Any securities, within the meaning of section 731, which at the time when the predecessor ceases to carry on the trade form part of the trading stock belonging to the trade shall be treated for the purposes of that section as having been sold at that time in the open market by the predecessor and as having been purchased at that time in the open market by the successor.

F1965(6) . . . . . .

(7) Where the successor ceases to carry on the trade within the period taken for the comparison under subsection (1)(a) above and on its doing so a third company begins to carry on the trade, F1966 . . ., subsections (2) to **[**F1967(5)**]** above shall apply both in relation to that event (together with the new predecessor and successor) and to the earlier event (together with the original predecessor and successor), but so that—

(a) in relation to the earlier event "successor" shall include the successor at either event; and

(b) in relation to the later event "predecessor" shall include the predecessor at either event;

and if the conditions of this subsection are thereafter again satisfied, it shall apply again in like manner.

(8) Where, on a company ceasing to carry on a trade, another company begins to carry on the activities of the trade as part of its trade, then that part of the trade carried on by the successor shall be treated for the purposes of this section as a separate trade, if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade; and where, on a company ceasing to carry on part of a trade, another company begins to carry on the activities of that part as its trade or part of its trade, the predecessor shall for purposes of this section be treated as having carried on that part of its trade as a separate trade if the effect of so treating it is that subsection (1) or (7) above has effect on that event in relation to that separate trade.

(9) M373Where under subsection (8) above any activities of a company's trade fall, on the company ceasing or beginning to carry them on, to be treated as a separate trade, such apportionments of receipts, expenses, assets or liabilities shall be made as may be just.

(10) M374Where, by virtue of subsection (9) above, any item falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more companies, any question which arises as to the manner in which the item is to be apportioned shall be determined, for the purposes of the tax of all those companies—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to all those companies, by those Commissioners, unless all the companies agree that it shall be determined by the Special Commissioners;

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those companies, by such of those bodies as the Board may direct, unless all the companies agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners,

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and any such Commissioners shall determine the question in like manner as if it were an appeal except that all those companies shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

(11) Any relief obtainable under this section by way of discharge or repayment of tax shall be given on the making of a claim.

(12) [M375]In the application of this section to any case in relation to which subsection (4) above does not apply—

(a) subsection (9) above shall have effect with the substitution for the words following "separate trade" of the words " any necessary apportionment shall be made of receipts or expenses "; and

(b) subsection (10) above shall have effect with the substitution for "item" of " sum ".

Textual Amendments

F1960 Words in s. 343(2) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 26** (with Sch. 3)

F1961 Words in s. 343(3) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(1)(a), **Sch. 19 Pt. V**, Note 4

F1962 Words in s. 343(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, **Sch 15 para. 7(1)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

F1963 Word in s. 343(3) repealed (with effect in relation to accounting periods ending after the day appointed for the purposes of s. 10 of 1988 c. 1) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** and omitted (27.7.1993) by virtue of s. 120, Sch. 14 para. 8(2)

F1964 S. 343(4A) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58) s. 39(7)

F1965 S. 343(6) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), **ss. 73(3)**(-(5), 123, Sch. 15 para. 7(2), Sch. 19 Pt. V, Note 4

F1966 Words in s. 343(7) repealed (in relation to losses incurred in accounting periods ending on or after 1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 7(3)(a), **Sch. 19 Pt. V**, Note 4

F1967 Words in s. 343(7) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 7(3)(b)**(in relation to losses incurred in accounting periods ending on or after 1.4.1991)

Modifications etc. (not altering text)

C226 S. 343 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 20(8)**

C227 S. 343 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para 12(2)** (with s. 43(6))

C228 S. 343 applied (with modifications) (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 9 paras. 16, **17** (with s. 38(2)); S.I. 2004/2575, art. 2(1), **Sch. 1**

C229 S. 343(3)(4A)(7)-(9)(11) applied (5.10.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 9 para. 2(1)(3)** (with s. 38(2)); S.I. 2004/2575, art. 2(1), **Sch. 1**

C230 S. 343(2) excluded (16.7.1992) by Capital Allowances Act 1990 (c. 1), **s. 152B(10)(e)** (as inserted (16.7.1992) by Finance Act 1992 (c. 48), **s. 67**).

C231 S. 343(2) excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), Sch. 3 paras. 4(8)(a), **5**; S.I. 1999/3434, **art. 2**

C232 S. 343(2) excluded (with effect in accordance with s. 579 of the excluding Act) by Capital Allowances Act 2001 (c. 2), **s. 561(5)** (with Sch. 3)

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C233 S. 343(3) restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 15(1)(a)(7)**

Marginal Citations

M368 Source-1970 s.252(1)
M369 Source-1970 s.252(2), (2A); 1971 Sch.8 16(5); 1986 s.56(7), Sch.13 2; 1987 (No.2) s.64(2)
M370 Source-1970 s.252(3)-(7)
M371 Source-1970 s.252(3A); 1986 s.42(2), (3), Sch.10 1(2)
M372 Source-1970 s.252(4)-(7)
M373 Source-1970 s.252(8); 1986 Sch.10 1(3)
M374 Source-1970 s.252(9), (10)
M375 Source-1986 s.42(2), (3)

VALID FROM 21/07/2008

[F1968 343ZA Transfers of trade to obtain balancing allowances

(1) This section applies where—

(a) a company ("the predecessor") ceases to carry on a trade,

(b) another company ("the successor") begins to carry on the activities of that trade as its trade or as part of its trade,

(c) in the accounting period in which the predecessor ceases to carry on the trade the predecessor would (apart from this section) be entitled under Part 2 of the Capital Allowances Act to a balancing allowance in respect of the trade, and

(d) the predecessor's ceasing to carry on the trade is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor to that balancing allowance.

(2) This section also applies where—

(a) a company ("the predecessor") ceases to carry on part of a trade,

(b) another company ("the successor") begins to carry on the activities of that part of the trade as its trade or as part of its trade, and

(c) the predecessor's ceasing to carry on the part of the trade mentioned in paragraph (a) is part of a scheme or arrangement the main purpose, or one of the main purposes, of which is to entitle the predecessor, on cessation of the trade, to a balancing allowance in respect of the trade under Part 2 of the Capital Allowances Act.

(3) This section does not apply where section 343 applies.

(4) Where this section applies, the Corporation Tax Acts have effect subject to section 343(2), but as if the words "and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)" were omitted.

(5) Where this section applies because of subsection (1), and the successor carries on the activities of the trade the predecessor ceased to carry on as part of the successor's trade, for the purposes of section 343(2) that part of the successor's trade is to be treated as a separate trade carried on by the successor.

(6) Where this section applies because of subsection (2), for the purposes of section 343(2)—

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(a) that part of the trade which the predecessor ceased to carry on is to be treated as a separate trade carried on by the predecessor, and

(b) where the successor carries on the activities of that part of the trade as part of its trade, that part of the successor's trade is to be treated as a separate trade carried on by the successor.

(7) Where subsection (5) or (6) applies, such apportionment of receipts, expenses, assets and liabilities is to be made as may be just.

(8) Section 343(10) applies to an apportionment under subsection (7) as it applies to an apportionment under section 343(9).**]**

Textual Amendments

F1968 S. 343ZA inserted (with effect in accordance with s. 89(2) of the amending Act) by Finance Act 2008 (c. 9), **s. 89(1)**

VALID FROM 19/07/2007

[F1969 343A Company reconstructions involving business of leasing plant or machinery

(1) This section applies if the trade is or forms part of a business of leasing plant or machinery which the predecessor or the successor carries on on the day of cessation.

(2) If, on the day of cessation, both the predecessor and the successor carry on the trade otherwise than in partnership, section 343(2) does not apply unless—

(a) the principal company or companies of the predecessor immediately before the cessation are the same as the principal company or companies of the successor immediately afterwards, and

(b) if any such principal company is a consortium principal company, the relevant fraction in relation to the predecessor immediately before the cessation is the same as the relevant fraction in relation to the successor immediately afterwards (irrespective of whether the members of each consortium are the same).

(3) If, on the day of cessation, the predecessor or the successor carries on the trade in partnership, section 343(2) does not apply unless—

(a) the predecessor ceases to carry on the whole of its trade, and

(b) that trade is a business of leasing plant or machinery which the predecessor carries on in partnership on the day of cessation.

(4) In any case where section 343(2) does not apply as a result of this section, the plant or machinery belonging to the trade shall be treated for the purposes of the Corporation Tax Acts as sold by the predecessor to the successor on the day of the cessation for an amount equal to its market value as at that day.

(5) In this section—

"business of leasing plant or machinery"—

(a) has the same meaning as in Part 2 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc) (if the business is carried on otherwise than in partnership), and

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(b) has the same meaning as in Part 3 of that Schedule (if the business is carried on in partnership),

"consortium principal company" means a company which is a principal company as a result of paragraph 12 of that Schedule,

"market value", in relation to plant or machinery, is to be construed in accordance with paragraph 41(8) of that Schedule,

"plant or machinery" has the same meaning as in Part 2 of the Capital Allowances Act,

"principal company" is to be construed in accordance with paragraph 11 or (as the case may be) 12 of Schedule 10 to the Finance Act 2006, and

"relevant fraction" has the same meaning as in paragraph 12 of that Schedule.**]**

Textual Amendments

F1969 S. 343A inserted (19.7.2007, the inserted subsections (2) and (3) having effect in accordance with Sch. 6 para. 1(3)-(5) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 6 para. 1(2)**

344 Company reconstructions: supplemental.

M376(1) For the purposes of section 343—

(a) a trade carried on by two or more persons shall be treated as belonging to them in the shares in which they are entitled to the profits of the trade;

(b) a trade or interest in a trade belonging to any person as trustee (otherwise than for charitable or public purposes) shall be treated as belonging to the persons for the time being entitled to the income under the trust; and

(c) a trade or interest in a trade belonging to a company shall, where the result of so doing is that subsection (1) or (7) of section 343 has effect in relation to an event, be treated in any of the ways permitted by subsection (2) below.

(2) For the purposes of section 343, a trade or interest in a trade which belongs to a company engaged in carrying it on may be regarded—

(a) as belonging to the persons owning the ordinary share capital of the company and as belonging to them in proportion to the amount of their holdings of that capital, or

(b) in the case of a company which is a subsidiary company, as belonging to a company which is its parent company, or as belonging to the persons owning the ordinary share capital of that parent company, and as belonging to them in proportion to the amount of their holdings of that capital,

and any ordinary share capital owned by a company may, if any person or body of persons has the power to secure by means of the holding of shares or the possession of voting power in or in relation to any company, or by virtue of any power conferred by the articles of association or other document regulating any company, that the affairs of the company owning the share capital are conducted in accordance with his or their wishes, be regarded as owned by the person or body of persons having that power.

(3) For the purposes of subsection (2) above—

(a) references to ownership shall be construed as references to beneficial ownership;

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(b) a company shall be deemed to be a subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies;

(c) the amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies, shall be determined in accordance with section 838(5) to (10); and

(d) where any company is a subsidiary of another company, that other company shall be considered as its parent company unless both are subsidiaries of a third company.

(4) In determining, for the purposes of section 343, whether or to what extent a trade belongs at different times to the same persons, persons who are relatives of one another and the persons from time to time entitled to the income under any trust shall respectively be treated as a single person, and for this purpose "relative" means husband, wife, **[**[F1970]civil partner,**]** ancestor, lineal descendant, brother or sister.

(5) For the purposes of section 343(4), relevant assets are—

(a) assets which were vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; and

(b) consideration given to the predecessor by the successor in respect of the change of company carrying on the trade;

and for the purposes of paragraph (b) above the assumption by the successor of any liabilities of the predecessor shall not be treated as the giving of consideration to the predecessor by the successor.

(6) For the purposes of section 343(4), relevant liabilities are liabilities which were outstanding and vested in the predecessor immediately before it ceased to carry on the trade, which were not transferred to the successor and which, in a case where the predecessor was the predecessor on a previous application of section 343, were not by virtue of subsection (9) of that section apportioned to a trade carried on by the company which was the successor on that application; but a liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock is not a relevant liability.

(7) For the purposes of section 343(4)—

(a) the value of assets (other than money) shall be taken to be the price which they might reasonably be expected to have fetched on a sale in the open market immediately before the predecessor ceased to carry on the trade; and

(b) the amount of liabilities shall be taken to be their amount at that time.

(8) Where the predecessor transferred a liability to the successor but the creditor concerned agreed to accept settlement of part of the liability as settlement of the whole, the liability shall be treated for the purposes of subsection (6) above as not having been transferred to the successor except as to that part.

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(9) A liability representing the predecessor's share capital, share premium account, reserves or relevant loan stock shall, for the purposes of subsection (6) above, be treated as not doing so if, in the period of one year ending with the day on which the predecessor ceased to carry on the trade, the liability arose on a conversion of a liability not representing its share capital, share premium account, reserves or relevant loan stock.

(10) Where a liability of the predecessor representing its relevant loan stock is not a relevant liability for the purposes of section 343(4) but is secured on an asset of the predecessor not transferred to the successor, the value of the asset shall, for the purposes of section 343(4), be reduced by an amount equal to the amount of the liability.

(11) In this section "relevant loan stock" means any loan stock or similar security (whether secured or unsecured) except any in the case of which subsection (12) below applies.

(12) This subsection applies where, at the time the liability giving rise to the loan stock or other security was incurred, the person who was the creditor was carrying on a trade of lending money.

Textual Amendments

F1970 Words in s. 344(4) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 66

Marginal Citations

M376 Source-1970 s.253; 1986 s.42, Sch.10 2

Chargeable gains

F1971 345 . . . . . .

Textual Amendments

F1971 S. 345 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

F1972 346 . . . . . .

Textual Amendments

F1972 S. 346 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

F1973 347 . . . . . .

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Textual Amendments

F1973 S. 347 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 20, 22, 26(2), 27).

PART IX

ANNUAL PAYMENTS AND INTEREST

Annual payments

[F1974 347A General rule.

(1) A payment to which this section applies shall not be a charge on the income of the person liable to make it, and accordingly—

(a) his income shall be computed without any deduction being made on account of the payment, and

(b) the payment shall not **[**F1975, for the purposes of corporation tax, **]** form part of the income of **[**F1976any company**]** to whom it is made or of any **[**F1977other company**]**.

(2) This section applies to any annual payment made by an individual which would otherwise be within the charge to tax under Case III of Schedule D except—

(a) a payment of interest;

(b) F1978 . . . . . .

(c) a payment made for bona fide commercial reasons in connection with the individual's trade, profession or vocation; and

(d) a payment to which section 125(1) applies.

F1979 **[** (2A) This section applies to any annual payment made by an individual which—

(a) arises in the United Kingdom, and

(b) is exempt from any charge under Part 5 of ITTOIA 2005 (miscellaneous income) as a result of section 727 of that Act.**]**

(3) This section applies to a payment made by personal representatives (within the meaning given in section 701(4)) where—

(a) the deceased would have been liable to make the payment if he had not died, and

(b) this section would have applied to the payment if he had made it.

(4) F1980 . . . . . .

(5) F1980 . . . . . .

(6) References in subsection (2) **[**F1981or (2A)**]** above to an individual include references to a Scottish partnership in which at least one partner is an individual.

(7) F1982 . . . . . .

(8) F1982 . . . . . .**]**

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Textual Amendments

F1974 Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), **s. 36(1)(3)-(5)**

F1975 Words in s. 347A(1)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 146(2)(a)** (with Sch. 2)

F1976 Words in s. 347A(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 146(2)(b)** (with Sch. 2)

F1977 Words in s. 347A(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 146(2)(c)** (with Sch. 2)

F1978 S. 347A(2)(b) repealed (with effect in accordance with s. 41(9) of the repealing Act) by Finance Act 2000 (c. 17), s. 41(2), **Sch. 40 Pt. 2(1)**, Note 3

F1979 S. 347A(2A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 146(3)** (with Sch. 2)

F1980 S. 347A(4)(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 146(4), **Sch. 3** (with Sch. 2)

F1981 Words in s. 347A(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 146(5)** (with Sch. 2)

F1982 S. 347A(7)(8) repealed (with effect in accordance with s. 41(9) of the repealing Act) by Finance Act 2000 (c. 17), s. 41(2), **Sch. 40 Pt. 2(1)**, Note 3

Modifications etc. (not altering text)

C234 S. 347A applied (with modifications) by Finance Act 1994 (c. 9), **s. 79(1)(2)**

C235 S. 347A applied (with effect and application in accordance with s. 74 of the affecting Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 4(1)**

C236 S. 347A applied (29.4.1996) by Finance Act 1996 (c. 8), 149

C237 S. 347A applied (with effect in accordance with s. 36(8) of the affecting Act) by Finance Act 1999 (c. 16), **s. 36(7)**

[F1983 347B Qualifying maintenance payments.

(1) [F1984 Subject to subsection (1A) below] in this section "qualifying maintenance payment" means a periodical payment which—

(a) is made under an order made by a court [F1985 in a member State]], or under a written agreement the [F1986 law applicable to] which is the law of [F1985 a member State or of a part of a member State],

[F1987 (b) is made —

(i) by one of the parties to a marriage or civil partnership (including a marriage or civil partnership which has been dissolved or annulled) to or for the benefit of the other party and for the maintenance of the other party, or

(ii) by one parent of a child to the child's other parent for the maintenance of the child by the other parent or by one person to another for the maintenance by the other of a relevant child of theirs,]

(c) is due at a time when—

[F1988 (i) in a case falling within paragraph (b)(i) above, the two parties are not a married couple, or civil partners of each other, living together and the party to whom or for whose benefit the payment is made has not subsequently entered into a marriage or civil partnership, and

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(ii) in a case falling within paragraph (b)(ii) above, the person making the payment is not living together with the person to whom the payment is made, and**]**

(d) is not a payment in respect of which relief from tax is available to the person making the payment under any provision of the Income Tax Acts other than this section.

[F1989(1A) A periodical payment is not a qualifying maintenance payment unless—

[F1990(a) in a case falling within subsection (1)(b)(i) above, either of the parties to the marriage or civil partnership was born before 6th April 1935, or

(b) in a case falling within subsection (1)(b)(ii) above, either the person by whom the payment is made, or the person to whom it is made, was born before that date.**]]**

(2) F1991. . . Subject to **[**F1992subsection (3)**]** below, a person making a claim for the purpose shall be entitled, **[**F1993for a year of assessment to an income tax reduction calculated by reference to**]** an amount equal to the aggregate amount of any qualifying maintenance payments made by him which fall due in that year.

(3) **[**F1994The amount by reference to which any income tax reduction is to be calculated under this section shall be limited to**]** the amount **[**F1995specified in **[**F1996section 257A(5A)**]** for the year**]**.

(4) F1997. . . . . .

(5) F1997. . . . . .

[F1998(5A) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to the amount determined in accordance with **[**F1999subsections (2) and (3)**]** above ("the relevant amount"), the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

(a) the amount equal to **[**F2000 10 per cent.**]** of the relevant amount; and

(b) the amount which reduces his liability to nil;

F2001. . . . . .

(5B) In determining for the purposes of subsection (5A) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII;

(b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or

(c) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.**]**

(6) *The reference in subsection* (1)*above to a married couple living together shall be construed in accordance with section* 282(1),*but section* 282(2)*shall not apply for the purposes of this section*F2002.

(7) In this section—

[F2003"child" means a person under 21 years of age;**]**

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F2004 . . . . . .

"periodical payment" does not include an instalment of a lump sum;

[F2005"relevant child", in relation to any two persons, means a child who (not being a child who has been boarded out with them by a public authority or voluntary organisation) has been treated by both of them as a child of their family.**]**

[F2006(8) In **[**F2007subsection (1)(a)**]** above, the reference to an order made by a court in the United Kingdom includes a reference to a maintenance assessment.

(9) Where—

(a) any periodical payment is made under a maintenance assessment by **[**F2008any person**]**,

(b) **[**F2009another person**]** is, for the purposes of the Child Support Act 1991 or (as the case may be) the Child Support (Northern Ireland) Order 1991, a parent of the child or children with respect to whom the assessment has effect,

(c) the assessment was not made under section 7 of the Child Support Act 1991 (right of child in Scotland to apply for maintenance assessment), and

(d) any of the conditions mentioned in subsection (10) below is satisfied,

this section shall have effect as if the payment had been made to the other **[**F2010person**]** for the maintenance by that other **[**F2010person**]** of that child or (as the case may be) those children.

(10) The conditions are that—

(a) the payment is made to the Secretary of State in accordance with regulations made under section 29 of the Child Support Act 1991, by virtue of subsection (3)(a)(ii) of that section;

(b) the payment is made to the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 29 of the Child Support (Northern Ireland) Order 1991, by virtue of paragraph (3)(a)(ii) of that Article;

(c) the payment is retained by the Secretary of State in accordance with regulations made under section 41 of that Act;

(d) the payment is retained by the Department of Health and Social Services for Northern Ireland in accordance with regulations made under Article 38 of that Order.

(11) In this section "maintenance assessment" means **[**F2011a maintenance assessment made under **]** the Child Support Act 1991 or the Child Support (Northern Ireland) Order 1991.

(12) Where any periodical payment is made to the Secretary of State or to the Department of Health and Social Services for Northern Ireland—

(a) by **[**F2012any person **]**, and

[F2013(b) under an order—

(i) made under section 106 of the Social Security Administration Act 1992 or section 101 of the Social Security Administration (Northern Ireland) Act 1992 (recovery of expenditure on benefit from person liable for maintenance) in respect of income support claimed by **[**F2014any other person**]**; or

(ii) made by virtue of section 23 of the Jobseekers Act 1995 (recovery of sums in respect of maintenance), or any corresponding enactment

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in Northern Ireland, in respect of an income-based jobseeker's allowance claimed by **[**F2014any other person**]**,**]**

this section shall have effect as if the payment had been made to **[**F2015that other person**]** to or for the benefit, and for the maintenance, of **[**F2015that other person**]** or (as the case may be) to **[**F2015that other person**]** for the maintenance of the child or children concerned.**]**

[F2016(13) In subsection (12) above, "income-based jobseeker's allowance" has the same meaning as in the Jobseekers Act 1995 or, for Northern Ireland, the same meaning as in any corresponding enactment in Northern Ireland.**]**

Textual Amendments

F1983 Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), **s. 36(1)(3)-(5)**

F1984 Words in s. 347B(1) inserted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), **s. 36(1)**

F1985 Words in s. 347B(1)(a) substituted (16.7.1992 with effect for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 61**.

F1986 Words in s. 347B(1)(a) substituted (1.4.1991) by Contracts (Applicable Law) Act 1990 (c. 36, SIF 30), s. 5, **Sch. 4 para. 6**; S.I. 1991/707, **art. 2**

F1987 S. 347B(1)(b) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(2)(a)

F1988 S. 347B(1)(c)(i)(ii) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(2)(b)

F1989 S. 347B(1A) inserted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), **s. 36(2)**

F1990 S. 347B(1A)(a)(b) substituted for words in s. 347B(1A) (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(3)

F1991 Words in s. 347B(2) repealed (with effect in accordance with s. 79(1), Sch. 26 Pt. 5(1) Note of the repealing Act) by Finance Act 1994 (c. 9), s. 79(3)(a), **Sch. 26 Pt. 5(1)**

F1992 Words in s. 347B(2) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), **s. 36(3)**

F1993 Words in s. 347B(2) substituted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), **s. 79(3)(b)**

F1994 Words in s. 347B(3) substituted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), **s. 79(4)**

F1995 1988(F) s.35*and* Sch.3 para.13*for* 1990-91*and subsequent years. Previously*
"of the difference between the higher (married person's) relief and the lower (single person's) relief under subsection (1) of section 257 as it applies for the year to a person not falling within subsection (2) or (3) of that section".

F1996 Words in s. 347B(3) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 36), **s. 36(4)**

F1997 S. 347B(4)(5) repealed (with effect in accordance with Sch. 20 Pt. 3(6) Note of the repealing Act) by Finance Act 1999 (c. 16), **Sch. 20 Pt. 3(6)**

F1998 S. 347B(5A)(5B) inserted (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), **s. 79(6)**

F1999 Words in s. 347B(5A) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), **s. 36(5)**

F2000 Words in s. 347B(5A)(a) substituted (with effect in accordance with s. 27(1 of the amending Act) by Finance Act 1998 (c. 36), **s. 27(1)(b)**

F2001 Words in s. 347B(5A) repealed (with effect in accordance with Sch. 27 Pt. 3(1) Note of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(1)**

F2002 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

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F2003 S. 347B(7); definition of "child" inserted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(4)(b)

F2004 S. 347B(7); definition of "child of the family" omitted (with effect in accordance with reg. 1(5) of the repealing S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(4)(a)

F2005 S. 347B(7); definition of "relevant child" inserted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(4)(c)

F2006 S. 347B(8)-(12) inserted (6.4.1993) by Finance (No. 2) Act 1992 (c. 48), **s. 62(1)**; S.I. 1992/2642, **art.2**.

F2007 Words in s. 347B(8) substituted (with effect in accordance with s. 36(8) of the amending Act) by Finance Act 1999 (c. 16), **s. 36(6)**

F2008 Words in s. 347B(9)(a) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(5)(a)

F2009 Words in s. 347B(9)(b) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(5)(b)

F2010 Words in s. 347B(9) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(5)(c)

F2011 Words in s. 347B(11) repealed (N.I.) (3.3.2003 for specified purposes) by Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4), ss. 67, 68(1)(2), **Sch. 9 Pt. 1**; S.R. 2003/53, art. 3, **Sch.**

F2012 Words in s. 347B(12)(a) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(6)(a)

F2013 S. 347B(12)(b) substituted (7.10.1996) by Jobseekers Act 1995 (c. 18), s. 41(2), **Sch. 2 para. 15(2)**; SI 1996/2208, art. 2(b)

F2014 Words in s. 347B(12)(b)(i)(ii) substituted (5.12.2005 with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(6)(b)

F2015 Words in s. 347B(12) substituted (with effect in accordance with reg. 1(5) of the amending S.I.) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 67(6)(c)

F2016 S. 347B(13) inserted (7.10.1996) by Jobseekers Act 1995 (c. 18), s. 41(2), **Sch. 2 para. 15(3)**; SI 1996/2208, art. 2(b)

Modifications etc. (not altering text)

C238 S. 347B modified (with effect in accordance with s. 79(1) of the amending Act) by Finance Act 1994 (c. 9), **s. 79(3)-(6)**

348 Payments out of profits or gains brought into charge to income tax: deduction of tax.

(1) [M377]Subject to any provision to the contrary in the Income Tax Acts, where any annuity or other annual payment **[**[F2017]to which this subsection applies**]** is payable wholly out of profits or gains brought into charge to income tax—

(a) the whole of the profits or gains shall be assessed and charged with income tax on the person liable to the annuity or other annual payment, without distinguishing the annuity or other annual payment; and

(b) the person liable to make the payment, whether out of the profits or gains charged with income tax or out of any annual payment liable to deduction, or from which a deduction has been made, shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of income tax thereon; and

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(c) the person to whom the payment is made shall allow the deduction on receipt of the residue of the payment, and the person making the deduction shall be acquitted and discharged of so much money as is represented by the deduction, as if that sum had been actually paid; and

(d) the deduction shall be treated as income tax paid by the person to whom the payment is made.

[F2018(1A) Subsection (1) applies to any annuity or other annual payment, not being interest—

(a) which is charged with tax under Case III of Schedule D,

[F2019(aa) which—

(i) is charged with tax under Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments), Chapter 10 of that Part (distributions from unauthorised unit trusts), section 579 of that Act (royalties etc. from intellectual property), Chapter 4 of Part 5 of that Act (certain telecommunication rights: non-trading income) or Chapter 7 of Part 5 of that Act (annual payments not otherwise charged), and

(ii) is not relevant foreign income,**]**

(b) which is charged with tax under Part 9 of ITEPA 2003 (pension income) because section 605 of that Act applies to it (retirement annuity contracts: annuities), or

(c) which arises from a source in the United Kingdom and is charged with tax under Part 9 of ITEPA 2003 because section 609, 610 or 611 of that Act applies to it (certain employment-related annuities).**]**

(2) Subject to any provision to the contrary in the Income Tax Acts, where—

(a) any royalty or other sum paid in respect of the user of a patent; F2020. . .

(b) F2020. . . . . .

is paid wholly out of profits or gains brought into charge to income tax, the person making the payment shall be entitled on making the payment to deduct and retain out of it a sum representing the amount of the income tax thereon.

(3) M378This section does not apply to F2021. . . any payment to which section 687 applies F2022. . . **[**F2023 or to any payment which is a qualifying donation for the purposes of section 25 of the M379Finance Act 1990**]**.

[F2024(4) For the purposes of this section and section 349(1), the following income shall be treated as not brought into charge to income tax—

(a) income on which income tax is treated as paid under section 399(2) or 400(2) of ITTOIA 2005 (distributions from UK resident companies etc. on which there is no tax credit),

(b) income on which an individual is liable to income tax as a result of section 413(2) of that Act or trustees are so liable as a result of section 413(3) of that Act (stock dividend income),

(c) income on which any person is liable to income tax under Chapter 6 of Part 4 of that Act (release of loan to participator in close company),

(d) income on which an individual is liable to income tax as a result of section 465 of that Act or trustees are so liable as a result of section 467 of that Act (gains from contracts for life insurance etc.), being income to which section 530 of that Act applies (income tax treated as paid etc.), and

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(e) income which is included in the aggregate income of an estate as a result of section 664(2)(c), (d) or (e) of that Act (income arising to personal representatives and corresponding to income within paragraph (b), (c) or (d)).**]**

Textual Amendments

F2017 Words in s. 348(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 50(2)** (with Sch. 7)

F2018 S. 348(1A) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 50(3)** (with Sch. 7)

F2019 S. 348(1A)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 147(2)** (with Sch. 2)

F2020 S. 348(2)(b) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(2)**

F2021 *Words repealed by* 1988(F) Sch.14 Part IV—*in respect of payments made on or after* 6*April* 1989.

F2022 Words in s. 348(3) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**, Note 1

F2023 Words in s. 348(3) inserted (with effect in accordance with s. 41(9) of the amending Act) by Finance Act 2000 (c. 17), **s. 41(3)**

F2024 S. 348(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 147(3)** (with Sch. 2)

Modifications etc. (not altering text)

C239 *See also*1970(M) s.90—*interest on unpaid tax.*1970(M) s.106—*avoidance of agreements for payment without deduction of tax.*1989 s.94*and* Sch.11 para.18—*deep gain securities.*S.I. 1970 No.448 (in Part III Vol.5) regns. 2-11—*procedure for payment without deduction of tax of income exempt under double taxation arrangements.*

Marginal Citations

M377 Source-1970 s.52; 1971 Sch.6 20(c); 1973 s.17(1)

M378 Source-1970 s.65(2)

M379 1990 c. 29.

349 Payments not out of profits or gains brought into charge to income tax, and annual interest.

(1) **M380**Where—

(a) any annuity or other annual payment **[**F2025to which this paragraph applies**]**; or

(b) any royalty or other sum paid in respect of the user of a patent;F2026. . .

(c) F2026. . . . . .

is not payable or not wholly payable out of profits or gains brought into charge to income tax, the person by or through whom any payment thereof is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon .

[F2027(1A) Paragraph (a) of subsection (1) applies to any annuity or other annual payment, not being interest—

(a) which is charged with tax under Case III of Schedule D,

[which—

F2028(aa) (i) is charged with tax under Chapter 7 of Part 4 of ITTOIA 2005 (purchased life annuity payments), Chapter 10 of that Part

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(distributions from unauthorised unit trusts), section 579 of that Act (royalties etc. from intellectual property), Chapter 4 of Part 5 of that Act (certain telecommunication rights: non-trading income) or Chapter 7 of Part 5 of that Act (annual payments not otherwise charged), and

(ii) is not relevant foreign income,**]**

(b) which is charged with tax under Part 9 of ITEPA 2003 (pension income) because section 605 of that Act applies to it, or

(c) which arises from a source in the United Kingdom and is charged with tax under Part 9 of ITEPA 2003 because section 609, 610 or 611 of that Act applies to it.**]**

[F2029(1B)**]** **[**F2030Subsection (1)**]** does not apply to any payment to which section 687 applies F2031. . . **[**F2032 or to any payment which is a qualifying donation (within the meaning of section 339) or a qualifying donation for the purposes of section 25 of the M381Finance Act 1990**]** .

(2) M382Subject to subsection (3) below and to any other provision to the contrary in the Income Tax Acts, where any yearly interest of money **[**F2033which falls within Chapter 2 of Part 4 of ITTOIA 2005 (interest) (excluding anything specially exempted from income tax and discounts treated as interest by section 381 of that Act) or which is chargeable to corporation**]** tax under Case III of Schedule D **[**F2034(as that Schedule has effect apart from the modification made for the purposes of corporation tax by section 18(3A))**]** is paid—

(a) otherwise than in a fiduciary or representative capacity, by a company **[**F2035 (other than a building society)**]** or local authority; or

(b) by or on behalf of a partnership of which a company is a member; or

(c) by any person to another person whose usual place of abode is outside the United Kingdom;

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3) Subsection (2) above does not apply—

[F2036(za) to interest chargeable to income tax as relevant foreign income; or**]**

(a) to interest payable in the United Kingdom on an advance from a bank carrying on a bona fide banking business **[**F2037on an advance from a bank, if at the time when the interest is paid the person beneficially entitled to the interest is within the charge to corporation tax as respects the interest**]**; or

(b) to interest paid by **[**F2038a bank in the ordinary course of its**]** business; or

[F2039(ba) to interest paid on deposits with the National Savings Bank; or**]**

(c) to any **[**F2040payment of interest on a quoted Eurobond**]**; or

(d) to any payment to which section 369*or* 479(1) F2041 applies; **[**F2042or

F2043(e) . . . . . .

[F2044(e) F2045. . . . . .**]**

(f) to any payment in respect of which a liability to deduct income tax is imposed by section 480A(1); or

(g) to any payment in respect of which a liability to deduct income tax would be imposed by section 480A(1) if conditions prescribed by regulations under section 480B were not fulfilled; **[**F2046 or**]]**

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[F2047(h) to any payment in respect of which a liability to deduct income tax would, but for section 481(5)(k), be imposed by section 480A(1);**][**F2048 or

(i) in the case of a person who is authorised for the purposes of the Financial Services and Markets Act 2000 and whose business consists wholly or mainly of dealing in financial instruments as principal, to interest paid by that person in the ordinary course of his business;**][**F2049 or

(j) to interest paid by a recognised clearing house or recognised investment exchange carrying on business as provider of a central counterparty clearing service, in the ordinary course of that business, on margin or other collateral deposited with it by users of the service; or

(k) to interest treated by virtue of section 730A(2)(a) or (b) (repos) as paid by a recognised clearing house or recognised investment exchange in respect of contracts made by it as provider of a central counterparty clearing service.**]**

F2050 . . . . . .

[F2051(3AA) In this section "bank" has the meaning given by section 840A.**]**

[F2052(3AB) An order under section 840A(1)(d) designating an organisation as a bank for the purposes of paragraph (a) of subsection (3) above may provide that that paragraph shall apply to the organisation as if the words from "if" to the end were omitted.**]**

[F2053(3A) Subject to subsection (3B) below and to any other provision to the contrary in the Income Tax Acts, where—

(a) any dividend or interest is paid in respect of a security issued by a building society other than a qualifying certificate of deposit **[**F2054and other than a qualifying deposit right**]**, and

(b) the security was **[**F2055listed**]**, or capable of being **[**F2055listed**]**, on a recognised stock exchange at the time the dividend or interest became payable,

the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax thereon for the year in which the payment is made.

(3B) Subsection (3A) above does not apply to any **[**F2040payment of interest on a quoted Eurobond**]** .

[F2056(3C) Subject to any provision to the contrary in the Income Tax Acts, where any UK public revenue dividend is paid, the person by or through whom the payment is made shall, on making the payment, deduct out of it a sum representing the amount of income tax on it for the year in which the payment is made.**]**

[F2057F2058(4) In **[**F2059this section**]** —

[F2060"certificate of deposit" means a document falling within the definition of that expression in section 56(5) above or section 552(2) of ITTOIA 2005;**]**

" dividend" has the same meaning as in section 477A,

[F2059" qualifying certificate of deposit" means a certificate of deposit F2061 . . . under which **[**F2062, or uncertificated eligible debt security units under which**]**—

(a) the amount payable by the issuing society, exclusive of interest, is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made), and

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(b) the obligation of the society to pay that amount arises after a period of not more than five years beginning with the date on which the deposit is made; and

[F2063“qualifying deposit right” means a right to receive an amount (with or without interest) in pursuance of a deposit of money, where—

(a) the right subsists under an arrangement falling within section 56A**[**F2064 above or is an uncertificated right, as defined in section 552(2) of ITTOIA 2005**]**,

(b) no certificate of deposit F2061. . . has been issued **[**F2065, and no uncertificated eligible debt security units have been issued,**]** in respect of the right at the time the dividend or interest concerned is paid, and

(c) the conditions set out in paragraphs (a) and (b) in the definition of “qualifying certificate of deposit” apply; and**]**

[F2066“quoted Eurobond” means any security that—

(i) is issued by a company,

(ii) is listed on a recognised stock exchange, and

(iii) carries a right to interest;**]**

“security” includes share;**]**

[F2067“uncertificated eligible debt security units” has the same meaning as in section 552(2) of ITTOIA 2005;**]**

[F2068“UK public revenue dividend” means any income from securities which is paid out of the public revenue of the United Kingdom or Northern Ireland, but does not include interest on local authority stock.**]**

[F2057(5) For the purposes of subsection (3)(i) above, a financial instrument includes—

(a) any money,

(b) any shares or securities,

(c) an option, future or contract for differences if, but only if, its underlying subject-matter is (or is primarily) a financial instrument, or financial instruments, and

(d) an instrument the underlying subject-matter of which is (or is primarily) creditworthiness.

(6) **[**F2069“central counterparty clearing service” means the service provided by a clearing house or investment exchange to the parties to a transaction where there are contracts between each of the parties and the clearing house or investment exchange (in place of, or as an alternative to, a contract directly between the parties);**]**

[F2070“recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000 (see section 285 of that Act);**]**

for the purposes of subsection (5) above, the “underlying” subject-matter of an instrument the effect of which depends on an index or factor is the matter by reference to which the index or factor is determined.**]**

[F2071(7) This section is subject to section 101 of the Finance Act 2004 (payment of royalties without deduction at source).**]**

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Textual Amendments

F2025 Words in s. 349(1)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 51(2)** (with Sch. 7)

F2026 S. 349(1)(c) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(2)**

F2027 S. 349(1A) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 51(3)** (with Sch. 7)

F2028 S. 349(1A)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(2)** (with Sch. 2)

F2029 Words in s. 349(1) renumbered as s. 349(1B) (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by virtue of Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 51(4)** (with Sch. 7)

F2030 Words in s. 349(1B) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 51(5)** (with Sch. 7)

F2031 Words in s. 349(1) repealed (with effect in accordance with s. 111(6)(b) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**, Note 1

F2032 Words in s. 349(1) inserted (with effect in accordance with s. 41(9) of the amending Act) by Finance Act 2000 (c. 17), **s. 41(4)**

F2033 Words in s. 349(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(3)** (with Sch. 2)

F2034 Words in s. 349 inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 18** (with Sch. 15)

F2035 Words in s. 349(2)(a) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(2)**

F2036 S. 349(3)(za) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(4)** (with Sch. 2)

F2037 Words in s. 349(3)(a) substituted (with application in accordance with Sch. 37 para. 8(1)-(6) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 3(a)**

F2038 Words in s. 349(3)(b) substituted (with application in accordance with Sch. 37 para. 8(7)(8) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 3(b)**

F2039 S. 349(3)(ba) inserted (with application in accordance with s. 78(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 78(1)**

F2040 Words in ss. 349(3)(c)(3B) substituted (with effect in accordance with s. 111(6)(b) of the amending Act) by Finance Act 2000 (c. 17), **s. 111(2)(a)**

F2041 *Words*
"or 479(1)"
repealed by 1990 s.132*and* Sch.19 Part.IV.

F2042 S. 349(3)(e)-(g) and the word "or" inserted (26.7.1990) by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(2)(4)** (for payments made on or after 6th April 1991).

F2043 S. 349(3)(e) (which was inserted 26.7.1990 by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(2)(4)**) repealed (25.7.1991) by Finance Act 1991 (c. 31, SIF 63:1), ss. 52(1), 123, Sch. 11 para. 1(3), **Sch. 19 Pt. V**

F2044 S. 349(3)(e) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 29 para. 5(2)**

F2045 S. 349(3)(e) repealed (with effect in accordance with s. 111(6)(b) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**, Note 1

F2046 Word in s. 349(3), at the end of para. (g), inserted (27.7.1993) by 1993 c. 34, **s.59**

F2047 S. 349(3)(h) inserted (27.7.1993) by 1993 c. 34, **s. 59**

F2048 S. 349(3)(i) and preceding word inserted (with application in accordance with s. 95(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 95(2)**

F2049 S. 349(3)(j)(k) and preceding word inserted (with effect in accordance with s. 202(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 202(2)**

F2050 *Words repealed by* 1988(F) s.148*and* Sch.14 Part IV*for payments made on or after* 6*April* 1989.

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F2051 S. 349(3AA) inserted (with application in accordance with Sch. 37 para. 8 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(1)(2)(b)**

F2052 S. 349(3AB) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 4**

F2053 S. 349(3A)(3B) inserted (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(4)**.

F2054 Words in s. 349(3A)(a) inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 2(2), **6**.

F2055 Word in s. 349(3A)(b) substituted (with effect in accordance with Sch. 38 para. 6(7) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(e)**

F2056 S. 349(3C) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(2)**

F2057 S. 349(5)(6) inserted (with application in accordance with s. 95(4) of the amending Act) by Finance Act 2002 (c. 23) s. 95(3)

F2058 S. 349(4) inserted (26.7.1990) by Finance Act 1990 (c. 29), s. 30, **Sch. 5 para. 10(3)(4)** (for payments made on or after 6th April 1991).

F2059 S. 349(4): definitions of "qualifying certificate of deposit" and "security" substituted for words in s. 349(4) (25.7.1991) by Finance Act 1991 (c. 31), s. 52(1), **Sch. 11 para. 1(5)**

F2060 S. 349(4): definition of "certificate of deposit" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(5)(a)** (with Sch. 2)

F2061 S. 349(4): words in definitions of "qualifying certificate of deposit" and "qualifying deposit right" repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 148(5)(b)(i)(c)(ii), **Sch. 3** (with Sch. 2)

F2062 S. 349(4): words in definition of "qualifying certificate of deposit" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(5)(b)(ii)** (with Sch. 2)

F2063 S. 349(4): definition of "qualifying deposit right" inserted (with application in relation to arrangements made after 16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 2(3), **6**

F2064 S. 349(4): words in definition of "qualifying deposit right" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(5)(c)(i)** (with Sch. 2)

F2065 S. 349(4): words in definition of "qualifying deposit right" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(5)(c)(ii)** (with Sch. 2)

F2066 S. 349(4): definition of "quoted Eurobond" inserted (with effect in accordance with s. 111(6)(b) of the amending Act) by Finance Act 2000 (c. 17), **s. 111(2)(b)**

F2067 S. 349(4): definition of "uncertificated eligible debt security units" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(5)(a)** (with Sch. 2)

F2068 S. 349(4): definition of "UK public revenue dividend" inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(3)**

F2069 S. 349(6): definition of "central counterparty clearing service" inserted (with effect in accordance with s. 202(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 202(3)**

F2070 S. 349(6): definitions of "recognised clearing house" and "recognised investment exchange" inserted (with effect in accordance with s. 202(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 202(3)**

F2071 S. 349(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 148(6)** (with Sch. 2)

Modifications etc. (not altering text)

C240 S. 349 excluded (3.5.1994) by Finance Act 1994 (c. 9), **s. 174**

C241 S. 349 excluded (with effect in accordance with s. 83(3) of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 26 para. 51** (with Sch. 28)

C242 S. 349 applied (with effect in accordance with s. 56 of the affecting Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 3**

C243 *See* S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of* s.349(1)*for the purposes of* S.I. 1986 No.482 (*Building Society Regulations*).
C244 S. 349(1) modified by The Income Tax (Manufactured Overseas Dividends) Regulations 1993 (S.I. 1993/2004), **reg. 5(1A)** (as inserted (1.11.2003) by The Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2003 (S.I. 2003/2582), **reg. 6(3)**)
C245 S. 349(1) excluded (retrospective to 22.10.2004) by Finance Act 2006 (c. 25), **ss. 65(3)**, 66(6)
C246 *See* S.I. 1986 No.482 (in Part III Vol.5) regn. 2(2)—*application of* s.349(1)*for the purposes of* S.I. 1986 No.482 (*Building Society Regulations*).
C247 S. 349(3)(a) applied (with modifications) (29.4.1996) by The European Investment Bank (Designated International Organisation) Order 1996 (S.I. 1996/1179), **art. 4**
C248 *See*—1970(M) s.106—*avoidance of agreements for payment without deduction of tax, etc.*1989 s.94*and* Sch.11 para.18—*deep gain securities.*1989 s.116—*certain interest on Eurobonds to Netherlands Antilles subsidiaries made on or after* 1*April* 1989.
C249 S. 349(3)(b)(3AA) modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 8(8)**

Marginal Citations
M380 Source-1970 s.53(1); 1973 s.17(1); 1971 Sch.6 21
M381 1990 c. 29.
M382 Source-1970 s.54(1), (2); 1971 Sch.6 22; 1982 s.26(1); 1984 ss.27(2), 35(1); 1970 s.65(2)

[F2072 349ZA Extension of section 349: proceeds of sale of UK patent rights

(1) Subsection (2) applies if—
(a) a person who is a non-UK resident is chargeable to tax under section 587 of ITTOIA 2005 on profits from the sale of the whole or part of any patent rights, and
(b) the net proceeds of the sale consist wholly or partly of a capital sum.

(2) Subsection (1) of section 349 of this Act applies to any payment of the net proceeds of sale, or of an instalment of them, as if the net proceeds or instalment were, so far as consisting of the capital sum—
(a) an annual sum to which paragraph (a) of that subsection applies, and
(b) payable otherwise than out of profits or gains charged to income tax.

(3) For the purposes of this section the net proceeds of the sale is the amount of the proceeds net of any incidental expenses of the sale which are deducted before payment.

(4) Sections 597 to 599 of ITTOIA 2005 (licences connected with patents etc.) apply for the purposes of this section as they apply for the purposes of sections 587 to 596 of that Act.

(5) Section 4 of the Capital Allowances Act 2001 (meaning of "capital sums" etc.) applies in relation to this section as it applies in relation to Chapter 2 of Part 5 of ITTOIA 2005 (receipts from intellectual property).

(6) In this section "a non-UK resident" means a person who is not resident in the United Kingdom.**]**

Textual Amendments
F2072 S. 349ZA inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 149** (with Sch. 2)

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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[F2073 349A Exceptions to section 349 for payments between companies etc

(1) The provisions specified in subsection (3) below (which require tax to be deducted on making certain payments) do not apply to a payment made by a company **[**F2074 or a local authority**]** if, at the time the payment is made, the company **[**F2075 or authority**]** reasonably believes that one of the conditions specified in section 349B is satisfied.

(2) Subsection (1) above has effect subject to any directions under section 349C.

(3) The provisions are—

section 349(1) (certain annuities and other annual payments, and royalties and other sums paid for use of UK patents),

section 349(2)(a) and (b) (UK interest),

section 349(3A) (dividend or interest on securities issued by building societies), and

[F2076 349ZA(2)**]** (which provides for section 349(1) to apply to proceeds of sale of UK patent rights).

(4) References in subsection (3) above to any provision of section 349 do not include that provision as applied—

(a) under section 777(9) (directions applying section 349(1) to certain payments to non-residents), or

(b) by paragraph 4(2) of Schedule 23A (manufactured overseas dividends to be treated as annual payments within section 349).

(5) References in this section to the company by which a payment is made do not include a company acting as trustee or agent for another person.

(6) For the purposes of this section—

[F2077 (a)**]** a payment by a partnership is treated as made by a company if any member of the partnership is a company **[**F2078, and

(b) a payment by a partnership is treated as made by a local authority if any member of the partnership is a local authority**].]**

Textual Amendments

F2073 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

F2074 Words in s. 349A(1) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(1)(a)(i)**

F2075 Words in s. 349A(1) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(1)(a)(ii)**

F2076 Words in s. 349A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 150**, (with Sch. 2)

F2077 Words in s. 349A(6) renumbered as s. 349A(6)(a) (with application in accordance with s. 94(7) of the amending Act) by virtue of Finance Act 2002 (c. 23), **s. 94(1)(b)(i)**

F2078 S. 349A(6)(b) and preceding word inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(1)(b)(ii)**

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[F2073 349B The conditions mentioned in section 349A(1)

(1) The first of the conditions mentioned in section 349A(1) is that the person beneficially entitled to the income in respect of which the payment is made is—

(a) a company resident in the United Kingdom, F2079 . . .

(b) F2079 . . . . . .

(2) The second of those conditions is that—

(a) the person beneficially entitled to the income in respect of which the payment is made is a company not resident in the United Kingdom ("the non-resident company"),

(b) the non-resident company carries on a trade in the United Kingdom through a [F2080 permanent establishment], and

(c) the payment falls to be brought into account in computing the chargeable profits (within the meaning given by section 11(2)) of the non-resident company.

[The third of those conditions is that the payment is made to [F2082, or to the nominee F2081 (3) of]—

(a) a local authority;

(b) a health service body within the meaning of section 519A(2);

(c) a public office or department of the Crown to which section 829(1) applies;

(d) a charity (within the meaning of section 506(1));

(e) a body for the time being mentioned in section 507(1) (bodies that are allowed the same exemption from tax as charities the whole income of which is applied to charitable purposes);

(f) an Association of a description specified in section 508 (scientific research organisations);

(g) F2083 . . . . . .

(h) F2083 . . . . . .

(i) the administrator (within the meaning of section 611AA) of a scheme entitled to exemption under section 592(2) or 608(2)(a) (exempt approved schemes and former approved superannuation funds);

(j) the trustees of a scheme entitled to exemption under section 613(4) (Parliamentary pension funds);

(k) the persons entitled to receive the income of a fund entitled to exemption under section 614(3) (certain colonial, etc pension funds);

(l) the trustees or other persons having the management of a fund entitled to exemption under section 620(6) (retirement annuity trust schemes); or

(m) a person holding investments or deposits for the purposes of a scheme entitled to exemption under section 643(2) (approved personal pension schemes).

(4) The fourth of those conditions is that—

(a) the person to whom the payment is made is, or is the nominee of, the plan manager of a plan [F2084 of a kind to which regulations under Chapter 3 of Part 6 of ITTOIA 2005 (income from individual investment plans) apply],

(b) F2085 . . . . . .

(c) the plan manager receives the payment in respect of investments under the plan.

(5) F2086 . . . . . .

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(6) The sixth of those conditions is that the person beneficially entitled to the income in respect of which the payment is made is a partnership each member of which is—

(a) a person or body mentioned in subsection (3) above, or

(b) a person or body mentioned in subsection (7) below.

(7) The persons and bodies referred to in subsection (6)(b) above are—

(a) a company resident in the United Kingdom;

(b) a company that—

(i) is not resident in the United Kingdom,

(ii) carries on a trade there through a **[**F2080permanent establishment**]**, and

(iii) is required to bring into account, in computing its chargeable profits (within the meaning of section 11(2)), the whole of any share of that payment that falls to it by reason of sections 114 and 115;

(c) the European Investment Fund.

(8) The Treasury may by order amend—

(a) subsection (3) above;

(b) subsection (7) above;

so as to add to, restrict or otherwise alter the persons and bodies falling within that subsection.**]]**

Textual Amendments

F2073 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

F2079 S. 349B(1)(b) and preceding word repealed (with effect in accordance with s. 94(7) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(14)**, Note

F2080 Words in s. 349B(2)(b)(7)(b)(ii) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F2081 S. 349B(3)-(8) inserted (with effect in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(2)**

F2082 Words in s. 349B(3) inserted (1.12.2002) by The Income and Corporation Taxes Act 1988, Section 349B(3) Order 2002 (S.I. 2002/2931), art. 2

F2083 S. 349B(3)(g)(h) repealed (with effect in accordance with s. 46(4)(a)(b) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), s. 46(2)(a)(b), **Sch. 11 Pt. 2(12)**, Note (with s. 46(6)(7))

F2084 Words in s. 349B(4)(a) inserted (with effect in accordance with s. 22(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 22(2)**

F2085 S. 349B(4)(b) repealed (with effect in accordance with ss. 19(1), 22(4) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), s. 22(3), **Sch. 11 Pt. 2(3)**, Note 2; S.I. 2006/982, **art. 2**

F2086 S. 349B(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 151(3), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C250 S. 349B(4) applied (with modifications) (6.4.2005) by The Child Trust Funds Regulations 2004 (S.I. 2004/1450), **regs. 1**, 24(c) (as amended (27.12.2005) by The Child Trust Funds (Amendment No. 3) Regulations 2005 (S.I. 2005/3349), **regs. 1**, 7(b)); S.I. 2004/3369, **art. 2(1)**

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[F2073 349C Directions disapplying section 349A(1)

(1) The Board may give a direction to a company [F2087 or local authority] directing that section 349A(1) is not to apply in relation to any payment that—

(a) is made by the company [F2088 or authority] after the giving of the direction, and

(b) is specified in the direction or is of a description so specified.

(2) Such a direction shall not be given unless the Board have reasonable grounds for believing as respects each payment to which the direction relates that it is likely that [F2089 none] of the conditions specified in section 349B will be satisfied in relation to the payment at the time the payment is made.

(3) A direction under this section may be varied or revoked by a subsequent such direction.

[F2090 (4) In this section—

"company" includes a partnership of which any member is a company; and

"local authority" includes a partnership of which any member is a local authority.]]

Textual Amendments

F2073 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

F2087 Words in s. 349C(1) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(3)(a)(i)**

F2088 Words in s. 349C(1) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(3)(a)(ii)**

F2089 Word in s. 349C(2) substituted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(3)(b)**

F2090 S. 349C(4) substituted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(3)(c)**

[F2073 349D Section 349A(1): consequences of reasonable but incorrect belief

(1) Where—

(a) a payment is made by a company [F2091 or local authority] without an amount representing the income tax on the payment being deducted from the payment,

(b) at the time the payment is made, the company [F2092 or authority] reasonably believes that one of the conditions specified in section 349B is satisfied,

(c) if the company [F2092 or authority] did not so believe, tax would be deductible from the payment under section 349, and

(d) [F2093 none] of the conditions specified in section 349B is satisfied at the time the payment is made,

section 350 applies as if the payment were within section 349 (and Schedule 16 applies as if tax were deductible from the payment under section 349).

[F2094 (2) In this section—

"company" includes a partnership of which any member is a company; and

"local authority" includes a partnership of which any member is a local authority.]]

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Textual Amendments

F2073 Ss. 349A-349D inserted (with application in accordance with s. 85(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 85(1)**

F2091 Words in s. 349D(1)(a) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(4)(a)(i)**

F2092 Words in s. 349D(1)(b)(c) inserted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(4)(a)(ii)**

F2093 Word in s. 349D(1)(d) substituted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(4)(a)(iii)**

F2094 S. 349D(2) substituted (with application in accordance with s. 94(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 94(4)(b)**

[F2095 349D Deductions under section 349(1): payment of royalties overseas

(1) Where—

(a) a company makes a payment of a royalty to which section 349(1) applies, and

(b) the company reasonably believes that, at the time the payment is made, the payee is entitled to relief in respect of the payment under any arrangements under section 788 (double taxation relief),

the company may, if it thinks fit, calculate the sum to be deducted from the payment under section 349(1) by reference to the rate of income tax appropriate to the payee pursuant to the arrangements.

(2) But, where the payee is not at that time entitled to such relief, section 350 and Schedule 16 shall have effect as if subsection (1) above never applied in relation to the payment.

(3) Where the Board are not satisfied that the payee will be entitled to such relief in respect of one or more payments to be made by a company, they may direct the company that subsection (1) above is not to apply to the payment or payments.

(4) A direction under subsection (3) above may be varied or revoked by a subsequent such direction.

(5) In this section—

"payee", in relation to a payment, means the person beneficially entitled to the income in respect of which the payment is made; and

"royalty" includes—

(a) any payment received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design, process or information, or

(b) any proceeds of sale of all or any part of any patent rights.

(6) Paragraph 3(1) of Schedule 18 to the Finance Act 1998 (requirement to make return in respect of information relevant to application of Corporation Tax Acts) has effect as if the reference to the Corporation Tax Acts included a reference to this section.

(7) Paragraph 20 of that Schedule (penalties for incorrect returns), in its application to an error relating to information required in a return by virtue of subsection (6) above, has effect as if—

(a) the reference in sub-paragraph (1) to a tax-related penalty were a reference to an amount not exceeding £3000, and

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(b) sub-paragraphs (2) and (3) were omitted.**]**

Textual Amendments

F2095 S. 349E inserted (with application in accordance with s. 96(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 96(1)**

350 Charge to tax where payments made under section 349.

(1) [M383]Where any payment within section 349 is made by or through any person, that person shall forthwith deliver to the inspector an account of the payment, and shall be assessable and chargeable with income tax at the **[**[F2096]applicable rate**]** on the payment, or on so much thereof as is not made out of profits or gains brought into charge to income tax.

[[F2097](1A) In subsection (1) above "the applicable rate" means the rate which is applicable to the payment under section 4 **[**[F2098](or, where the payment is one to which subsection (1) of section 349E applies, the rate referred to in that subsection)**]**.**]**

(2) [M384]In section 349(1) any reference to a payment or sum as being not payable, or not wholly payable, out of profits or gains brought into charge to income tax shall be construed as a reference to it as being payable wholly or in part out of a source other than profits or gains brought into charge; and any such reference elsewhere in the Tax Acts shall be construed accordingly.

(3) [M385]All the provisions of the Income Tax Acts relating to persons who are to be chargeable with income tax, to income tax assessments, and to the collection and recovery of income tax, shall, so far as they are applicable, apply to the charge, assessment, collection and recovery of income tax under this section.

(4) [M386]Section 349 and this section have effect subject to the provisions of Schedule 16 which has effect for the purpose of regulating the time and manner in which companies resident in the United Kingdom—

(a) are to account for and pay income tax in respect of payments from which tax is deductible under section 349, and

(b) are to be repaid income tax in respect of payments received by them;

and for that purpose the Board may by regulations modify, supplement or replace any of the provisions of Schedule 16; and references in this Act and in any other enactment to any of those provisions shall be construed as including references to any such regulations.

(5) [M387]Without prejudice to the generality of subsection (4) above, regulations under that subsection may, in relation to income tax for which a company is liable to account, modify any provision of Parts II to VI of the Management Act or apply any such provision with or without modifications.

(6) Regulations under this section may—

(a) make different provision for different descriptions of companies and for different circumstances and may authorise the Board, where in their opinion there are special circumstances justifying it, to make special arrangements as respects income tax for which a company is liable to account or the repayment of income tax borne by a company;

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(b) include such transitional and other supplemental provisions as appear to the Board to be expedient or necessary.

(7) The Board shall not make any regulations under this section unless a draft of them has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F2096 Words in s. 350(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 8**

F2097 S. 350(1A) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 8**

F2098 Words in s. 350(1A) inserted (with application in accordance with s. 96(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 96(2)**

Modifications etc. (not altering text)

C251 *See* 1970(M) s.98—*penalties for non-compliance.*

C252 S. 350(1) excluded (22.3.1992) by S.I. 1992/569, **reg. 13(2)(d)**.

C253 *See* 1970(M) Parts IV-VI—*principal provisions as to assessment, appeals and collection.*

C254 *See* 1988(F) s.130(7)(b)—*payment of outstanding tax by migrating companies.*

C255 S. 350(4) amended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(1)(2)**

C256 S. 350(4) extended by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(3)**

C257 (*See* 1970(M) Parts IV-VI—*principal provisions as to assessment, appeals and collection.*)*and also:*— 1970(M) s.31(3)*appeals under* s.349(1)*and* 350*to go to Special Commissioners.*

C258 *See* 1989 s.94*and* Sch.11 para.18—*deep gain securities.*

Marginal Citations

M383 Source-1970 ss.53(2), 54(3); 1971 Sch.6 21

M384 Source-1970 s.56

M385 Source-1970 s.53(3), 54(3)

M386 Source-1970 s.53(4), 54(3); 1972 s.104, 108(1), Sch.24 16

M387 Source-1972 s.108(2)-(4)

[F2099 350A UK public revenue dividends: deduction of tax.

(1) The Board may by regulations—

(a) make provision as to the time and manner in which persons who under section 349(3C) deduct sums representing income tax out of payments of UK public revenue dividends are to account for and pay those sums; and

(b) otherwise modify the provisions of sections 349 and 350 in their application to such dividends;

and in this section "UK public revenue dividend" has the same meaning as in section 349.

(2) Regulations under this section may—

(a) make different provision for different descriptions of UK public revenue dividend and for different circumstances;

(b) make special provision for UK public revenue dividends which—

(i) are payable to the Bank of Ireland out of the public revenue of the United Kingdom, or

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(ii) are entrusted to the Bank of Ireland for payment and distribution and are not payable by that Bank out of its principal office in Belfast;

(c) include such transitional and other supplementary provisions as appear to the Board to be necessary or expedient.

(3) No regulations under this section shall be made unless a draft of them has been laid before and approved by a resolution of the House of Commons.**]**

Textual Amendments

F2099 S. 350A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 2000 (c. 17), **s. 112(4)**

[F2100]351 Small maintenance payments.

. . . . . .

Textual Amendments

F2100 S. 351 repealed by Finance Act 1988 (c. 39) s. 36(6), Sch.14 Part IV, Note 5 (with s. 36(3))

352 Certificates of deduction of tax.

[M388](1) A person making any payment which is subject to deduction of income tax by virtue of section 339, 348, 349 or 687 shall, if the recipient so requests in writing, furnish him with a statement in writing showing the gross amount of the payment, the amount of tax deducted, and the actual amount paid.

(2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the statement.

Modifications etc. (not altering text)

C259 S. 352 excluded (22.3.1992) by S.I. 1992/569, **reg.21**.
S. 352 modified (22.3.1992) by S.I. 1992/569, **reg.23**.

C260 *See* s.30*and* Sch.5 para.11—*words*
"or 687"
replaced by
", 480A or 687 or by virtue of regulations under section 477A(1)"
as regards a payment made on or after 6*April* 1991.

Marginal Citations

M388 Source-1970 s.55; 1973 s.17(4), 1986 s.29(3)

Relief for payments of interest (excluding MIRAS)

353 General provision.

[[F2101](1) Where a person pays interest in any year of assessment, that person, if he makes a claim to the relief, shall for that year of assessment be entitled (subject to **[**[F2102]sections

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359**]** to 368 **[**F2103of this Act and section 52 of ITTOIA 2005**]**) to relief in accordance with this section in respect of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of **[**F2102sections 359**]** to 365.**]**

[F2104(1A) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

(a) is eligible for that relief by virtue of section F2105. . . 365, F2106. . .

(b) F2106. . . . . .

that relief shall consist in an income tax reduction for that year calculated by reference to that amount.

(1B) Where a person is entitled for any year of assessment to relief under this section in respect of any amount of interest which—

(a) is eligible for that relief otherwise than by virtue of section F2105. . . 365, F2107. . .

(b) F2107. . . . . .

that relief shall consist (subject to **[**F2108section 237(5)(b)**]**) in a deduction or set-off of that amount from or against that person's income for that year.

(1C) F2109. . . . . .

(1D) F2109. . . . . .

(1E) Where any person is entitled for any year of assessment to relief under this section in respect of any amount of interest as is eligible for that relief partly as mentioned in subsection (1A) above and partly as mentioned in subsection (1B) above, that amount of interest shall be apportioned between the cases to which each of those subsections applies without regard to what parts of the total amount borrowed remain outstanding but according to F2110. . . —

(a) the proportions of the total amount borrowed which were applied for different purposes; F2111. . .

(b) F2111. . . . . .

and subsection (1A) or (1B) above shall apply accordingly in relation to the interest apportioned to the case to which that subsection applies.

(1F) Where any person is entitled under this section for any year of assessment to an income tax reduction calculated by reference to an amount of interest, the amount of that person's liability for that year to income tax on his total income shall be the amount to which he would have been liable apart from this section less whichever is the smaller of—

(a) the amount equal to the applicable percentage of that amount of interest; and

(b) the amount which reduces his liability to nil.

[F2112(1G) In subsection (1F) above "the applicable percentage" means **[**F2113**23** per cent.**]]**

(1H) In determining for the purposes of subsection (1F) above the amount of income tax to which a person would be liable apart from any income tax reduction under this section, no account shall be taken of—

(a) any income tax reduction under Chapter I of Part VII or section 347B;

(b) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1); or

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(c) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.**]**

(2) [M389]This section does not apply to a payment of relevant loan interest to which section 369 applies.

(3) [M390]Relief under this section shall not be given in respect of—

(a) interest on a debt incurred by overdrawing an account or by debiting the account of any person as the holder of a credit card or under similar arrangements; or

(b) where interest is paid at a rate in excess of a reasonable commercial rate, so much of the interest as represents the excess.

(4) [F2114] . . . . . .

(5) [F2114] . . . . . .

Textual Amendments

F2101 S. 353(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 81(1)**

F2102 Words in s. 353(1) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 1(2)**

F2103 Words in s. 353(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 152** (with Sch. 2)

F2104 S. 353(1A)-(1H) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 81(2)**

F2105 Words in s. 353(1A)(1B) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 1(3), **Sch. 20 Pt. 3(7)**

F2106 S. 353(1A)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

F2107 S. 353(1B)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

F2108 Words in s. 353(1B) substituted (with effect in accordance with s. 42(3)-(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 42(2)(a)**

F2109 S. 353(1C)(1D) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

F2110 Words in s. 353(1E) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

F2111 S. 353(1E)(b) and preceding word repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

F2112 S. 353(1G) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 1(4)**

F2113 Words in s. 353(1G) substituted (with effect in accordance with s. 83(4) of the amending Act) by Finance Act 2000 (c. 17), **s. 83(2)**

F2114 S. 353(4)(5) repealed (with effect in accordance with s. 81(6) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 9 para. 3, **Sch. 26 Pt. 5(2)**, Note

Modifications etc. (not altering text)

C261 *See*—1988 s.117—*limited partners.*1988 s.280—*transfer of reliefs between spouses.*1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

C262 S. 353 restricted (1.5.1995) by Finance Act 1995 (c. 4), s. 123, **Sch. 22 para. 2**

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C263 S. 353 restricted (27.7.1999) by Finance Act 1999 (c. 16), **s. 38(1)**

Marginal Citations

M389 Source-1986 s.26(1)

M390 Source-1972 s.75(1A), (2); 1974 s.19(1)(b)

354 Loans to buy land etc.

F2115 . . . . . .

Textual Amendments

F2115 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

355 Matters excluded from section 354.

F2116 . . . . . .

Textual Amendments

F2116 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

356 Job-related accommodation.

F2117 . . . . . .

Textual Amendments

F2117 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

[F2118 356A Limit on relief for home loans: residence basis.

F2119 . . . . . .]

Textual Amendments

F2118 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), **s.42(1)(4)**

F2119 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

[F2120 356B Residence basis: married couples.

F2121 . . . . . .]

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Textual Amendments

F2120 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), **s. 42(1)(4)**; and s. 356B substituted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), **Sch. 3 para. 14**

F2121 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

[F2122 356C Payments to which sections 356A and 356B apply.

F2123 . . . . . .]

Textual Amendments

F2122 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), **s.42(1)(4)**

F2123 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

[F2124 356D Provisions supplementary to sections 356A to 356C.

F2125 . . . . . .]

Textual Amendments

F2124 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), **s.42(1)(4)**

F2125 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

357 Limit on amount of loan eligible for relief by virtue of section 354.

F2126 . . . . . .

Textual Amendments

F2126 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

[F2127 357A Substitution of security.

F2128 . . . . . .]

Textual Amendments

F2127 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 56**

F2128 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

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[F2129 357B Treatment of loans following security substitution.

F2130 . . . . . .]

Textual Amendments

F2129 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 56**

F2130 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

[F2131 357C Substitution of security: supplemental.

F2132 . . . . . .]

Textual Amendments

F2131 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 56**

F2132 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

358 Relief where borrower deceased.

F2133 . . . . . .

Textual Amendments

F2133 Ss. 354-358 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 2, **Sch. 20 Pt. 3(7)**

359 Loan to buy machinery or plant.

(1) M391 Where an individual is a member of a partnership which, under [F2134 section 264 of the Capital Allowances Act], is entitled to a capital allowance or liable to a balancing charge for [F2135 any period of account in respect of plant or machinery] belonging to the individual, any interest paid by him in [F2136 that period of account] on a loan to defray money applied as capital expenditure on the provision of [F2137 that plant or machinery] is eligible for relief under section 353, except interest falling due and payable more than three years after the end of [F2138 the period of account] in which the debt was incurred.

(2) M392 Where the machinery or plant is in use partly for the purposes of the trade, profession or vocation carried on by the partnership and partly for other purposes, such part only of the interest is eligible for relief under section 353 as is just and reasonable to attribute to the purposes of the trade, profession or vocation, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.

(3) M393 Where the holder of an office or employment—

(a) is under [F2139 Part 2 of the Capital Allowances Act] entitled to a capital allowance or liable to a balancing charge, (or would be so entitled or liable but for some contribution made by the employer), for any year of assessment

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in respect of **[**F2140plant or machinery**]** belonging to him and in use for the purposes of the office or employment; and

(b) pays interest in that year on a loan to defray money applied as capital expenditure on the provision of that **[**F2141plant or machinery**]**;

the interest so paid is eligible for relief under section 353 unless it is interest falling due and payable more than three years after the end of the year of assessment in which the debt was incurred.

(4) M394Where the machinery or plant is in use partly for the purposes of the office or employment and partly for other purposes, such part only of the interest is eligible for relief under section 353 as it is just and reasonable to attribute to the purposes of the office or employment, having regard to all the relevant circumstances and, in particular, to the extent of the use for those other purposes.

Textual Amendments

F2134 Words in s. 359(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(1)(a)** (with Sch. 3)

F2135 Words in s. 359(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(1)(b)** (with Sch. 3)

F2136 Words in s. 359(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(1)(c)** (with Sch. 3)

F2137 Words in s. 359(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(1)(d)** (with Sch. 3)

F2138 Words in s. 359(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(1)(e)** (with Sch. 3)

F2139 Words in s. 359(3)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(2)(a)** (with Sch. 3)

F2140 Words in s. 359(3)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(2)(a)** (with Sch. 3)

F2141 Words in s. 359(3)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 27(2)(b)** (with Sch. 3)

Marginal Citations

M391 Source-1972 Sch.9 10; 1974 Sch.1 1

M392 Source-1972 Sch.9 11; 1974 Sch.1 1

M393 Source-1972 Sch.9 12; 1974 Sch. 1 1

M394 Source-1972 Sch.9 13; 1974 Sch.1 1

360 Loan to buy interest in close company.

(1) M395Subject to the following provisions of this section and sections 361 to 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in acquiring any part of the ordinary share capital of a close company **[**F2142complying with section 13A(2)**]**; or

(b) in lending money to such a close company which is used wholly and exclusively for the purposes of the business of the company or of any associated company of it which is a close company satisfying any of those conditions; or

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(c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and either the conditions stated in subsection (2) below or those stated in subsection (3) below are satisfied.

(2) [M396]The conditions first referred to in subsection (1) above are—

(a) that, when the interest is paid, the company continues to **[**[F2142]comply with section 13A(2)**]** and the individual has a material interest in the company; and

(b) that he shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1); and

(c) that, if the company exists wholly or mainly for the purpose of holding investments or other property, no property held by the company is used as a residence by the individual;

but the condition in paragraph (c) above shall not apply in a case where the individual has worked for the greater part of his time in the actual management or conduct of the business of the company, or of an associated company of the company.

(3) [M397]The conditions secondly referred to in subsection (1) above are—

(a) that, when the interest is paid, the company continues to **[**[F2143]comply with section 13A(2)**]** and the individual holds any part of the ordinary share capital of the company; and

(b) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his time in the actual management or conduct of the company or of an associated company of the company; and

(c) that he shows in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).

[[F2144](3A) Interest shall not be eligible for relief under section 353 by virtue of paragraph (a) of subsection (1) above in respect of shares acquired on or after 14th March 1989 if at any time the person by whom they are acquired, or that person's **[**[F2145]spouse or civil partner**]**, makes a claim for relief in respect of them under Chapter III of Part VII **[**[F2146]or makes a claim in respect of them under Schedule 5B to the 1992 Act**]**.**]**

[[F2147](4) Subject to section 360A, in this section expressions to which a meaning is assigned by Part XI have that meaning.**]**

Textual Amendments

F2142 1989 s.107*and* Sch.12 para.12—*in relation to interest paid on or after* 27*July* 1989. 1988 s.424(4)*continues to have effect for purposes of* s.360*in relation to interest paid before* 27*July* 1989.*Previously*
"satisfying any of the conditions of section 424(4)"
in subs.1(a)*and*
"satisfy any of the conditions of section 424(4)"
in subs.2(a).

F2143 1989 s.107*and* Sch.12 para.12—*in relation to interest paid on or after* 27*July* 1989. 1988 s.424(4)*continues to have effect for purposes of* s.360*in relation to interest paid before* 27*July* 1989.*Previously*

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"satisfy any of the conditions of section 424(4)".

F2144 1989 s.47.

F2145 Words in s. 360(3A) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 68

F2146 Words in s. 360(3A) inserted (with effect in accordance with s. 79(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 79(1)**

F2147 1989 s.48(1).*Previously*

"(4) In this section expressions to which a meaning is assigned by Part XI have that meaning, but— (a) in relation to any loan made after 5th April 1987, paragraph 39 of Schedule 9 shall have effect for determining whether the interest on the loan is eligible for relief under section 353 by virtue of this section; and (b) in relation to any loan made before 14th November 1986, section 417 shall have effect subject to the following modifications—(i) in subsection (3)(c) for the words following "deceased person" there shall be substituted the words "subject to subsection (3A) below, any other person interested therein"; and (ii) after subsection (3) there shall be added— "(3A) Subsection (3)(c) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or (b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company; and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded."".

Modifications etc. (not altering text)

C264 *See* 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

Marginal Citations

M395 Source-1974 Sch.1 9(1); 1982 s.49(2)

M396 Source-1974 Sch.1 10(1); 1980 s.28(1)(b), (c); 1982 s.49(3)

M397 Source-1974 Sch.1 10(2); 1982 s.49(3)

[F2148 360A Meaning of "material interest" in section 360.

(1) For the purposes of section 360(2)(a) an individual shall be treated as having a material interest [F2149 in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates,—

(a) is the beneficial owner of, or able, directly or through the medium of other companies, or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company, or

(b) possesses, or is entitled to acquire, such rights as would, in the event of the winding-up of the company or in any other circumstances, give an entitlement to receive more than 5 per cent. of the assets which would then be available for distribution among the participators.]

(2) Subject to the following provisions of this section, in subsection (1) above "associate", in relation to an individual, means—

(a) any relative or partner of the individual;

(b) the trustee or trustees of a settlement in relation to which the individual is, or any relative of his (living or dead) is or was, a settlor ("settlement" and "settlor" having the same meaning as in [F2150 Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)]); and

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(c) where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased.

(3) In relation to any loan made after 5th April 1987, there shall be disregarded for the purposes of subsection (2)(c) above—

(a) the interest of the trustees of an approved profit sharing scheme (within the meaning of section 187) in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and

(b) any rights exercisable by those trustees by virtue of that interest.

(4) In relation to any loan made on or after the day on which the Finance Act 1989 was passed, where the individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless subsection (6) below applies in relation to him.

(5) In subsection (4) above "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8, except that in its application for this purpose paragraph 7(5)(b) shall have effect as if it referred to the day on which the Finance Act 1989 was passed instead of to 14th March 1989.

(6) This subsection applies in relation to an individual if at any time on or after the day on which the Finance Act 1989 was passed—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company.

(7) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of subsection (6) above in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.

(8) In relation to any loan made before 14th November 1986, where the individual is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person, subsection (2)(c) above shall have effect as if for the reference to the trustee or trustees of the settlement concerned or, as the case may be, the personal representative of the deceased there were substituted a reference to any person (other than the individual) interested in the settlement or estate, but subject to subsection (9) below.

(9) Subsection (8) above shall not apply so as to make an individual an associate as being entitled or eligible to benefit under a trust—

(a) if the trust relates exclusively to an exempt approved scheme as defined in section 592; or

(b) if the trust is exclusively for the benefit of the employees, or the employees and directors, of the company or their dependants (and not wholly or mainly for the benefit of directors or their relatives), and the individual in question is not (and could not as a result of the operation of the trust become), either on his own or with his relatives, the beneficial owner of more than 5 per cent. of the ordinary share capital of the company;

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and in applying paragraph (b) above any charitable trusts which may arise on the failure or determination of other trusts shall be disregarded.

(10) In this section **[**F2151"participator" has the meaning given by section 417(1) and**]**"relative" means **[**F2152spouse or civil partner**]**, parent or remoter forebear, child or remoter issue or brother or sister.**]**

Textual Amendments

F2148 S. 360A inserted by Finance Act 1989 (c. 26), **s. 48(2)**

F2149 1989 s.107*and* Sch.12 para.13(2)*in relation to accounting periods beginning after* 31*March* 1989.*For accounting periods beginning on or before* 31*March* 1989,*the following wording applies:*
"in a company—(a) if he, either on his own or with one or more of his associates, or if any associate of his with or without other such associates, is the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 5 per cent. of the ordinary share capital of the company, or (b) if, on an amount equal to the whole distributable income of the company falling to be apportioned under Part XI for the purpose of computing total income, more than 5 per cent. of that amount could be apportioned to him together with his associates (if any), or to any associate of his, or any such associates taken together.".

F2150 Words in s. 360A(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 153** (with Sch. 2)

F2151 1989 s.107*and* Sch.12 para.13(3)*in relation to accounting periods beginning after* 31*March* 1989.

F2152 Words in s. 360A(10) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 69

Modifications etc. (not altering text)

C265 27*July* 1989.

C266 27*July* 1989.

361 Loan to buy interest in co-operative or employee-controlled company.

(1) **M398**Subject to the following provisions of this section and sections 363 and 364, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in acquiring a share or shares in a body which is a co-operative as defined by section 363(5); or

(b) in lending money to any such body which is used wholly and exclusively for the purposes of the business of that body or of a subsidiary of that body; or

(c) in paying off another loan interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions in subsection (2) below are satisfied.

(2) **M399**The conditions referred to in subsection (1) above are—

(a) that the loan was made after 10th March 1981;

(b) that, when the interest is paid, the body continues to be a co-operative; and

(c) that in the period from the application of the proceeds of the loan to the payment of the interest the individual has worked for the greater part of his time as an employee of the body or of a subsidiary of the body; and

(d) that he shows that in that period he has not recovered any capital from the body apart from any taken into account under section 363(1).

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(3) [M400]Subject to sections 362 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in acquiring any part of the ordinary share capital of an employee-controlled company; or

(b) in paying off another loan, interest on which would have been eligible for relief under section 353 had the loan not been paid off (on the assumption, if it was free of interest, that it carried interest);

and the conditions stated in subsection (4) below are satisfied.

(4) [M401]The conditions referred to in subsection (3) above are that—

(a) the company is, throughout the period beginning with the date on which the shares are acquired and ending with the date on which the interest is paid—

(i) an unquoted company resident in the United Kingdom and not resident elsewhere; and

(ii) a trading company or the holding company of a trading group;

(b) the shares are acquired before, or not later than 12 months after, the date on which the company first becomes an employee-controlled company;

(c) during the year of assessment in which the interest is paid the company either—

(i) first becomes an employee-controlled company; or

(ii) is such a company throughout a period of at least nine months;

(d) the individual or his spouse is a full-time employee of the company throughout the period beginning with the date on which the proceeds of the loan are applied and ending with the date on which the interest is paid or, if at that date he has ceased to be such an employee, ending with whichever is the later of—

(i) the date on which he ceased to be such an employee;

(ii) the date 12 months before the payment of the interest; and

(e) the individual shows that in the period from the application of the proceeds of the loan to the payment of the interest he has not recovered any capital from the company, apart from any amount taken into account under section 363(1).

(5) For the purposes of this section a company is employee-controlled at any time when more than 50 per cent.—

(a) of the issued ordinary share capital of the company, and

(b) of the voting power in the company,

is beneficially owned by persons who, or whose spouses, are full-time employees of the company.

(6) Where an individual owns beneficially, or he and his spouse together own beneficially, more than 10 per cent. of the issued ordinary share capital of, or voting power in, a company, the excess shall be treated for the purposes of subsection (5) above as being owned by an individual who is neither a full-time employee of the company nor the spouse of such an employee.

(7) [M402]Where an individual and his spouse are both full-time employees of the company, subsection (6) above shall apply in relation to them with the omission of the words "or he and his spouse together own beneficially".

(8) [M403]In this section—

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"full-time employee", in relation to a company, means a person who works for the greater part of his time as an employee or director of the company or of a 51 per cent. subsidiary of the company;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities of one or more companies which are its 75 per cent. subsidiaries;

"trading company" means a company whose business consists wholly or mainly of the carrying on of a trade or trades;

"trading group" means a group the business of whose members taken together consists wholly or mainly of the carrying on of a trade or trades, and for this purpose "group" means a company which has one or more 75 per cent. subsidiaries together with those subsidiaries; and

"unquoted company" means a company none of whose shares are listed in the Official List of the Stock Exchange.

Modifications etc. (not altering text)

C267 *See* 1988(F) Sch.6 para.3(3)*—disallowance of interest relief in respect of occupation of commercial woodlands.*

C268 *See* 1988(F) s.35*and* Sch.3 para.15*for changes applicable in respect of payments of interest made on or after* 6*April* 1990.

C269 *See* 1988(F) s.35*and* Sch.3 para.15*for changes applicable in respect of payments of interest made on or after* 6*April* 1990.

Marginal Citations

M398 Source-1974 Sch.1 10A(1); 1981 s.25(3)

M399 Source-1974 Sch.1 10B; 1981 s.25(3), (6)

M400 Source-1974 Sch.1 10C; 1983 s.24(1)

M401 Source-1974 Sch.1 10D(1)-(3); 1983 s.24(1); 1984 s.24(2), (3)

M402 Source-1974 Sch.1 10D(3A); 1983 s.24(1); 1984 s.24(4)

M403 Source-1974 Sch.1 10D(4); 1983 s.24(1)

362 Loan to buy into partnership.

(1) [M404]Subject to sections 363 to 365, interest is eligible for relief under section 353 if it is interest on a loan to an individual to defray money applied—

(a) in purchasing a share in a partnership; or

(b) in contributing money to a partnership by way of capital or premium, or in advancing money to a partnership, where the money contributed or advanced is used wholly for the purposes of the trade, profession or vocation carried on by the partnership; or

(c) in paying off another loan interest on which would have been eligible for relief under that section had the loan not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and the conditions stated in subsection (2) below are satisfied.

(2) [M405]The conditions referred to in subsection (1) above are—

(a) that, throughout the period from the application of the proceeds of the loan until the interest was paid, the individual has been a member of the partnership **[**[F2153] otherwise than—

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(i) as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907, or

(ii) as a member of an investment LLP;**]** and

(b) that he shows that in that period he has not recovered any capital from the partnership, apart from any amount taken into account under section 363(1).

Textual Amendments

F2153 Words in s. 362(2)(a) substituted (retrospective to 6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 9**

Modifications etc. (not altering text)

C270 *See* 1988(F) Sch.6 para.3(3)—*disallowance of interest relief in respect of occupation of commercial woodlands.*

Marginal Citations

M404 Source-1974 Sch.1 11(1)

M405 Source-1974 Sch.1 12; 1981 s.25(2)

363 Provisions supplementary to sections 360 to 362.

(1) **M406**If at any time after the application of the proceeds of the loan the individual has recovered any amount of capital from the close company, co-operative, employee-controlled company or partnership without using that amount in repayment of the loan, he shall be treated for the purposes of sections 353, 360, 361 and 362 as if he had at that time repaid that amount out of the loan, so that out of the interest otherwise eligible for relief (or, where section 367(4) applies, out of the proportion so eligible) and payable for any period after that time there shall be deducted an amount equal to interest on the amount of capital so recovered.

(2) **M407**The individual shall be treated as having recovered an amount of capital from the close company, co-operative, employee-controlled company or partnership if—

(a) he receives consideration of that amount or value for the sale, exchange or assignment of any part of the ordinary share capital of the company or of his share or shares in the co-operative or of his interest in the partnership, or of any consideration of that amount or value by way of repayment of any part of that ordinary share capital or of his share or shares in the co-operative; or

(b) the close company, co-operative, employee-controlled company or partnership repays that amount of a loan or advance from him or the partnership returns that amount of capital to him; or

(c) he receives consideration of that amount or value for assigning any debt due to him from the close company, co-operative, employee-controlled company or partnership;

and where a sale or assignment is not a bargain made at arm's length, the sale or assignment shall be deemed to be for a consideration of an amount equal to the market value of what is disposed of.

(3) **M408**In the application of this section to Scotland for the word "assignment" wherever it occurs there shall be substituted the word " assignation ".

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(4) [M409]Section 360, or, as the case may be, 361(2) or (4) or 362(2) and subsections (1) to (3) above, shall apply to a loan within section 360(1)(c), 361(1)(c) or (3)(b) or 362(1)(c) as if it, and any loan it replaces, were one loan, and so that—

(a) references to the application of the proceeds of the loan were references to the application of the proceeds of the original loan; and

(b) any restriction under subsection (1) above which applies to any loan which has been replaced shall apply to the loan which replaces it.

(5) [M410]In this section and sections 361 and 362—

"co-operative" means a common ownership enterprise or a co-operative enterprise as defined in section 2 of the [M411]Industrial Common Ownership Act 1976; and

"subsidiary" has the same meaning as for the purposes of section 2 of that Act.

Marginal Citations

M406 Source-1974 Sch.1 13; 1981 s.25(4); 1983 s.24(2)(a)
M407 Source-1974 Sch.1 14(1); 1981 s.25(4); 1983 s.24(2)(a)
M408 Source-1974 Sch.1 14(2)
M409 Source-1974 Sch.1 15; 1981 s.25(4); 1983 s.24(2)(b)
M410 Source-1974 Sch.1 10A(2); 1981 s.25(3)
M411 1976 c.78.

364 Loan to pay inheritance tax.

(1) [M412]Interest is eligible for relief under section 353 if it is interest on a loan to the personal representatives of a deceased person, the proceeds of which are applied—

(a) in paying, before the grant of representation or confirmation, capital transfer tax or inheritance tax payable on the delivery of the personal representatives' account and attributable to the value of personal property to which the deceased was beneficially entitled immediately before his death and which vests in the personal representatives or would vest in them if the property were situated in the United Kingdom; or

(b) in paying off another loan interest on which would have been eligible for that relief by virtue of this section if the loan had not been paid off (on the assumption, if the loan was free of interest, that it carried interest);

and the interest is paid in respect of a period ending within one year from the making of the loan within paragraph (a) above.

(2) [M413]If or to the extent that any relief in respect of interest eligible for it under subsection (1) above cannot be given against income of the year in which the interest is paid because of an insufficiency of income in that year, it may instead be given against income of the preceding year of assessment, and so on; and if or to the extent that it cannot be so given it may instead be given against income of the year following that in which the interest is paid, and so on.

(3) [M414]Sufficient evidence of the amount of capital transfer tax or inheritance tax paid as mentioned in subsection (1)(a) above and of any statements relevant to its computation may be given by the production of a document purporting to be a certificate from the Board.

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(4) For the purposes of subsections (1) to (3) above—

(a) references to capital transfer tax or inheritance tax include any interest payable on that tax; and

(b) references to interest in respect of a period ending within a given time apply whether or not interest continues to run after that time.

Marginal Citations

M412 Source-1974 Sch.1 17(1); 1975 Sch.12 19(2); 1986 s.100

M413 Source-1974 Sch.1 18

M414 Source-1974 Sch.1 20, 21; 1975 Sch.12 19(3), (4); 1986 s.100

365 Loan to buy life annuity.

M415(1) Subject to the following provisions of this section, interest is eligible for relief under section 353 if it is interest on a loan in respect of which the following conditions are satisfied—

[F2154(aa) that the loan was made before 9th March 1999;**]**

(a) that the loan was made as part of a scheme under which not less than nine-tenths of the proceeds of the loan were applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons ("the annuitants") who include the person to whom the loan was made;

(b) that at the time the loan was made the person to whom it was made or each of the annuitants had attained the age of 65 years;

(c) that the loan was secured on land in the United Kingdom or the Republic of Ireland and the person to whom it was made or one of the annuitants owns an estate or interest in that land; and

(d) that, if the loan was made after 26th March 1974, the person to whom it was made or each of the annuitants **[**F2155used the land on which it was secured as his only or main residence immediately before 9th March 1999**]** .

[F2156(1AA) Where—

(a) a loan made on or after 9th March 1999 was made in pursuance of an offer made by the lender before that date, and

(b) the offer was either in writing or evidenced by a note or memorandum made by the lender before that date,

the loan shall be deemed for the purposes of subsection (1)(aa) above to have been made before that date.**]**

[F2157(1AB) Subject to subsection (1AC) below, the conditions in paragraphs (aa) and (a) of subsection (1) above shall be treated as satisfied in relation to a loan ("the new loan") if—

(a) the new loan was made on or after the day on which the Finance Act 1999 was passed;

(b) the new loan was made as part of a scheme ("the scheme") under which the whole or any part of the proceeds of the loan was used to defray money applied in paying off another loan ("the old loan"); and

(c) the conditions in subsection (1) above were, or were treated by virtue of this subsection as, satisfied with respect to the old loan.

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(1AC) If only part of the proceeds of the new loan was used to defray money applied in paying off the old loan, subsection (1AB) above applies only if, under the scheme, not less than nine-tenths of the remaining part of the proceeds of the new loan was applied to the purchase by the person to whom it was made of an annuity ending with his life or with the life of the survivor of two or more persons who include him.

(1AD) In subsection (1AC) above "the remaining part" means the part of the proceeds of the new loan that was not used to defray money applied in paying off the old loan.**]**

[[F2158]**[**[F2159](1A) The condition in subsection (1)(d) above shall be treated as satisfied in relation to a loan if—

(a) the person to whom the loan was made, or any of the annuitants, ceased to use the land as his only or main residence at a time falling within the period of twelve months ending with 8th March 1999, and

(b) the intention at that time of the person to whom the loan was made, or each of the annuitants owning an estate or interest in the land, was to take steps, before the end of the period of twelve months after the day on which the land ceased to be so used, with a view to the disposal of his estate or interest.**]**

(1B) If it appears to the Board reasonable to do so, having regard to all the circumstances of a particular case, they may direct that in relation to that case subsection (1A) above shall have effect as if for the reference to 12 months there were substituted a reference to such longer period as meets the circumstances of that case.**]**

(2) Interest is not eligible for relief by virtue of this section unless it is payable by the person to whom the loan was made or by one of the annuitants.

(3) If the loan was made after 26th March 1974 interest on it is eligible for relief by virtue of this section only to the extent that the amount on which it is payable does not exceed **[**[F2160]the sum of £30,000**]**; and if the interest is payable by two or more persons the interest payable by each of them is so eligible only to the extent that the amount on which it is payable does not exceed such amount as bears to **[**[F2161]that sum**]** the same proportion as the interest payable by him bears to the interest payable by both or all of them.

Textual Amendments

F2154 S. 365(1)(aa) inserted (with effect in accordance with s. 39(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 39(1)**

F2155 Words in s. 365(1)(d) inserted (with effect in accordance with s. 40(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 40(2)**

F2156 S. 365(1AA) inserted (with effect in accordance with s. 39(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 39(2)**

F2157 S. 365(1AB)-(1AD) inserted (with effect in accordance with s. 40(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 40(3)**

F2158 S. 365(1A)(1B) inserted (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by Finance Act 1993 (c. 34), **s. 57(3)(5)(6)**

F2159 S. 365(1A) substituted (with effect in accordance with s. 40(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 40(4)**

F2160 Words in s. 365(3) substituted (with effect in accordance with s. 83(4) of the amending Act) by Finance Act 2000 (c. 17), **s. 83(1)(a)**

F2161 Words in s. 365(3) substituted (with effect in accordance with s. 83(4) of the amending Act) by Finance Act 2000 (c. 17), **s. 83(1)(b)**

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Marginal Citations

M415 Source-1974 Sch.1 24; 1984 s.22(3)

366 Information.

(1) [M416]A person who claims relief under section 353 in respect of any payment of interest shall furnish to the inspector a statement in writing by the person to whom the payment is made, showing—

(a) the date when the debt was incurred;

(b) the amount of the debt when incurred;

(c) the interest paid in the year of assessment for which the claim is made (or, in the case of relief by virtue of section [F2162]. . . 364(2), the year of assessment for which the claim would be made but for an insufficiency of income); and

(d) the name and address of the debtor.

(2) [M417]Where any such interest as is mentioned in section 353 is paid, the person to whom it is paid shall, if the person who pays it so requests in writing, furnish him with such statement as regards that interest as is mentioned in subsection (1) above; and the duty imposed by this subsection shall be enforceable at the suit or instance of the person making the request.

(3) Subsections (1) and (2) above do not apply to interest paid to a building society, or to a local authority.

Textual Amendments

F2162 Words in s. 366(1)(c) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

Marginal Citations

M416 Source-1972 Sch.10 7; 1974 Sch.1 25(1)

M417 Source-1972 Sch.10 8, 9

367 Provisions supplementary to sections 354 to 366.

(1) [F2163]. . . . . .

(2) [M418]Sections [F2164]. . . 360 to 364 do not apply to a loan unless it is made—

(a) in connection with the application of money, and

(b) on the occasion of, or within what is in the circumstances a reasonable time from, the application of the money;

and those sections do not apply to a loan the proceeds of which are applied for some other purpose before being applied as mentioned in those sections.

(3) [M419]For the purposes of **[**[F2165]sections 359**]** to 364, the giving of credit for any money due from the purchaser under any sale shall be treated as the making of a loan to defray money applied by him in making the purchase.

(4) [M420]Where part only of a debt fulfils the conditions required under **[**[F2165]sections 359**]** to 364 for interest on the debt to be eligible for relief under section 353, such proportion of the interest shall be treated as eligible for relief under that section as is equal to

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the portion of the debt fulfilling those conditions at the time of the application of the money in question.

(5) [M421]In [F2166section] 365(3) references to the qualifying maximum for the year of assessment are references to such sum as Parliament may determine for the purpose for that year.

Textual Amendments

F2163 S. 367(1) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 3(2), **Sch. 20 Pt. 3(7)**

F2164 Words in s. 367(2) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 3(2), **Sch. 20 Pt. 3(7)**

F2165 Words in s. 367(3)(4) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 3(3)**

F2166 Words in s. 367(5) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 3(4)**

Modifications etc. (not altering text)

C271 S. 367(5): £30,000 specified (1988-89) by Finance Act 1988 (c. 39), **s. 41**
S. 367(5): £30,000 specified (1989-90) by Finance Act 1989 (c. 26), **s. 46**
S. 367(5): £30,000 specified (1990-91) by Finance Act 1990 (c. 29), **s. 71**
S. 367(5): £30,000 specified (1991-92) by Finance Act 1991 (c. 31), **s. 26**
S. 367(5): £30,000 specified (1992-93) by Finance Act 1992 (c. 20), **s. 10(4)** (with s. 10(5))
S. 367(5): £30,000 specified (1993-94) by Finance Act 1993 (c. 34), **s. 55**
S. 367(5): £30,000 specified (1994-95, 1995-96) by Finance Act 1994 (c. 9), **s. 80**
S. 367(5): £30,000 specified (1996-97) by Finance Act 1996 (c. 8), **s. 76**
S. 367(5): £30,000 specified (1997-98) by Finance Act 1997 (c. 16), **s. 57**
S. 367(5): £30,000 specified (1998-99) by Finance (No. 2) Act 1997 (c. 58), **s. 16**
S. 367(5): £30,000 specified (1999-2000) by Finance Act 1999 (c. 16), **s. 37**

Marginal Citations

M418 Source-1972 Sch.9 2; 1974 Sch.1 23
M419 Source-1972 Sch.9 14; 1974 Sch.1 23
M420 Source-1972 Sch.9 15; 1974 Sch.1 1, 23
M421 Source-1972 Sch.9 5(1A); 1984 s.22(1)(c)

VALID FROM 01/04/2010

[F2167367A Alternative finance arrangements

(1) Sections 353 and 365 have effect as if—

(a) purchase and resale arrangements involved the making of a loan, and

(b) alternative finance return were interest.

(2) Section 366 has effect accordingly.

(3) In this section—

"alternative finance return" has the meaning given in sections 564I to 564L of ITA 2007, and

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"purchase and resale arrangements" means arrangements to which section 564C of ITA 2007 applies.**]**

Textual Amendments

F2167 S. 367A inserted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 2 para. 47** (with Sch. 9)

368 Exclusion of double relief etc.

M422(1) Interest in respect of which relief is given under section 353 shall not be allowable as a deduction **[**F2168for any purpose of the Income Tax Acts except so far as it is so allowable in accordance with subsection (1B) of that section.**]**

(2) Relief shall not be given under section 353 against income chargeable to corporation tax, and shall not be given against any other income of a company, except where both of the following conditions are satisfied, that is to say—

(a) that the company is not resident in the United Kingdom; and

(b) that the interest cannot be taken into account in computing corporation tax chargeable on the company.

(3) Where interest on any debt or liability is taken into account in the computation of **[**F2169profits**]** or losses **[**F2170of any trade, profession or vocation, or of any UK property business or overseas property business,**]** no relief shall be given under section 353—

(a) in respect of the payment of that interest; or

(b) in respect of interest on the same debt or liability which is paid in any year of assessment for which that computation is relevant.

(4) F2171. . . . . .

(5) For the purposes of **[**F2172subsection (3)**]** above, all interest capable of being taken into account in such a computation as is mentioned in **[**F2173that subsection**]** which is payable by any person on money advanced to him on current account, whether advanced on one or more accounts or by the same or separate banks or other persons, shall be treated as interest payable on the same debt.

[F2174(6) Any reference in subsection (3) above to an amount taken into account is a reference to an amount taken into account in an assessment which has been finally determined.**]**

Textual Amendments

F2168 Words in s. 368(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 9**

F2169 Words in s. 368(3)(4)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F2170 Words in s. 368(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 154(2)** (with Sch. 2)

F2171 S. 368(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 154(3), **Sch. 3** (with Sch. 2)

F2172 Words in s. 368(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 154(4)(a)** (with Sch. 2)

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F2173 Words in s. 368(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 154(4)(b)** (with Sch. 2)
F2174 S. 368(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 154(5)** (with Sch. 2)

Marginal Citations
M422 Source-1972 Sch.10 1-6

Mortgage interest relief at source

369 Mortgage interest payable under deduction of tax.

(1) M423 If a person who is a qualifying borrower makes a payment of relevant loan interest to which this section applies, he shall be entitled, on making the payment, to deduct and retain out of it a sum equal to **[**F2175 the applicable percentage thereof.**]**

[F2176 (1A) In subsection (1) above "the applicable percentage" means **[**F2177 23 per cent.**]**.**]**

(2) Where a sum is deducted under subsection (1) above from a payment of relevant loan interest—

(a) the person to whom the payment is made shall allow the deduction on receipt of the residue;

(b) the borrower shall be acquitted and discharged of so much money as is represented by the deduction as if the sum had been actually paid; and

(c) the sum deducted shall be treated as income tax paid by the person to whom the payment is made.

[F2178 (3) The following payments, that is to say—

(a) payments of relevant loan interest to which this section applies, and

(b) payments which would be such payments but for section 373(5),

shall not be allowable as deductions for any purpose of the Income Tax Acts except in so far as they fall to be treated as such payments by virtue only of section 375(2) and would be allowable apart from this subsection.**]**

(6) M424 Any person by whom a payment of relevant loan interest to which this section applies is received shall be entitled to recover from the Board, in accordance with regulations, an amount which by virtue of subsection (2)(c) above is treated as income tax paid by him; and any amount so recovered shall be treated for the purposes of the Tax Acts in like manner as the payment of relevant loan interest to which it relates.

[F2179 (7) The following provisions of the Management Act, namely—

[F2180 (a) section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to (10) of that Act;**]**

(b) section 30 (tax repaid in error etc.) **[**F2181 apart from subsection (1B)**]** ,

(c) **[**F2182 section 86**]** (interest), and

(d) section 95 (incorrect return or accounts),

shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable in accordance with regulations made by virtue of subsection (6) above but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid **[**F2183 as respects a chargeable period**]** as a relief which was not due.**]**

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[F2184(8) In the application of section 86 of the Management Act by virtue of subsection (7) above in relation to sums due and payable by virtue of an assessment made for the whole or part of a year of assessment ("the relevant year of assessment") under section 29(1)(c) or 30 of that Act, as applied by that subsection, the relevant date—

(a) is 1st January in the relevant year of assessment in a case where the person falling within subsection (6) above has made a relevant interim claim; and

(b) in any other case, is the later of the following dates, that is to say—

(i) 1st January in the relevant year of assessment; or

(ii) the date of the making of the payment by the Board which gives rise to the assessment.

(9) In this section—

"financial year", in relation to any person, means a financial year of that person for the purposes of the relevant regulations;

"interim claim" means an interim claim within the meaning of the relevant regulations;

"relevant interim claim" means, in relation to an assessment made for a period coterminous with, or falling wholly within, a person's financial year, an interim claim made for a period falling wholly or partly within that financial year; and

"the relevant regulations" means regulations made under section 378(3) for the purposes of subsection (6) above.**]**

Textual Amendments

F2175 Words in s. 369(1) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 81(3)**

F2176 S. 369(1A) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 4**

F2177 Words in s. 369(1A) substituted (with effect in accordance with s. 83(4) of the amending Act) by Finance Act 2000 (c. 17), **s. 83(3)**

F2178 S. 369(3) substituted for s. 369(3)-(5B) (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 81(4)**

F2179 S. 369(7) inserted (27.7.1993) by 1993 c. 34, **s. 58(1)(2)**

F2180 S. 369(7)(a) substituted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 6(2)(a)**

F2181 Words in s. 369(7)(b) inserted (with effect in accordance with Sch. 18 para. 17(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 6(2)(b)**

F2182 Words in s. 369(7)(c) substituted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 6(2)(c)**

F2183 Words in s. 369(7) inserted (with effect in accordance with Sch. 18 para. 17(8) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 6(2)(d)**

F2184 S. 369(8)(9) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 6(3)**

Modifications etc. (not altering text)

C272 *See* S.I. 1988 No.1347 (*in* Part III Vol.5)*in respect of housing associations.*

C273 S. 369(1) excluded (27.7.1999) by Finance Act 1999 (c. 16), **s. 38(2)-(7)**

Marginal Citations

M423 Source-1982 s.26(1), (2)

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M424 Source-1982 s.26(7)

370 Relevant loan interest.

(1) M425Subject to this section and **[**F2185sections 373**]** to 376, in this Part "relevant loan interest" means interest which is paid and payable in the United Kingdom to a qualifying lender and to which subsection (2) F2186. . . below applies.

(2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2) **[**F2187and any other provision applying to interest falling to be treated as relevant loan interest**]**—

(a) it is interest falling within section F2188. . . 365; and

(b) apart **[**F2189(where applicable) from**]** section F2188. . . 365(3), the whole of the interest **[**F2190would be eligible for relief under section 353**]**;F2191. . .

(c) F2191. . . . . .

(3) F2192. . . . . .

(4) F2192. . . . . .

(5) M426In determining whether subsection (2) above applies to any interest, **[**F2193section 365 shall**]** have effect as if the words "or the Republic of Ireland" were omitted.

(6) F2192. . . . . .

[F2194(6A) F2195. . . . . .**]**

(7) F2192. . . . . .

Textual Amendments

F2185 Words in s. 370(1) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 5(2)(a)**

F2186 Words in s. 370(1) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(2)(b), **Sch. 20 Pt. 3(7)**

F2187 Words in s. 370(2) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 10(1)(a)**

F2188 Words in s. 370(2) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(3), **Sch. 20 Pt. 3(7)**

F2189 Words in s. 370(2)(b) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 10(1)(b)**

F2190 Words in s. 370(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 155** (with Sch. 2)

F2191 S. 370(2)(c) and preceding word repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(3), **Sch. 20 Pt. 3(7)**

F2192 S. 370(3)(4)(6)(7) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 5(4), **Sch. 20 Pt. 3(7)**

F2193 Words in s. 370(5) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 5(5)**

F2194 S. 370(6A) inserted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 10(2)**

F2195 S. 370(6A) repealed (with effect in accordance with s. 42(3)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(2)**, Note

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Marginal Citations

M425 Source-1982 Sch.7 2(1)-(3)

M426 Source-1982 Sch.7 3(1)-(3)

F2196 371 Second loans.

. . . . . .

Textual Amendments

F2196 S. 371 repealed (27.7.1993 with effect in relation to payments of interest made on or after 16 March 1993 (whenever falling due)) by Finance Act 1993 (c. 34), ss. 57, 213, **Sch. 23 Pt.III**

372 Home improvement loans.

F2197 . . . . . .

Textual Amendments

F2197 S. 372 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 6, **Sch. 20 Pt. 3(7)**

373 Loans in excess of the qualifying maximum, and joint borrowers.

(1) M427 The provisions of this section have effect in relation to a loan where, by virtue of F2198 . . . section 365(3), only part of the interest on the loan would (apart from section 353(2)) be eligible for relief under section 353; and in this section any such loan is referred to as a "limited loan".

(2) None of the interest on a limited loan is relevant loan interest unless—

(a) the loan is made on or after 6th April 1987; or

(b) the qualifying lender to whom the interest is payable has given notice to the Board in accordance with regulations that he is prepared to have limited loans of a description which includes that limited loan brought within the tax deduction scheme.

(3) F2199 . . . . . .

(4) F2199 . . . . . .

(5) M428 Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled F2200 . . . only so much of the interest as (apart from section 353(2)) would be eligible for relief under section 353 is relevant loan interest.

(6) M429 Where a loan on which interest is payable by the borrower was made jointly to the borrower and another person who is not the borrower's husband or wife, the interest on the loan is not relevant loan interest unless—

(a) each of the persons to whom the loan was made is a qualifying borrower; and

(b) in relation to each of them considered separately, the whole of that interest is relevant loan interest, in accordance with **[**F2201 section 370**]** and this section.

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(7) In subsection (6) above references to the borrower's husband or wife do not include references to a separated husband or wife [F2202]. . . .

Textual Amendments

F2198 Words in s. 373(1) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 7(2)(a), **Sch. 20 Pt. 3(7)**

F2199 S. 370(3)(4) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 7(2)(b), **Sch. 20 Pt. 3(7)**

F2200 Words in s. 373(5) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 7(2)(c), **Sch. 20 Pt. 3(7)**

F2201 Words in s. 373(6) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 7(3)**

F2202 Words in s. 373(7) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 7(2)(d), **Sch. 20 Pt. 3(7)**

Marginal Citations

M427 Source-1982 Sch.7 5(1)-(3); 1985 s.37(2)

M428 Source-1982 Sch.7 5(4); 1983 s.17(2); 1985 s.37(3)

M429 Source-1982 Sch.7 6(1), (2)

374 Conditions for application of section 369.

(1) [M430]Section 369 does not apply to any relevant loan interest unless—

(a) in the case of a loan of a description specified by regulations for the purposes of this paragraph, the borrower or, in the case of joint borrowers, each of them has given notice to the lender in the prescribed form certifying—

(i) that he is a qualifying borrower; and

(ii) that the interest is relevant loan interest; and

(iii) such other matters as may be prescribed; or

(b) the Board have given notice to the lender and the borrower that the interest may be paid under deduction of tax; or

(c) [F2203] . . . . . .

(d) [M431]the loan to which the interest relates is of a description specified by regulations for the purposes of this paragraph and was made—

(i) if sub-paragraph (2) of paragraph 2 of Schedule 7 to the Finance Act 1982 applied to interest on the loan which became due on or after a date earlier than 6th April 1983, being a date specified by the Board in pursuance of sub-paragraph (5) of that paragraph, before that earlier date; or

(ii) if the qualifying lender is a building society or a local authority, before 1st April 1983; or

(iii) if sub-paragraphs (i) and (ii) above do not apply and the interest falls within section 370(2), before 6th April 1983.

(2) [M432]Where notice has been given as mentioned in paragraph (a) or (b) of subsection (1) above, section 369 applies to any relevant loan interest to which the notice relates and which becomes due on or after the relevant date, as defined by subsection (3) below; and in a case falling within paragraph [F2204]. . . (d) of subsection (1) above, section 369 applies to the relevant loan interest referred to in that paragraph.

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(3) In subsection (2) above "the relevant date" means—

(a) in the case of a notice under subsection (1)(a) above, the date the notice is given, and

(b) in the case of a notice under subsection (1)(b) above, a date specified in the notice as being the relevant date (which may be earlier than the date so specified as the date from which the interest may be paid under deduction of tax).

Textual Amendments

F2203 S. 374(1)(c) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 8, **Sch. 20 Pt. 3(7)**

F2204 Words in s. 374(2) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 8, **Sch. 20 Pt. 3(7)**

Marginal Citations

M430 Source-1982 Sch.7 7(1)(a)-(c)

M431 Source-1982 Sch.7 7(1)(d), (4), (5)

M432 Source-1982 Sch.7 7(2)(3)

[F2205 374A Interest which never has been relevant loan interest etc.

(1) This section applies where, in the case of any loan, interest on the loan never has been relevant loan interest or the borrower never has been a qualifying borrower.

(2) Without prejudice to subsection (3) below, in relation to a payment of interest—

(a) as respects which either of the conditions mentioned in paragraphs (a) and (b) of section 374(1) is fulfilled, and

(b) from which a deduction was made as mentioned in section 369(1),

section 369 shall have effect as if the payment of interest were a payment of relevant loan interest made by a qualifying borrower.

(3) Nothing in subsection (2) above shall be taken as regards the borrower as entitling him to make any deduction or to retain any amount deducted and, accordingly, where any amount has been deducted, he shall be liable to make good that amount and an officer of the Board may make such assessments as may in his judgment be required for recovering that amount.

(4) The Management Act shall apply to an assessment under subsection (3) above as if it were an assessment to income tax for the year of assessment in which the deduction was made F2206. . . .

(5) If the borrower fraudulently or negligently makes any false statement or representation in connection with the making of any deduction, he shall be liable to a penalty not exceeding the amount deducted.]

Textual Amendments

F2205 S. 374A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 112(1)**

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F2206 Words in s. 374A(4) repealed (with effect in accordance with Sch. 18 para. 17(5) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 18 para. 7, **Sch. 41 Pt. 5(8)**, Note

375 Interest ceasing to be relevant loan interest, etc.

(1) M433 If at any time—

(a) the interest on a loan ceases to be relevant loan interest; or

(b) a person making payments of relevant loan interest ceases to be a qualifying borrower;

the borrower shall give notice of the fact to the lender.

(2) Without prejudice to subsection (3) below, in relation to a payment of interest—

(a) which is due after the time referred to in subsection (1) above and before the date on which notice is given under that subsection, and

[F2207 (aa) as respects which any of the conditions mentioned in section 374(1) is fulfilled, and**]**

(b) from which a deduction was made as mentioned in section 369(1),

section 369 shall have effect as if the payment were a payment of relevant loan interest made by a qualifying borrower.

(3) Nothing in subsection (2) above **[**F2208 shall be taken as regards the borrower as entitling him to any deduction or to retain any amount deducted and, accordingly, where any amount that has been deducted exceeds the amount which ought to have been deducted**]**, he shall be liable to make good the excess and an inspector may make such assessments as may in his judgment be required for recovering the excess.

[F2209 (4) The Management Act shall apply to an assessment under subsection (3) above **[**F2210 as if it were an assessment to income tax for the year of assessment in which the deduction was made**]**.

(4A) If there is any unreasonable delay in the giving of a notice under subsection (1) above, the borrower shall be liable to a penalty not exceeding so much of the aggregate amount that he is liable to make good under subsection (3) above as is attributable to that delay.**]**

(5) M434 If, as a result of receiving a notice under subsection (1) above or otherwise, a qualifying lender has reason to believe that any interest is no longer relevant loan interest or that a borrower is no longer a qualifying borrower, the lender shall furnish the Board with such information as is in his possession with respect to those matters.

(6) M435 Where it appears to the Board that any of the provisions of sections 370 to 373 is not or may not be fulfilled with respect to any interest, or that a qualifying borrower has or may have ceased to be a qualifying borrower, they shall give notice of that fact to the lender and the borrower specifying the description of relevant loan interest concerned or, as the case may be, that the borrower has or may have ceased to be a qualifying borrower.

(7) Section 369 shall not apply to any payment of relevant loan interest of a description to which a notice under subsection (6) above relates and which becomes due or is made after such date as may be specified in the notice and before such date as may be specified in a further notice given by the Board to the lender and the borrower.

(8) M436 In any case where—

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(a) section 369 applies to any relevant loan interest by virtue of a notice under section 374(1)(b), and

(b) the relevant date specified in the notice is earlier than the date from which the interest begins to be paid under deduction of tax, and

(c) a payment of that interest was made on or after the relevant date but not under deduction of tax,

regulations may provide for a sum to be paid by the Board of an amount equal to that which the borrower would have been able to deduct from that payment by virtue of section 369 if it had been made after the relevant date.

[F2211(8A) In any case where an amount to which a person is not entitled is paid to him by the Board in pursuance of regulations made by virtue of subsection (8) above, regulations may—

(a) provide for an officer of the Board to make such assessments as may in his judgment be required for recovering that amount from that person; and

(b) make provision corresponding to that made by subsection (4A) above and subsections (4) and (5) of section 374A.**]**

[F2212(8B) Subsections (1), (5) and (6) above shall not apply where interest ceases to be relevant loan interest by virtue of section 38 of the Finance Act 1999.**]**

(9) F2213. . . . . .

(10) F2213. . . . . .

Textual Amendments

F2207 S. 375(2)(aa) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 112(2)**

F2208 Words in s. 375(3) substituted (with effect in accordance with s. 81(6) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 9 para. 11**

F2209 S. 375(4)(4A) substituted for s. 375(4) (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 112(3)**

F2210 Words in s. 375(4) substituted (with effect in accordance with Sch. 18 para. 17(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 8**

F2211 S. 375(8A) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 112(4)**

F2212 S. 375(8B) inserted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 9(1)**

F2213 S. 375(9)(10) repealed (with effect in accordance with Sch. 4 para. 18(1) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 9(2), **Sch. 20 Pt. 3(7)**, Note 1

Marginal Citations

M433 Source-1982 Sch.7 8

M434 Source-1982 Sch.7 9(1)

M435 Source-1982 Sch.7 10(1), (2)

M436 Source-1982 Sch.7 11

[F2214375A Option to deduct interest for the purposes of Schedule A.

F2215. . . . . .**]**

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Textual Amendments

F2214 S. 375A inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 18**

F2215 S. 375A repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 10, **Sch. 20 Pt. 3(7)**

376 Qualifying borrowers and qualifying lenders.

(1) [M437]Subject to subsection (2) below, an individual is a qualifying borrower with respect to the interest on any loan.

(2) In relation to interest paid at a time when the borrower or the borrower's husband or wife holds **[**[F2216]an office or employment which would, but for some special exemption or immunity from tax, be a taxable employment under Part 2 of ITEPA 2003 (as defined by section 66(3) of that Act)**]**, the borrower is not a qualifying borrower.

(3) In subsection (2) above references to the borrower's husband or wife do not include references to a separated husband or wife [F2217]. . . .

(4) [M438]The following bodies are qualifying lenders:—

(a) a building society;

(b) a local authority;

(c) the Bank of England;

(d) [F2218]. . . . . .

[[F2219](e) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance;**]**

(f) any company to which property and rights belonging to a trustee savings bank were transferred by section 3 of the [M439]Trustee Savings Bank Act 1985;

(g) [F2220]. . . . . .

(h) a development corporation within the meaning of the [M440]New Towns Act 1981 or the [M441]New Towns (Scotland) Act 1968;

(j) the Commission for the New Towns;

(k) the Housing Corporation;

[[F2221](ka) the Secretary of State if the loan is made by him under section 79 of the [M442]Housing Associations Act 1985;**]**

(l) the Northern Ireland Housing Executive;

(m) the Scottish Special Housing Association;

(n) [F2222]. . . . . .

(o) the Church of England Pensions Board;

[[F2223](p) any body which is for the time being registered under section 376A.**]**

[[F2224](4A) [F2225]. . . . . .**]**

(5) [F2226]. . . . . .

(6) [F2227]. . . . . .

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Textual Amendments

F2216 Words in s. 376(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 52** (with Sch. 7)

F2217 Words in s. 376(3) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 11(a), **Sch. 20 Pt. 3(7)**

F2218 S. 376(4)(d) repealed (26.3.2001) by The Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001 (S.I. 2001/1149), arts. 1(2), 3(2), **Sch. 2**

F2219 S. 376(4)(e) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 23(2)(a)**

F2220 S. 376(4)(g) omitted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 23(2)(b)**

F2221 S. 376(4)(ka) substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140(2), 158(1), **Sch. 16 para. 55**; S.I. 1998/2244, **art. 5**

F2222 S. 376(4)(n) repealed (1.10.1998) by Government of Wales Act 1998 (c. 38), ss. 152, 158(1), **Sch. 18 Pt. 4**; S.I. 1998/2244, **art. 4**

F2223 S. 376(4)(p) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 23(2)(c)**

F2224 S. 376(4A) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 3(3), **22**; S.I. 1993/236, **art. 2**

F2225 S. 376(4A) omitted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 23(3)**

F2226 S. 376(5) repealed (3.5.1994) by Finance Act 1994 (c. 9), s. 142(1)(b), **Sch. 26 Pt. 5(19)**

F2227 S. 376(6) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 11(b), **Sch. 20 Pt. 3(7)**

Marginal Citations

M437 Source-1982 Sch.7 13

M438 Source-1982 Sch.7 14(1); 1983 s.17(3)

M439 1985 c. 50.

M440 1981 c.64.

M441 1968 c. 16.

M442 1985 c. 69.

[F2228 376A The register of qualifying lenders.

(1) The Board shall maintain, and publish in such manner as they consider appropriate, a register for the purposes of section 376(4).

[The following are entitled to be registered—

F2229 (1A) (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000—

(i) to accept deposits; or

(ii) to effect or carry out contracts of general insurance;

(b) a 90 per cent subsidiary of a person mentioned in—

(i) section 376(4)(e); or

(ii) paragraph (a) above;

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(c) any other body whose activities and objects appear to the Board to qualify it for registration.**]**

(2) If the Board are satisfied that an applicant for registration is entitled to be registered, they may register the applicant generally or in relation to any description of loan specified in the register, with effect from such date as may be so specified; and a body which is so registered shall become a qualifying lender in accordance with the terms of its registration.

(3) The registration of any body may be varied by the Board—

(a) where it is general, by providing for it to be in relation to a specified description of loan, or

(b) where it is in relation to a specified description of loan, by removing or varying the reference to that description of loan,

and where they do so, they shall give the body written notice of the variation and of the date from which it is to have effect.

(4) If it appears to the Board at any time that a body which is registered under this section would not be entitled to be registered if it applied for registration at that time, the Board may by written notice given to the body cancel its registration with effect from such date as may be specified in the notice.

(5) The date specified in a notice under subsection (3) or (4) above shall not be earlier than the end of the period of 30 days beginning with the date on which the notice is served.

(6) Any body which is aggrieved by the failure of the Board to register it under this section, or by the variation or cancellation of its registration, may, by notice given to the Board before the end of the period of 30 days beginning with the date on which the body is notified of the Board's decision, require the matter to be determined by the Special Commissioners; and the Special Commissioners shall thereupon hear and determine the matter in like manner as an appeal.**]**

Textual Amendments

F2228 S. 376A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 142(2)**

F2229 S. 376A(1A) inserted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 24**

377 Variation of terms of repayment of certain loans.

F2230 . . . . . .

Textual Amendments

F2230 S. 377 repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 12, **Sch. 20 Pt. 3(7)**

378 Supplementary regulations.

M443(1) **F2231** . . . . . .

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(2) F2231. . . . . .

(3) The Board may by regulations make provision—

(a) for the purposes of any provision of sections 369 to **[**F2232376A**]** which relates to any matter or thing to be specified by or done in accordance with regulations;

(b) for the application of those sections in relation to loan interest paid by personal representatives and trustees;

(c) with respect to the furnishing of information by borrowers or lenders, including, in the case of lenders, the inspection of books, documents and other records on behalf of the Board;

(d) for, and with respect to, appeals to the General Commissioners or the Special Commissioners against the refusal of the Board to issue a notice under section 374(1)(b) or the issue of a notice under section 375(6) or (7); and

(e) generally for giving effect to sections 369 to **[**F2232376A**]**.

(4) F2231. . . . . .

Textual Amendments

F2231 S. 378(1)(2)(4) repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 13(a), **Sch. 20 Pt. 3(7)**

F2232 Words in s. 378(3) substituted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 13(b)**

Modifications etc. (not altering text)

C274 *See* S.I. 1983 No.368 (*in* Part III Vol.5)—*housing associations.*

Marginal Citations

M443 Source-1982 s.29; 1984 s.56(2)

379

In sections 369 to 378—

[F2233"contracts of general insurance" means contracts which fall within Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and "contracts of long-term insurance" means contracts which fall within Part II of that Schedule;**]**

"prescribed" F2234. . . means prescribed by the Board;

"qualifying borrower" has the meaning given by section 376(1) to (3);

"qualifying lender" has the meaning given by section 376(4) F2235. . . ;

"regulations" F2236 . . . means regulations made by the Board under section 378;

"relevant loan interest" has the meaning given by section 370(1);

[F2237"separated" means separated under an order of a court of competent jurisdiction or by deed of separation or in such circumstances that the separation is likely to be permanent.**]**

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Textual Amendments

F2233 S. 379: definition of "contracts of general insurance" inserted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 25**

F2234 S. 379: words in definition of "prescribed" repealed (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 26 Pt. 5(19)**

F2235 S. 379: words in definition of "qualifying lender" repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 14(a), **Sch. 20 Pt. 3(7)**

F2236 S. 379: words in definition of "regulations" repealed (with effect in accordance with Sch. 4 para. 18(5), Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 14(b), **Sch. 20 Pt. 3(7)**

F2237 S. 379: definition of "separated" inserted (with effect in accordance with Sch. 4 para. 18(5) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 14(c)**

PART X

LOSS RELIEF AND GROUP RELIEF

CHAPTER I

LOSS RELIEF: INCOME TAX

Modifications etc. (not altering text)

C275 Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 44 of the extending Act) by Finance Act 1998 (c. 36), **Sch. 6 para. 2** (with Sch. 6 para. 6)

C276 Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 64, Sch. 22 paras. 16-18 of the extending Act) by Finance Act 2002 (c. 23), **Sch. 22 para. 4(2)(d)**

C277 Pt. 10 Ch. 1 modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 226**, 227, 232(3) (with Sch. 2)

[F2238[F2239 Losses from [F2240 UK property] business or overseas property business]

Textual Amendments

F2238 S. 379A and preceding cross-heading inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 19(1)**

F2239 S. 379A cross-heading substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 26** (with Sch. 5 para. 73)

F2240 Words in cross-heading preceding s. 379A substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(8)** (with Sch. 2)

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379A [F2241Losses from UK property business].

(1) Subject to the following provisions of this section, where for any year of assessment any person sustains any loss in a **[**F2242UK property business**]** carried on by him either solely or in partnership—

(a) the loss shall be carried forward to the following year of assessment and, to the extent that it does not exceed them, set against any **[**F2243profits**]** of that business for the year to which it is carried forward; and

(b) where there are no **[**F2243profits**]** for the following year or the **[**F2243profits**]** for that year are exceeded by the amount of the loss, the loss or, as the case may be, the remainder of it shall be so carried forward to the next following year, and so on.

(2) Subsection (3) below shall apply where a loss is sustained in a **[**F2244UK property business**]** for any year of assessment ("the year of the loss") and one or both of the following conditions is satisfied, that is to say—

(a) the amount of the F2245. . . capital allowances treated as expenses of that business in computing that loss exceeds, by any amount ("the net capital allowances"), the amount of any charges under **[**F2246the Capital Allowances Act**]** which are treated as receipts of that business in computing that loss;

(b) the **[**F2244UK property business**]** has been carried on in relation to land that consists of or includes an agricultural estate to which allowable agricultural expenses deducted in computing that loss are attributable;

F2247. . . . . .

(3) Where the person carrying on the **[**F2248UK property business**]** in a case to which this subsection applies makes a claim, in relation to the year of the loss or the year following that year, for relief under this subsection in respect of the loss—

(a) relief from income tax may be given, for the year to which the claim relates, on an amount of that person's income for that year which is equal to the amount of relief available for that year in respect of the loss; and

(b) the loss which is to be or has been carried forward under subsection (1) above shall be treated as reduced (if necessary to nil) by an amount equal to the amount on which relief is given;

but a claim for relief under this subsection shall not be made after the end of twelve months from the 31st January next following the end of the year to which it relates and shall be accompanied by all such amendments as may be required by virtue of paragraph (b) above of any **[**F2249return made by the claimant under section 8 or 8A**]** of the Management Act.

(4) Subject to subsection (5) below, the reference in subsection (3) above to the amount of the relief available for any year in respect of a loss is a reference to whichever is the smallest of the following amounts, that is to say—

(a) the amount of the relievable income for the year to which the claim relates;

(b) the loss sustained in the **[**F2250UK property business**]** in the year of the loss; and

(c) the amount which, according to whether one or both of the conditions mentioned in subsection (2) above is satisfied in relation to the year of the loss, is equal—

(i) to the net capital allowances,

(ii) to the amount of the allowable agricultural expenses for the year of the loss, or

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(iii) to the sum of the net capital allowances and the amount of those expenses.

(5) Where relief under subsection (3) above is given in respect of a loss in relation to either of the years in relation to which relief may be claimed in respect of that loss, relief shall not be available in respect of the same loss for the other year except, in a case where the relief already given is of an amount determined in accordance with subsection (4)(a) above, to the extent that the smaller of the amounts applicable by virtue of subsection (4)(b) and (c) above exceeds the amount of relief already given.

(6) For the purposes of subsection (4)(a) above the amount of relievable income for any year, in relation to any person, shall be equal to the amount of his income for that year—

(a) after effect has been given to subsection (1) above in relation to any amount carried forward to that year in respect of a loss sustained in any year before the year of the loss, and

(b) in the case of a claim under subsection (3) above in relation to the year of the loss, after effect has been given to any claim under that subsection in respect of a loss sustained in the preceding year.

(7) For the purposes of this section the loss sustained in any **[**[F2251]UK property business**]** shall be computed in like manner as the **[**[F2243]profits arising**]** from such a business are computed under the provisions of the Income Tax Acts **[**[F2252]applicable to UK property businesses**]**.

(8) In this section "allowable agricultural expenses", in relation to an agricultural estate, means any disbursements or expenses attributable to the estate which are deductible in respect of maintenance, repairs, insurance or management of the estate and otherwise than in respect of the interest payable on any loan.

(9) For the purposes of this section the amount of any disbursements or expenses attributable to an agricultural estate shall be determined as if—

(a) disbursements and expenses were to be disregarded to the extent that they would not have been attributable to the estate if it did not include the parts of it used wholly for purposes other than purposes of husbandry, and

(b) disbursements and expenses in respect of parts of the estate used partly for purposes of husbandry and partly for other purposes were to be reduced to an extent corresponding to the extent to which those parts were used for other purposes.

(10) In this section—

"agricultural estate" means any land (including any houses or other buildings) which is managed as one estate and which consists of or includes any agricultural land; and

"agricultural land" means land, houses or other buildings in the United Kingdom occupied wholly or mainly for the purposes of husbandry.

Textual Amendments

F2241 S. 379A sidenote substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(7)** (with Sch. 2)

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F2242 Words in s. 379A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(2)** (with Sch. 2)
F2243 Words in s. 379A(1)(a)(b)(7) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
F2244 Words in s. 379A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(3)** (with Sch. 2)
F2245 Word in s. 379A(2)(a) repealed (with effect in accordance with Sch. 15 para 9(1) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 15 para. 2(1)(a), **Sch. 18 Pt. 6(11)**, Note
F2246 Words in s. 379A(2)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 28** (with Sch. 3)
F2247 Words in s. 379A(2) repealed (with effect in accordance with Sch. 15 para 9(1) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 15 para. 2(1)(b), **Sch. 18 Pt. 6(11)**, Note
F2248 Words in s. 379A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(4)** (with Sch. 2)
F2249 Words in s. 379A(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 29 para 35(2)**
F2250 Words in s. 379A(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(5)** (with Sch. 2)
F2251 Words in s. 379A(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(6)(a)** (with Sch. 2)
F2252 Words in s. 379A(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 156(6)(b)** (with Sch. 2)

Modifications etc. (not altering text)
C278 S. 379A restricted (1.5.1995) by Finance Act 1995 (c. 4), **s. 41(8)**
C279 S. 379A(1) applied (with effect in accordance with s. 39(4)(5) of the affecting Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 19(2)(3)**
C280 S. 379A(3) applied (with effect in accordance with s. 39(4)(5) of the modifying Act) Finance Act 1995 (c. 4), **Sch. 6 para. 19(4)**

[F2253 379B Losses from overseas property business.]

The provisions of section 379A apply in relation to an overseas property business [F2254 (within the meaning given by Chapter 2 of Part 3 of ITTOIA 2005)] as they apply in relation to a [F2255 UK property business].]

Textual Amendments
F2253 S. 379B inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 27** (with Sch. 5 para. 73)
F2254 Words in s. 379B inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 157(a)** (with Sch. 2)
F2255 Words in s. 379B substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 157(b)** (with Sch. 2)

Trade etc. losses

380 Set-off against general income.

[F2256 (1) Where in any year of assessment any person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership, he may,

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by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

(a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or

(b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

(2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection.**]**

(3) [F2257] . . . . . .

[F2258](4) [M444]This section applies in relation to losses sustained in the occupation of woodlands in respect of which a person has elected under **[**[F2259]paragraph 4 of Schedule 6 to the Finance Act 1988**]** to be charged to income tax under Schedule D as it applies in relation to losses sustained in a trade.

Textual Amendments

F2256 S. 380(1)(2) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 209(1)** (with Sch. 20)

F2257 S. 380(3) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(b), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F2258 *See* 1988(F) s.148*and* Sch.14 Part V*regarding repeal of* s.380(4)*from* 6*April* 1993.

F2259 1988(F) Sch.6 para.8*from* 15*March* 1988.*Previously* "section 54".

Modifications etc. (not altering text)

C281 S. 380 amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 171** (3), 184(3)

C282 S. 380(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**

C283 S. 380(1) modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 20 para. 8**

C284 S. 380(1) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

C285 *See*—1990(C) s.142—*restriction of set off of first-year allowances.*

Marginal Citations

M444 Source—1970 s.168(8)

381 Further relief for individuals for losses in early years of trade.

(1) [M445]Where an individual carrying on a trade sustains a loss in the trade in—

(a) the year of assessment in which it is first carried on by him; or

(b) any of the next three years of assessment;

he may, by notice given **[**[F2260]on or before the first anniversary of the 31st January next following**]** the year of assessment in which the loss is sustained, make a claim for relief under this section.

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(2) M446Subject to section 492 and this section, relief shall be given under subsection (1) above from income tax on **[**F2261so much of the claimant's income as is equal to the amount of the loss or, where it is less than that amount, the whole of that income**]**, being income for the three years of assessment last preceding that in which the loss is sustained, taking income for an earlier year before income for a later year.

(3) M447Relief shall not be given for the same loss or the same portion of a loss both under subsection (1) above and under any other provision of the Income Tax Acts.

(4) M448Relief shall not be given under subsection (1) above in respect of a loss sustained in any period unless F2262. . . the trade was carried on throughout that period on a commercial basis and in such a way that profits in the trade (or, where the carrying on of the trade forms part of a larger undertaking, in the undertaking as a whole) could reasonably be expected to be realised in that period or within a reasonable time thereafter.

(5) Relief shall not be given under subsection (1) above in respect of a loss sustained by an individual in a trade if—

(a) at the time when it is first carried on by him he is married to **[**F2263, or a civil partner of, another individual with whom he is living together and**]** who has previously carried on the trade; and

(b) the loss is sustained in a year of assessment later than the third year of assessment after that in which the trade was first carried on by the other individual.

(6) F2264. . . . . .

(7) M449This section applies, with the necessary modifications, in relation to a profession or vocation as it applies in relation to a trade.

Textual Amendments

F2260 Words in s. 381(1) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 10**

F2261 Words in s. 381(2) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 209(2)** (with Sch. 20)

F2262 Words in s. 381(4) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 24, **Sch. 41 Pt. 5(10)**, Note

F2263 Words in s. 381(5)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 70

F2264 S. 381(6) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(c), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

Modifications etc. (not altering text)

C286 S. 381(1) modified for the year of assessment 1988-89 by S.I. 1991/851, reg. 9, **Sch.2**.
S. 381(1) modified (for the year of assessment 1989-90 only) (28.3.1992) by S.I. 1992/511, reg. 9, **Sch.2**.

C287 S. 381(1) applied with modification (23.3.1993) by S.I. 1993/415, reg. 9, **Sch.2**

C288 S. 381(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**

C289 S. 381(1) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

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C290 *See* S.I. 1987 No.530 (in Part III Vol.5) regn. 15—*non-resident entertainers and sportsmen.*
C291 *See* 1990(C) s.142—*restriction of set-off of first-year allowances.*

Marginal Citations
M445 Source—1978 s.30(1)
M446 Source—1978 s.30(2)
M447 Source—1978 s.30(3)
M448 Source—1978 s.30(4)-(6)
M449 Source—1978 s.30(10)

382 Provisions supplementary to sections 380 and 381.

(1) [M450]*A claim for relief under section* 380*or* 381*may require that the relief be given only by reference to the income of the person sustaining the loss, without extending to the income of that person's wife or husband.*

(2) [M451]*Subject to any requirement under subsection* (1)*above, relief under section* 380*or* 381*shall be given in respect of a loss sustained by any person by treating the loss as reducing first his income of the corresponding class, then his other income, then the income of the corresponding class of that person's wife or husband, then the other income of the wife or husband*[F2265].

For the purposes of this subsection "income of the corresponding class" means earned or unearned income according as income arising during the same period as the loss to the person sustaining it from profits or gains of the same trade, profession, vocation or employment would have been that person's earned or unearned income.

[[F2266](3) Subject to subsection (4) below, for the purposes of sections 380 and 381, the amount of a loss sustained in a trade, profession or vocation shall be computed in like manner and in respect of the same period as the **[**[F2267]profits arising**]** from the trade, profession or vocation are computed [F2268]. . . .

(4) An amount of a loss which, apart from this subsection, would fall to be included in the computations for two successive years of assessment shall not be included in the computation for the second of those years.**]**

Textual Amendments
F2265 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*
F2266 S. 382(3)(4) substituted (with effect in accordance with ss. 209(7), 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 209(3)** (with Sch. 20)
F2267 Words in s. 382(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
F2268 Words in s. 382(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 158, **Sch. 3** (with Sch. 2)

Marginal Citations
M450 Source—1970 s.168(3); 1971 s.16(2)(a); 1978 s.30(7)(a)
M451 Source—1970 s.168(4); 1978 s.30(7)(a)

383 Extension of right of set-off to capital allowances.

[F2269] . . . . . .

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Textual Amendments

F2269 S. 383 repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(b), **Sch. 26 Pt. 5(24)**, Note 5

384 Restrictions on right of set-off.

(1) M452 Subject to subsection (2) below, a loss F2270 . . . shall not be available for relief under section 380 unless F2271 . . . , for the year of assessment in which the loss is claimed to have been sustained, the trade was being carried on on a commercial basis and with a view to the realisation of profits in the trade or, where the carrying on of the trade formed part of a larger undertaking, in the undertaking as a whole.

(2) Subsection (1) above shall not apply—

(a) to a loss made F2272 . . . by any person in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act); F2273 . . .

(b) F2273 . . . . . .

(3) M453 Where during a year of assessment there is a change in the manner in which a trade is being carried on, it shall be treated for the purposes of this section as having been carried on throughout the year in the way in which it was being carried on by the end of the year.

(4) Subject to subsection (5) below, where

[F2274 (a) a trade is carried on for part only of a year of assessment by reason of its being set up and commenced, or discontinued, or both, in that year, or

(b) a person carries on, or is treated as carrying on, a trade for part only of a year of assessment by reason of—

(i) a succession to the trade during the year which involves all the persons carrying it on before the succession permanently ceasing to carry it on, or

(ii) a change of residence within section 17 of ITTOIA 2005,

subsections (1) to (3) above**]** shall have effect in relation to the trade as regards that part of that year as if any reference to the manner of carrying on the trade for or by the end of that year were a reference to the manner of carrying it on for or by the end of that part of that year.

(5) F2275 . . . . . .

(6) **[**F2276 M454 There shall be disregarded for the purposes of sections 380 and 381 so much of any loss as derives from any allowances**]** made to an individual **[**F2277 under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery**]** for leasing in the course of a trade unless—

(a) the trade is carried on by him (alone or in partnership) for a continuous period of at least six months in, or beginning or ending in, **[**F2278 the year of assessment in which the loss was sustained**]**; and

(b) he devotes substantially the whole of his time to carrying it on (alone or in partnership) throughout that year or if it is set up or permanently discontinued (or both) in that year, for a continuous period of at least six months beginning or ending in that year.

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(7) [M455]Subsection (6) above shall apply also to expenditure incurred by an individual on the provision for the purposes of a trade carried on by him (alone or in partnership) of an asset which is not to be leased if payments in the nature of royalties or licence fees are to accrue from rights granted by him in connection with that asset.

(8) [M456]Where relief has been given in a case to which subsection (6) above applies it shall be withdrawn by the making of an assessment **[**[F2279]to income tax**]**.

[[F2280](9) Where at any time a trade is carried on so as to afford a reasonable expectation of profit, it shall be treated for the purposes of subsection (1) above as being carried on at that time with a view to the realisation of profits.**]**

(10) Subsections (1) to (5) and (9) above—

(a) apply to professions and vocations as they apply to trades, with references to a commercial basis construed accordingly; and

(b) have effect without prejudice to section 397;

[F2281] . . . . . .

[[F2282](11) Expressions used in subsections (6) to (8) and in Part 2 of the Capital Allowances Act have same meaning in those subsections as in that Part; and those subsections are without prejudice to section 384A.**]**

Textual Amendments

F2270 Words in s. 384(1) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), **Sch. 26 Pt. 5(24)**, Note 5

F2271 Words in s. 384(1) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c, 8), Sch. 20 para. 25(1), Sch. 41 Pt. 5(10), Note

F2272 Words in s. 384(2)(a) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), **Sch. 26 Pt. 5(24)**, Note 5

F2273 S. 384(2)(b) and preceding word repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(c), **Sch. 26 Pt. 5(24)**, Note 5

F2274 S. 384(4)(a)(b) and words substituted for words in s. 384 (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 159(2)** (with Sch. 2)

F2275 S. 384(5) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(d), **Sch. 26 Pt. 5(24)**, Note 4(b) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F2276 Words in s. 384(6) substituted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 214(2)(a)**

F2277 Words in s. 384(6) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 29(1)** (with Sch. 3)

F2278 Words in s. 384(6)(a) substituted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 214(2)(b)**

F2279 Words in s. 384(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 159(3)** (with Sch. 2)

F2280 S. 384(9) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 25(2)**

F2281 Words in s. 384(10) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 29(2), **Sch. 4** (with Sch. 3)

F2282 S. 384(11) inserted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 29(2)** (with Sch. 3)

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Marginal Citations

M452 Source—1970 s.170(1)
M453 Source—1970 s.170(2)-(4)
M454 Source—1980 s.70(1), (5)
M455 Source—1980 s.70(2), (5)
M456 Source—1980 s.70(4)

[F2283 384A Restriction of set-off of allowances against general income

(1) Relief shall not be given to an individual under sections 380 and 381 by reference to a first-year allowance under Part 2 of the Capital Allowances Act (plant and machinery allowances) in the circumstances specified in subsection (2) or (4) below.

(2) The circumstances are that the allowance is in respect of expenditure incurred on the provision of plant or machinery for leasing in the course of a qualifying activity and—

(a) at the time when the expenditure was incurred, the qualifying activity was carried on by the individual in question in partnership with a company (with or without other partners), or

(b) a scheme has been effected or arrangements have been made (whether before or after that time) with a view to the qualifying activity being so carried on by that individual.

(3) For the purposes of subsection (2) above letting a ship on charter shall be regarded as leasing it if, apart from this subsection, it would not be so regarded.

(4) The circumstances are that the allowance is made in connection with—

(a) a qualifying activity which at the time when the expenditure was incurred was carried on by the individual in partnership or which has subsequently been carried on by him in partnership or transferred to a person who was connected with him, or

(b) an asset which after that time has been transferred by the individual to a person who was connected with him or, at a price lower than its market value, to any other person,

and the condition in subsection (5) below is met.

(5) The condition is that a scheme has been effected or arrangements have been made (whether before or after the time referred to in subsection (4) above) such that the sole or main benefit that might be expected to accrue to the individual from the transaction under which the expenditure was incurred was the obtaining of a reduction in tax liability by means of relief under sections 380 and 381.

(6) Where relief has been given in circumstances in which subsection (1) applies it shall be withdrawn by the making of an assessment **[**F2284 to income tax**]**.

(7) Section 839 (how to tell whether persons are connected) applies for the purposes of subsection (4) above.

(8) Expressions used in this section and in Part 2 of the Capital Allowances Act have the same meaning as in that Part.**]**

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Textual Amendments

F2283 S. 384A inserted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 30** (with Sch. 3)

F2284 Words in s. 384A(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 160** (with Sch. 2)

385 Carry-forward against subsequent profits.

[F2285(1) Where a person has, in any trade, profession or vocation carried on by him either alone or in partnership, sustained a loss (to be computed as mentioned in subsections (3) and (4) of section 382) in respect of which relief has not been wholly given either under section 380 or any provision of the Income Tax Acts—

(a) he may make a claim requiring that any part of the loss for which relief has not been so given shall be set off for the purposes of income tax against the income of the trade, profession or vocation for subsequent years of assessment; and

(b) where he makes such a claim, the income from the trade, profession or vocation in any subsequent year of assessment shall be treated as reduced by that part of the loss, or by so much of that part as cannot, on that claim, be relieved against such income of an earlier year of assessment.**]**

(2) F2286. . . . . .

(3) F2287. . . . . .

(4) Where in any year of assessment relief cannot be given, or cannot be wholly given, in respect of a loss carried forward under this section because the amount of the **[**F2288profits**]** of the trade assessed F2289. . . for that year is insufficient, any interest or dividends being interest or dividends—

(a) on investments arising in that year, and

(b) which would fall to be taken into account as trading receipts in computing the **[**F2288profits**]** of the trade for the purposes of assessment F2289. . . but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts,

shall be treated for the purposes of the application of this section as if they were **[**F2288profits**]** on which the person carrying on the trade was assessed F2289. . . in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

(5) F2290. . . . . .

F2291(6) Where a loss is sustained by a person in the occupation of woodlands, and that person, if he had made a profit, would by reason of his election under **[**F2292paragraph 4 of Schedule 6 to the Finance Act 1988**]** have been chargeable for the following year to income tax under Schedule D computed on the amount of that profit, this section shall apply so as to give relief in respect of that loss in the same manner, and to the same extent, as if it were a loss sustained in a trade.

(7) In so far as relief in respect of any loss has been given to any person under this section, that person shall not be entitled to claim relief in respect of that loss under any other provision of the Income Tax Acts.

(8) F2293. . . . . .

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Textual Amendments

F2285 S. 385(1) substituted (with effect in accordance with ss. 209(7), 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 209(4)** (with Sch. 20)

F2286 S. 385(2) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(e), **Sch. 26 Pt. 5(24)**, Note 4(c) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F2287 S. 385(3) repealed (with effect in accordance with ss. 209(7), 218 of the repealing Act) by Finance Act 1994 (c. 9), s. 209(5), **Sch. 26 Pt. 5(24)**, Note 6

F2288 Words in s. 385(4) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**

F2289 Words in s. 385(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 161, **Sch. 3** (with Sch. 2)

F2290 S. 385(5) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(e), **Sch. 26 Pt. 5(24)**, Note 4(c) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F2291 *See* 1988(F) Sch.14 Part V—*repeal of* subs. (6)*from* 6*April* 1993.

F2292 1988(F) Sch.6 para.6(8)*from* 15*March* 1988.*Previously* "section 54".

F2293 S. 385(8) repealed (with effect in accordance with ss. 209(7), 218 of the repealing Act) by Finance Act 1994 (c. 9), s. 209(5), **Sch. 26 Pt. 5(24)**, Note 6

Modifications etc. (not altering text)

C292 S. 385 modified (with effect in accordance with s. 56(9) of the amending Act) by Finance Act 1998 (c. 36), **s. 56(4)**

C293 S. 385 modified by Finance Act 1993 (c. 34), **Sch. 20A paras. 6-8** (as inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 25 para. 3**)

386 Carry-forward where business transferred to a company.

(1) [M457]Where—

(a) a business carried on by any individual, or any individuals in partnership, has been transferred to a company in consideration solely or mainly of the allotment of shares in the company to that individual or those individuals; and

(b) in the case of any individual to whom, or to whose nominee or nominees, shares have been so allotted, his total income for any year of assessment throughout which he is the beneficial owner of the shares, and throughout which the company carries on the business, includes any income derived by him from the company, whether by way of dividends on those shares or otherwise;

then, subject to subsection (2) below, section 385 (except subsection (5)) shall apply as if the income so derived were **[**[F2294]profits**]** on which that individual was assessed [F2295]. . . in respect of that business for that year.

(2) Where under section 385 as applied by subsection (1) above a loss falls to be deducted from or set off against any income for any year of assessment, the deduction or set-off shall be made in the first place against that part, if any, of the income in respect of which the individual has been, or is liable to be, assessed to tax for that year.

(3) This section, in its application to the year of assessment in which a business is transferred, shall have effect as if, for the reference in subsection (1)(b) to the year of assessment throughout which the individual is the beneficial owner of the shares and

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the business is carried on by the company, there were substituted a reference to the period from the date of the transfer to the following 5th April.

(4) F2296. . . . . .

Textual Amendments

F2294 Words in s. 386(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para 1**

F2295 Words in s. 386(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 162, **Sch. 3** (with Sch. 2)

F2296 S. 386(4) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(f), **Sch. 26 Pt. 5(24)**, Note 4(a) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

Marginal Citations

M457 Source—1970 s.172

387 Carry-forward as losses of amounts taxed under section 350.

(1) M458Subject to the provisions of this section, where under section 350 a person has been assessed to income tax in respect of a payment made wholly and exclusively for the purposes of a trade, profession or vocation, the amount on which tax has been paid under that assessment shall be treated for the purposes of sections 385 and 386 as though it were a loss sustained in that trade, profession or vocation, and relief in respect of the loss shall be allowed accordingly.

(2) Relief shall not be allowed by virtue of this section in respect of any payment, or part of a payment, which is not ultimately borne by the person assessed, or which is charged to capital.

(3) This section shall not apply—

(a) M459to any payment falling within section 349(2);

(b) M460to any payment falling within section 349 by virtue of section 43(1);

(c) F2297. . . . . .

(d) to any capital sum paid in respect of any patent rights assessed **[**F2298under section 349(1) of this Act by virtue of section 595 of ITTOIA 2005**]**;

(e) to any payment of, or on account of, copyright royalties to which section 536 applies **[**F2299or royalties in respect of a right in a design to which section 537B applies**]**;F2300. . .

(f) F2300. . . . . .

Textual Amendments

F2297 S. 387(3)(c) repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(2)**

F2298 Words in s. 387(3)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 163** (with Sch. 2)

F2299 Sch.7 para.36(4)Copyright, Designs and Patents Act 1988 (c.48)*from* 1*August* 1989. (*Commencement order*—S.I. 1989 No.816—*not reproduced.*)

F2300 S. 387(3)(f) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

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Marginal Citations

M458 Source—1970 s.173(1), (2)

M459 Source—1970 s.173(3)(aa); 1970(F) Sch.4 9(6)

M460 Source—1970 s.173(3)(a)-(c)

388 Carry-back of terminal losses.

(1) M461Where a trade, profession or vocation is permanently discontinued in the year 1988-89 or any later year, and any person then carrying it on, either alone or in partnership, has sustained therein a loss to which this section applies ("a terminal loss"), that person may, subject to the provisions of this section and of section 389, make a claim requiring that the amount of the terminal loss shall, as far as may be, be deducted from or set off against the amount of **[**F2301profits**]** on which he has been charged to income tax F2302. . . in respect of the trade, profession or vocation for **[**F2303the year of assessment in which the discontinuance occurs and the three years last preceding it**]**; and there shall be made all such reductions of assessments or repayments of tax as may be necessary to give effect to the claim.

(2) Relief shall not be given in respect of the same matter both under this section and under some other provision of the Income Tax Acts.

(3) M462Any relief under this section shall be given as far as possible from the assessment for a later rather than an earlier year.

(4) Where—

(a) a claim under this section is made in respect of a terminal loss sustained in a trade, and

(b) relief cannot be given, or cannot be wholly given, against the **[**F2301profits**]** of the trade charged to income tax F2302. . . for any year because the amount of those **[**F2301profits**]** is insufficient,

any relevant interest or dividends arising in that year shall be treated for the purposes of the application of this section as if they were **[**F2301profits**]** on which the person carrying on the trade was assessed F2302. . . in respect of that trade for that year of assessment, and relief shall be given accordingly by repayment or otherwise.

For the purposes of this subsection "any relevant interest or dividends" means interest or dividends which would fall to be taken into account as trading receipts in computing the **[**F2301profits**]** of the trade for the purpose of assessment F2302. . . but for the fact that they have been subjected to tax under other provisions of the Income Tax Acts.

(5) The **[**F2301profits**]** on which a person or partnership has been charged to income tax for any year of assessment shall be treated for the purposes of any relief under this section from the assessment for that year as reduced by the amount of those **[**F2301profits**]** applied in making any payment from which income tax was deducted, but was not accounted for because the payment was made out of profits or gains brought into charge to income tax; and the like reduction shall be made in the amount of the terminal loss for which relief may be given under this section from the assessments for earlier years unless the payment was one which, if not made out of profits or gains brought into charge to income tax—

(a) could have been assessed to income tax under section 350, and

(b) if so assessed, could have been treated as a loss by virtue of section 387.

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(6) The question whether a person has sustained any and, if so, what terminal loss in a trade, profession or vocation shall be determined for the purposes of this section by taking the amounts (if any) of the following, in so far as they have not otherwise been taken into account so as to reduce or relieve any charge to tax—

(a) the loss sustained by him in the trade, profession or vocation in the year of assessment in which it is permanently discontinued;

(b) F2304 . . . . . .

(c) the loss sustained by him in the trade, profession or vocation in the part of the preceding year of assessment beginning 12 months before the discontinuance;

F2304 . . .

(d) F2304 . . . . . .

(7) F2305 . . . For the purposes of paragraphs (a) and (c) of that subsection the amount of a loss shall, subject to the provisions of this section, be computed in the same way as **[**F2301profits**][**F2306of a trade, profession or vocation under Part 2 of ITTOIA 2005**]**.

Textual Amendments

F2301 Words in s. 388(1)(4)(5)(7) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**

F2302 Words in s. 388(1)(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 164(2)(3), **Sch. 3** (with Sch. 2)

F2303 Words in s. 388(1) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 209(6)** (with Sch. 20)

F2304 S. 388(6)(b)(d) (and word preceding (d)) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(d), **Sch. 26 Pt. 5(24)**, Note 5(a) (with Sch. 20)

F2305 Words in s. 388(7) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(d), **Sch. 26 Pt. 5(24)**, Note 5(a) (with Sch. 20)

F2306 Words in s. 388(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 164(4)** (with Sch. 2)

Modifications etc. (not altering text)

C294 S. 388 restricted (9.3.1995 with effect in accordance with reg. 1 of the affecting S.I.) by The Lloyd's Underwriters (Tax) Regulations 1995 (S.I. 1995/351), **reg. 14(3)**

C295 S. 388 modified (1.12.1997 with effect in accordance with reg. 1 of the affecting S.I.) by The Lloyd's Underwriters (Scottish Limited Partnerships) (Tax) Regulations 1997 (S.I. 1997/2681), **reg. 10**

C296 *See* 1990(C) ss.30-31*(ships)—carry forward does not include postponement under* 1990(C) ss.30-31.

Marginal Citations

M461 Source—1970 s.174(1)

M462 Source—1970 s.174(2)-(6)

389 Supplementary provisions relating to carry-back of terminal losses.

(1) M463Sections 387, 458 and 474 shall apply to the computation of losses, or of profit or loss, for any purpose of this section or section 388 as they apply to any such computation for the corresponding purposes of section 385.

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(2) Where on the permanent discontinuance of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits within the meaning of **[**F2307Part 5 of the Capital Allowances Act**]**, a claim for relief is made both under section 388 above and **[**F2308section 355 of that Act**]** (carry-back of balancing allowances), the balancing allowance in respect of which the claim is made under **[**F2309section 355**]** shall be left out of account for the purposes of section 388(6), but relief under section 388 shall be given in priority to relief under **[**F2309section 355**]**.

(3) F2310. . . . . .

[F2311(4) For the purposes of this section and section 388 references to the permanent discontinuance of a trade, profession or vocation include—

(a) a person permanently ceasing to carry on a trade, profession or vocation, and

(b) a partner permanently ceasing to carry on a notional trade in accordance with section 852(4) of ITTOIA 2005.**]**

(5) F2312. . . . . .

(6) F2312. . . . . .

(7) F2312. . . . . .

F2313(8) Where a person occupying woodlands has elected to be charged to income tax in respect thereof under Schedule D, this section and section 388 shall apply to a terminal loss sustained by him in the occupation of the woodlands as they apply to a terminal loss sustained in a trade.

Textual Amendments

F2307 Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 31(a)** (with Sch. 3)

F2308 Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 31(b)** (with Sch. 3)

F2309 Words in s. 389(2) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 31(c)** (with Sch. 3)

F2310 S. 389(3) repealed (with effect in accordance with s. 215(4)(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 216(3)(g), **Sch. 26 Pt. 5(24)**, Note 4(d) (as s. 215(5) of that Act is modified (1.5.1995) by 1995 c. 4, **s. 125(1)**) (with Sch. 20)

F2311 S. 389(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 165** (with Sch. 2)

F2312 S. 389(5)-(7) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(1)(e), **Sch. 26 Pt. 5(24)**, Note 5(c) (with Sch. 20)

F2313 *See* 1988(F) Sch.14 Part V*for repeal of* subs. (8)*from* 6*April* 1993.

Marginal Citations

M463 Source—1970 s.174(7)-(13); 1986 Sch.13 27; 1971 Sch.8 16

390 Treatment of interest as a loss for purposes of carry-forward and carry-back.

M464Where—

(a) a payment of interest eligible for relief under section 353 is money wholly and exclusively laid out or expended for the purposes of a trade, profession or vocation **[**F2314carried on wholly or partly in the United Kingdom**]**, and

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(b) full effect cannot be given to such relief in respect of the payment by reason of a want or deficiency of income of the year of assessment in which the payment is made,

the amount unallowed may be carried forward to succeeding years of assessment as if it were a loss carried forward under section 385, or may be treated for the purposes of sections 388 and 389 as a loss sustained at the date of payment.

Textual Amendments

F2314 Words in s. 390(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 166** (with Sch. 2)

Marginal Citations

M464 Source—1970 s.175; 1972 Sch.11 3; 1974 Sch.1 28

[F2315 391 Losses from trade etc. carried on abroad

In the case of a loss sustained in a trade, profession or vocation carried on wholly outside the United Kingdom, relief under any of sections 380 to 386, 388 and 389 is given only on—

(a) the profits of a trade, profession or vocation carried on wholly outside the United Kingdom, or

(b) income falling within section 23, 355, 575, 613, 615, 631 or 635 of ITEPA 2003,

but no relief is to be given on income which is charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis).**]**

Textual Amendments

F2315 S. 391 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 167** (with Sch. 2)

Case VI losses

[F2316 392 Losses from miscellaneous transactions

(1) A person may make a loss relief claim if —

(a) in any year of assessment he sustains a loss in any transaction (whether he was engaged in it solely or in partnership), and

(b) the transaction is of such a nature that, if any profits or other income had arisen from it, he would have been liable to be assessed to income tax in respect of the income under or by virtue of any provision to which section 836B applies.

(2) A loss relief claim is a claim requiring—

(a) that the amount of the loss sustained by him is, as far as may be, to be deducted from or set off against the total of the amount of any profits or other income or gains arising from any transaction in respect of which he is assessed for that year under or by virtue of any such provision, and

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(b) that any portion of the loss for which relief is not so given is, as far as may be, to be carried forward and deducted from or set off against the total of the amount of any profits or other income or gains arising from any transaction in respect of which he is assessed for a subsequent year of assessment under or by virtue of any such provision.

(3) If a partner in a partnership sustains a loss, the expression "the amount of any profits or other income or gains arising from any transaction in respect of which he is assessed" is to be read in accordance with subsection (4).

(4) In respect of any year that expression means such portion of the amount on which the partnership is assessed under or by virtue of any provision to which section 836B applies in respect of any transaction as falls to be taken into account in computing the partner's total income for that year.

(5) Any relief under this section by way of the carrying forward of the loss is to be given as far as possible—

(a) from the first subsequent assessment in respect of any profits or other income or gains arising from any transaction in respect of which he is assessed under or by virtue of any provision to which section 836B applies for any year, and

(b) so far as it cannot be so given, from the next such assessment, and so on.

(6) So far as a loss relief claim concerns the amount of the loss for any year of assessment it must be made on or before the fifth anniversary of the 31st January next following the year of assessment in question.

(7) But the question whether and, if so, how much relief on that amount should be given under this section against tax for any year of assessment may be the subject of a separate claim made on or before the fifth anniversary of the 31st January next following that year of assessment.

(8) Any portion of a loss sustained by any person in any transaction (whether he was engaged in it solely or in partnership)—

(a) which was of such a nature that, if any profits had arisen from it, he would have been liable to be assessed to income tax in respect of the profits under Case VI of Schedule D for any year of assessment before the year 2005-06, and

(b) which did not fall within section 34, 35 or 36,

is (so far as relief for that portion has not previously been given) to be treated as a loss to be carried forward and deducted in accordance with subsection (2)(b) above.**]**

Textual Amendments

F2316 S. 392 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 168** (with Sch. 2)

CHAPTER II

LOSS RELIEF: CORPORATION TAX

Modifications etc. (not altering text)

C297 *See* s.434A—*limitations on loss relief for life assurance company.*

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C298 Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 44 of the extending Act) by Finance Act 1998 (c. 36), **Sch. 6 para. 2**, (with Sch. 6 para. 6)

C299 Pt. 10 Chs. 1, 2 extended (with effect in accordance with s. 64, Sch. 22 paras. 16-18 of the extending Act) by Finance Act 2002 (c. 23), **Sch. 22 para. 4(2)(d)**

C300 Pt. 10 Ch. 2 modified (1.4.2009 with effect in accordance with s. 1329(1) of the modifying Act) by Corporation Tax Act 2009 (c. 4), **s. 39(3)** (with Sch. 2 Pts. 1, 2)

Losses from Schedule A business or overseas property business

392A Schedule A losses.

(1) Where a company incurs a Schedule A loss in an accounting period, the loss shall be set off for the purposes of corporation tax against the company's total profits for that period.

(2) To the extent that a company's Schedule A loss cannot be set off under subsection (1), it shall, if the company continues to carry on the Schedule A business in the succeeding accounting period, be carried forward to that period and be treated for the purposes of this section as a Schedule A loss of that period.

[[F2317](3) Where a company with investment business—

(a) ceases to carry on a Schedule A business, but

(b) continues to be a company with investment business,

any Schedule A loss that cannot be used under the preceding provisions shall be carried forward to the succeeding accounting period and be treated for the purposes of section 75 as if it were expenses of management deductible for that period.**]**

(4) In this section—

(a) a "Schedule A loss" means a loss incurred by a company in a Schedule A business carried on by it; and

(b) **[**[F2318]"company with investment business"**]** has the same meaning as in Part IV.

(5) The preceding provisions of this section apply to a Schedule A business only to the extent that it is carried on—

(a) on a commercial basis, or

(b) in the exercise of statutory functions.

(6) For the purposes of subsection (5)(a)—

(a) a business or part is not carried on on a commercial basis unless it is carried on with a view to making a profit, but if it is carried on so as to afford a reasonable expectation of profit it is treated as carried on with a view to making a profit; and

(b) if there is a change in the manner in which a business or part is carried on, it is treated as having been carried on throughout an accounting period in the way in which it was being carried on by the end of the period.

(7) In subsection (5)(b) "statutory functions" means functions conferred by or under any enactment (including an enactment contained in a local or private Act).

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Textual Amendments

F2317 S. 392A(3) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 12(2)(4)

F2318 Words in s. 392A(4)(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 12(3)(4)

Modifications etc. (not altering text)

C301 S. 392A modified (with effect in accordance with s. 70(1) of the modifying Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 17(1)** (with Sch. 22 para. 32)

392B Losses from overseas property business.

(1) Where in any accounting period a company incurs a loss in an overseas property business (whether carried on by it solely or in partnership)—

(a) the loss shall be carried forward to the succeeding accounting period and set against any profits of the business for that period,

(b) if there are no profits of the business for that period, or if the profits for that period are exceeded by the amount of the loss, the loss or the remainder of it shall be carried forward again and set against any profits of the business for the next succeeding accounting period,

and so on.

(2) Subsections (5) to (7) of section 392A apply in relation to relief under subsection (1) above and an overseas property business as they apply in relation to relief under section 392A(1) to (3) and a Schedule A business.

Modifications etc. (not altering text)

C302 S. 392B excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(5), **Sch. 17 para. 12(2)**

C303 S. 392B excluded by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69X(5)** (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1**, 5)

Trade etc. losses

393 Losses other than terminal losses.

(1) [M465]Where in any accounting period a company carrying on a trade incurs a loss in the trade, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against any trading income from the trade in succeeding accounting periods; and (so long as the company continues to carry on the trade) its trading income from the trade in any succeeding accounting period shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot, on that claim or on a claim (if made) under **[**[F2319]section 393A(1)**]**, be relieved against income or profits of an earlier accounting period.

[F2320](2) . . . . . .

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F2320(3) . . . . . .

F2320(4) . . . . . .

F2320(4A) . . . . . .

F2320(4B) . . . . . .

F2320(5) . . . . . .

F2320(6) . . . . . .

(7) The amount of a loss incurred in a trade in an accounting period shall be computed for the purposes of this section in the same way as trading income from the trade in that period would have been computed.

(8) For the purposes of this section "trading income" means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; but where—

(a) in an accounting period a company incurs a loss in a trade in respect of which it is within the charge to corporation tax under Case I or V of Schedule D, and

(b) in any later accounting period to which the loss or any part of it is carried forward under subsection (1) above relief in respect thereof cannot be given, or cannot wholly be given, because the amount of the trading income of the trade is insufficient,

any interest or dividends on investments which would fall to be taken into account as trading receipts in computing that trading income but for the fact that they have been subjected to tax under other provisions shall be treated for the purposes of subsection (1) above as if they were trading income of the trade.

(9) Where in an accounting period the charges on income paid by a company—

(a) exceed the amount of the profits against which they are deductible, and

(b) include payments made wholly and exclusively for the purposes of a trade carried on by the company,

then, up to the amount of that excess or of those payments, whichever is the less, the charges on income so paid shall in computing a loss for the purposes of subsection (1) above be deductible as if they were trading expenses of the trade.

(10) In this section references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(11) A claim under subsection (1) above must be made within six years after the end of the accounting period in which the loss is incurred, and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years; F2321 . . ..

Textual Amendments

F2319 Words in s. 393(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 8(a)**

F2320 S. 393(2)-(6) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(2)(4)(5), 123, **Sch. 19** Pt. v Note 4

F2321 Words in s. 393(11) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)-(5), 123, Sch. 15 para. 8(b), **Sch. 19 Pt. V** Note 4

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Modifications etc. (not altering text)

C304 S. 393 modified (with effect in accordance with s. 69(1) of the modifying Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 19** (with Sch. 20 para. 26)

C305 S. 393 modified (with effect in accordance with s. 70(1) of the modifying Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 17(2)-(5)** (with Sch. 22 para. 32)

C306 S. 393 modified (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 4(2)**

C307 S. 393 modified (with effect in accordance with Sch. 13 para. 28 of the modifying Act) by Finance Act 2002 (c. 23), Sch. 13 paras. 13, 15(6), 16(5)(1)(a), **19**

C308 S. 393 modified (5.10.2004) by Energy Act 2004 (c. 20), **ss. 27(1)(b)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

C309 *See* 1990 s.99(2)*and* (4)*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

C310 *See*Trustee Savings Banks Act 1985 (c.58) s.5*and* Sch.2 para.6(4)*—carry forward of losses where transfer to successor from existing bank under the* Trustee Savings Banks Act 1985.

C311 S. 393(1) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 15**

C312 *See* 1990 s.99(2)*and* (4)*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).

Marginal Citations

M465 Source—1970 s.177(1)-(3)

[F2322393A Losses: set off against profits of the same, or an earlier, accounting period.

(1) Subject to section 492(3), where in any accounting period ending on or after 1st April 1991 a company carrying on a trade incurs a loss in the trade, then, subject to subsection (3) below, the company may make a claim requiring that the loss be set off for the purposes of corporation tax against profits (of whatever description)—

(a) of that accounting period, and

(b) if the company was then carrying on the trade and the claim so requires, of preceding accounting periods falling wholly or partly within the period specified in subsection (2) below;

and, subject to that subsection and to any relief for an earlier loss, the profits of any of those accounting periods shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this subsection against profits of a later accounting period.

(2) The period referred to in paragraph (b) of subsection (1) **[**F2323is (subject to subsection (2A) below) the period of twelve months**]** immediately preceding the accounting period in which the loss is incurred; but the amount of the reduction that may be made under that subsection in the profits of an accounting period falling partly before the beginning of that period shall not exceed a part of those profits proportionate to the part of the accounting period falling within that period.

F2324**[** (2A) This section shall have effect in relation to any loss to which this subsection applies as if, in subsection (2) above, the words "three years" were substituted for the words "twelve months".

(2B) Where a company ceases to carry on a trade at any time, subsection (2A) above applies to the following—

(a) the whole of any loss incurred in that trade by that company in an accounting period beginning twelve months or less before that time; and

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(b) the part of any loss incurred in that trade by that company in an accounting period ending, but not beginning, in that twelve months which is proportionate to the part of that accounting period falling within those twelve months.

(2C) Where—

(a) a loss is incurred by a company in a ring fence trade carried on by that company, and

(b) the accounting period in which the loss is incurred is an accounting period for which an allowance under **[**F2325section 164 of the Capital Allowances Act (abandonment expenditure incurred before cessation of ring fence trade)**]** is made to that company,

subsection (2A) above applies to so much of the amount of that loss not falling within subsection (2B) above as does not exceed the amount of that allowance.**]**

(3) Subsection (1) above shall not apply to trades falling within Case V of Schedule D; and a loss incurred in a trade in any accounting period shall not be relieved under that subsection unless—

(a) the trade is one carried on in the exercise of functions conferred by or under any enactment (including an enactment contained in a local or private Act), or

(b) **[**F2326for**]** that accounting period the trade was being carried on on a commercial basis and with a view to the realisation of gain in the trade or in any larger undertaking of which the trade formed part;

but this subsection is without prejudice to section 397.

(4) For the purposes of subsection (3) above—

[F2327(a) where at any time a trade is carried on so as to afford a reasonable expectation of gain, it shall be treated as being carried on at that time with a view to the realisation of gain; and**]**

(b) where in an accounting period there is a change in the manner in which a trade is being carried on, it shall be treated as having throughout the accounting period been carried on in the way in which it was being carried on by the end of that period.

(5) F2328. . . . . .

(6) F2328. . . . . .

(7) **[**F2329Subject to subsection (7A) below,**]** where a company ceases to carry on a trade, subsection (9) of section 393 shall apply in computing for the purposes of this section a loss in the trade in **[**F2330an accounting period ending with the cessation, or ending at any time in the twelve months immediately preceding the cessation,**]** as it applies in computing a loss in an accounting period for the purposes of subsection (1) of that section.

F2331(7A) **[** For the purposes of this section where—

(a) subsection (7) above has effect for computing the loss for any accounting period, and

(b) that accounting period is one beginning before the beginning of the twelve months mentioned in that subsection,

the part of that loss that is not the part falling within subsection (2B)(b) above shall be treated as reduced (without any corresponding increase in the part of the loss that does fall within subsection (2B)(b) above) by an amount equal to so much of the aggregate of the charges on income treated as expenses by virtue of subsection (7) above as is

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proportionate to the part of the accounting period that does not fall within those twelve months.**]**

(8) Relief shall not be given by virtue of subsection (1)(b) above in respect of a loss incurred in a trade so as to interfere with any relief under section 338 in respect of payments made wholly and exclusively for the purposes of that trade.

(9) For the purposes of this section—

(a) the amount of a loss incurred in a trade in an accounting period shall be computed in the same way as trading income from the trade in that period would have been computed;

(b) "trading income" means, in relation to any trade, the income which falls or would fall to be included in respect of the trade in the total profits of the company; and

(c) references to a company carrying on a trade refer to the company carrying it on so as to be within the charge to corporation tax in respect of it.

(10) A claim under subsection (1) above may only be made within the period of two years immediately following the accounting period in which the loss is incurred or within such further period as the Board may allow.

(11) In any case where—

(a) by virtue of **[**F2332section 165 of the Capital Allowances Act (abandonment expenditure within 3 years of ceasing ring fence trade)**]** the qualifying expenditure of the company for the chargeable period related to the cessation of its ring fence trade is treated as increased by any amount, or

(b) by virtue of **[**F2333section 416 of that Act (expenditure on restoration within 3 years of ceasing to trade)**]** any expenditure is treated as qualifying expenditure incurred by the company on **[**F2334the last day of trading**]**,

then, in relation to any claim under subsection (1) above to the extent that it relates to an increase falling within paragraph (a) above or to expenditure falling within paragraph (b) above, subsection (10) above shall have effect with the substitution of "five years" for "two years".

F2335(12) **[** In this section "ring fence trade" has the same meaning as in **[**F2336section 162 of the Capital Allowances Act**]**.**]]**

Textual Amendments

F2322 S. 393A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 73(1)(4)(5)**

F2323 Words in s. 393A(2) substituted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 39(2)**

F2324 S. 393A(2A)-(2C) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 39(3)**

F2325 Words in s. 393A(2C)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 32(1)** (with Sch. 3)

F2326 Word in s. 393A(3)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 26(a)**

F2327 S. 393A(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 26(b)**

F2328 S. 393A(5)(6) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 32(2), **Sch. 4** (with Sch. 3)

F2329 Words in s. 393A(7) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997, s. 39(4)(a)

F2330 Words in s. 393A(7) substituted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 39(4)(b)**

F2331 S. 393A(7A) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 39(5)**

F2332 Words in s. 393A(11)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 32(3)(a)** (with Sch. 3)

F2333 Words in s. 393A(11)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 32(3)(b)** (with Sch. 3)

F2334 Words in s. 393A(11)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 32(3)(b)** (with Sch. 3)

F2335 S. 393A(12) inserted (with application in accordance with s. 39(8)-(12) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 39(6)**

F2336 Words in s. 393A(12) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 32(4)** (with Sch. 3)

Modifications etc. (not altering text)

C313 S. 393A modified (with effect in accordance with Sch. 13 para. 28 of the modifying Act) by Finance Act 2002 (c. 23), Sch. 13 paras. 13, 15(5), **16(4)(a)(b)(5)(b)**

C314 S. 393A modified (5.10.2004) by Energy Act 2004 (c. 20), **ss. 27(1)(b)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

C315 S. 393A(1) restricted (with effect in accordance with Sch. 10 para. 2 of the affecting Act) by Finance Act 2006 (c. 25), **Sch. 10 para. 38(4)**

C316 S. 393A(1)(b) restricted (with effect in accordance with s. 69(1) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 23** (with Sch. 20 para. 26)

C317 S. 393A(1)(b) restricted (with effect in accordance with Sch. 10 para. 2 of the affecting Act) by Finance Act 2006 (c. 25), **Sch. 10 para. 35(2)**

VALID FROM 21/07/2008

[F2337 393B Losses of ring fence trade: set off against profits of an earlier accounting period

(1) This section applies if these conditions are met—

(a) a company makes a claim under section 393A(1) requiring that a loss incurred in a ring fence trade be set off against profits;

(b) section 393A(2A) applies in relation to that claim (three year set off period) by virtue of—

(i) section 393A(2B) (loss precedes cessation of trade), or

(ii) section 393A(2C) (loss arises in year when general decommissioning expenditure incurred); and

(c) the loss incurred in the ring fence trade that may be set off under section 393A ("L") exceeds the profits against which L may be set off under section 393A ("P").

(2) The profits of the ring fence trade of an accounting period are to be relieved under subsection (3) if that period—

(a) falls wholly or partly before the three year set off period, and

(b) ends on or after 17 April 2002.

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(3) Subject to any relief for an earlier loss, those profits of that accounting period shall be treated as reduced by—

(a) the amount by which L exceeds P, or

(b) so much of that amount as cannot be relieved under this subsection against profits of the ring fence trade of a later accounting period.

(4) Subsection (3) is subject to subsection (5) in the case of an accounting period that falls partly (but not wholly) before the three year set off period.

(5) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls before the three year set off period.

(6) Subsection (3) is subject to subsection (7) in the case of an accounting period that begins before 17 April 2002 and ends on or after that date.

(7) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls after 16 April 2002.

(8) In this section—

"ring fence" has the same meaning as in section 162 of the Capital Allowances Act;

"three year set off period" means the period of three years that applies to the claim under section 393A(1) by virtue of section 393A(2A) and section 393A(2B) or (2C).**]**

Textual Amendments

F2337 S. 393B inserted (with effect in accordance with s. 111(3) of the amending Act) by Finance Act 2008 (c. 9), **s. 111(1)**

[F2338]394 Terminal losses.

. . . . . .

Textual Amendments

F2338 S. 394 repealed by Finance Act 1991 (c. 31), ss. 73(2)(4)(5), 123, **Sch. 19 Pt. V**

395 Leasing contracts and company reconstructions.

(1) Subject to the provisions of this section, if— [M466]

(a) under a contract entered into on or after 6th March 1973 a company ("the first company") incurs capital expenditure on the provision of **[**[F2339]plant or machinery**]** which the first company lets to another person by another contract (a "leasing contract"); and

(b) apart from this subsection, the first company would be entitled **[**[F2340]under section 393(1) or in pursuance of a claim under section 393A(1) to relief**]** in respect of losses incurred on the leasing contract; and

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(c) in the accounting period for which a first-year allowance, **[**F2341within the meaning of Part 2 of the Capital Allowances Act**]**, in respect of the expenditure referred to in paragraph (a) above is made to the first company, arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period, a successor company will be able to carry on any part of the first company's trade which consists of or includes the performance of all or any of the obligations which, apart from the arrangements, would be the first company's obligations under the leasing contract,

then, in the accounting period specified in paragraph (c) above and in any subsequent accounting period, the first company shall not be entitled F2342. . . as mentioned in paragraph (b) above except in computing its profits (if any) arising under the leasing contract.

(2) For the purposes of this section a company is a successor of the first company if the circumstances are such that—

(a) section 343 applies in relation to the first company and the other company as the predecessor and the successor within the meaning of that section; or

(b) the two companies are connected with each other within the terms of section 839.

(3) For the purposes of this section losses incurred on a leasing contract and profits arising under such a contract shall be computed as if the performance of the leasing contract were a trade begun to be carried on by the first company, separately from any other trade which it may carry on, at the commencement of the letting under the leasing contract.

(4) In determining whether the first company would be entitled F2342. . . as mentioned in subsection (1)(b) above, any losses incurred on the leasing contract shall be treated as incurred in a trade carried on by that company separately from any other trade which it may carry on.

(5) In this section "arrangements" means arrangements of any kind whether in writing or not.

Textual Amendments

F2339 Words in s. 395(1)(a) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 33(a)** (with Sch. 3)

F2340 Words in s. 395(1)(b) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(a)**

F2341 Words in s. 395(1)(c) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 33(b)** (with Sch. 3)

F2342 Words in s. 395(1) and (4): repealed (27.7.1993 with effect in relation to accounting periods ending after the day appointed for the purposes of section 10 of the amended Act) by 1993 c. 34, **s. 213**,Sch. 23 Pt.III(11), note; omitted (27.7.1993) by virtue of 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(b)**

Marginal Citations

M466 Source—1973 ss.30, 32(6)

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Case VI losses

396 Case VI losses.

(1) [M467]Subject to subsection (2) below, where in any accounting period a company incurs a loss in a transaction in respect of which the company is within the charge to corporation tax under Case VI of Schedule D, the company may make a claim requiring that the loss be set off against the amount of any income arising from transactions in respect of which the company is assessed to corporation tax under that Case for the same or any subsequent accounting period; and the company's income in any accounting period from such transactions shall then be treated as reduced by the amount of the loss, or by so much of that amount as cannot be relieved under this section against income of an earlier accounting period.

(2) This section shall not apply to a loss incurred in a transaction falling within section 34, 35 or 36.

(3) A claim under this section must be made within six years after the end of the accounting period in which the loss is incurred and must be so made notwithstanding that relief cannot be given in respect of the loss until after the end of that period of six years .

Modifications etc. (not altering text)

C318 S. 396 restricted (27.7.1993 with application as mentioned in s. 165 of the amending Act) by 1993 c. 34, **ss. 129(9)**, 165

C319 S. 396 modified (with application in accordance with Sch. 5 para. 72(2) of the modifying Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 72(1)**

C320 S. 396 modified by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **reg. 7A** (as inserted (28.10.2003 with effect in accordance with reg. 1(3) of the modifying S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Amendment No. 2) Regulations 2003 (S.I. 2003/2573), **reg. 8(1)**)

C321 *See* 1990 ss.99(3)*and* (4)*and* 132*and* Sch.19 Part V*for changes in relation to income tax falling to be set off against corporation tax for accounting periods ending after the appointed day* (*see* 1988 s.10).
S. 396(1) restricted (27.7.1993 with application as mentioned in s. 165 of the amending Act) by 1993 c. 34, **ss. 129(9)**, 165

Marginal Citations

M467 Source—1970 s.179

CHAPTER III

LOSS RELIEF: MISCELLANEOUS PROVISIONS

397 Restriction of relief in case of farming and market gardening.

(1) [M468]Any loss incurred in a trade of farming or market gardening shall be excluded from section 380 if in each of the prior five years a loss **[**[F2343], computed without regard to capital allowances,**]** was incurred in carrying on that trade; [F2344]. . . .

(2) Any loss incurred in any accounting period by a company in carrying on a trade of farming or market gardening shall be excluded from section 393(2) if a loss, computed

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without regard to capital allowances, was incurred in carrying on that trade in that accounting period, and in each of the chargeable periods wholly or partly comprised in the prior five years.

(3) Subsections (1) and (2) above shall not restrict relief for any loss or for any capital allowance **[**F2345in any case**]**—

(a) **[**F2346where**]** the whole of the farming or market gardening activities in the year next following the prior five years are of such a nature, and carried on in such a way, as would have justified a reasonable expectation of the realisation of profits in the future if they had been undertaken by a competent farmer or market gardener, but

(b) **[**F2346where**]**, if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, he could not reasonably have expected the activities to become profitable until after the end of the year next following the prior period of loss.

(4) Subsections (1) and (2) above shall not restrict relief where the carrying on of the trade forms part of, and is ancillary to, a larger trading undertaking.

(5) In this section—

F2347 . . . . . .

"chargeable period", in relation to a company, means any accounting period F2348 . . . ;

"prior five years"—

(a) in relation to a loss incurred in a year of assessment, means the last five years of assessment before that year, and

(b) in relation to a loss incurred in a company's accounting period, means the last five years before the beginning of the accounting period;

"prior period of loss" means the prior five years, except that, if losses were incurred in the trade in successive years of assessment or chargeable periods amounting in all to a period longer than five years (and ending when the prior five years end), it means that longer period, and in applying this definition to a chargeable period of a company "losses" means losses computed without regard to capital allowances; and

[F2349"farming" and "market gardening" shall be construed—

(a) for income tax purposes, in accordance with the definitions in section 876 of ITTOIA 2005, and

(b) for corporation tax purposes, in accordance with the definitions in section 832 but as if those definitions were not restricted to activities in the United Kingdom.**]**

(6) F2350 . . . . . .

(7) In ascertaining for the purposes of this section whether a loss was incurred in any part of the prior five years or earlier, the rules applicable to **[**F2351the calculation of the profits of a trade in Part 2 of ITTOIA 2005 or to**]** Case I of Schedule D shall be applied; and in this section "loss computed without regard to capital allowances" means, in relation to a chargeable period of a company, a loss so ascertained, **[**F2352 but disregarding—

(a) any allowance or charge under the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act); and

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(b) any provision of that Act requiring allowances and charges to be treated as expenses and receipts of the trade**]**.

(8) Subsections (1) and (2) above shall not restrict relief for any loss or capital allowance if the trade was set up and commenced within the prior five years, and, for the purposes of this subsection

[F2353(a) a trade shall be treated as discontinued, and a new trade set up, in any event which under any of the provisions of the Tax Acts is to be treated as equivalent to the permanent discontinuance or setting up of a trade; and

(b) without prejudice to paragraph (a), a trade shall be treated as discontinued, and a new trade set up, at any time when there is a change in the persons carrying on the trade which involves all of the persons carrying it on before the change permanently ceasing to carry it on.**]**

(9) For the purposes of subsection (8) above a trade shall not be treated as discontinued if, under section 343(2), it is not to be treated as discontinued for the purpose of capital allowances and charges.

(10) **[**F2354Where at any time there has been a change in the persons carrying on a trade, this section shall, notwithstanding subsection (8) above, apply as if**]**—

(a) a husband and his wife were the same person, F2355. . .

[F2356(ab) two civil partners of each other were the same person,**]**

(b) a husband or his wife were the same person as any company of which either the husband or the wife has control, or of which the two of them have control;**[**F2357 and

(c) a civil partner of another were the same person as any company of which either of the civil partners has control, or of which the two of them have control;**]**

and accordingly relief from income tax or from corporation tax may be restricted under this section by reference to losses some of which are incurred in years of assessment and some, computed without regard to capital allowances, are incurred in a company's chargeable periods.

In this subsection "control" has the same meaning as in Part XI.

Textual Amendments

F2343 Words in s. 397(1) inserted (with effect in accordance with ss. 211(2), 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 214(3)(a)** (with Sch. 20)

F2344 Words in s. 397(1) repealed (with effect in accordance with ss. 211(2), 218(1)(b) of the repealing Act) by Finance Act 1994 (c. 9), s. 214(3)(b), **Sch. 26 Pt. 5(24)**, Note 5(a) (with Sch. 20)

F2345 Words in s. 397(3) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 27(a)**

F2346 Words in s. 397(3)(a)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 27(b)**

F2347 S. 397(5): definition of "basis year" repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para 34(1)(a), **Sch. 4** (with Sch. 3)

F2348 S. 397(5): words in definition of "chargeable period" repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para 34(1)(b), **Sch. 4** (with Sch. 3)

F2349 S. 397(5): definitions of "farming" and "market gardening" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 169(2)** (with Sch. 2)

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F2350 S. 397(6) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 34(2), **Sch. 4** (with Sch. 3)
F2351 Words in s. 397(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 169(3)** (with Sch. 2)
F2352 Words in s. 397(7) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 34(3)** (with Sch. 3)
F2353 S. 397(8)(a)(b) substituted for words in s. 397(8) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 169(4)** (with Sch. 2)
F2354 Words in s. 397(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 169(5)** (with Sch. 2)
F2355 Word at the end of s. 397(10)(a) omitted (5.12.2005) by virtue of The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 71(2)(a)
F2356 S. 397(10)(ab) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 71(2)(a)
F2357 S. 397(10)(c) and preceding word inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 71(2)(b)

Marginal Citations
M468 Source—1970 s.180; 1986 s.56(7) Sch.13 2(5)

398 Transactions in deposits with and without certificates or in debts.

M469 Where a person sustains a loss on the exercise or disposal of a right to receive any amount, being a right to which section 56(2) **[**F2358 above or Chapter 11 of Part 4 of ITTOIA 2005 (transactions in deposits)**]** applies, in a case where—

(a) if a profit had arisen from that exercise or disposal, that profit would have been chargeable to tax by virtue of section 56(2) **[**F2359 above or that Chapter**]**, and

(b) he is chargeable to **[**F2360 corporation tax under Schedule D or income tax under that Act**]** in respect of interest payable on that amount,

then the amount of that interest shall be included in the amounts against which **[**F2361 the amount of his loss may be set off in pursuance of a claim under section 392 or, as the case may be, against which the amount of his loss may be set off under section 396**]**.

Textual Amendments
F2358 Words in s. 398 inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 170(a)** (with Sch. 2)
F2359 Words in s. 398 inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 170(b)** (with Sch. 2)
F2360 Words in s. 398 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 170(c)** (with Sch. 2)
F2361 Words in s. 398 substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(4)**

Marginal Citations
M469 Source—1973 s.26(2); 1974 s.30(2)

399 Dealings in commodity futures etc: withdrawal of loss relief.

(1) F2362 . . . . . .

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[F2363(1A) F2362. . . . . .**]**

[F2364(1B) If, apart from section 143(1) of the 1992 Act or section 128(2) above, gains arising in the course of dealing in financial futures or in qualifying options would constitute, for the purposes of the Corporation Tax Acts, profits and gains chargeable to tax under Case V or VI of Schedule D, then any loss arising in the course of that dealing shall not be allowable against profits and gains which are chargeable to tax under Case V or VI of Schedule D.**]**

(2) M470Relief shall not be given to any person under section 380, 381 or **[**F2365393A(1)**]** in respect of a loss sustained in a trade of dealing in commodity futures if—

(a) the loss was sustained in a trade carried on in partnership and that person or one or more of the other partners was a company; and

(b) a scheme has been effected or arrangements have been made (whether by the partnership agreement or otherwise) such that the sole or main benefit that might be expected to accrue to that person from his interest in the partnership was the obtaining of a reduction in tax liability by means of any such relief.

(3) Where relief has been given in a case to which subsection (2) above applies it shall be withdrawn by the making of an assessment **[**F2366(in the case of corporation tax, under Case VI of Schedule D)**]**.

(4) Subsection (2) above does not apply where the scheme was effected or the arrangements were made wholly before 6th April 1976.

(5) M471In this section "commodity futures", "financial futures" and "qualifying options" have the same meanings as in section **[**F2367143 of the 1992 Act**]**, F2368. . . .

Textual Amendments

F2362 S. 399(1)(1A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 171(2), **Sch. 3** (with Sch. 2)

F2363 S. 399(1A) inserted (with effect in accordance with s. 80(6)(7) of the amending Act) by Finance Act 1997 (c. 16), **s. 80(4)**

F2364 S. 399(1B) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 4(2)** (with Sch. 28)

F2365 Words in s. 399(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 11**

F2366 Words in s. 399(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 171(3)** (with Sch. 2)

F2367 Words in s. 399(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(19)(b)** (with ss. 60, 101(1), 171, 201(3)).

F2368 Words in s. 399(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 171(4), **Sch. 3** (with Sch. 2)

Marginal Citations

M470 Source—1978 s.31

M471 Source—1985 s.72(2); 1987 Sch.15 11(2); 1987 (No.2) s.81(1)

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400 Write-off of government investment.

(1) [M472]Where any amount of government investment in a body corporate is written-off on or after 6th April 1988, an amount equal to the amount written-off shall be set off against the body's tax losses as at the end of the accounting period ending last before the write-off date and, to the extent to which that amount exceeds those losses, against the body's tax losses as at the end of the next accounting period and so on.

(2) For the purposes of subsection (1) above a body's tax losses as at the end of an accounting period are—

(a) any losses which under section 393(1) are [F2369]. . . available for relief against its trading income for the next accounting period;

[[F2370](b) in the case of a company with investment business, within the meaning of Part 4, any such excess as is mentioned in subsection (8) of section 75 which falls to be treated in accordance with subsection (9) of that section;**]**

[[F2371](bb) any losses which—

(i) under section 392A(2) or 392B are carried forward to the next accounting period, or

[[F2372](ii) under section 392A(3) are to be carried forward to the next accounting period and treated for the purposes of section 75 as if they were expenses of management deductible for that period;**]]**

(c) any allowances which under **[**[F2373]section 260(2) of the Capital Allowances Act**]** are available for carry forward to the next accounting period;

(d) any amount paid by way of charges on income so far as it exceeds the company's profit for the period and is not taken into account under 75(3) or 393(9); and

(e) any allowable losses available under **[**[F2374]8 of the 1992 Act**]** so far as not allowed in that or a previous accounting period.

(3) The set off to be made under subsection (1) above for any accounting period shall be made first against the amounts in paragraphs (a) to (d) of subsection (2) above and, so far as it cannot be so made, against the amount in paragraph (e) of that subsection.

(4) For the purposes of subsection (1) above there shall be excluded from a body's tax losses as at the end of the accounting period ending last before the write-off date any amounts in respect of which a claim has been made before the write-off date under section **[**[F2375]393A(1)**]** or 402 of this Act or **[**[F2376]section 260(3) of the Capital Allowances Act**]** but the body's tax losses as at the end of any subsequent accounting period shall be determined as if no such claim had been made on or after that date.

(5) Any amount that could be set off under subsection (1) above against a body's tax losses as at the end of an accounting period (or could be so set off if that body then had any such losses) may be set off against the tax losses of any other body corporate which at the end of that period is a member of the same group as the first-mentioned body, or partly against the tax losses of one member of that group and partly against those of the other or any of the others, as may be just and reasonable.

(6) Expenditure shall not be treated for the purposes of **[**[F2377]section 532 or 536 of the Capital Allowances Act**]** or section **[**[F2378]50 of the 1992**]** Act as met by the Crown by reason only of the writing-off of any government investment in the body in question and a sum shall not by reason only of any such writing-off be treated as not having been deductible in computing the **[**[F2379]profits**]** of that body for the purposes of Case I or II of Schedule D.

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(7) For the purposes of this section an amount of government investment in a body corporate is written-off—

(a) if its liability to repay any money lent to it out of public funds by a Minister of the Crown **[**F2380or the Scottish Ministers**]** is extinguished;

(b) if any of its shares for which a Minister of the Crown has **[**F2381, or the Scottish Ministers have,**]** subscribed out of public funds are cancelled; or

(c) if its commencing capital debt is reduced otherwise than by being paid off or its public dividend capital is reduced otherwise than by being repaid (including, in either case, a reduction to nil);

and the amount written-off and the write-off date are the amount in respect of which the liability is extinguished and the date on which it is extinguished, the amount subscribed for the shares that are cancelled and the date of cancellation or the amount of reduction in the commencing capital debt or public dividend capital and the date of the reduction, as the case may be.

(8) In subsection (7) above "commencing capital debt" means any debt to a Minister of the Crown **[**F2382or the Scottish Ministers**]** assumed as such under an enactment and "public dividend capital" means any amount paid by a Minister of the Crown **[**F2382or the Scottish Ministers**]** under an enactment in which that amount is so described or under an enactment corresponding to an enactment in which a payment made on similar terms to another body is so described.

(9) This section shall not have effect in relation to any amount written-off if and to the extent to which it is replaced by money lent, or a payment made, out of public funds or by shares subscribed for, whether for money or money's worth, by a Minister of the Crown **[**F2382or the Scottish Ministers**]**.

[F2383(9A) Nothing in section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act) shall be construed as preventing this section from applying where a government investment in a body corporate is written off by the extinguishment, in whole or in part, of any liability under a loan relationship.**]**

(10) In this section—

"body corporate" means any body corporate which is a company for the purposes of corporation tax;

"group" means a company having one or more 51 per cent. subsidiaries and that or those subsidiaries; and

"Minister of the Crown" includes a Northern Ireland department.

Textual Amendments

F2369 Words in s. 400(2)(a); repealed (27.7.1993 with effect in relation to accounting periods ending after the day appointed for the purposes of section 10 of the amended Act) by 1993 c. 34, s. 213, Sch. 14 para. 8(5), **Sch. 23 Pt. III** (11), note; omitted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 paras. 8(5)**

F2370 S. 400(2)(b) substituted (28.9.2004 with effect in accordance with art. 1(2), Sch. para 13(4) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 13(2)(5)

F2371 S. 400(2)(bb) inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 36** (with Sch. 5 para. 73)

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F2372 S. 499(2)(bb)(ii) substituted (28.9.2004 with effect in accordance with art. 1(2), Sch. para. 13(4) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 13(3)(5)
F2373 Words in s. 400(2)(c) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 35(1)** (with Sch. 3)
F2374 Words in s. 400(2)(e) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(20)(a)** (with ss. 60, 101(1), 171, 201(3)).
F2375 Words in s. 400(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 12**
F2376 Words in s. 400(4) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para 35(2)** (with Sch. 3)
F2377 Words in s. 400(6) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para 35(3)** (with Sch. 3)
F2378 Words in s. 400(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(20)(b)** (with ss. 60, 101(1), 171, 201(3)).
F2379 Words in s. 400(6) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
F2380 Words in s. 400(7)(a) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(2)(a)(i)** (with art. 5)
F2381 Words in s. 400(7)(b) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(2)(a)(ii)** (with art. 5)
F2382 Words in s. 400(8)(9) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No. 2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(2)(b)** (with art. 5)
F2383 S. 400(9A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 19** (with Sch. 15)

Modifications etc. (not altering text)
C322 S. 400 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 16**
C323 S. 400 excluded (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 4(3)**
C324 S. 400 modified (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 4(4)**
C325 S. 400(1) excluded (31.10.1994) by Coal Industry Act 1994 (c. 21), **ss. 20(2)**, 68(4) (with s. 40(7)); SI 1994/2552, art. 2, Sch.
C326 S. 400(1) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(1)**
C327 S. 400(6) modified (31.10.1994) by Coal Industry Act 1994 (c. 21), **ss. 20(3)**, 68(4) (with s. 40(7)); SI 1994/2552, art. 2, Sch.
C328 S. 400(6) modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(2)**
C329 S. 400(7)(8) applied (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), **Sch. 9 para. 7(2)** (with Sch. 15)

Marginal Citations
M472 Source—1981 s.48

401 Relief for pre-trading expenditure.

(1) **M473**Where a **[F2384**company**]** incurs expenditure for the purposes of a **[F2385**trade or profession**]** before the time when **[F2386**the company**]** begins to carry it on and the expenditure—

(a) is incurred not more than **[F2387**seven**]** years before that time; and

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(b) is not allowable as a deduction in computing **[**F2388the company's**][**F2389profits**]** from the **[**F2385trade or profession**]** for the purposes of Case I or II of Schedule D but would have been so allowable if incurred after that time,

the expenditure shall be **[**F2390treated as incurred on the day on which the **[**F2385trade or profession**]** is first carried on by **[**F2391the company**]]**.

[F2392(1A) F2393. . . . . .**]**

[F2394(1AA) Subsection (1) above shall not apply to any expenditure in relation to which any debit falls, or (but for subsection (1AB) below) would fall, to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships).

(1AB) Where, in the case of any company—

(a) a non-trading debit is given for any accounting period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships), and

(b) an election for the purposes of this section is made by that company with respect to that debit within the period of 2 years beginning with the end of that accounting period,

that debit shall not be brought into account for the purposes of that Chapter as a non-trading debit for that period, but subsection (1AC) below shall apply instead.

(1AC) If a company—

(a) begins to carry on a trade within the period of seven years after the end of the accounting period for which a non-trading debit is given for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships),

(b) that debit is such that, if it had been given for the accounting period in which the company begins to carry on that trade, it would have been brought into account by reference to that trade in accordance with section 82(2) of that Act (trading debits and credits), and

(c) an election is or has been made with respect to that debit under subsection (1AB) above,

that debit shall be treated for the purposes of that Chapter as if it were a debit for the accounting period in which the company begins to carry on the trade and shall be brought into account for that period in accordance with section 82(2) of that Act.**]**

[F2395(1B) F2396. . . . . .**]**

(2) F2397. . . . . .

Textual Amendments

F2384 Word in s. 401(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 172(a)** (with Sch. 2)

F2385 Words in s. 401(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 172(b)** (with Sch. 2)

F2386 Words in s. 401(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 172(c)** (with Sch. 2)

F2387 Word in s. 401(1) substituted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by virtue of s. 109(1)(4)

F2388 Words in s. 401(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 172(d)** (with Sch. 2)

F2389 Words in s. 401(1)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**

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F2390 Words in s. 401(1) substituted (with effect in accordance with s. 120(2) of the amending Act) by Finance Act 1995 (c. 4), **s. 120(1)(a)**
F2391 Words in s. 401(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 172(e)** (with Sch. 2)
F2392 S. 401(1A) inserted (27.7.1993 with effect as mentioned in s. 109(4) of the amending Act) by 1993 c. 34, **s. 109(2)(4)**
F2393 S. 401(1A) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 20(2), **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)
F2394 S. 401(1AA)-(1AC) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 20(1)** (with Sch. 15)
F2395 S. 401(1B) inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 20**
F2396 S. 401(1B) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note
F2397 S. 401(2) repealed (with effect in accordance with s. 120(2) of the repealing Act) by Finance Act 1995 (c. 4), s. 120(1)(b), **Sch. 29 Pt. 8(15)**, Note 2

Modifications etc. (not altering text)
C330 S. 401 excluded (with effect in accordance with s. 69(1) of the excluding Act) by Finance Act 2000 (c. 17), Sch. 20 paras. 1(3), **26**
C331 S. 401 excluded (with effect in accordance with s. 53(1) of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 12 para. 20(1)**
C332 S. 401 excluded (with effect in accordance with Sch. 13 para. 28(1)(2) of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 13 para. 15(3)**
C333 S. 401 excluded (with effect in accordance with s. 56 of the excluding Act) by Finance Act 2002 (c. 23), **Sch. 15 para. 2(2)**

Marginal Citations
M473 Source—1980 s.39(1), (2), (4); 1982 s.50

CHAPTER IV

GROUP RELIEF

Modifications etc. (not altering text)
C334 *See*—1988 s.434A—*limitations on group relief for life assurance company.*1989 s.102—*surrender of company tax refund etc. within group* (*from a day to be appointed not earlier than* 31*March* 1992).
C335 Pt. 10 Ch. 4 modified (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **5(1)**
C336 Pt. 10 Ch. 4: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 35** to be construed as one with this Chapter (6.4.2006) by virtue of regs. 1, 35(2) of that affecting S.I.

402 Surrender of relief between members of groups and consortia.

(1) [M474]Subject to and in accordance with this Chapter and section 492(8), relief for trading losses and other amounts eligible for relief from corporation tax may, in the cases set out in subsections (2) and (3) below, be surrendered by a company ("the surrendering company") and, on the making of a claim by another company ("the

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claimant company") may be allowed to the claimant company by way of a relief from corporation tax called "group relief".

(2) Group relief shall be available in a case where the surrendering company and the claimant company are both members of the same group.

A claim made by virtue of this subsection is referred to as a "group claim".

(3) [M475]Group relief shall also be available in the case of a surrendering company and a claimant company either where one of them is a member of a consortium and the other is—

(a) a trading company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company; or

(b) a trading company—

(i) which is a 90 per cent. subsidiary of a holding company which is owned by the consortium; and

(ii) which is not a 75 per cent. subsidiary of a company other than the holding company; or

(c) a holding company which is owned by the consortium and which is not a 75 per cent. subsidiary of any company;

or, in accordance with section 406, where one of them is a member of a group of companies and the other is owned by a consortium and another company is a member of both the group and the consortium.

A claim made by virtue of this subsection is referred to as "a consortium claim".

[[F2398](3A) Group relief is not available unless the following condition is satisfied in the case of both the surrendering company and the claimant company.

(3B) The condition is that the company is resident in the United Kingdom or is a non-resident company carrying on a trade in the United Kingdom through a **[**[F2399]permanent establishment**].]**

(4) A consortium claim shall not be made [F2400]. . . if a profit on a sale of the share capital of the other company or its holding company which the member owns would be treated as a trading receipt of that member.

(5) [M476]Subject to the provisions of this Chapter, two or more claimant companies may make claims relating to the same surrendering company, and to the same accounting period of that surrendering company.

(6) A payment for group relief—

(a) shall not be taken into account in computing profits or losses of either company for corporation tax purposes, and

(b) shall not for any of the purposes of the Corporation Tax Acts be regarded as a distribution [F2401]. . . ;

and in this subsection "a payment for group relief" means a payment made by the claimant company to the surrendering company in pursuance of an agreement between them as respects an amount surrendered by way of group relief, being a payment not exceeding that amount.

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Textual Amendments

F2398 S. 402(3A)(3B) inserted (with effect in accordance with Sch. 27 para. 6(1)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 1**

F2399 Words in s. 402(3B) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F2400 Words in s. 402(4) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(a)(5), **Sch. 40 Pt. 2(11)**, Note 2

F2401 Words in s. 402(6)(b) repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

Modifications etc. (not altering text)

C337 S. 402(1)(2)(5)(6) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting Regulations) by The Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 (S.I. 2001/1163), **reg. 10**

C338 S. 402(3) restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **5(2)**

C339 S. 402(3) restricted (with effect in accordance with s. 69(1) of the restricting Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 22** (with Sch. 20 para. 26)

Marginal Citations

M474 Source—1970 s.258(1)

M475 Source—1970 s.258(2); 1981 s.40(2); 1985 Sch.9 5, 6

M476 Source—1970 s.258(3), (4)

[F2402 403 Losses etc. which may be surrendered by way of group relief.

(1) If in an accounting period (the "surrender period") the surrendering company has—

(a) trading losses, excess capital allowances or a non-trading deficit on its loan relationships, or

(b) charges on income, Schedule A losses **[**F2403, management expenses or a non-trading loss on intangible fixed assets**]** available for group relief,

the amount may, subject to the provisions of this Chapter, be set off for the purposes of corporation tax against the total profits of the claimant company for its corresponding accounting period.

(2) Trading losses, excess capital allowances and a non-trading deficit on the company's loan relationships are eligible for surrender as group relief even if the surrendering company has other profits of the surrender period against which they could be set.

Further provision about relief in respect of amounts eligible for surrender under this subsection is contained in sections 403ZA to 403ZC.

(3) Charges on income, Schedule A losses **[**F2404management expenses and a non-trading loss on intangible fixed assets**]** are available for surrender as group relief only to the extent that in aggregate they exceed the surrendering company's gross profits for the surrender period.

Any excess surrendered shall be taken to consist first of charges on income, then Schedule A losses **[**F2405, management expenses and finally a non-trading loss on intangible fixed assets**]**.

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Further provision about relief in respect of amounts available for surrender under this subsection is contained in section 403ZD.

(4) This section has effect subject to—

section 404 (limitation of group relief in relation to certain dual resident companies), and

sections 492(8) and 494A (oil extraction activities: availability of group relief against ring fence profits).**]**

Textual Amendments

F2402 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

F2403 Words in s. 403(1)(b) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(a)**

F2404 Words in s. 403(3) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(b)**

F2405 Words in s. 403(3) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(c)**

Modifications etc. (not altering text)

C340 S. 403 applied by Finance Act 1996 (c. 8), **Sch. 8 para 2(2)** (as substituted (with effect in accordance with s. 38(2)(3) of the1998 amending Act) by Finance Act 1998 (c. 36), Sch 5 para. 64(3) (with **Sch 5 para. 73**))

C341 S. 403 modified (with effect in accordance with s. 38(2)(3) of the modifying Act) by Finance Act 1998 (c. 36), Sch. 5 paras. 75, **76**

C342 S. 403 excluded (with effect in accordance with s. 579(1) of the affecting Act) by Capital Allowances Act 2001 (c. 2), **ss. 260(7)**, 261 (with Sch. 3)

C343 S. 403 modified (5.10.2004) by Energy Act 2004 (c. 20), **ss. 27(1)(b)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

[F2406 403ZA Amounts eligible for group relief: trading losses.

(1) For the purposes of section 403 a trading loss means a loss incurred by the surrendering company in the surrender period in carrying on a trade, computed as for the purposes of section 393A(1).

(2) That section does not apply to a trading loss which would be excluded from section 393A(1) by—

(a) section 393A(3) (foreign trades and certain trades not carried on with a view to gain), or

(b) section 397 (farming and market gardening: restriction on loss relief).

(3) Where a company owned by a consortium—

(a) has in any relevant accounting period incurred a trading loss, and

(b) has profits (of whatever description) of that accounting period against which that loss could be set off under section 393A(1),

the amount of the loss available to a member of the consortium on a consortium claim shall be determined on the assumption that the company has made a claim under section 393A(1) requiring the loss to be so set off.

(4) Where the company mentioned in subsection (3) is a group/consortium company, the amount of the loss available under that subsection shall be determined before any reduction is made under section 405(1) to (3).**]**

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Textual Amendments

F2406 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

[F2406 403ZB Amounts eligible for group relief: excess capital allowances.

(1) For the purposes of section 403 excess capital allowances means capital allowances falling to be made to the surrendering company **[**F2407 for the surrender period to the extent that they are to be given effect under section 260 of the Capital Allowances Act (special leasing: excess allowance).**]**

(2) In determining the amount of the allowances falling to be made for the surrender period, no account shall be taken of any allowances carried forward from an earlier period.

(3) The amount of the company's income of the relevant class means its amount before deduction of—

(a) losses of any other period, or

(b) capital allowances.**]**

Textual Amendments

F2406 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

F2407 Words in s. 403ZB(1) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para 36** (with Sch. 3)

Modifications etc. (not altering text)

C344 S. 403ZB(2) restricted (with effect in accordance with s. 579(1) of the restricting Act) by Capital Allowances Act 2001 (c. 2), **s. 131(7)** (with Sch. 3 paras. 54, 55)

[F2406 403ZC Amounts eligible for group relief: non-trading deficit on loan relationships.

(1) For the purposes of section 403 a non-trading deficit on its loan relationships means a deficit of the surrendering company to which section 83 of the M477 Finance Act 1996 applies.

(2) F2408 . . . . . .**]**

Textual Amendments

F2406 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

F2408 S. 403ZC(2) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 45, **Sch. 40 Pt. 3(12)**, Note

Marginal Citations

M477 1996 c.8.

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[F2406 403ZD Other amounts available by way of group relief.

(1) References in section 403 to charges on income, Schedule A losses and management expenses shall be construed as follows.

(2) Charges on income means the aggregate of the amounts paid by the surrendering company in the surrender period by way of charges on income.

(3) A Schedule A loss means a loss incurred by the surrendering company in the surrender period in a Schedule A business carried on by the company.

It does not include—

(a) an amount treated as such a loss by section 392A(2) (losses carried forward from earlier period), or

(b) a loss which would be excluded from section 392A by subsection (5) of that section (certain businesses not carried on with a view to gain).

[F2409 (4) Management expenses means the aggregate of the amounts deductible under section 75(1) (expenses of management of company with investment business) by the surrendering company for this period.

It does not include an amount deductible by virtue only of section 75(9) or 392A(3) (amounts carried forward from earlier periods).]

(5) F2410 . . . . . .

F2411 [(6) A non-trading loss on intangible fixed assets means a non-trading loss on intangible fixed assets, within the meaning of Schedule 29 to the Finance Act 2002, for the surrender period.

It does not include so much of any such loss as is attributable to an amount being carried forward under paragraph 35(3) of that Schedule (amounts carried forward from earlier periods).]]

Textual Amendments

F2406 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

F2409 S. 403ZD(4) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 14(2)(4)

F2410 S. 403ZD(5) omitted (28.9.2004 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 14(3)

F2411 S. 403ZD(6) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(2)**

[F2406 403ZE Computation of gross profits.

(1) For the purposes of section 403 the surrendering company's gross profits of the surrender period means its profits for that period—

(a) without any deduction in respect of such losses, allowances and other amounts as are mentioned in paragraph (a) or (b) of subsection (1) of that section, and

(b) without any deduction falling to be made—

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(i) in respect of losses, allowances or other amounts of any other period (whether or not of a description within subsection (1) of that section), or

(ii) by virtue of section **[**F2412 75(9)**]** or 392A(3) (other amounts carried forward).

(2) F2413 . . . . . .**]**

Textual Amendments

F2406 Ss. 403-403ZE substituted for s. 403 (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 29** (with Sch. 5 para. 73)

F2412 Words in s. 403ZE(1)(b)(ii) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 15(2)(3)

F2413 S. 403ZE(2) omitted (28.9.2004 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 15(4)

[F2414 403A Limits on group relief.

(1) The amount which, on a claim for group relief, may be set off against the total profits of the claimant company for an accounting period ("the claim period"), and accordingly the amount to which any consent required in respect of that claim may relate, shall not exceed whichever is the smaller of the following amounts—

(a) the unused part of the surrenderable amount for the overlapping period; and

(b) the unrelieved part of the claimant company's total profits for the overlapping period.

(2) For the purposes of any claim for group relief—

(a) the unused part of the surrenderable amount for the overlapping period is the surrenderable amount for that period reduced by the amount of any prior surrenders attributable to the overlapping period; and

(b) the unrelieved part of the claimant company's total profits for the overlapping period is the amount of its total profits for that period reduced by the amount of any previously claimed group relief attributable to the overlapping period.

(3) For the purposes of any claim for group relief—

(a) the surrenderable amount for the overlapping period is so much of the surrenderable amount for the accounting period of the surrendering company to which the claim relates as is attributable, on an apportionment in accordance with section 403B, to the overlapping period;

(b) the surrenderable amount for an accounting period of the surrendering company is the total amount for that accounting period of the losses and other amounts which (disregarding this section and section 403C) are available in that company's case for set off by way of group relief; and

(c) the amount of the claimant company's total profits for the overlapping period is so much of its total profits for the claim period as is attributable, on an apportionment in accordance with section 403B, to the overlapping period.

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(4) In relation to any claim for group relief ("the relevant claim") the amount of the prior surrenders attributable to the period which is the overlapping period in the case of the relevant claim is equal to the aggregate amount (if any) produced by—

(a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—

(i) has been made before the relevant claim,

(ii) was made in respect of the whole or any part of the amount which, in relation to the relevant claim, is the surrenderable amount for the accounting period of the surrendering company to which the claim relates, and

(iii) has not been withdrawn;

(b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;

(c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—

(i) that period; and

(ii) the period which is the overlapping period in the case of the relevant claim;

and

(d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.

(5) In relation to any claim for group relief ("the relevant claim"), the amount of previously claimed group relief attributable to the period which is the overlapping period in the case of that claim is the aggregate amount produced by—

(a) taking the amount of every claim for group relief (whether a group claim or a consortium claim) which—

(i) has been made before the relevant claim,

(ii) was a claim to set off an amount by way of group relief against the claimant company's total profits for the period which, in relation to the relevant claim, is the claim period, and

(iii) has not been withdrawn;

(b) treating the amount of group relief which (having regard to the provisions of this section) is allowable under each such claim as an amount of relief for the period which is the overlapping period in the case of that claim;

(c) determining how much of each amount treated in accordance with paragraph (b) above as an amount of relief for a particular period is attributable, on an apportionment in accordance with section 403B, to the period (if any) which is common to both—

(i) that period; and

(ii) the period which is the overlapping period in the case of the relevant claim;

and

(d) aggregating all the amounts determined under paragraph (c) above in respect of the previously made claims.

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(6) For the purposes of this section the amount of group relief allowable on any claim ("the finalised claim") shall fall to be determined as at the time when that claim ceases to be capable of being withdrawn as if—

(a) every claim that became incapable of being withdrawn before that time were a claim made before the finalised claim; and

(b) every claim that remains capable of being withdrawn at that time were a claim made after the finalised claim.

(7) Subject to subsection (6) above and without prejudice to any power to withdraw and resubmit claims, where (but for this subsection) more than one claim for group relief would be taken for the purposes of subsections (4) and (5) above to have been made at the same time, those claims shall be deemed, instead, to have been made—

(a) in such order as the company or companies making them may, by notice to any officer of the Board, elect or, as the case may be, jointly elect; and

(b) if there is no such election, in such order as an officer of the Board may direct.

(8) In this section "the overlapping period", in relation to a claim for group relief, means (subject to subsection (9) below and section 406(3) and (7)) the period which is common to both—

(a) the claim period; and

(b) the accounting period of the surrendering company to which the claim relates.

(9) For the purposes of this section any time in the period which, in relation to any claim for group relief, is common to both the accounting periods mentioned in subsection (8) above but which is a time when the qualifying conditions were not satisfied—

(a) shall be treated as not comprised in the period which is the overlapping period in the case of that claim; and

(b) shall be treated instead, in relation to each of those accounting periods, as if it constituted a part of that accounting period which was not common to both periods.

(10) For the purposes of subsection (9) above the qualifying conditions are satisfied in relation to any claim for group relief at the following times, that is to say—

(a) if the claim is a group claim, whenever the claimant company and the surrendering company are both members of the same group **[**[F2415]and the condition specified in section 402(3B) is satisfied in the case of both companies**]**; and

(b) if the claim is a consortium claim, whenever the conditions specified in section 402(3) for the making of that claim **[**[F2416]and the condition specified in section 402(3B)**]** are satisfied in the case of the claimant company and the surrendering company.**]**

Textual Amendments

F2414 Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 2**

F2415 Words in s. 403A(10)(a) inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 3(a)** (with Sch. 27 para. 6(1))

F2416 Words in s. 403A(10)(b) inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 3(b)** (with Sch. 27 para. 6(1))

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Modifications etc. (not altering text)

C345 S. 403A modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 179(4)** (as amended (with effect in accordance with Sch. 7 para. 9 of the 1997 amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 8**)

[F2414 403B Apportionments under section 403A.

(1) Subject to subsection (2) below, where an apportionment falls to be made under section 403A for the purpose of determining how much of an amount for any period ("the first period") is attributable to any other period ("the second period") which comprises the whole or a part of the first period—

(a) the whole of that amount shall be attributed to the second period if the first and second periods begin and end at the same times; and

(b) in any other case, the apportionment shall be made on a time basis according to how much of the first period coincides with the second period.

(2) Where the circumstances of a particular case are such that the making on the time basis mentioned in subsection (1)(b) above of some or all of the apportionments to be made in that case would work in a manner that would be unjust or unreasonable in relation to any person, those apportionments shall be made instead (to the extent only that is necessary in order to avoid injustice and unreasonableness) in such other manner as may be just and reasonable.**]**

Textual Amendments

F2414 Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 2**

Modifications etc. (not altering text)

C346 S. 403B modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 179(4)** (as amended (with effect in accordance with Sch. 7 para. 9 of the 1997 amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 8**)

[F2414 [F2417 403C Amount of relief in consortium cases.

(1) In the case of a consortium claim the amount that may be set off against the total profits of the claimant company is limited by this section.

(2) Where the claimant company is a member of the consortium, the amount that may be set off against the total profits of that company for the overlapping period is limited to the relevant fraction of the surrenderable amount.

That fraction is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the surrendering company that is beneficially owned by the claimant company;

(b) the percentage to which the claimant company is beneficially entitled of any profits available for distribution to equity holders of the surrendering company; and

(c) the percentage to which the claimant company would be beneficially entitled of any assets of the surrendering company available for distribution to its equity holders on a winding-up.

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If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

(3) Where the surrendering company is a member of the consortium, the amount that may be set off against the total profits of the claimant company for the overlapping period is limited to the relevant fraction of the claimant company's total profits for the overlapping period.

That fraction is whichever is the lowest in that period of the following percentages—

(a) the percentage of the ordinary share capital of the claimant company that is beneficially owned by the surrendering company;

(b) the percentage to which the surrendering company is beneficially entitled of any profits available for distribution to equity holders of the claimant company; and

(c) the percentage to which the surrendering company would be beneficially entitled of any assets of the claimant company available for distribution to its equity holders on a winding-up.

If any of those percentages have fluctuated in that period, the average percentage over the period shall be taken.

(4) In any case where the claimant or surrendering company is a subsidiary of a holding company which is owned by a consortium, for the references in subsection (2) or (3) above to the claimant or surrendering company there shall be substituted references to the holding company.

(5) Expressions used in this section and in section 403A have the same meanings in this section as in that section.

(6) Schedule 18 has effect for supplementing this section.**]]**

Textual Amendments

F2414 Ss. 403A-403C inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 2**

F2417 S. 403C substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(1)(5)**

[F2418 403D Relief for or in respect of non-resident companies.

(1) In determining for the purposes of this Chapter the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by a non-resident company, no loss or other amount shall be treated as so available except in so far as—

(a) it is attributable to activities of that company the income and gains from which for that period are, or (were there any) would be, brought into account in computing the company's chargeable profits for that period for corporation tax purposes;

(b) it is not attributable to activities of the company which are made exempt from corporation tax for that period by any double taxation arrangements; and

(c) no part of—

(i) the loss or other amount, or

(ii) any amount brought into account in computing it,

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corresponds to, or is represented in, any amount which, for the purposes of any foreign tax, is (in any period) deductible from or otherwise allowable against non-UK profits of the company or any other person.

(2) In determining for the purposes of sections 403A and 403C the total profits for an accounting period of a non-resident company, there shall be disregarded—

(a) amounts not falling to be comprised for corporation tax purposes in the chargeable profits of the company for that accounting period, and

(b) so far as not falling within paragraph (a) above, any amounts arising from activities which are made exempt from corporation tax for that period by any double taxation arrangements.

(3) In this section "non-UK profits", in relation to any person, means amounts which—

(a) are taken for the purposes of any foreign tax to be the amount of the profits, income or gains on which (after allowing for deductions) that person is charged with that tax, and

(b) are not amounts corresponding to, and are not represented in, the total profits (of that or any other person) for any accounting period,

or amounts taken into account in computing such amounts.

(4) Subsection (2) above applies for the purposes of subsection (3)(b) above as it applies for the purposes of sections 403A and 403C.

(5) For the purposes of this section an amount shall not be taken to be an amount which for the purposes of any foreign tax is deductible from or otherwise allowable against any non-UK profits of any person by reason only that it is—

(a) an amount of profits brought into account for the purpose of being excluded from the profits that are non-UK profits of that person by reference to that foreign tax; or

(b) an amount brought into account in computing the amount of any profits falling to be so excluded.

(6) So much of the law of any territory outside the United Kingdom as for the purposes of any foreign tax makes the deductibility of any amount dependent on whether or not it is deductible for tax purposes in the United Kingdom shall be disregarded for the purposes of this section.

(7) For the purposes of this section activities of a company are made exempt from corporation tax for any period by double taxation arrangements if the effect of any such arrangements is that the income and gains (if any) arising for that period from those activities is to be disregarded in computing the company's chargeable profits.

(8) In this section "double taxation arrangements" means any arrangements having effect by virtue of section 788.

(9) In this section "foreign tax" means any tax chargeable under the law of any territory outside the United Kingdom which—

(a) is charged on income and corresponds to United Kingdom income tax; or

(b) is charged on income or chargeable gains or both and corresponds to United Kingdom corporation tax;

but for the purposes of this section a tax shall not be treated as failing to correspond to income tax or corporation tax by reason only that it is chargeable under the law of a

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province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

(10) In determining for the purposes of this section whether any activities are made exempt from corporation tax for any period by any double taxation arrangements any requirement that a claim is made before effect is given to any provision of the arrangements shall be disregarded.**]**

Textual Amendments

F2418 Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 4**

[F2418 403E Relief for overseas losses of UK resident companies.

(1) In determining, for the purposes of this Chapter, the amounts for any accounting period of the losses and other amounts available for surrender by way of group relief by any company resident in the United Kingdom ("the resident company"), a loss or other amount shall be treated as not so available in so far as it—

(a) is attributable to an overseas **[**F2419permanent establishment**]** of that company, and

(b) is a loss or other amount falling within subsection (2) below.

(2) Subject to subsection (3) below, a loss or other amount attributable to an overseas **[**F2419permanent establishment**]** falls within this subsection if the whole or any part of it is, or represents, an amount which, for the purposes of foreign tax under the law of the territory where that **[**F2419permanent establishment**]** is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.

(3) A loss or other amount does not fall within subsection (2) above if it is referable to life assurance business (within the meaning of Chapter I of Part XII) carried on by the resident company.

(4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas **[**F2419permanent establishment**]** of a company is a reference to the loss or other amount (if any) that would be surrenderable by that company by way of group relief if the amount surrenderable by that company were computed—

(a) by reference only to that **[**F2419permanent establishment**]**, and

(b) by the application in relation to that **[**F2419permanent establishment**]** of principles corresponding in all material respects to those applicable for the purposes of corporation tax to the computation of the equivalent losses or other amounts in the case of the UK **[**F2419permanent establishment**]** of a non-resident company.

(5) In subsection (4)(b) above the reference to the UK **[**F2419permanent establishment**]** of a non-resident company is a reference to any **[**F2419permanent establishment**]** through which a company which is not resident in the United Kingdom carries on a trade in the United Kingdom.

(6) References in this section to an overseas **[**F2419permanent establishment**]** of a company are references to any **[**F2419permanent establishment**]** through which that company carries on a trade in a territory outside the United Kingdom.

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(7) In this section "foreign tax" and "non-UK profits" have the same meaning as in section 403D.

(8) Where the deductibility of any amount for the purposes of any foreign tax is dependent on whether or not that amount, or a corresponding amount, is deductible for tax purposes in the United Kingdom, this section shall have effect as if that amount were deductible for the purposes of that foreign tax if, and only if, the resident company is treated for the purposes of that tax as resident in the territory where that tax is charged.**]**

Textual Amendments

F2418 Ss. 403D, 403E inserted (with effect in accordance with Sch. 27 para. 6(1)(2)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 4**

F2419 Words in s. 403E(1)(a)(2)(4)(5)(6) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

VALID FROM 19/07/2006

[F2420 403E Relief in respect of overseas losses of non-resident companies

(1) This section has effect for determining for the purposes of this Chapter the extent to which a loss or other amount is available for surrender by way of group relief by a non-resident company—

(a) which is resident in an EEA territory, or

(b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,

in a case where a group claim may be made as a result of the condition in section 402(2A) being satisfied.

(2) A loss or other amount is not available for surrender by way of group relief by the non-resident company except in so far as, in relation to the EEA territory, the amount meets—

(a) the equivalence condition,

(b) the EEA tax loss condition,

(c) the qualifying loss condition, and

(d) the precedence condition.

(3) Part 1 of Schedule 18A determines, in the case of any amount and any EEA territory, the extent to which those conditions are met.

(4) In so far as a loss or other amount meets those conditions, Part 2 of Schedule 18A applies—

(a) for calculating the amount of the loss or other amount (if any) that is available for surrender by way of group relief, and

(b) otherwise for making provision in relation to the application of this Chapter to the non-resident company.

(5) This section is subject to section 403G (unallowable overseas losses of non-resident companies).**]**

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Textual Amendments

F2420 S. 403F inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 4(1)**

VALID FROM 19/07/2006

[F2421 403G Unallowable overseas losses of non-resident companies

(1) This section applies in the case of a loss or other amount arising to a non-resident company—

(a) which is resident in any EEA territory, or

(b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment,

where the amount is not attributable for corporation tax purposes to any UK permanent establishment of the non-resident company.

(2) The amount is not available for surrender by way of group relief by the non-resident company in so far as conditions A and B are met.

(3) Condition A is that—

(a) the amount would not qualify for group relief but for any relevant arrangements, or

(b) the amount would not have arisen to the non-resident company but for any relevant arrangements.

(4) Condition B is that the main purpose, or one of the main purposes, of the relevant arrangements was to secure that the amount would qualify for group relief.

(5) In this section references to relevant arrangements, in relation to any amount, are to—

(a) arrangements made on or after 20th February 2006, or

(b) arrangements made before that date where the amount would (but for this section) first qualify for group relief on or after that date or (as the case may be) the amount arises on or after that date.

(6) In this section—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),

"UK permanent establishment", in relation to the non-resident company, means any permanent establishment through which it carries on a trade in the United Kingdom.**]**

Textual Amendments

F2421 S. 403G inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 4(2)**

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404 Limitation of group relief in relation to certain dual resident companies.

(1) [M478]Notwithstanding any other provision of this Chapter, no loss or other amount shall be available for set off by way of group relief in accordance with section 403 if, in the material accounting period of the company which would otherwise be the surrendering company, that company is for the purposes of this section a dual resident investing company.

(2) In this section "the material accounting period" means, according to the kind of group relief which would be appropriate, the accounting period—

[[F2422](a) in which the trading loss or Schedule A loss is incurred; or

(aa) in which the non-trading deficit on the company's loan relationships arises; or**]**

(b) for which the capital allowances fall to be made; or

(c) for which the expenses of management are **[**[F2423]deductible**]**; or

(d) for which the amount is paid by way of charges on income;

but subsection (1) above does not have effect unless the material accounting period begins on or after 1st April 1987.

(3) In Schedule 17—

(a) Part I has effect where an accounting period of a company in which it is a dual resident investing company begins before and ends on or after 1st April 1987 and references in subsections (1) and (2) above to the material accounting period shall be construed accordingly; and

(b) Part II has effect with respect to the time at which certain interest and other payments are to be treated as paid.

(4) A company is for the purposes of this section a dual resident company in any accounting period in which—

(a) it is resident in the United Kingdom; and

(b) it is also within a charge to tax under the laws of a territory outside the United Kingdom—

(i) because it derives its status as a company from those laws; or

(ii) because its place of management is in that territory; or

(iii) because under those laws it is for any other reason regarded as resident in that territory for the purposes of that charge.

(5) In any accounting period throughout which it is not a trading company, a dual resident company is for the purposes of this section an investing company.

(6) In any accounting period of a dual resident company in which it is a trading company, the company is nevertheless for the purposes of this section an investing company if—

(a) in that period it carries on a trade of such a description that its main function or one of its main functions consists of all or any of the following, namely—

(i) acquiring and holding, directly or indirectly, shares, securities or investments of any other description, including interests in companies (resident outside, as well as in, the United Kingdom) with which the dual resident company is connected, within the terms of section 839;

[[F2424](ia) making payments in relation to which, being payments under loan relationships, any debits fall to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996;**]**

(ii) making payments which, by virtue of any enactment, are charges on income for the purposes of corporation tax;

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(iii) making payments (of interest or other sums) which are similar to those referred to in sub-paragraph (ii) above but which are deductible in computing the profits of the company for the purposes of corporation tax;

(iv) obtaining funds (by borrowing or in any other manner whatsoever) for the purpose of, or otherwise in connection with, any of the activities referred to in sub-paragraphs (i) to (iii) above; or

(b) it does not fall within paragraph (a) above, but in that accounting period it carries on all or any of the activities referred to in sub-paragraphs (i) to (iv) of that paragraph and does so—

(i) to an extent which does not appear to be justified by any trade which it does carry on; or

(ii) for a purpose which does not appear to be appropriate to any such trade; or

(c) [F2425] . . . . . .

[[F2426](7) In this section "debtor relationship" has the same meaning as in Chapter II of Part IV of the Finance Act 1996.**]**

Textual Amendments

F2422 S. 404(2)(a)(aa) substituted for s. 404(2)(a) (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 37(2)** (with Sch. 5 para. 73)

F2423 Word in s. 404(2)(c) substituted (28.9.2004 with effect in accordance with art. 1(2), Sch. para. 16(3) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 16(2)

F2424 S 404(6)(a)(ia) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 21(1)(a)** (with Sch. 15)

F2425 S. 404(6)(c) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 5 para. 37(3), **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 para. 73)

F2426 S. 404(7) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 21(2)** (with Sch. 15)

Modifications etc. (not altering text)

C347 S. 404 applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 (S.I. 2001/1163), **reg. 10**

C348 *Definition applied for purposes of*—1970 s.273A—*transfer of U.K. branch or agency.*1970 s.276(1A)—*replacement of business assets by members of a group.*1990(C) s.161(2)—*interpretation.*

Marginal Citations

M478 Source—1987 (No.2) s.63

405 Claims relating to losses etc. of members of both group and consortium.

(1) [M479]For the purposes of a consortium claim in respect of the loss or other amount of any relevant accounting period of a group/consortium company, that loss or other amount shall be treated as reduced (or, as the case may be, extinguished) by first deducting therefrom the potential relief attributable to group claims.

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(2) Subject to subsection (3) below, in relation to the loss or other amount of a relevant accounting period of a group/consortium company, the potential relief attributable to group claims is the aggregate amount of group relief that would be claimed if every company which, as a member of the same group of companies as the group/consortium company, could make a group claim in respect of that loss or other amount made such a claim for an amount which, when set against the claimant company's total profits for its corresponding accounting period, would equal those profits.

(3) Where for any accounting period another member of the group of companies of which the group/consortium company is a member has a loss or other amount available for relief and one or more group claims is or are in fact made in respect of that loss or other amount, account shall be taken of the relief so claimed before determining (in relation to the loss or other amount of the group/consortium company) the potential relief attributable to group claims under subsection (2) above.

(4) [M480]In any case where—

(a) a consortium claim is made by a group/consortium company in respect of a loss or other amount of an accounting period of a member of the consortium, and

(b) the corresponding accounting period of the group/consortium company is a relevant accounting period,

the total profits of the corresponding accounting period of the group/consortium company against **[**[F2427]which an amount may by virtue of that claim be set off by way of group relief**]** shall be treated as reduced (or as the case may be extinguished) by deducting therefrom the potential relief available to the group/consortium company by way of group claims.

(5) Subject to subsection (6) below, in relation to a relevant accounting period of a group/consortium company, the potential relief available to the company by way of group claims is the maximum amount of group relief that could be claimed by the company for that accounting period on group claims relating to the losses or other amounts available for relief of other members of the group of companies of which the group/consortium company is a member.

(6) Where another member of the group of companies of which the group/consortium company is a member in fact makes one or more group claims in respect of losses or other amounts of other members of the group, account shall be taken of the relief already claimed by that company in determining the potential relief available to the group/consortium company by way of group claims under subsection (5) above.

Textual Amendments

F2427 Words in s. 405(4) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 4**

Marginal Citations

M479 Source—1985 Sch.9 2

M480 Source—1985 Sch.9 3

406 Claims relating to losses etc. of consortium company or group member.

(1) [M481]In this section—

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(a) "link company" means a company which is a member of a consortium and is also a member of a group of companies; and

(b) "consortium company", in relation to a link company, means a company owned by the consortium of which the link company is a member; and

(c) "group member", in relation to a link company, means a company which is a member of the group of which the link company is also a member but is not itself a member of the consortium of which the link company is a member.

(2) [M482]Subject to subsections (3) and (4) below, where the link company could (disregarding any deficiency of profits) make a consortium claim in respect of the loss or other amount eligible for relief of a relevant accounting period of a consortium company, a group member may make any consortium claim which could be made by the link company; and the fraction which is **[**[F2428]the relevant fraction for the purposes of section 403C**]** where a group member is the claimant company shall be the same as **[**[F2429]it would be**]** if the link company were the claimant company.

[[F2430](3) Sections 403A to 403C shall have effect in relation to a consortium claim made by a group member by virtue of subsection (2) above as if any time when the claimant company was not a member of the group—

(a) were not comprised in the period which is the overlapping period in the case of that claim; and

(b) were to be treated instead as if it constituted a part of the claim period which did not coincide with any part of the accounting period of the surrendering company to which the claim relates.**]**

(4) The maximum amount of relief which, in the aggregate, may be claimed by group members and the link company by consortium claims relating to the loss or other amount of a relevant accounting period of a consortium company shall not exceed the relief which could have been claimed by the link company (disregarding any deficiency of profits) if subsections (2) and (3) above had not been enacted.

(5) [M483]Subject to subsections (6) to (8) below, where a group member has for a relevant accounting period a loss or other amount available for relief, a consortium company may make any claim in respect of that loss or other amount which it could make if the group member were a member of the consortium at all times when the link company was such a member, but not at any other time.

(6) The fraction which is **[**[F2428]the relevant fraction for the purposes of section 403C**]** in relation to a consortium claim made by virtue of subsection (5) above shall be the same as **[**[F2429]it would be**]** if the link company were the surrendering company, except that the **[**[F2431]overlapping period in respect of which the relevant fraction**]** is to be ascertained shall be that of the group member which is in fact the surrendering company.

[[F2432](7) Sections 403A to 403C shall have effect in relation to a consortium claim made by a consortium company by virtue of subsection (5) above as if any time when the surrendering company was not a member of the group—

(a) were not comprised in the period which is the overlapping period in the case of that claim; and

(b) were to be treated instead as if it constituted a part of the claim period that did not coincide with any part of the accounting period of the surrendering company to which the claim relates.**]**

(8) For any accounting period of a consortium company ("the claimant company's accounting period") the maximum amount of relief which, in the aggregate, may

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be claimed by that company by consortium claims relating to the losses or other amounts of accounting periods of the link company and group members shall not exceed **[**F2433the maximum amount of relief available to the claimant company**]** on a consortium claim in respect of which—

(a) the link company was the surrendering company; and

(b) the link company's accounting period was the same as the claimant company's accounting period.

Textual Amendments

F2428 Words in s. 406(2)(6) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(1)(a)**

F2429 Words in s. 406(2)(6) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(1)(b)**

F2430 S. 406(3) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(2)**

F2431 Words in s. 406(6) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(2)(5)**

F2432 S. 406(7) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(3)**

F2433 Words in s. 406(8) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 5(4)**

Marginal Citations

M481 Source—1985 Sch.9 5(1), 6(1)

M482 Source—1985 Sch.9 5(2)-(4)

M483 Source—1985 Sch.9 6(2)-(5)

407 Relationship between group relief and other relief.

(1) M484Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period—

(a) before reduction by any relief derived from a subsequent accounting period, but

(b) M485as reduced by any other relief from tax (including relief in respect of charges on income under section 338(1) **[**F2434of this Act or by virtue of section 83 of, or paragraph 4 of Schedule 11 to, the Finance Act 1996 (non-trading deficits)**]**) determined on the assumption that the company makes all relevant claims under section **[**F2435393A(1)**]** of this Act and **[**F2436section 260(3) of the Capital Allowances Act**]**(set-off of capital allowances against total profits).

(2) For the purposes of this section "relief derived from a subsequent accounting period" means—

(a) M486relief under section **[**F2437393A(1)(b)**]** in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed; and

(b) M487relief under **[**F2438section 260(3) of the Capital Allowances Act**]** in respect of capital allowances falling to be made for an accounting period after the accounting period the profits of which are being computed; **[**F2439and**]**

[F2440**[**F2441(c) relief in pursuance of a claim under section 83(2) of, or paragraph 4 of Schedule 11 to, the Finance Act 1996 (non-trading deficits) in respect of any

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deficit for a deficit period after the accounting period the profits of which are being computed.**]]**

(3) [M488]The reductions to be made in total profits of an accounting period against which any relief derived from a subsequent accounting period is to be set off shall include any group relief for that first-mentioned accounting period.

Textual Amendments

F2434 Words in s. 407(1)(b) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 22(1)** (with Sch. 15)

F2435 Words in s. 407(1)(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(1)**

F2436 Words in s. 407(1)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 37(1)** (with Sch. 3)

F2437 Words in s. 407(2)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 14(2)**

F2438 Words in s. 407(2)(b) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 37(2)** (with Sch. 3)

F2439 Word in s. 407(2) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**

F2440 S. 407(2)(c) and words inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**

F2441 S. 407(2)(c) substituted for para. (c) and words following it (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 22(2)** (with Sch. 15)

Marginal Citations

M484 Source—1970 s.260(1)

M485 Source—1970 s.260(1), (2)

M486 Source—1970 s.260(3)(a), (d)

M487 Source—1970 s.260(3)(b)

M488 Source—1970 s.260(4)

408 Corresponding accounting periods.

F2442 . . . . . .

Textual Amendments

F2442 Ss. 408, 409 repealed (with effect in accordance with Sch. 7 para. 9, Sch. Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

409 Companies joining or leaving group or consortium.

F2443 . . . . . .

Textual Amendments

F2443 Ss. 408, 409 repealed (with effect in accordance with Sch. 7 para. 9, Sch. Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

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410 Arrangements for transfer of company to another group or consortium.

(1) [M489]If, apart from this section, two companies ("the first company" and "the second company") would be treated as members of the same group of companies and—

(a) in an accounting period one of the two companies has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and

(b) arrangements are in existence by virtue of which, at some time during or after the expiry of that accounting period—

(i) the first company or any successor of it could cease to be a member of the same group of companies as the second company and could become a member of the same group of companies as a third company; or

(ii) any person has or could obtain, or any persons together have or could obtain, control of the first company but not of the second; or

(iii) a third company could begin to carry on the whole or any part of a trade which, at any time in that accounting period, is carried on by the first company and could do so either as a successor of the first company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the first company shall be treated as not being a member of the same group of companies as the second company.

(2) If a trading company is owned by a consortium or is a 90 per cent. subsidiary of a holding company which is owned by a consortium and—

(a) in any accounting period the trading company or a member of the consortium has trading losses or other amounts eligible for relief from corporation tax which it would, apart from this section, be entitled to surrender by way of group relief; and

(b) arrangements are in existence by virtue of which—

(i) the trading company or any successor of it could, at some time during or after the expiry of that accounting period, become a 75 per cent. subsidiary of a third company; or

(ii) any person who owns, or any persons who together own, less than 50 per cent. of the ordinary share capital of the trading company has or together have, or could at some time during or after the expiry of that accounting period obtain, control of the trading company; or

(iii) any person, other than a holding company of which the trading company is a 90 per cent. subsidiary, either alone or together with connected persons, holds or could obtain, or controls or could control the exercise of not less than 75 per cent. of the votes which may be cast on a poll taken at a general meeting of that trading company in that accounting period or in any subsequent accounting period; or

(iv) a third company could begin to carry on, at some time during or after the expiry of that accounting period, the whole or any part of a trade which, at any time in that accounting period, is carried on by the trading company and could do so either as a successor of the trading company or as a successor of another company which is not a third company but which, at some time during or after the expiry of that

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accounting period, has begun to carry on the whole or any part of that trade;

then, for the purposes of this Chapter, the trading company shall be treated as though it did not (as the surrendering company or the claimant company) fall within section 402(3).

(3) In any case where a trading company is a 90 per cent. subsidiary of a holding company which is owned by a consortium, any reference in subsection (2) above to the trading company, other than a reference in paragraph (b)(iv), shall be construed as including a reference to the holding company.

(4) In this section "third company" means a company which, apart from any provision made by or under any such arrangements as are specified in paragraph (b) of either subsection (1) or subsection (2) above, is not a member of the same group of companies as the first company or, as the case may be, the trading company or the holding company to which subsection (2) above applies.

(5) In subsections (1) and (2) above—

"arrangements" means arrangements of any kind whether in writing or not;

"connected persons" shall be construed in accordance with section 839 **[**[F2444]but as if subsection (7) of that section (persons acting together to control a company are connected) were omitted**]**; and

"control" has the meaning assigned by section 840.

(6) For the purposes of subsections (1) and (2) above a company is the successor of another if it carries on a trade which, in whole or in part, the other company has ceased to carry on and the circumstances are such that—

(a) section 343 applies in relation to the two companies as the predecessor and the successor within the meaning of that section; or

(b) the two companies are connected with each other within the meaning of section 839.

(7) [M490]Where by virtue of any enactment a Minister of the Crown or Northern Ireland department has power to give directions to a statutory body as to the disposal of assets belonging to, or to a subsidiary of, that body, the existence of that power shall not be regarded as constituting or as having at any time constituted an arrangement within the meaning of this section.

Textual Amendments

F2444 Words in s. 410(5) inserted (19.3.1997) by Finance Act 1997 (c. 16), **s. 68**

Modifications etc. (not altering text)

C349 S. 410 restricted (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17**

C350 S. 410 restricted (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 16** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C351 S. 410 restricted (19.7.1995) by Crown Agents Act 1995 (c. 24) s. 7(2)

C352 S. 410 restricted (6.11.2000) by Postal Services Act 2000 (c. 26), s. 130(1), **Sch. 4 para. 5**; S.I. 2000/2957, art. 2(1), **Sch. 1**

C353 S. 410 restricted (1.4.2002) by The Scottish Water (Transfer of Functions, etc.) (Tax Provisions) Order 2002 (S.I. 2002/653), **art. 5** (with art. 6)

C354 S. 410(1)(2) restricted (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 8(1)**

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C355 S. 410(1)(2) restricted (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 20(1)** (with s. 43(6))

C356 S.. 410(1)(4)(5)-(7) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 (S.I. 2001/1163), **reg. 10**

C357 *See* Trustee Savings Bank Act 1985 s.5*and* Sch.2 para.6(8)—s.410*not to apply to transfers effected by* s.3*of the* TSB Act 1985.

Marginal Citations

M489 Source—1973 s.29, 32(6); 1981 s.40(6)

M490 Source—1981 s.47

411 Exclusion of double allowances.

(1) [M491]Relief shall not be given more than once in respect of the same amount, whether by giving group relief and by giving some other relief (in any accounting period) to the surrendering company, or by giving group relief more than once.

(2) [F2445]. . . . . .

(3) [F2445]. . . . . .

(4) [F2445]. . . . . .

(5) [F2445]. . . . . .

(6) [F2445]. . . . . .

(7) [F2445]. . . . . .

(8) [F2445]. . . . . .

(9) [F2445]. . . . . .

(10) [F2446]. . . Any reference in **[**[F2447]the Capital Allowances Act, except Parts 6 and 10**]**, to an allowance made includes a reference to an allowance which would be made but for the granting of group relief, or but for that and but for an insufficiency of profits or other income against which to make it.

Textual Amendments

F2445 S. 411(2)-(9) repealed (with effect in accordance with Sch. 7 para. 6, Sch. 8 Pt. 2(14) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 7 para. 6, **Sch. 8 Pt. 2(14)**

F2446 Words in s. 411(10) repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 38(a), **Sch. 4** (with Sch. 3)

F2447 Words in s. 411(10) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 38(b)** (with Sch. 3)

Modifications etc. (not altering text)

C358 S. 411(1) applied (with modifications) (31.3.2001 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 (S.I. 2001/1163), **reg. 10**

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Marginal Citations

M491 Source—1970 s.263(1),(2)

VALID FROM 01/04/2009

[F2448 411ZA No relief where deduction of relevant return under alternative finance arrangements disallowed

(1) This section applies if the surrendering company is prevented from obtaining a deduction in respect of an amount by section 520 of CTA 2009 (provision not at arm's length: non-deductibility of relevant return).

(2) The amount may not be surrendered by way of group relief.]

Textual Amendments

F2448 S. 411ZA inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 124** (with Sch. 2 Pts. 1, 2)

Modifications etc. (not altering text)

C359 S. 411ZA: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 521** (with Sch. 2 Pts. 1, 2, paras. 73-75)

[F2449 411A Group relief by way of substitution for loss relief.

F2450 . . . . . .]

Textual Amendments

F2449 S. 411A inserted (with effect in accordance with s. 101(2) of the amending Act) by Finance Act 1990 (c. 29), **s. 101(1)**

F2450 S. 411A repealed (with effect in accordance with s. 93(2) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 11 para. 1, **Sch. 20 Pt. 3(21)**, Note

[F2451 412 Claims and adjustments.

(1) Claims for group relief are dealt with in Part VIII of Schedule 18 to the Finance Act 1998.

(2) Paragraph 76 of that Schedule provides for assessments or other adjustments where group relief has been given which is or has become excessive.]

Textual Amendments

F2451 S. 412 substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 46**; S.I. 1998/3173, **art. 2**

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413 Interpretation of Chapter IV.

(1) The following provisions of this section have effect for the interpretation of this Chapter.

(2) [M492]In this Chapter—

"claimant company" has the meaning given by section 402(1);

[[F2452]"company" means any body corporate;**]**

"consortium claim" means a claim for group relief made by virtue of section 402(3);

"group claim" means a claim for group relief made by virtue of section 402(2);

"group/consortium company" means a company which is both a member of a group of companies and a company owned by a consortium;

"group relief" has the meaning given by section 402(1);

[[F2453]"non-resident company" means a company that is not resident in the United Kingdom;**]**

"relevant accounting period" means an accounting period beginning after 31st July 1985; and

"surrendering company" has the meaning given by section 402(1).

[[F2454](2A) For the purposes of group relief an accounting period of the claimant company which falls wholly or partly within an accounting period of the surrendering company shall be taken to correspond to that accounting period of the surrendering company.**]**

(3) [M493]For the purposes of this Chapter—

(a) two companies shall be deemed to be members of a group of companies if one is the 75 per cent. subsidiary of the other or both are 75 per cent. subsidiaries of a third company;

(b) "holding company" means a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent. subsidiaries and which are trading companies; and

(c) "trading company" means a company the business of which consists wholly or mainly in the carrying on of a trade or trades.

(4) In applying for the purposes of this Chapter the definition of "75 per cent. subsidiary" in section 838, any share capital of a registered industrial and provident society shall be treated as ordinary share capital.

(5) [F2455]. . . In determining for the purposes of this Chapter whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt;[F2456]. . .

(c) [F2456]. . . . . .

(6) [M494]References to a company being owned by a consortium shall be construed in accordance with paragraph (a) below except for the purposes of the definition of "group consortium company" in subsection (2) above and of sections **[**[F2457]403ZA(3)**]**,

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406(1)(b) and 409(5), (6) and (7), and for those purposes shall be construed in accordance with paragraph (b) below—

(a) a company is owned by a consortium if three-quarters or more of the ordinary share capital of the company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;

(b) a company is owned by a consortium if—

(i) it is either such a trading company as is referred to in paragraph (a) or (b) of subsection (3) of section 402 or such a holding company as is referred to in paragraph (c) of that subsection, and

(ii) three-quarters or more of the ordinary share capital of the company or, in the case of a company within section 402(3)(b), of its holding company is beneficially owned between them by companies of which none beneficially owns less than one-twentieth of that capital;

and the companies which so own three-quarters or more of that ordinary share capital are in this Chapter called the members of the consortium.

(7) [M495]Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary or a 90 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this Chapter unless, additionally at that time—

(a) the parent company is beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to not less than 75 per cent. or, as the case may be, 90 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(8) [F2458] . . . . . .

(9) [F2458] . . . . . .

(10) Schedule 18 shall have effect for supplementing this section.

Textual Amendments

F2452 S. 413(2): definition of "company" inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 7 para. 2(1)** (with Sch. 7 para. 6(1))

F2453 S. 413(2): definition of "non-resident company" inserted (with effect in accordance with Sch. 27 para. 6(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 7 para. 2(1)** (with Sch. 7 para. 6(1))

F2454 S. 413(2A) inserted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 7**

F2455 Words in s. 413(5) repealed (with efffect in accordance with Sch. 27 para. 6(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 27 para. 2(2), **Sch. 40 Pt. 2(11)**, Note 3

F2456 S. 413(5)(c) and preceding word repealed (with efffect in accordance with Sch. 27 para. 6(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 27 para. 2(2), **Sch. 40 Pt. 2(11)**, Note 3

F2457 Words in s. 413(6) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 38** (with Sch. 5 para. 73)

F2458 S. 413(8)(9) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(b)(5), **Sch. 40 Pt. 2(11)**, Note 2

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Modifications etc. (not altering text)

C360 S. 413(3) applied (with modifications) (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **regs. 1**, 35

C361 S. 413(6)(a) applied (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17(7)**

Marginal Citations

M492 Source—1970 s.258; 1985 Sch.9 1

M493 Source—1970 s.258(5)-(7)

M494 Source—1970 s.258(8); 1984 s.46(2); 1985 Sch.9 1(a)

M495 Source—1973 s.28(2)-(5); 1981 s.40(5)

PART XI

CLOSE COMPANIES

CHAPTER I

INTERPRETATIVE PROVISIONS

414 Close companies.

(1) [M496]For the purposes of the Tax Acts, a "close company" is one which is under the control of five or fewer participators, or of participators who are directors, except that the expression does not apply—

(a) to a company not resident in the United Kingdom;

(b) to a registered industrial and provident society within the meaning of section 486(12) or to a building society;

(c) to a company controlled by or on behalf of the Crown, and not otherwise a close company; or

(d) to a company falling within section 415 or subsection (5) below.

[F2459](2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is also a close company if five or fewer participators, or participators who are directors, together possess or are entitled to acquire—

(a) such rights as would, in the event of the winding-up of the company ("the relevant company") on the basis set out in subsection (2A) below, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or

(b) such rights as would in that event so entitle them if any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company) were disregarded.

(2A) In the notional winding-up of the relevant company, the part of the assets available for distribution among the participators which any person is entitled to receive is the aggregate of—

(a) any part of those assets which he would be entitled to receive in the event of the winding-up of the company, and

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(b) any part of those assets which he would be entitled to receive if—

(i) any other company which is a participator in the relevant company and is entitled to receive any assets in the notional winding-up were also wound up on the basis set out in this subsection, and

(ii) the part of the assets of the relevant company to which the other company is entitled were distributed among the participators in the other company in proportion to their respective entitlement to the assets of the other company available for distribution among the participators.

(2B) In the application of subsection (2A) above to the notional winding-up of the other company and to any further notional winding-up required by paragraph (b) of that subsection (or by any further application of that paragraph), references to "the relevant company" shall have effect as references to the company concerned.

(2C) In ascertaining under subsection (2) above whether five or fewer participators, or participators who are directors, together possess or are entitled to acquire rights such as are mentioned in paragraph (a) or (b) of that subsection—

(a) a person shall be treated as a participator in or director of the relevant company if he is a participator in or director of any other company which would be entitled to receive assets in the notional winding-up of the relevant company on the basis set out in subsection (2A) above, and

(b) except in the application of subsection (2A) above, no account shall be taken of a participator which is a company unless the company possesses or is entitled to acquire the rights in a fiduciary or representative capacity.

(2D) Subsections (4) to (6) of section 416 apply for the purposes of subsections (2) and (2A) above as they apply for the purposes of subsection (2) of that sections.**]**

(3) [M497]*In ascertaining under subsection* (2)*above whether any amount could be apportioned among five or fewer participators or among participators who are directors, account shall, in cases where an original apportionment and any sub-apportionment are involved, be taken only of persons among whom that amount could finally be apportioned as the result of the whole process of original apportionment and sub-apportionment and those persons shall be treated as participators or directors if they are participators or directors of any company in the case of which either an original apportionment or any sub-apportionment could be made*[F2460].

(4) [M498]For the purposes of this section—

(a) a company is to be treated as controlled by or on behalf of the Crown if, but only if, it is under the control of the Crown or of persons acting on behalf of the Crown, independently of any other person, and

(b) where a company is so controlled, it shall not be treated as being otherwise a close company unless it can be treated as a close company as being under the control of persons acting independently of the Crown.

(5) [M499]A company is not to be treated as a close company—

(a) if—

(i) it is controlled by a company which is not a close company, or by two or more companies none of which is a close company; and

(ii) it cannot be treated as a close company except by taking as one of the five or fewer participators requisite for its being so treated a company which is not a close company;

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(b) if it cannot be treated as a close company except by virtue of **[**F2461paragraph (a) of subsection (2) above or paragraph (c) of section 416(2) and it would not be a close company if the references in those paragraphs**]** to participators did not include loan creditors who are companies other than close companies.

(6) References in subsection (5) above to a close company shall be treated as applying to any company which, if resident in the United Kingdom, would be a close company.

(7) M500If shares in any company ("the first company") are held on trust for an exempt approved scheme as defined in section 592, then, unless the scheme is established wholly or mainly for the benefit of persons who are, or are dependants of, directors or employees or past directors or employees of—

(a) the first company; or

(b) an associated company of the first company; or

(c) a company which is under the control of any director or associate of a director of the first company or of two or more persons each of whom is such a director or associate; or

(d) a close company;

the persons holding the shares shall, for the purposes of subsection (5) above, be deemed to be the beneficial owners of the shares and, in that capacity, to be a company which is not a close company.

Textual Amendments

F2459 1989 s. 104(1) from 1 April 1989. Previously "(2) Subject to section 415 and subsection (5) below, a company resident in the United Kingdom (but not falling within subsection (1)(b) above) is a close company if-(a) on the assumtion that it is so, or (b) on the assumption that it and any other such company or companies are so, more than half of any any amount falling to be apportioned under section 423 in the case of the company (including any sum which has been apportioned to it, or could on either of those assumptions be apportioned to it, under that section) could be apportioned among five or fewer participators, or among participators who are directors.".

F2460 Repealed by 1989 ss. 104(2) and 187 and Sch. 17 Part V from 1 April 1989

F2461 1989 s.104(3)*from* 1*April* 1989.*Previously*
"paragraph (c) of section 416(2) and it would not be a close company if the reference in that paragraph".

Modifications etc. (not altering text)

C362 S. 414 modified by Finance Act 1996 (c. 8), **Sch. 13 para. 9A(4)** (as inserted (with effect in accordance with s. 104(5) of the 2002 amending Act) by Finance Act 2002 (c. 23), **s. 104(3)**)

C363 S. 414 modified by Finance Act 1996 (c. 8), **Sch. 9 para. 2(5)** (as inserted (with effect in accordance with s. 82(2) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 22(4)**)

C364 S. 414 applied (with modifications) (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 453**, 456(7) (with Sch. 2)

C365 *See* 1979(C) s.155(1)—*definition applied for purposes of capital gains.*

Marginal Citations

M496 Source—1970 s.282(1)

M497 Source—1970 s.282(2); 1972 Sch.17 1

M498 Source—1970 s.282(3)

M499 1970 s.282(4), (5); 1972 Sch.17 1

M500 Source—1971 s.25(6)

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415 Certain quoted companies not to be close companies.

(1) [M501]Subject to the following provisions of this section, a company is not to be treated as being at any time a close company if—

(a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, and are at that time beneficially held by, the public, and

(b) any such shares have within the preceding 12 months been the subject of dealings on a recognised stock exchange, and the shares have within those 12 months been **[**[F2462]listed**]** in the official list of a recognised stock exchange.

(2) Subsection (1) above shall not apply to a company at any time when the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.

(3) For the purposes of subsection (1) above shares in a company shall be deemed to be beneficially held by the public if, and only if, they—

(a) fall within subsection (4) below, and

(b) are not within the exceptions in subsection (5) below,

and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.

(4) Shares shall fall within this subsection (as being beneficially held by the public)—

(a) [M502]if beneficially held by a company resident in the United Kingdom which is not a close company, or by a company not so resident which would not be a close company if it were so resident, or

(b) [M503]if held on trust for an exempt approved scheme as defined in section 592, or

(c) [M504]If they are not comprised in a principal member's holding.

(5) [M505]Shares shall not be deemed to be held by the public if they are held—

(a) by any director or associate of a director of the company, or

(b) by any company which is under the control of any such director or associate, or of two or more persons each of whom is such a director or associate, or

(c) by any associated company of the company, or

(d) as part of any fund the capital or income of which is applicable or applied wholly or mainly for the benefit of, or of the dependants of, the employees or directors, or past employees or directors, of the company, or of any company within paragraph (b) or (c) above.

References in this subsection to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.

(6) For the purposes of this section—

(a) a person is a principal member of a company if he possesses a percentage of the voting power in the company of more than 5 per cent. and, where there are more than five such persons, if he is one of the five persons who possess the greatest percentages or if, because two or more persons possess equal percentages of the voting power in the company, there are no such five persons, he is one of the six or more persons (so as to include those two or

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more who possess equal percentages) who possess the greatest percentages, and

(b) a principal member's holding consists of the shares which carry the voting power possessed by him.

(7) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.

(8) In this section "shares" include stock.

Textual Amendments

F2462 Word in s. 415(1)(b) substituted (with effect in accordance with Sch. 38 para. 6(8) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(f)**

Marginal Citations

M501 Source—1970 s.283(1)-(3)
M502 Source—1970 s.283(4)(a)
M503 Source—1970 s.283(4)(bb); 1970(F) Sch.5 Part III 12(3)
M504 Source—1970 s.283(4)(c)
M505 Source—1970 s.283(5)-(8)

416 Meaning of "associated company" and "control".

(1) **M506**For the purposes of this Part,*except paragraphs* 2*and* 9(1)(a), (2)(a)*and* (3)(a)*of Schedule* 19 **F2463**, a company is to be treated as another's "associated company" at a given time if, at that time or at any other time within one year previously, one of the two has control of the other, or both are under the control of the same person or persons.

(2) **M507**For the purposes of this Part, a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire, direct or indirect control over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire—

(a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or

(b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or

(c) such rights as would, in the event of the winding-up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

(3) Where two or more persons together satisfy any of the conditions of subsection (2) above, they shall be taken to have control of the company.

(4) For the purposes of subsection (2) above a person shall be treated as entitled to acquire anything which he is entitled to acquire at a future date, or will at a future date be entitled to acquire.

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(5) [M508]For the purposes of subsections (2) and (3) above, there shall be attributed to any person any rights or powers of a nominee for him, that is to say, any rights or powers which another person possesses on his behalf or may be required to exercise on his direction or behalf.

(6) For the purposes of subsections (2) and (3) above, there may also be attributed to any person all the rights and powers of any company of which he has, or he and associates of his have, control or any two or more such companies, or of any associate of his or of any two or more associates of his, including those attributed to a company or associate under subsection (5) above, but not those attributed to an associate under this subsection; and such attributions shall be made under this subsection as will result in the company being treated as under the control of five or fewer participators if it can be so treated.

Textual Amendments

F2463 Words repealed by 1989 s. 187 and Sch. 17 Part v in relation to accounting periods beginning after 31 March 1989

Modifications etc. (not altering text)

C366 S. 416 applied (with modifications) by Finance Act 1991 (c. 31, SIF 63:1), s. 89(1), **Sch. 16 para. 10(9)**
S. 416 applied (with modifications) by Finance Act 1981 (c. 35, SIF 63:2), **s. 82A(11)(13)** (in relation to payments received on or after 19.3.1991) (as inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 91, **Sch. 18 para. 4**)

C367 S. 416 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 86(5), 288(1), 289, Sch. 5 paras. 2(8)(9), 8(8), **9(9)(10)** (with ss. 60, 101(1), 171, 201(3))
S. 416 applied (1.10.1992) by S.I. 1992/1725 (N.I. 15), **art. 62(4)**; S.R. 1992/402, **art. 2(a)**

C368 S. 416 applied (17.12.1996) by Housing Grants, Construction and Regeneration Act 1996 (c. 53), **ss. 54(2)**, 150(3); S.I. 1996/2842, **art. 3**

C369 S, 416 applied (N.I.) (1.10.2003 for specified purposes and 1.12.2003 otherwise) by The Housing (Northern Ireland) Order 2003 (S.I. 2003/412), **arts. 1(3)**, 85(2); S.R. 2003/270, art. 2(4), **Sch. 3**

C370 S. 416(2)-(6) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 184(1)(b)**, 289 (with ss. 60, 101(1), 171, 201(3))

C371 S. 416(2)-(6) applied (29.4.1996) by Finance Act 1996 (c. 8), **s. 87(6)** (with Schs. 10, 11)

C372 S. 416(2)-(6) applied (with effect in accordance with Sch. 9 para. 17(1) of the affecting Act) by Finance Act 1996 (c. 8) Sch. 9 para. 17(9)

C373 S. 416(2)-(5) applied (1.3.1996) by Gas Act 1995 (c. 45), **ss. 12(7)**, 18(4) (with Sch. 5 para. 1); S.I. 1996/218, **art. 3**

C374 S. 416(2)-(5) applied (10.6.1996) by The Gas (Northern Ireland) Order 1996 (S.I. 1996/275), **arts. 1(2)**, 39(7) (with art. 71); S.R. 1996/216, **art. 2** (with arts. 3, 4)

C375 S. 416(2)-(5) applied (with modifications) by Gas Act 1986 (c. 44), **s. 19E(4)** (as inserted (10.8.2000) by The Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), **Sch. 2 para. 1**)

C376 S. 416(2)-(5) applied (with modifications) by Petroleum Act 1998 (c. 17), **s. 17E(7)** (as inserted (10.8.2000) by The Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937), **Sch. 4 para. 4**)

C377 S. 416(2)-(6) applied (with modifications) (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 8(2)-(5)**

C378 S. 416(2)-(6) applied (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 20**; and s. 416(2)-(6) applied by that para. 20 as amended by Finance Act 2004 (c. 12), Sch. 20 paras. 4, **15**

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C379 S. 416(2)-(6) applied (with application in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 33(5)**

C380 S. 416(2)-(6) applied by Finance Act 1996 (c. 8), **Sch.15 para. 11(2D)(a)** (as inserted (with effect in accordance with s. 82(2) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 41(2)**)

C381 S. 416(2)-(6) applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 59(4)**

C382 S. 416(2)-(6) applied by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 5 para. 10(3)** (as substituted (with effect in accordance with s. 96(6) of the 2004 amending Act) by Finance Act 2004 (c. 12), **s. 96(3)**)

C383 S. 416(2)-(6) applied (with effect in accordance with s. 77 of the affecting Act) by Finance Act 2004 (c. 12), **Sch. 11 para. 4(2)**; S.I. 2006/3240, **art. 2**

C384 S. 416(2)-(6) applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 784(6)** (with Sch. 2 Pts. 1, 2)

Marginal Citations

M506 Source—1970 s.302(1); 1972 Sch.24 21

M507 Source—1970 s.302(2)-(4); 1972 Sch.17 5

M508 Source—1970 s.302(5), (6)

417 Meaning of "participator", "associate", "director" and "loan creditor".

(1) [M509]For the purposes of this Part, a "participator" is, in relation to any company, a person having a share or interest in the capital or income of the company, and, without prejudice to the generality of the preceding words, includes—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any loan creditor of the company;

(c) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company (construing "distributions" without regard to section 418) or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption; and

(d) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit.

In this subsection references to being entitled to do anything apply where a person is presently entitled to do it at a future date, or will at a future date be entitled to do it.

(2) The provisions of subsection (1) above are without prejudice to any particular provision of this Part requiring a participator in one company to be treated as being also a participator in another company.

(3) [M510] "associate" means, in relation to a participator—

(a) any relative or partner of the participator;

(b) the trustee or trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor ("settlement" and "settlor" having here the same meaning as in **[**[F2464]Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)**]**); and

(c) where the participator is interested in any shares or obligations of the company which are subject to any trust, or are part of the estate of a deceased person—

(i) the trustee or trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and

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(ii) if the participator is a company, any other company interested in those shares or obligations;

and has a corresponding meaning in relation to a person other than a participator.

(4) [M511]In subsection (3) above "relative" means **[**[F2465]spouse or civil partner**]**, parent or remoter forebear, child or remoter issue, or brother or sister.

(5) For the purposes of this Part "director" includes any person occupying the position of director by whatever name called, any person in accordance with whose directions or instructions the directors are accustomed to act, and any person who—

(a) is a manager of the company or otherwise concerned in the management of the company's trade or business, and

(b) is, either on his own or with one or more associates, the beneficial owner of, or able, directly or through the medium of other companies or by any other indirect means, to control 20 per cent. or over of the ordinary share capital of the company.

(6) In subsection (5)(b) above the expression "either on his own or with one or more associates" requires a person to be treated as owning or, as the case may be, controlling what any associate owns or controls, even if he does not own or control share capital on his own.

(7) [M512]Subject to subsection (9) below, for the purposes of this Part "loan creditor", in relation to a company, means a creditor in respect of any debt incurred by the company—

(a) for any money borrowed or capital assets acquired by the company; or

(b) for any right to receive income created in favour of the company; or

(c) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of the debt (including any premium thereon);

or in respect of any redeemable loan capital issued by the company.

(8) [M513]Subject to subsection (9) below, a person who is not the creditor in respect of any debt or loan capital to which subsection (7) above applies but nevertheless has a beneficial interest therein shall, to the extent of that interest, be treated for the purposes of this Part as a loan creditor in respect of that debt or loan capital.

(9) [M514]A person carrying on a business of banking shall not be deemed to be a loan creditor in respect of any loan capital or debt issued or incurred by the company for money lent by him to the company in the ordinary course of that business.

Textual Amendments

F2464 Words in s. 417(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 173** (with Sch. 2)

F2465 Words in s. 417(4) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 72

Modifications etc. (not altering text)

C385 *Definition of* "participator",*excluding* "loan creditor",*applied for purposes of* 1979(C) s.149 (*capital gains tax relief on disposals to employee trusts*).*Definition of*

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"participator"
applied for purposes of—1988 s.168(11)—*directors etc.*1988 s.187(3)—*share option and profit sharing schemes.*1988 s.360A—*loan to buy interest in close company.*1989 Sch.5—*employee share ownership trusts.*

C386 In s. 417(1): definition of 'participator' applied by Finance Act 1991 (c. 31, SIF 63:1), s. 89, Sch. 16 paras. 4(10), 10(10), **11(11)**
and applied by Finance Act 1981 (c. 35, SIF 63:2), **s. 82A(12)(13)** (in relation to payments received on or after 19.3.1991) (as inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 91, **Sch. 18 para. 4**)

C387 *See* s.360(4)(b)*ante with regard to loans made before* 14*November* 1986.

C388 *Definition of*
"associate"
applied for purposes of:—1988 s.168 (Ch.II Part V) (*expenses of directors and others*).1988 s.312 (Ch.III Part VII) (*Business Expansion Scheme*).1989 Sch.5 para.16—*employee share ownership trusts.*

C389 *Definition applied for purposes of* 1988(F) s.131—*penalties; and* 1989 s.134—*non-payment of tax by non-residents.*

C390 *Definition applied for purposes of* 1989 Sch.12 Pt.I—*close companies: administrative provisions.*

Marginal Citations

M509 Source—1970 s.303(1), (2)
M510 Source—1970 s.303(3); 1970(F) Sch.5 Part III 12(4); 1987 s.37(1)
M511 Source—1970 s.303(4)-(6)
M512 Source—1970 s.303(7)
M513 Source—1970 s.303(8); 1972 Sch.17 7
M514 Source—1970 s.303(7)

Additional matters to be treated as distributions

[418 "Distribution" to include certain expenses of close companies.

(1) M515Subject to such exceptions as are mentioned in section 209(1), in the Corporation Tax Acts "distribution", in relation to a close company, includes, unless otherwise stated, any such amount as is required to be treated as a distribution by subsection (2) below.

(2) M516Subject to subsection (3) below, where a close company incurs expense in or in connection with the provision for any participator of living or other accommodation, of entertainment, of domestic or other services, or of other benefits or facilities of whatever nature, the company shall be treated as making a distribution to him of an amount equal to so much of that expense as is not made good to the company by the participator.

(3) Subsection (2) above shall not apply to expense incurred in or in connection with the provision—

(a) M517for a person employed in **[**F2466employment **[**F2467to which Part 3 of ITEPA 2003 applies (earnings and benefits etc. treated as employment income) without the exclusion in section 216 of that Act (provisions not applicable to lower-paid employment)**]]** of such benefits as are mentioned in any of **[**F2468Chapters 6 to 10 of Part 3 and section 223 of that Act (cars and vans, loans, shares, other benefits, and payments on account of director's tax)**]**; or

(b) M518of living accommodation for any person if the accommodation is (within the meaning of **[**F2469Chapter 5 of Part 3 of ITEPA 2003**]**) provided by reason of his employment; or

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(c) M519for the spouse **[**F2470or civil partner**]**, children or dependants of a person employed by the company of any pension, annuity, lump sum, gratuity or other like benefit to be given on that person's death or retirement.

(4) M520The amount of the expense to be taken into account under subsection (2) above as a distribution shall be the same as would under **[**F2471 Chapters 6 to 10 of Part 3 of ITEPA 2003**]** be the cash equivalent of the resultant benefit to the participator.

(5) M521Subsection (2) above shall not apply if the company and the participator are both resident in the United Kingdom and—

(a) one is a subsidiary of the other or both are subsidiaries of a third company also so resident, and

(b) the benefit to the participator arises on or in connection with a transfer of assets or liabilities by the company to him, or to the company by him.

(6) The question whether one body corporate is a subsidiary of another for the purposes of subsection (5) above shall be determined as a question whether it is a 51 per cent. subsidiary of that other, except that that other shall be treated as not being the owner—

(a) of any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) of any share capital which it owns indirectly, and which is owned directly by a body corporate for which a profit on a sale of the shares would be a trading receipt; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom.

(7) Where each of two or more close companies makes a payment to a person who is not a participator in that company, but is a participator in another of those companies, and the companies are acting in concert or under arrangements made by any person, then each of those companies and any participator in it shall be treated as if the payment made to him had been made by that company.

This subsection shall apply, with any necessary adaptations, in relation to the giving of any consideration, and to the provision of any facilities, as it applies in relation to the making of a payment.

(8) For the purposes of this section any reference to a participator includes an associate of a participator, and any participator in a company which controls another company shall be treated as being also a participator in that other company.**]**

Textual Amendments

F2466 1989 s.53(2)(f).*Previously*
"director's or higher-paid employment (within the meaning of section 167)".

F2467 Words in s. 418(3)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 55(2)(a)** (with Sch. 7)

F2468 Words in s. 418(3)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 55(2)(b)** (with Sch. 7)

F2469 Words in s. 418(3)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 55(3)** (with Sch. 7)

F2470 Words in s. 418(3)(c) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 73

F2471 Words in s. 418(4) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 55(4)** (with Sch. 7)

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Marginal Citations

M515 Source—1970 s.284(1)
M516 Source—1970 s.284(2)
M517 Source—1970 s.284(2)(a); 1976 Sch.9 15
M518 Source—1970 s.284(2)(aa); 1980 s.51(4)
M519 Source—1970 s.284(2)(b); 1976 Sch.9 15; 1977 s.35(4)
M520 Source—1970 s.284(3); 1976 Sch.9 16
M521 Source—1970 s.284(4)-(7)

CHAPTER II

CHARGES TO TAX IN CONNECTION WITH LOANS

Modifications etc. (not altering text)

C391 *See* 1989 s.107*and* Sch.12—*close companies: administrative provisions.*

419 Loans to participators etc.

(1) M522Subject to the following provisions of this section and section 420, where a close company, otherwise than in the ordinary course of a business carried on by it which includes the lending of money, makes any loan or advances any money to an individual who is a participator in the company or an associate of a participator, there shall be assessed on and recoverable from the company, as if it were an amount of corporation tax chargeable on the company for the accounting period in which the loan or advance is made, an amount equal to **[**F2472**]**25 per cent. of the amount of the loan or advance**]**.

In relation to a loan or advance made in an accounting period ending after the day, not being earlier than 31st March 1992, appointed by order by the Treasury for the purpose of this provision, this subsection shall have effect with the substitution for "assessed on and recoverable" of " due ".

(2) M523For the purposes of this section the cases in which a close company is to be regarded as making a loan to any person include a case where—

(a) that person incurs a debt to the close company; or

(b) a debt due from that person to a third party is assigned to the close company;

and then the close company shall be regarded as making a loan of an amount equal to the debt.

[F2473**]**(3) Tax due by virtue of this section in relation to any loan or advance shall be due and payable **[**F2474**]**in accordance with section 59D of the Management Act**]** on the day following the expiry of nine months from the end of the accounting period in which the loan or advance was made.**]**

(4) M524Where a close company has made a loan or advance which gave rise to a charge to tax on the company under subsection (1) above and

[F2475**]**(a)**]** the loan or advance or any part of it is repaid to the company,**[**F2476**]**or

(b) the whole or part of the debt in respect of the loan or advance is released or written off,**]**

relief shall be given from that tax, or a proportionate part of it F2477. . . .

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Relief under this subsection shall be given on a claim, which must be made within six years from the end of the financial year in which the repayment is made **[**F2478or the release or writing off occurs**]**.

[F2479(4A) Where

[F2480(a)**]** the repayment of the whole or any part of a loan or advance occurs on or after the day on which tax by virtue of this section becomes due in relation to that loan or advance,**[**F2481 or

(b) the release or writing off of the whole or any part of the debt in respect of a loan or advance occurs on or after the day on which tax by virtue of this section becomes due in relation to that loan or advance,**]**

relief in respect of the repayment **[**F2482, release or writing off**]** shall not be given under subsection (4) above at any time before the expiry of nine months from the end of the accounting period in which the repayment **[**F2482, release or writing off**]** occurred.**]**

[F2483(4B) Schedule 1A to the Taxes Management Act 1970 (claims and elections not included in return) applies to a claim for relief under subsection (4) above unless—

(a) the claim is included (by amendment or otherwise) in the return for the period in which the loan or advance was made, and

(b) the relief may be given at the time the claim is made.**]**

(5) M525Where, under arrangements made by any person otherwise than in the ordinary course of a business carried on by him—

(a) a close company makes a loan or advance which, apart from this subsection, does not give rise to any charge on the company under subsection (1) above, and

(b) some person other than the close company makes a payment or transfers property to, or releases or satisfies (in whole or in part) a liability of, an individual who is a participator in the company or an associate of a participator,

then, unless in respect of the matter referred to in paragraph (b) above there falls to be included in the total income of the participator or associate an amount not less than the loan or advance, this section shall apply as if the loan or advance had been made to him.

(6) In subsections (1) and (5)(b) above the references to an individual shall apply also to a company receiving the loan or advance in a fiduciary or representative capacity F2484. . . .

(7) For the purposes of this section any participator in a company which controls another company shall be treated as being also a participator in that other company.

Subordinate Legislation Made

P2 S. 419(1)(3): 30.9.1993 appointed for the purposes of s. 419(1)(3) by S.I. 1992/3066, **art. 2(2)(b)**

Textual Amendments

F2472 Words in s. 419(1) substituted (with effect in accordance with Sch. 3 para. 24(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(2)**

F2473 S. 419(3) substituted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(2)**

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F2474 Words in s. 419(3) inserted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 47(2)**; S.I. 1998/3173, **art. 2**
F2475 Word in s. 419(4) renumbered as s. 419(4)(a) (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(a)**
F2476 S. 419(4)(b) and preceding word inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(b)**
F2477 Words in s. 419(4) repealed (with effect in accordance with s. 117(4)(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 19 para 47(3), **Sch. 27 Pt. 3(28)**, Note; S.I. 1998/3173, **art. 2**
F2478 Words in s. 419(4) inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(3)(c)**
F2479 S. 419(4A) inserted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(3)**
F2480 Word in s. 419(4A) renumbered as s. 419(4A)(a) (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(a)**
F2481 S. 419(4A)(b) and preceding word inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(b)**
F2482 Words in s. 419(4A) inserted (with effect in accordance with Sch. 3 para. 24(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 24(4)(c)**
F2483 S. 419(4B) inserted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 47(4)**; S.I. 1998/3173, **art. 2**
F2484 Words in s. 419(6) repealed (with effect in accordance with s. 173(6) of the repealing Act) by Finance Act 1996 (c. 8), s. 173(4), **Sch. 41 Pt. 5(29)**, Note

Modifications etc. (not altering text)
C392 *See* 1970(M) s.109—*application of* s.419*to corporation tax enactments generally.*

Marginal Citations
M522 Source—1970 s.286(1); 1972 Sch.17 3(2); 1987 (No.2) s.90(3)
M523 Source—1970 s.286(2)
M524 Source—1970 s.286(5); 1972 Sch.17 3(4); 1986 s.43(2); 1976 s.44
M525 Source—1970 s.286(7)-(9)

420 Exceptions from section 419.

(1) [M526]Section 419(2)(a) shall not apply to a debt incurred for the supply by the close company of goods or services in the ordinary course of its trade or business unless the credit given exceeds six months or is longer than that normally given to the company's customers.

(2) [M527]Section 419(1) shall not apply to a loan made to a director or employee of a close company, or of an associated company of the close company, if—

(a) neither the amount of the loan, nor that amount when taken together with any other outstanding loans which—

(i) were made by the close company or any of its associated companies to the borrower*or the wife or husband of the borrower*[F2485] ; and

(ii) if made before 31st March 1971, were made for the purpose of purchasing a dwelling which was or was to be the borrower's only or main residence;

exceeds £15,000 and the outstanding loans falling within sub-paragraph (ii) above do not together exceed £10,000; and

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(b) the borrower works full-time for the close company or any of its associated companies; and

(c) the borrower does not have a material interest in the close company or in any associated company of the close company;

but if the borrower acquires such a material interest at a time when the whole or part of any such loan made after 30th March 1971 remains outstanding the close company shall be regarded as making to him at that time a loan of an amount equal to the sum outstanding.

Section 168(11) shall apply for the purpose of determining whether a person has, for the purpose of this subsection, a material interest in a company, but with the omission of the words following "417(3)".

Textual Amendments

F2485 Words omitted where the loan first mentioned in s. 420(2) is made on or after 6 April 1990-see 1988(F) s. 35 and Sch. 3 para. 16.

Marginal Citations

M526 Source—1970 s.286(2)

M527 Source—1970 s.286(3), (9); 1971 s.25(5); 1972 Sch.17 3(3)

421 Taxation of borrower when loan under section 419 released etc

(1) Subject to the following provisions of this section, where a company is assessed or liable to be assessed under section 419 in respect of a loan or **[**F2486advance made to the trustees of a trust and after the trust has ended**]** releases or writes off the whole or part of the debt in respect of it, then—

(a) for the purpose of computing **[**F2487 the income of the person from whom the debt was due ("the debtor") for corporation tax purposes**]**, a sum equal to the amount so released or written off shall be treated as income received by **[**F2488the debtor**]** after deduction of income tax **[**F2489at the **[**F2490**[**F2491dividend**]** ordinary rate**]]** from a corresponding gross amount;

(b) no repayment of income tax shall be made in respect of that income and **[**F2492the debtor shall not be liable to pay corporation tax at the dividend**]** ordinary rate on that income;

(c) F2493 . . . . . .

(d) F2493 . . . . . .

(2) F2494 . . . . . .

(3) F2494 . . . . . .

(4) This section shall be construed as one with section 419.

Textual Amendments

F2486 Words in s. 421(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 174(2)(a)** (with Sch. 2)

F2487 Words in s. 421(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 174(2)(b)** (with Sch. 2)

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F2488 Words in s. 421(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 174(2)(b)** (with Sch. 2)
F2489 Words in s. 421(1)(a) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 77(4)(a)(5)**
F2490 Words in s. 421(1)(a)(b) substituted (with effect in accordance with Sch. 4 para. 11(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 11(1)(a)**
F2491 Words in s. 421(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 174(2)(b)** (with Sch. 2)
F2492 Words in s. 421(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 174(2)(c)** (with Sch. 2)
F2493 S. 421(1)(c)(d) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 174(2)(d), **Sch. 3** (with Sch. 2)
F2494 S. 421(2)(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 174(3), **Sch. 3** (with Sch. 2)

422 Extension of section 419 to loans by companies controlled by close companies.

(1) Subject to subsection (4) below, where a company which is controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419, that section and section 420 shall apply as if the loan had been made by the close company.

(2) [M528]Subject to subsection (4) below, where a company which is not controlled by a close company makes a loan which, apart from this section, does not give rise to a charge under subsection (1) of section 419 and a close company subsequently acquires control of it, that section and section 420 shall apply as if the loan had been made by the close company immediately after the time when it acquired control.

(3) Where two or more close companies together control the company that makes or has made the loan, subsections (1) and (2) above shall have effect—

(a) as if each of them controlled that company; and

(b) as if the loan had been made by each of those close companies,

but the loan shall be apportioned between those close companies in such proportion as may be appropriate having regard to the nature and amount of their respective interests in the company that makes or has made the loan.

(4) Subsections (1) and (2) above do not apply if it is shown that no person has made any arrangements (otherwise than in the ordinary course of a business carried on by him) as a result of which there is a connection—

(a) between the making of the loan and the acquisition of control; or

(b) between the making of the loan and the provision by the close company of funds for the company making the loan;

and the close company shall be regarded as providing funds for the company making the loan if it directly or indirectly makes any payment or transfers any property to, or releases or satisfies (in whole or in part) a liability of, the company making the loan.

(5) Where, by virtue of this section, sections 419 and 420 have effect as if a loan made by one company had been made by another, any question under those sections or section 421 whether—

(a) the company making the loan did so otherwise than in the ordinary course of a business carried on by it which includes the lending of money;

(b) the loan or any part of it has been repaid to the company;

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(c) the company has released or written off the whole or part of the debt in respect of the loan,

shall be determined by reference to the company that makes the loan.

(6) This section shall be construed as one with section 419 and section 420 and in this section—

(a) "loan" includes advance; and

(b) references to a company making a loan include references to cases in which the company is, or if it were a close company would be, regarded as making a loan by virtue of section 419(2).

Marginal Citations

M528 Source—1970 s.287A 1976 s.44(2)

[F2495CHAPTER III

APPORTIONMENT OF UNDISTRIBUTED INCOME ETC.]

Textual Amendments

F2495 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2496423 Apportionment of certain income, deductions and interest.

. . . . . .

Textual Amendments

F2496 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2497424 Exclusions from section 423.

. . . . . .

Textual Amendments

F2497 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2498425 Manner of apportionment.

. . . . . .

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Textual Amendments

F2498 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2499 426 Charge to income tax where apportionment is to an individual.

. . . . . .

Textual Amendments

F2499 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2500 427 Reduction of charge under section 426 in certain cases.

. . . . . .

Textual Amendments

F2500 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2501 428 Increase of apportioned sum etc. by reference to ACT.

. . . . . .

Textual Amendments

F2501 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2502 429 Payment and collection of income tax.

. . . . . .

Textual Amendments

F2502 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

F2503 430 Consequences of apportionment: ACT.

. . . . . .

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Textual Amendments

F2503 Pt. 11 Ch. 3 (ss. 423-430) repealed (with effect in accordance with s. 103(1) of the repealing Act) by Finance Act 1989 (c. 4), **Sch. 17 Pt. 5**, Note 4 (with s. 103(2))

PART XII

SPECIAL CLASSES OF COMPANIES AND BUSINESSES

CHAPTER I

INSURANCE COMPANIES, UNDERWRITERS AND CAPITAL REDEMPTION BUSINESS

Modifications etc. (not altering text)

C393 Definitions in Pt. XII Chapter I (ss. 431-458) applied by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 16(7), **18**

C394 Pt. XII Chapter I (ss. 431-458) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 212(7)(b)**, 289 (with ss. 60, 101(1), 171, 201(3))

C395 Pt. 12 Ch. 1 modified (s. 431AB treated as inserted) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 7A** (as inserted (8.4.2004 with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2004 (S.I. 2004/822), **reg. 7**)

Insurance companies: general

Modifications etc. (not altering text)

C396 See 1989 ss.82-92 for changes made by Finance Act 1989 and 1990 ss.41-48 for changes made by Finance Act 1990.

431 Interpretative provisions relating to insurance companies.

(1) [M529]This section has effect for the interpretation of this Chapter.

(2) [M530]Unless the context otherwise requires—

"annuity business" means the business of granting annuities on human life **[**[F2504], other than the business of granting immediate needs annuities (within the meaning of **[**[F2505]section 725 of ITTOIA 2005 (immediate needs annuities)**]**)**]**;

F2506 . . . . . .

F2506 . . . . . .

[[F2507][F2508] . . . . . .

F2509 . . . . . .

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[F2510“basic life assurance and general annuity business” has the meaning given by section 431F;**]**

[F2511“brought into account” has the meaning given by section 83A of the Finance Act 1989;**]**

“closing” and “opening”, in relation to a period of account, refer respectively to the position at the end and at the beginning of the period and, in relation to an accounting period, refer respectively to the position at the end and at the beginning of the period of account in which the accounting period falls;

“closing liabilities” includes liabilities assumed at the end of the period of account concerned in consequence of the declaration of reversionary bonuses or a reduction in premiums;

[F2512“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and “contract of long-term insurance” means any contract which falls within Part II of Schedule 1 to that Order;**]**

[F2513F2514. . . . . .**]**

F2515. . . . . .**]**

[F2516**[**F2517“insurance business transfer scheme” means a scheme falling within section 105 of the Financial Services and Markets Act 2000, including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section;

“insurance company” means—

(a) a person (other than a friendly society) who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance, or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act or a firm qualifying for authorisation under Schedule 4 to that Act which—

(i) carries on business which consists of the effecting or carrying out of contracts of insurance, and

(ii) carries on that business through a branch or agency in the United Kingdom;**]]**

[F2518“the Integrated Prudential Sourcebook” means the Integrated Prudential Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000;**]**

[F2519“investment reserve”, in relation to an insurance company, means the excess of the value of the assets of the company’s long-term business over the aggregate of—

(a) the value of the liabilities of that business, and

(b) any money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) of the company not within paragraph (a) above which are owed in respect of that business;**]**

[F2520F2521. . . . . .

[F2522“liabilities”, in relation to an insurance company, means—

(a) the mathematical reserves of the company as determined in accordance with chapter 7.3 of the Integrated Prudential Sourcebook, and

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(b) liabilities of the company (whose value falls to be determined in accordance with chapter 1.3 of that Sourcebook) which arise from deposit back arrangements;

and for this purpose "deposit back arrangements" has the same meaning as in that Sourcebook;**]]**

"life assurance business" includes annuity business;

[F2523"life reinsurance business" has the meaning given by section 431C;

[F2524**[**F2525"linked assets", and related expressions, shall be construed in accordance with section 432ZA;**]**

[F2526"long-term business" means business which consists of the effecting or carrying out of contracts of long-term insurance;**]**

"**[**F2527long-term insurance fund**]**" means the fund maintained by an insurance company in respect of its **[**F2528long-term**]** business F2529. . . ;**]**

[F2530F2531. . . . . .**]**

F2532. . . . . .

[F2533F2534. . . . . .

F2535. . . . . .

[F2536"overseas life assurance business" has the meaning given by section 431D;

"overseas life assurance fund" shall be construed in accordance with Schedule 19AA;**]**

"overseas life insurance company" means an insurance company **[**F2537not resident in**]** the United Kingdom but carrying on life assurance business through a branch or agency in the United Kingdom; F2538. . .

[F2539"pension business" has the meaning given by section 431B;

"periodical return", in relation to an insurance company, means a return deposited with the **[**F2540Financial Services Authority under section 9.6 of the Prudential Sourcebook (Insurers)**]**.

[F2541"period of account" means the period covered by a periodical return;**]**

[F2542"the Prudential Sourcebook (Insurers)" means the Interim Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000 X2;**]**

F2543. . . . . .

[F2544"reinsurance business" includes retrocession business;

[F2545F2546. . . . . .**]**

[F2547**[**F2548"value", in relation to an asset of an insurance company, means the value of the asset as determined in accordance with chapter 1.3, as read with chapter 3.2, of the Integrated Prudential Sourcebook;**]**

"with-profits liabilities" means liabilities in respect of policies or contracts under which the policy holders or annuitants are eligible to participate in surplus;**]**

F2549**[** (2ZA) Subsections (2ZB) and (2ZC) below apply where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2ZB) If the transfer takes place otherwise than on the last day of a period of account of the transferor, references to—

(a) opening liabilities of the transferor,

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(b) opening values or net values of assets of the transferor, or

(c) the opening amount of the investment reserve of the transferor,

for the period of account, so far as relating to the business transferred, are to the part of those liabilities or values, or that reserve, which bears to the whole the proportion A/C.

(2ZC) If the transfer takes place otherwise than on the first day of a period of account of the transferee, references to—

(a) closing liabilities of the transferee,

(b) closing values or net values of assets of the transferee, or

(c) the closing amount of the investment reserve of the transferee,

for the period of account, so far as relating to the business transferred, are to the part of those liabilities or values, or that reserve, which bears to the whole the proportion B/C.

(2ZD) For the purposes of subsection (2ZC) above—

(a) closing liabilities of the transferee are to be taken not to relate to the business transferred to the extent that they are liabilities which, immediately before the transfer, were reinsured by the transferor with the transferee, but

(b) closing liabilities of the transferee are to be taken to relate to the business transferred to the extent that they are liabilities which, immediately before the transfer, were reinsured by the transferee with the transferor if the business transferred consists of or includes that reinsurance business.

(2ZE) In subsections (2ZB) and (2ZC) above—

A is the number of days in the period beginning with the period of account and ending with the day of the transfer,

B is the number of days in the period beginning with the day of the transfer and ending with the period of account, and

C is one-half of the number of days in the period of account.**]**

[F2551 . . . . . **]** F2550(2A)

(3) F2551 . . . . . .

(4) F2551 . . . . . .

(5) F2551 . . . . . .

(6) F2551 . . . . . **]]]]**

Editorial Information

X2 This sourcebook is part of the FSA Handbook. The FSA Handbook may be purchased on paper and on CD Rom from the Publications Department (Sales), Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS and is available on line at www.fsa.gov.uk.

Textual Amendments

F2504 S. 431(2): words in definition of "annuity business" inserted (with effect in accordance with s. 147(4)(5) of the amending Act) by Finance Act 2004 (c. 12), **s. 147(2)**

F2505 S. 431(2): words in definition of "annuity business" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 175** (with Sch. 2)

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F2506 S. 431(2): definition of "general annuity business" and "pension business" repealed (with effect in accordance with Sch. 8 para. 57, Sch. 29 Pt. 8(5) Notes 2, 3 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**

F2507 S. 431(2): definitions inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(2)**

F2508 S. 431(2): definition of "basic life assurance business" repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F2509 S. 431(2): definition of "basic life assurance and general annuity business" repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F2510 S. 431(2): definition of "basic life assurance and general annuity business" inserted (with effect in accordance with Sch. 8 para. 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 1**

F2511 S. 431(2): definition of "brought into account" inserted (with effect in accordance with Sch. 33 para. 20(3) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 20(2)**

F2512 S. 431(2): definition of "contract of insurance" inserted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 26(2)**

F2513 S. 431(2): definition of "foreign income dividends" inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 4**

F2514 S. 431(2): definition of "foreign income dividends" repealed (with effect in accordance with Sch. 6 para. 5(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 5(1), **Sch. 8 Pt. 2(11)**, Note

F2515 S. 431(2): definition of "industrial assurance business" repealed (with effect in accordance with Sch. 41 Pt. 5(26) Note of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(26)**

F2516 S. 431(2): definition of "insurance company" substituted (with effect in accordance with s. 52(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 52(1)**

F2517 S. 431(2): definitions of "insurance business transfer scheme" and "insurance company" substituted for definition of "insurance company" (1.12.2001 in accordance with arts. 1(2)(a), 26(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 26(3)**

F2518 S. 431(2): definition of "the Integrated Prudential Sourcebook" inserted (with effect in accordance with Sch. 9 para. 2(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 2(2)**

F2519 S. 431(2): definition of "investment reserve" inserted (with effect in accordance with Sch. 33 para. 28 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 25**

F2520 S. 431(2): definitions inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(2)**

F2521 S. 431(2): definition of "investment reserve" repealed (with effect in accordance with s. 109(10) of the repealing Act) by Finance Act 2000 (c. 17), s. 109(9)(a), **Sch. 40 Pt. 2(16)**, Note 1

F2522 S. 431(2): definition of "liabilities" substituted (with effect in accordance with Sch. 9 para. 2(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 2(3)**

F2523 S. 431(2): definition of "life reinsurance business" inserted (with effect in accordance with Sch. 8 para. 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 1**

F2524 S. 431(2): definitions inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(2)**

F2525 S. 431(2): definition of "linked assets" substituted (with effect in accordance with Sch. 8 para. 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 11(1)**

F2526 S. 431(2): definition of "long-term business" substituted for definition of "long term business" (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 26(5)**

F2527 S. 431(2): words in definition of "long term business fund" substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(b)**

F2528 S. 431(2): word in definition of "long term business fund" substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(a)**

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F2529 S. 431(2): words in definition of "long term business fund" repealed (with effect in accordance with Sch. 41 Pt. 5(26) Note of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(26)**

F2530 S. 431(2): definition of "long-term liabilities" inserted (1.12.2001 in accordance with arts. 1(2)(a), 26(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 26(6)**

F2531 S. 431(2): definition of "long-term liabilities" repealed (with effect in accordance with Sch. 9 para. 2(6) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 9 para. 2(4), **Sch. 11 Pt. 2(10)**, Note 1

F2532 S. 431(2): definition of "offshore income gain" repealed (with effect in accordance with Sch. 8 para. 55 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 1

F2533 S. 431(2): definitions inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(2)**

F2534 S. 431(2): definition of "ordinary long term business" and "ordinary life assurance business" repealed (with effect in accordance with Sch. 41 Pt. 5(26) Note of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(26)**

F2535 S. 431(2): definition of "overseas life asurance business" repealed (with effect in accordance with Sch. 8 para. 55 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 1

F2536 S. 431(2): definition of "overseas life assurance business" inserted (with effect in accordance with Sch. 8 para. 55 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 1**

F2537 S. 431(2): words in the definition of "overseas life insurance company" substituted (27.7.1993 as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, **s. 103(1)(3)(4)**

F2538 S. 431(2): word following the definition of "overseas life assurance company" repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F2539 S. 431(2): definition of "pension business" inserted (with effect in accordance with Sch. 8 para. 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 1**

F2540 S. 431(2): words in definition of "periodical return" substituted (1.12.2001 in accordance with arts. 1(2)(a), 26(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 26(7)**

F2541 S. 431(2): definition of "period of account" inserted (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 33 para. 29**

F2542 S. 431(2): definition of "the Prudential Sourcebook (Insurers)" inserted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 26(8)**

F2543 S. 431(2): definition of "policy holders' fraction" and "shareholders' fraction" inserted by Finance Act 1989 (c. 26), **Sch.8 para.1** and repealed (retrospectively) by Finance Act 1990 (c. 29), **Sch.19 Part IV**, Note 6

F2544 S. 431(2): definition of "reinsurance business" inserted (with effect in accordance with Sch. 8 para. 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 1**

F2545 S. 431(2): definition of "UK distribution income" inserted (27.7.1993 with effect in relation to accounting periods beginning after 31.12.1992) by 1993 c. 34, **s. 99(2)(3)**

F2546 S. 431(2): definition of "UK distribution income" repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F2547 S. 431(2): definitions inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(2)**

F2548 S. 431(2): definition of "value" substituted (with effect in accordance with Sch. 9 para. 2(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 2(5)**

F2549 S. 431(2ZA)-(2ZE) inserted (with effect in accordance with Sch. 33 para. 22(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 22(1)**

F2550 S. 431(2A) inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(3)**

F2551 S. 431(2A)-(6) repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

Modifications etc. (not altering text)

C397 S. 431 modified (20.3.1997 with effect as mentioned in reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 6 (as amended by: S.I. 2001/3629, **regs. 1**, 156, 165(2)(b); S.I. 2003/23, **regs. 1**, 4; S.I. 2004/822, **regs. 1**, 6; S.I. 2005/2005, **regs. 1**, 5)

C398 S. 431 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 6 (as amended by: S.I. 2007/2134, **regs. 1(1)(2)**, 6; S.I. 2008/1937, **regs. 1(2)(3)**, 4)

C399 S. 431(2) modified (31.7.1992 with effect as mentioned in reg. 1 of the modifying S.I.) by S.I. 1992/1655, **regs. 1**, 5 (as amended (31.12.1993) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1**, 5, 6; and as further amended (19.3.1997) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1997 (S.I. 1997/471), **regs. 1**, 6)

C400 S. 431(2) modified (20.3.1997 with effect as mentioned in reg. 7(1) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 7

C401 S. 431(2) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 7

C402 S. 431(2) modified (23.3.1999 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), **regs. 3**, 5

C403 S. 431(2) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 5; S.I. 2004/3369, **art. 2(1)**

Marginal Citations

M529 Source—1970 s.323(1); 1973 s.40(7); 1982 s.58(7)

M530 Source—1970 s.323(2); 1970(F) Sch.5 Pt.III 11(4)

VALID FROM 21/07/2008

[F2552 431ZA Election that assets not be foreign business assets

(1) An insurance company may, in its company tax return for the first accounting period of the company beginning on or after 1 January 2008 in which any of the assets of the company's long-term insurance fund would (apart from this section) be foreign business assets, elect that none of the assets of the company's long-term insurance fund are to be regarded for the purposes of this Act as being foreign business assets.

(2) The election has effect for that accounting period and all subsequent accounting periods of the company.

(3) An election under subsection (1) is irrevocable.]

Textual Amendments

F2552 S. 431ZA inserted (with effect in accordance with Sch. 17 para. 10(6)(7) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 17 para. 10(2)**

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[F2553[F2554431A Amendment of Chapter etc

(1) The Treasury may by order amend any insurance company taxation provision where it is expedient to do so in consequence of the exercise of any power under the Financial Services and Markets Act 2000, in so far as that Act relates to insurance companies.

(2) Where any exercise of a power under that Act has effect for a period ending on or before, or beginning before and ending after, the day on which an order containing an amendment in consequence of that exercise is made under subsection (1) above, the power conferred by that subsection includes power to provide for the amendment to have effect in relation to that period.

(3) The Treasury may by order amend any of the following provisions—

(a) sections 432ZA, 432A, 432B to 432G and 755A and Schedule 19AA;

(b) sections 83A, 85, 88 and 89 of the Finance Act 1989;

(c) section 210A of the Taxation of Chargeable Gains Act 1992.

(4) An order under subsection (3) above may only be made so as to have effect in relation to periods of account—

(a) beginning on or after 1st January 2005, and

(b) ending before 1st October 2006.

(5) The Treasury may by order amend subsection (4)(b) above by substituting for "1st October 2006" a date no later than 1st October 2007.

(6) Any power conferred by this section to make an order includes power to make—

(a) different provision for different cases or different purposes, and

(b) incidental, supplemental, consequential or transitional provision and savings.

(7) In this section "insurance company taxation provision" means any of the following—

(a) a provision of this Chapter;

(b) any other provision of the Tax Acts so far as relating to insurance companies.]]

Textual Amendments

F2553 S. 431A inserted (1.1.1990) by Finance Act 1990 (c. 29), Sch. 6 paras. 2, **11(2)** (with Sch. 6 para. 12)

F2554 S. 431A substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 3**

[F2555431AA Relevant benefits for purposes of section 431(4)(d) and (e).

F2556 . . . . . .]

Textual Amendments

F2555 S. 431AA inserted (with application in accordance with s. 143(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 143(4)**

F2556 S. 431AA repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

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[F2557 Classes of life assurance business]

Textual Amendments

F2557 Ss. 431B-431F and cross-heading inserted (with effect in accordance with Sch. 8 paras. 55, 57 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 2**

431B Meaning of "pension business".

(1) In this Chapter "pension business" means so much of a company's life assurance business as is referable to contracts of the following descriptions or to the reinsurance of liabilities under such contracts.

(2) The descriptions of contracts are—

(a) any contract with an individual who is, or would but for an insufficiency of profits or gains be, chargeable to income tax in respect of relevant earnings (as defined in section 623(1) and (2)) from a trade, profession, vocation, office or employment carried on or held by him, being a contract approved by the Board under section 620 or a substituted contract within the meaning of section 622(3);

(b) any contract (including a contract of insurance) entered into for the purposes of, and made with the persons having the management of, an exempt approved scheme as defined in Chapter I of Part XIV, being a contract so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme;

(c) any contract made under approved personal pension arrangements within the meaning of Chapter IV of Part XIV;

(d) any annuity contract entered into for the purposes of—

(i) a scheme which is approved or is being considered for approval under Chapter I of Part XIV;

(ii) a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV; or

(iii) a fund to which section 608 applies,

being a contract which is made with the persons having the management of the scheme or fund, or those persons and a member of or contributor to the scheme or fund, and by means of which relevant benefits (see subsections (3) and (4) below), and no other benefits, are secured;

(e) any annuity contract which is entered into in substitution for a contract within paragraph (d) above **[**F2558 or this paragraph**]** and by means of which relevant benefits (see subsections (3) and (4) below), and no other benefits, are secured;

[F2559 (ea) any contract which is entered into, for purposes connected with giving effect to any pension sharing order or provision made in relation to a contract falling within paragraph (d) or (e) above or this paragraph and by means of which relevant benefits (see subsections (3) and (4) below), and no other benefits, are secured;**]**

(f) any contract with the trustees or other persons having the management of a scheme approved under section 620 or, subject to subsection (5) below, of a superannuation fund which was approved under section 208 of the 1970 Act, being a contract which—

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(i) was entered into for the purposes only of that scheme or fund or, in the case of a fund part only of which was approved under section 208, for the purposes only of that part of that fund, and

(ii) (in the case of a contract entered into or varied after 1st August 1956) is so framed that the liabilities undertaken by the insurance company under the contract correspond with liabilities against which the contract is intended to secure the scheme or fund (or the relevant part of the fund).

[F2560(2A) For the purposes of subsection (2)(d) above the members of and contributors to a scheme or fund shall be deemed to include any person who by virtue of any pension sharing order or provision (within the meaning of Part XIV) has become entitled to any credit as against the persons having the management of the scheme or fund.**]**

(3) For the purposes of **[**F2561subsection (2)(d) to (ea)**]** above "relevant benefits" means relevant benefits as defined by section 612(1) which correspond—

(a) where subsection (2)(d)(i) above applies, or subsection (2)(e) **[**F2562or (ea)**]** above applies and the contract within subsection (2)(d) was entered into for the purposes of a scheme falling within subsection (2)(d)(i), with benefits that could be provided by a scheme approved under Chapter I of Part XIV;

(b) where subsection (2)(d)(ii) above applies, or subsection (2)(e) **[**F2562or (ea)**]** above applies and the contract within subsection (2)(d) was entered into for the purposes of a scheme falling within subsection (2)(d)(ii), with benefits that could be provided by a scheme which is a relevant statutory scheme for the purposes of Chapter I of Part XIV;

(c) where subsection (2)(d)(iii) above applies, or subsection (2)(e) **[**F2562or (ea)**]** above applies and the contract within subsection (2)(d) was entered into for the purposes of a fund falling within subsection (2)(d)(iii), with benefits that could be provided by a fund to which section 608 applies.

(4) For the purposes of subsection (3)(a), (b) or (c) above a hypothetical scheme or fund (rather than any particular scheme or fund), and benefits provided by a scheme or fund directly (rather than by means of an annuity contract), shall be taken.

(5) Subsection (2)(f) above shall not apply to a contract where the fund in question was approved under section 208 of the 1970 Act unless—

(a) immediately before 6th April 1980 premiums paid under the contract with the trustees or other persons having the management of the fund fell within section 323(4) of that Act (premiums referable to pension business); and

(b) the terms on which benefits are payable from the fund have not been altered since that time; and

(c) section 608 applies to the fund.

(6) In subsection (5) above "premium" includes any consideration for an annuity.

Textual Amendments

F2558 Words in s. 431B(2)(e) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 1(2)(a)**

F2559 S. 431B(2)(ea) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 1(2)(b)**

F2560 S. 431B(2A) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 1(3)**

F2561 Words in s. 431B(3) substituted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 1(4)(a)**

F2562 Words in s. 431B(3) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 1(4)(b)**

Modifications etc. (not altering text)

C404 S. 431B modified (23.3.1999 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), **regs. 3**, 6

C405 S. 431B(2) modified (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 36 para. 2(7)** (with s. 283(4)(5))

VALID FROM 19/07/2007

[F2563 431BA Meaning of "child trust fund business"

(1) In this Chapter "child trust fund business" means so much of a company's life assurance business as is referable to child trust fund policies (but not including the reinsurance of such business).

(2) In this section "child trust fund policy" means a policy of life insurance which is an investment under a child trust fund (within the meaning of the Child Trust Funds Act 2004).**]**

Textual Amendments

F2563 Ss. 431BA, 431BB inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 8** (with Sch. 7 Pt. 2)

VALID FROM 19/07/2007

[F2563 431BB Meaning of "individual savings account business"

(1) In this Chapter "individual savings account business" means so much of a company's life assurance business as is referable to individual savings account policies (but not including the reinsurance of such business).

(2) In this section "individual savings account policy" means a policy of life insurance which is an investment of a kind specified in regulations made by virtue of section 695(1) of ITTOIA 2005.**]**

Textual Amendments

F2563 Ss. 431BA, 431BB inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 8** (with Sch. 7 Pt. 2)

431C Meaning of "life reinsurance business".

(1) In this Chapter "life reinsurance business" means reinsurance of life assurance business other than pension business or business of any description excluded from this section by regulations made by the Board.

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(2) Regulations under subsection (1) above may describe the excluded business by reference to any circumstances appearing to the Board to be relevant.

Modifications etc. (not altering text)

C406 S. 431C modified (with effect in accordance with reg. 1 of the affecting S.I.) by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **reg. 11** (as amended by: S.I. 1996/1621, **regs. 1**, 5; S.I. 2003/2573, **regs. 1(1)(2)**, 10; S.I. 2007/2087, **regs. 1(1)(2)**, 6)

C407 S. 431C(1) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 8

C408 S. 431C(1) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 6; S.I. 2004/3369, **art. 2(1)**

431D Meaning of "overseas life assurance business".

(1) In this Chapter "overseas life assurance business" means life assurance business, other than pension business **[**F2564, life reinsurance business or business of any description excluded from this section by regulations made by the Board**]**, which—

(a) in the case of life assurance business other than reinsurance business, is business with a policy holder or annuitant not residing in the United Kingdom, and

(b) in the case of reinsurance business, is—

(i) reinsurance of life assurance business with a policy holder or annuitant not residing in the United Kingdom, or

(ii) reinsurance of business within sub-paragraph (i) above or this sub-paragraph.

[F2565(2) Regulations under subsection (1) above may describe the excluded business by reference to any circumstances appearing to the Board to be relevant.

(3) The Board may by regulations—

(a) make provision as to the circumstances in which a trustee who is a policy holder or annuitant residing in the United Kingdom is to be treated for the purposes of this section as not so residing; and

(b) provide that nothing in Chapter II of Part XIII **[**F2566or Chapter 9 of Part 4 of ITTOIA 2005**]** shall apply to a policy or contract which constitutes overseas life assurance business by virtue of any such provision as is mentioned in paragraph (a) above.

(4) Regulations under subsection (1) or (3) above may contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.**]**

Textual Amendments

F2564 Words in s. 431D(1) substituted (28.7.2000) by Finance Act 2000 (c. 17), **s. 108(1)** (with s. 108(3))

F2565 S. 431D(2)-(4) substituted for s. 431D(2)-(8) (28.7.2000) by Finance Act 2000 (c. 17), **s. 108(2)** (with s. 108(3))

F2566 Words in s. 431D(3)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 176** (with Sch. 2)

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Modifications etc. (not altering text)

C409 S. 431D(1) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 8

C410 S. 431D(1) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 6; S.I. 2004/3369, **art. 2(1)**

431E Overseas life assurance business: regulations.

(1) The Board may by regulations make provision for giving effect to section 431D.

(2) Such regulations may, in particular—

(a) provide that, in such circumstances as may be prescribed, any prescribed issue as to whether business is or is not overseas life assurance business (or overseas life assurance business of a particular kind) shall be determined by reference to such matters (including the giving of certificates or undertakings, the giving or possession of information or the making of declarations) as may be prescribed,

(b) require companies to obtain certificates, undertakings, information or declarations from policy holders or annuitants, or from trustees or other companies, for the purposes of the regulations,

(c) make provision for dealing with cases where any issue such as is mentioned in paragraph (a) above is (for any reason) wrongly determined, including provision allowing for the imposition of charges to tax (with or without limits on time) on the insurance company concerned or on the policy holders or annuitants concerned,

(d) require companies to supply information and make available books, documents and other records for inspection on behalf of the Board, and

(e) make provision (including provision imposing penalties) for contravention of, or non-compliance with, the regulations.

(3) The regulations may—

(a) make different provision for different cases, and

(b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.

VALID FROM 19/07/2007

[F2567 431EA Meaning of "gross roll-up business"

In this Chapter "gross roll-up business" means business of any of the following kinds—

(a) pension business;

(b) child trust fund business;

(c) individual savings account business;

(d) life reinsurance business; and

(e) overseas life assurance business.]

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Textual Amendments

F2567 S. 431EA inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 10** (with Sch. 7 Pt. 2)

431F Meaning of "basic life assurance and general annuity business".

In this Chapter "basic life assurance and general annuity business" means life assurance business (including reinsurance business) other than pension business, life reinsurance business or overseas life assurance business.

Modifications etc. (not altering text)

C411 S. 431F modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 9

C412 S. 431F modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 7; S.I. 2004/3369, **art. 2(1)**

[F2568 Separation of different categories of business]

Textual Amendments

F2568 Cross-heading before s. 432 inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 51(2)** (with Sch. 8 para. 55(2))

VALID FROM 19/07/2007

[F2569 431G Company carrying on life assurance business

(1) This section applies in relation to an insurance company which carries on life assurance business (whether or not it also carries on insurance business of any other kind).

(2) Subject as follows, the profits of the life assurance business for any accounting period shall be charged to tax under the I minus E basis.

(3) Where in the case of an insurance company for an accounting period either—

(a) all of its life assurance business is reinsurance business and none of that business is of a type excluded from this subsection by regulations made by the Board, or

(b) all, or substantially all, of its life assurance business is gross roll-up business,

the profits of that business for the accounting period shall be charged to tax in accordance with Case I of Schedule D and not otherwise.

(4) Where—

(a) the profits of the life assurance business of an insurance company for any accounting period are charged to tax under the I minus E basis, and

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(b) had those profits been charged to tax in accordance with Case I of Schedule D, a loss would have arisen to the company from that business for the period,

the loss (after being reduced in accordance with section 434A(2)(a)) may be set-off under section 393A or section 403(1).

(5) The application, in relation to the life assurance business of an insurance company, of any provision of Case I of Schedule D is not to be taken—

(a) to prevent the application of the I minus E basis in relation to that business of the company for any accounting period, or

(b) to affect the operation of the I minus E basis in relation to the that business of the company for any accounting period except as specifically provided by the Corporation Tax Acts.**]**

Textual Amendments

F2569 Ss. 431G, 431H and preceding cross-heading substituted for s. 432 and preceding cross-heading (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 4** (with Sch. 8 Pt. 2)

Modifications etc. (not altering text)

C413 S. 431G modified by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **reg. 12** (as amended (13.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Amendment) Regulations 2007 (S.I. 2007/2087), **regs. 1(1)**, 8)

VALID FROM 19/07/2007

[F2570 431H Company carrying on life assurance business and other insurance business

(1) This section applies in relation to an insurance company which carries on life assurance business and insurance business of any other kind.

(2) For the purposes of the Corporation Tax Acts—

(a) the life assurance business, and

(b) the other insurance business,

are to be treated as separate businesses.

(3) The profits of the other insurance business shall be charged to tax under Case I of Schedule D as the profits of a separate trade.

(4) But subsection (3) above does not apply where that business is mutual business.

(5) As to the profits of the life assurance business, see section 431G.**]**

Textual Amendments

F2570 Ss. 431G, 431H and preceding cross-heading substituted for s. 432 and preceding cross-heading (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 4** (with Sch. 8 Pt. 2)

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Modifications etc. (not altering text)

C414 S. 431H modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 7A** (as inserted (14.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2007 (S.I. 2007/2134), **regs. 1(1)**, 7; and as amended by S.I. 2008/1937, **regs. 1(1)(2)**, 5)

432 Separation of different [F2571categories] of business.

(1) M531Where an insurance company carries on life assurance business in conjunction with insurance business of any other **[**F2572category**]**, the life assurance business shall, for the purposes of the Corporation Tax Acts, be treated as a separate business from any other **[**F2572category**]** of business carried on by the company.

(2) F2573. . . . . .

Textual Amendments

F2571 S. 432: word in sidenote substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 51(3)** (with Sch. 8 para. 55(2))

F2572 Words in s. 432 substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 12(3)** (with Sch. 8 para. 55(2))

F2573 S. 432(2) repealed (with effect in accordance with s. 167(10), Sch. 41 Pt. 5(26) Note of the repealing Act) by Finance Act 1996 (c. 8), s. 167(1), **Sch. 41 Pt. 5(26)**

Modifications etc. (not altering text)

C415 S. 432 modified (20.3.1997 with effect in accordance with reg. 8(1) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 8(2)

C416 S. 432 modified (12.8.2005 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 8 (and that modifying reg. 8 is omitted by virtue of S.I. 2007/2134, **regs. 1(1)(2)**, 8)

Marginal Citations

M531 Source—1970 s.307

VALID FROM 08/01/2007

[F2574432A Long-term business other than life assurance business — adjustment consequent on change in Insurance Prudential Sourcebook

(1) This section applies in the case of—

(a) a company which is a non-profit company, or

(b) the non-profit fund of a company which is not a non-profit company,

if an amount (other than nil) is shown in paragraph 4(12) of Appendix 9.4 to the periodical return for the company for the first period of account which ends on or after 31st December 2006.

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(2) In computing profits of long-term business which is not life assurance business in accordance with the provisions applicable to Case I of Schedule D an amount ("the relevant amount") shall be added—

(a) to the closing long term business provision of the company for the first period of account which ends on or after 31st December 2006, and

(b) to the opening long term business provision of the company for the next period of account.

(3) The relevant amount is, subject to subsection (4), the amount by which B exceeds A. Here—

A is the company's long term business provision in respect of business which is not life assurance business for the first period of account which ends on or after 31st December 2006, calculated after taking into account the company's ability to—

(a) make provision for non-attributable expenses by reference to a homogeneous risk group instead of by reference to individual policies or contracts;

(b) make provision for the voluntary discontinuance of policies or contracts using a prudent lapse rate assumption; and

(c) set negative liabilities against positive liabilities (subject to overall liabilities not being less than nil);

in accordance with the Insurance Prudential Sourcebook; and

B is the company's long term business provision for that period of account in respect of business which is not life assurance business, calculated without taking into account the matters referred to in paragraphs (a) to (c) of the definition of A.

(4) In a case falling within subsection (1)(b)—

(a) the relevant amount shall be reduced (but not below nil) by so much (if any) of the amount shown in paragraph 4(12) of Appendix 9.4 to the periodical return as is reflected in column 1 of line 51 of the Form 14 for that period of account relating to the non-profit fund in question; and

(b) the references in subsection (3) to long term business provision and to liabilities are respectively to long term business provision and to liabilities relating to the non-profit fund in question.

(5) In this section—

"long term business provision" has the same meaning as in Schedule 9A to the Companies Act 1985;

"non-profit company" has the meaning given in section 83YA(8) of the Finance Act 1989; and

"non-profit fund" has the same meaning as in the Insurance Prudential Sourcebook.**]**

Textual Amendments

F2574 S. 432YA inserted (8.1.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment No. 2) Order 2006 (S.I. 2006/3387), **arts. 1(1)**, 2

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[F2575 432ZA Linked assets.

(1) In this Chapter "linked assets" means assets of an insurance company which are identified in its records as assets by reference to the value of which benefits provided for under a policy or contract are to be determined.

(2) Linked assets shall be taken—

(a) to be linked to **[**F2576long-term**]** business of a particular category if the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of business of that category; and

(b) to be linked solely to **[**F2576long-term**]** business of a particular category if all (or all but an insignificant proportion) of the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of business of that category.

(3) Where an asset is linked to more than one category of **[**F2576long-term**]** business, a part of the asset shall be taken to be linked to each category; and references in this Chapter to assets linked (but not solely linked) to any category of business shall be construed accordingly.

(4) Where subsection (3) above applies, the part of the asset linked to any category of business shall be a proportion determined as follows—

(a) where in the records of the company values are shown for the asset in funds referable to particular categories of business, the proportion shall be determined by reference to those values;

(b) in any other case the proportion shall be equal to **[**F2577the proportion A/B where—

A is the total of the linked liabilities of the company which are liabilities of the internal linked fund in which the asset is held and are referable to that category of business;

B is the total of the linked liabilities of the company which are liabilities of that fund.**]**

(5) For the purposes of sections 432A to 432F—

(a) income arising in any period from assets linked but not solely linked to a category of business,

(b) gains arising in any period from the disposal of such assets, and

(c) increases and decreases in the value of such assets,

shall be treated as arising to that category of business in the proportion which is the mean of the proportions determined under subsection (4) above at the beginning and end of the period.

[F2578(6) In this section—

"internal linked fund", in relation to an insurance company, means an account—

(a) to which linked assets are appropriated by the company; and

(b) which may be divided into units the value of which is determined by the company by reference to the value of those assets;

"linked liabilities" means liabilities in respect of benefits to be determined by reference to the value of linked assets.**]**

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(7) In the case of a policy or contract the effecting of which constitutes a class of life assurance business the fact that it also constitutes **[**F2576long-term**]** business other than life assurance business shall be disregarded for the purposes of this section unless the benefits to be provided which constitute **[**F2576long-term**]** business other than life assurance business are to be determined by reference to the value of assets.**]**

Textual Amendments

F2575 S. 432ZA inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 11(2)** (with Sch. 8 para. 55(2))

F2576 Words in s. 432ZA(2)(a)(b)(3)(7) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(b)**

F2577 Words in s. 432ZA(4)(b) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(1)**

F2578 S. 432ZA(6) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(2)**

[F2579**432A Apportionment of income and gains.**

[F2580(1) This section has effect **[**F2581for determining for the purposes of any provision of the Corporation Tax Acts in relation to any period for which an insurance company carries on business**]** what parts of—

(a) income arising from the assets of the company's **[**F2582long-term insurance fund**]**, or

(b) gains or losses accruing on the disposal of such assets,

are referable to any category of business.

[F2583(1A) If the company carries on only one category of business in the period, all of the income and gains or losses referred to in subsection (1) above shall be referable to that category of business; but if the company carries on more than one category of business in the period, the following provisions shall apply.**]**

(2) The categories of business referred to in **[**F2584subsections (1) and (1A)**]** above are—

(a) pension business;

(b) life reinsurance business;

(c) overseas life assurance business;

[F2585(d) basic life assurance and general annuity business; and**]**

(f) **[**F2586long-term**]** business other than life assurance business.

(3) Income arising from, and gains or losses accruing on the disposal of, assets linked to any category of business (apart from overseas life assurance business) shall be referable to that category of business.**]**

(4) Income arising from, and gains or losses accruing on the disposal of, assets of the overseas life assurance fund (and no other assets) shall be referable to overseas life assurance business.

(5) There shall be referable to any category of business (apart from overseas life assurance business) the relevant fraction of any income, gains or losses not directly referable to **[**F2587any category**]** of business.

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(6) For the purposes of subsection (5) above "the relevant fraction", in relation to a category of business, is the fraction of which—

(a) the numerator is the aggregate of—

(i) the mean of the opening and closing liabilities of the category, reduced **[**F2588(but not below nil)**]** by the mean of the opening and closing **[**F2589net values**]** of any assets directly referable to the category, and

(ii) the mean of the appropriate parts of the opening and closing amounts of the investment reserve; and

[F2590(b) the denominator is the aggregate of—

(i) the numerator given by paragraph (a) above; and

(ii) the numerators given by that paragraph in relation to the other categories of business.**]**

[F2591(7) For the purposes of subsections (5) and (6) above—

(a) income, gains or losses are directly referable to a category of business if referable to that category by virtue of subsection (3) or (4) above, and

(b) assets are directly referable to a category of business if income arising from the assets is, and gains or losses accruing on the disposal of the assets are, so referable by virtue of subsection (3) above.**]**

[F2592(8) In subsection (6) above "appropriate part", in relation to the investment reserve, means—

(a) where none (or none but an insignificant proportion) of the liabilities of the **[**F2586long-term**]** business are with-profits liabilities, the part of that reserve which bears to the whole the proportion A/B where—

A is the amount of the liabilities of the category of business in question;

B is the whole amount of the liabilities of the **[**F2586long-term**]** business; and

(b) in any other case, the part of that reserve which bears to the whole the proportion C/D where—

C is the amount of the with-profits liabilities of the category of business in question;

D is the whole amount of the with-profits liabilities of the **[**F2586long-term**]** business.**]**

[F2593(9) Where a company carries on overseas life assurance business—

(a) references in this section to liabilities do not include liabilities of that business, and

(b) the appropriate part of the investment reserve as defined by paragraph 4(2)(a) of Schedule 19AA shall be left out of account in determining that reserve for the purposes of this section.**]**

[In this section and sections 432C and 432D "net value", in relation to any assets, means F2594(9A) the excess of the value of the assets over **[**F2595the value of money debts (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) attributable to an internal linked fund which are not owed in respect of **[**F2596liabilities**]**.**]**

(9B) F2597. . . . . .**]**

F2598(10) . . . . . .**]**

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Textual Amendments

F2579 Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**

F2580 S. 432A(1)-(3) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 13(2)**

F2581 Words in s. 432A(1) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 8(2)**

F2582 Words in s. 432A(1)(a)(9B) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(c)**

F2583 S. 432A(1A) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 8(3)**

F2584 Words in s. 432A(2) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 8(4)**

F2585 S. 432A(2)(d) substituted for s. 432A(2)(d)(e) (with effect in accordance with s. 167(10) of the amending Act) by Finance Act 1996 (c. 8), **s. 167(2)**

F2586 Words in s. 432A(2)(f)(8)(a)(b)(9B) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(c)**

F2587 Words in s. 432A(5)(6)(b)(i) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 13(3)** (with Sch. 8 para. 55(2))

F2588 Words in s. 432A(6)(a) inserted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(a)(4)(a)**

F2589 Words in s. 432A(6)(a) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(a)(4)(a)**

F2590 S. 432A(6)(b) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(b)(4)(a)**

F2591 S. 432A(7) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 13(4)** (with Sch. 8 para. 55(2))

F2592 S. 432A(8) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(5)**

F2593 S. 432A(9) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 13(5)** (with Sch. 8 para. 55(2))

F2594 S. 432A(9A)(9B) inserted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(6)**

F2595 Words in s. 432A(9A) substituted (with effect in accordance with Sch. 33 para. 28 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 26**

F2596 Word in s. 432A(9A) substituted (with effect in accordance with Sch. 9 para. 4(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 4(2)**

F2597 S. 432A(9B) repealed (with effect in accordance with Sch. 43 Pt. 3(12), Note 1 of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(12)**

F2598 S. 432A(10) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, ss. 91(2)(a), 213, **Sch. 23 Pt.III** (8), Note

Modifications etc. (not altering text)

C417 S. 432A modified (3.5.1994) by Finance Act 1994, (c. 9), s. 169, Sch. 18 para 1(4)

C418 S. 432A modified by S.I. 1992/1655, **regs. 6-8** (as amended (31.12.1993) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1**, 5, 7; and as further amended (10.8.1995) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1995 (S.I. 1995/1916), **regs. 1**, 5)

C419 S. 432A applied (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), **Sch. 11 para. 3** (with Sch. 15)

C420 S. 432A applied (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 12 para 19**

C421 S. 432A modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473),

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regs. 1(1), 9, 13 (as amended by: S.I. 2000/2710, **regs. 1**, 4; S.I. 2001/3629, **arts. 1**, 157, 165; S.I. 2001/3975, **regs. 1**, 4; S.I. 2003/23, **regs. 1**, 5, 6; S.I. 2004/822, **regs. 1**, 8, 9; S.I. 2005/2005, **regs. 1**, 6)

C422 S. 432A modified by Finance Act 1996 (c. 8), **Sch. 11 para. 3A(5)** (as inserted (with effect in accordance with s. 109(10) of the 2000 amending Act) by Finance Act 2000 (c. 17), **s. 109(8)**)

C423 S. 432A applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 138(2)(3)**

C424 S. 432A modified (12.8.2005 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 9 (as amended by: S.I. 2007/2134, **regs. 1(1)(2)**, 9; S.I. 2008/1937, **regs. 1(1)(2)**, 6)

C425 S. 432A(2) modified (with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 10-12

C426 S. 432A(2) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 10

C427 S. 432A(2) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 8; S.I. 2004/3369, **art. 2(1)**

[F2599 432AA Schedule A business or overseas property business.

(1) An insurance company is treated as carrying on separate Schedule A businesses, or overseas property businesses, in accordance with the following rules.

(2) The exploitation of land held as an asset of the company's **[**F2600 long-term insurance fund**]** is treated as a separate business from the exploitation of land not so held.

(3) The exploitation of land held as an asset of the company's overseas life assurance fund is treated as a separate business from the exploitation of other land held as an asset of its **[**F2600 long-term insurance fund**]**.

(4) The exploitation of land held as an asset linked to any of the following categories of business is regarded as a separate business—

(a) pension business;

(b) life reinsurance business;

(c) basic life assurance and general annuity business;

(d) **[**F2601 long-term**]** business other than life assurance business.

(5) Accordingly, the exploitation of land held as an asset of the company's **[**F2600 long-term insurance fund**]** otherwise than as mentioned in subsection (3) or (4) is treated as a separate business from any other.

(6) In this section "land" means any estate, interest or rights in or over land.**]**

Textual Amendments

F2599 Ss. 432AA, 432AB inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para 39** (with Sch. 5 para. 73)

F2600 Words in s. 432AA(2)(3)(5) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(d)**

F2601 Word in s 432AA(4)(d) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(d)**

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Modifications etc. (not altering text)

C428 S. 432AA modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 13A** (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), **regs. 1**, 3)

C429 S. 432AA modified (12.8.2005 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 10 (as amended by: S.I. 2007/2134, **regs. 1(1)(2)**, 11; S.I. 2008/1937, **regs. 1(1)(2)**, 8)

C430 S. 432AA(4) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 11

C431 S. 432AA(4) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 9; S.I. 2004/3369, **art. 2(1)**

[F2599 432AB Losses from Schedule A business or overseas property business.

(1) This section applies to any loss arising in a Schedule A business or overseas property business.

(2) A loss arising from any category of business mentioned in section 432A(2) shall be apportioned under that section in the same way as income.

[F2602 (3) So far as a loss is referable to basic life assurance and general annuity business, it shall be treated for the purposes of section 76 as expenses payable which fall to be brought into account at Step 3 in subsection (7) of that section.]

(4) Where a company is treated under section 432AA as carrying on—

(a) more than one Schedule A business, or

(b) more than one overseas property business,

then, in relation to either kind of business, the reference in subsection (3) above to a loss referable to basic life assurance and general annuity business shall be construed as a reference to any aggregate net loss after setting the losses from those businesses which are so referable against any profits from those businesses that are so referable.

(5) The provisions of section 392A or 392B (loss relief) do not apply to a loss referable to life assurance business or any category of life assurance business.

(6) Where a company is treated under section 432AA as carrying on—

(a) more than one Schedule A business, or

(b) more than one overseas property business,

and, in relation to either kind of business, there are losses and profits referable to business which is not life assurance business, those losses shall be set against those profits before being used under section 392A or 392B.]

Textual Amendments

F2599 Ss. 432AA, 432AB inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para 39** (with Sch. 5 para. 73)

F2602 S. 432AB(3) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 17(2)

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Modifications etc. (not altering text)

C432 S. 432AB modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 13B** (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), **regs. 1**, 3)

C433 S. 432AB modified (12.8.2005 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 11

[F2603 432B Apportionment of receipts brought into account.

(1) This section and [F2604 sections 432C to 432F] have effect where it is necessary in accordance with section 83 of the Finance Act 1989 to determine what parts of any items [F2605 brought into account, within the meaning of that section,] are referable to life assurance business or any [F2606 category] of life assurance business.

[F2607 (2) Where for that purpose reference falls to be made to more than one account recognised for the purposes of that section, the provisions of sections 432C to 432F apply separately in relation to each account.]

(3) Sections 432C and 432D apply where the business with which an account is concerned ("the relevant business") relates exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus; and [F2608 sections 432E and 432F apply] where the relevant business relates wholly or partly to other policies or contracts.]

Textual Amendments

F2603 Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**

F2604 Words in s. 432B(1)(2) substituted (with effect in accordance with Sch. 8 para. 53(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(1)(a)** (with Sch. 8 para. 55(2))

F2605 Words in s. 432B(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 16(2)(a)** (with Sch. 8 para. 55(2))

F2606 Word in s. 432B(1) substituted (with effect in accordance with Sch. 9 para. 19(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 19(1)**

F2607 S. 432B(2) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 16(2)(b)** (with Sch. 8 para. 55(2))

F2608 Words in s. 432B(3) substituted (with effect in accordance with Sch. 8 para. 53(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(1)(b)** (with Sch. 8 para. 55(2))

Modifications etc. (not altering text)

C434 S. 432B modified by S.I. 1992/1655, **reg. 9** (as amended (31.12.1993) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1**, 8)

C435 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S. I. 1992/1655, **regs. 1**, 10

C436 S. 432B modified (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 1**, 9(1)

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[F2609 432C Section 432B apportionment: income of non-participating funds.

(1) To the extent that the amount brought into account as income is attributable to assets **[**F2610 linked**]** to **[**F2611 pension business, life reinsurance business, basic life assurance and general annuity business or long-term**]** business other than life assurance business**]**, it shall be referable to the category of business concerned.

(2) To the extent that that amount is attributable to assets of the overseas life assurance fund **[**F2612 or land in the United Kingdom linked to overseas life assurance business**]**, it shall be referable to overseas life assurance business.

(3) There shall be referable to any category of business (apart from overseas life assurance business) the relevant fraction of so much of the amount brought into account as income as is not directly referable to **[**F2613 any category of business**]**.

(4) For the purposes of subsection (3) above "the relevant fraction", in relation to a category of business, is the fraction of which—

(a) the numerator is the mean of the opening and closing liabilities of the relevant business so far as referable to the category, reduced **[**F2614 (but not below nil)**]** by the mean of the opening and closing **[**F2615 net values**]** of any assets of the relevant business directly referable to the category; and

[F2616 (b) the denominator is the aggregate of—

(i) the numerator given by paragraph (a) above; and

(ii) the numerators given by that paragraph in relation to the other categories of business.**]**

(5) For the purposes of subsections (3) and (4) above—

(a) F2617 . . . . . .

(b) the part of the amount brought into account as income which is directly referable to a category of business is the part referable to the category by virtue of subsection (1) **[**F2618 or (2)**]** above and assets are directly referable to a category of business if such part of the amount brought into account as is attributable to them is so referable.

[F2619 (6) For the purposes of this section, where a company carries on overseas life assurance business "liabilities" does not include liabilities of that business.**]**

Textual Amendments

F2609 Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**

F2610 Word in s. 432C(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 12(1)(a)** (with Sch. 8 para. 55(2))

F2611 Words in s. 432C(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para 14(2)** (with Sch. 8 para. 55(2))

F2612 Words in s. 432C(2) inserted (with effect in accordance with Sch. 8 para. 55(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 3** (with Sch. 8 para. 55(2))

F2613 Words in s. 432C(3) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para 14(3)** (with Sch. 8 para. 55(2))

F2614 Words in s. 432C(4)(a) inserted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(a)(4)(b)**

F2615 Words in s. 432C(4)(a) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(a)(4)(b)**

F2616 S. 432C(4)(b) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(b)(4)(b)**

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F2617 S. 432C(5)(a) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 para. 14(5), **Sch. 29 Pt. 8(5)**, Note 2 (with Sch. 8 para. 55(2))

F2618 Words in s. 432C(5)(b) inserted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(7)**

F2619 S. 432C(6) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 14(6)** (with Sch. 8 para. 55(2))

Modifications etc. (not altering text)

C437 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 110**

C438 S. 432C(1) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 12

C439 S. 432C(1) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 10; S.I. 2004/3369, **art. 2(1)**

VALID FROM 08/04/2010

[F2620 432CA Apportionment of asset value increase where line 51 amount decreases

(1) This section applies where—

(a) an insurance company is not a non-profit company in relation to a period of account ("the current period of account"),

(b) in the case of any business with which an account of the company for the current period of account is concerned ("the relevant business"), an amount is a relevant brought into account amount for that period of account (see subsection (2)),

(c) section 432C applies for determining the extent to which the relevant brought into account amount is referable to life assurance business or to gross roll-up business, and

(d) the line 51 reduction condition is met (see subsection (3)).

(2) An amount is a relevant brought into account amount for a period of account if—

(a) it is brought into account as mentioned in subsection (2)(b) of section 83 of the Finance Act 1989 (increases in value of non-linked assets) for that period,

(b) it is deemed to be brought into account for that period by subsection (2B) of that section in consequence of the transfer of non-linked assets, or

(c) it is taken into account under subsection (2) of that section for that period by virtue of section 444AB as being the relevant amount in relation to non-linked assets.

(3) The line 51 reduction condition is met if—

(a) the amount shown in column 1 of line 51 of Form 14 of the company's periodical return in respect of the relevant business for the current period of account, is less than

(b) the amount so shown for the period of account immediately before it;

and the amount of the difference is "the relevant reduction".

(4) Section 432C applies in relation to so much of the relevant brought into account amount as does not exceed the relevant reduction ("the affected amount") as if it were

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brought into account as an increase in the value of assets in the case of the relevant business for the applicable appropriate period of account of the company.

(5) A period of account is an "appropriate period of account" if it ended before the current period of account and—

(a) the amount shown in column 1 of line 51 of Form 14 of the company's periodical return in respect of the relevant business for it, was more than

(b) the amount so shown for the period of account immediately before it;

and the amount of the difference is "the relevant increase."

(6) The "applicable" appropriate period of account is the one which ended most recently ("the most recent appropriate period of account").

(7) But if the relevant increase in the case of the most recent appropriate period of account is less than the affected amount, the most recent appropriate period of account is the applicable appropriate period of account in relation to only so much of the affected amount as does not exceed that relevant increase.

(8) In that case, the appropriate period of account which ended most recently before the most recent appropriate period of account is the applicable appropriate period of account in relation to so much of the remainder as does not exceed the relevant increase in the case of that appropriate period of account (and, where necessary, so on until the applicable appropriate period of account is established in relation to all of the affected amount or there are no more appropriate periods of account).

(9) If the current period of account is not the first in relation to which this section has applied in the case of the business concerned, the amount of the relevant increase in the case of any appropriate period of account ("the period in question") is to be treated as reduced by the relevant aggregate.

(10) The "relevant aggregate" is the aggregate of so much of the affected amount for any period or periods of account earlier than the current period of account as was an amount to which section 432C applied as if it were brought into account as mentioned in subsection (4) for the period in question.

(11) For the purposes of this section an insurance company which has elected under section 83YA(9) of the Finance Act 1989 (changes in value of assets brought into account: non-profit companies) to be treated as a non-profit company in relation to a period of account is to be regarded as a non-profit company in relation to the period of account.**]**

Textual Amendments

F2620 S. 432CA inserted (with effect in accordance with s. 47(2)-(4) of the amending Act) by Finance Act 2010 (c. 13), **s. 47(1)**

VALID FROM 27/07/2010

[F2621 432CB Transfers of business involving excess assets

(1) This section applies where, under an insurance business transfer scheme, there is a transfer of long-term business—

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(a) from a non-profit fund of an insurance company ("the transferor") which is not a non-profit company in relation to the relevant period of account,

(b) to another insurance company ("the transferee") to constitute or form part of a non-profit fund of the transferee ("the transferee's non-profit fund"),

("the transfer") and conditions A and B are met.

(2) Condition A is that the fair value of the assets transferred by the transfer exceeds by an amount ("the chargeable excess") the amount of the relevant liabilities transferred by the transfer.

For this purpose "relevant" liabilities are liabilities of a type shown (or treated as shown) in any of lines 14, 17, 21 to 23 and 31 to 38 of Form 14 of a periodical return of an insurance company.

(3) Condition B is that the main purpose, or one of the main purposes, of the transferor or the transferee (or both) in entering into any part of the transfer scheme arrangements is to secure a reduction in tax as a result of section 432C having effect in the case of the transferee, rather than the transferor, in relation to the business transferred by the transfer.

(4) The chargeable excess is to be brought into account by the transferor as mentioned in section 83(2)(b) of the Finance Act 1989 for the relevant period of account.

(5) Where there is no amount shown in relation to the transferee's non-profit fund in column 1 of line 51 of Form 14 of the periodical return of the transferee for the first period of account of the transferee ending on or after the transfer date ("the first post-transfer period of account"), the chargeable excess is to be brought into account by the transferee as mentioned in section 83(2) of the Finance Act 1989 as a decrease in the value of non-linked assets for the first post-transfer period of account.

(6) Where—

(a) there is an amount shown in relation to the transferee's non-profit fund in column 1 of line 51 of Form 14 of the periodical return of the transferee for the first post-transfer period of account, and

(b) the amount so shown in column 1 of line 51 of Form 14 of the periodical return of the transferee for that period of account, or for any other period of account of the transferee ending after the transfer date, (an "affected period of account") is less than the total chargeable excess amount,

the relevant amount is to be brought into account by the transferee as mentioned in section 83(2) of the Finance Act 1989 as a decrease in the value of non-linked assets for the affected period of account.

(7) For this purpose "the relevant amount" is the amount by which—

(a) the amount shown in relation to the transferee's non-profit fund in column 1 of line 51 of Form 14 of the periodical return of the transferee for the affected period of account, is less than

(b) the total chargeable excess amount less any amount brought into account by the transferee as mentioned in section 83(2) of the Finance Act 1989 as a decrease in the value of non-linked assets for any earlier period of account by virtue of the operation of this section in relation to the transferee's non-profit fund.

(8) In subsections (6) and (7) "the total chargeable excess amount" means the aggregate of—

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(a) the chargeable excess, and

(b) any amount which is the chargeable excess in relation to any other transfer of business to the transferee's non-profit fund.

(9) In this section "the relevant period of account" means—

(a) the period of account of the transferor ending immediately before the transfer date, or

(b) if no period of account of the transferor so ends, the period of account of the transferor covering the transfer date.

(10) In this section "the transfer scheme arrangements" means the insurance business transfer scheme and any relevant associated operations; and for this purpose "relevant associated operations" means—

(a) any other insurance business transfer scheme,

(b) any contract of reinsurance, or

(c) any reconstruction or amalgamation involving the transferor, a dependant of the transferor which is an insurance undertaking or the transferee,

which is effected in connection with the insurance business transfer scheme.

(11) In subsection (10)—

"dependant", and

"insurance undertaking",

have the same meaning as in the Insurance Prudential Sourcebook.

(12) In this section "the transfer date" means the date on which the insurance business transfer scheme takes effect.

(13) For the purposes of this section an insurance company which has elected under section 83YA(9) of the Finance Act 1989 (changes in value of assets brought into account: non-profit companies) to be treated as a non-profit company in relation to a period of account is to be regarded as a non-profit company in relation to the period of account.**]**

Textual Amendments

F2621 S. 432CB inserted (with effect in accordance with s. 9(2) of the amending Act) by Finance (No. 2) Act 2010 (c. 31), **s. 9(1)**

[F2622 432B Section 432B apportionment: value of non-participating funds.

(1) To the extent that the amount brought into account as the increase or decrease in the value of assets **[**F2623 or as other income**]** is attributable to assets **[**F2624 linked**]** to **[**F2625 pension business, life reinsurance business, basic life assurance and general annuity business or **[**F2626 long-term**]** business other than life assurance business**]**, or to assets of the overseas life assurance fund which are **[**F2624 linked**]** to overseas life assurance business, it shall be referable to the category of business concerned.

(2) There shall be referable to any category of business the relevant fraction of the amount brought into account as the increase or decrease in the value of assets **[**F2623 or as other income**]** except so far as the amount is attributable to assets which are directly referable to **[**F2627 any category of business**]**.

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[F2628(3) For the purposes of subsection (2) above "the relevant fraction", in relation to a category of business, is the fraction of which—

(a) the numerator is the mean of the opening and closing liabilities of the relevant business so far as referable to the category, reduced **[**F2629(but not below nil)**]** by the mean of the opening and closing **[**F2630net values**]** of any assets of the relevant business directly referable to the category; and

[F2631(b) the denominator is the aggregate of—

(i) the numerator given by paragraph (a) above; and

(ii) the numerators given by that paragraph in relation to the other categories of business.**]**

(4) For the purposes of subsections (2) and (3) above, the part of the amount brought into account as the increase or decrease in the value of assets **[**F2623or as other income**]** which is directly referable to a category of business is the part referable to the category by virtue of subsection (1) above and assets are directly referable to a category of business if such part of the amount brought into account as the increase or decrease in the value of assets **[**F2623or as other income**]** as is attributable to them is so referable.**]]**

Textual Amendments

F2622 Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**

F2623 Words in s. 432D inserted (with effect in accordance with Sch. 33 para. 9(1) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 9(1)**

F2624 Words in s. 432D(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 12(1)(a)** (with Sch. 8 para. 55(2))

F2625 Words in s. 432D(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 15(2)** (with Sch. 8 para. 55(2))

F2626 Word in s. 432D(1) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(f)**

F2627 Words in s. 432D(2) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 15(3)** (with Sch. 8 para. 55(2))

F2628 S. 432D(3)(4) substituted for s. 432D(3) (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 15(4)** (with Sch. 8 para. 55(2))

F2629 Words in s. 432D(3)(a) inserted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(a)(4)(c)**

F2630 Words in s. 432D(3)(a) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(a)(4)(c)**

F2631 S. 432D(3)(b) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(3)(b)(4)(c)**

Modifications etc. (not altering text)

C440 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S. I. 1992/1655, **regs. 1**,10

C441 S. 432D(1) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 12

C442 S. 432D(1) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 10; S.I. 2004/3369, **art. 2(1)**

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[F2632 432B Section 432B apportionment: participating funds.

(1) The part of the net amount **[**F2633 to be taken into account in accordance with section 83(2) of the M532Finance Act 1989 (that is to say, the aggregate amount to be taken into account as receipts reduced by the aggregate amount to be taken into account as expenses)**]** which is referable to a particular category of business **[**F2634 shall be the amount determined in accordance with **[**F2635subsections (2) and (2A)**]** below or, if greater, the amount determined in accordance with subsection (3) below **[**F2636but subject to section 432G**].]**

(2) For the purposes of subsection (1) above there shall be determined the amount which is such as to secure—

(a) F2637. . . . . .

(b) F2638. . . that

$$CS - CAS = \left(S - AS \right) \times \frac{CAS}{AS}$$

where—

S is the surplus of the relevant business;

AS is so much of that surplus as is allocated to persons entitled to the benefits provided for by the policies or contracts to which the relevant business relates;

CAS is so much of the surplus so allocated as is attributable to policies or contracts of the category of business concerned; and

CS is so much of the surplus of the relevant business as would remain if the relevant business were confined to business of the category concerned.

F2639**[** In a case where **[**F2640an amount or amounts are**]** taken into account under subsection (2) (2A) of section 83 of the Finance Act 1989 by virtue of subsection (2B) of that section **[**F2641or by virtue of section 444ACA(2) of this Act**]**, the amount determined under subsection (2) above is increased by—

$$\frac{CAS}{AS} \times RP$$

where—

CAS and AS have the same meanings as in subsection (2) above; and

[F2642RP is the amount or the aggregate of the amounts taken into account under subsection (2) of section 83 of the Finance Act 1989 by virtue of any of the following provisions—

(a) subsection (2B) of that section;

(b) section 444ACA(2) of this Act.**]**

(3) For the purposes of subsection (1) above there shall also be determined the aggregate of—

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(a) the applicable percentage of what is left of the mean of the opening and closing liabilities of the relevant business so far as referable to the category of business concerned after deducting from it the mean of the opening and closing values of any assets of the relevant business **[**F2643linked**]** to that category of business, and

(b) the part of the net amount mentioned in subsection (1) above that is attributable to assets **[**F2643linked**]** to that category of business.

(4) For the purposes of subsection (3) above "the applicable percentage", in any case, is such percentage as may be determined for that case by or in accordance with an order made by the Treasury.

(5) Where the part of the net amount referable to a particular category or categories of business ("the subsection (3) category or categories") is the amount determined in accordance with subsection (3) above, the amount determined in accordance with subsection (2) above in relation to any other category ("the relevant category") shall be reduced by—

$$\frac{XY}{Z}$$

where—

X is the excess of the amount determined in accordance with subsection (3) above in the case of the subsection (3) category (or each of them) over the amount determined in its case (or the case of each of them) in accordance with subsection (2) above;

Y is so much of the surplus of the relevant business as is allocated to persons entitled to the benefits provided for by policies or contracts of the relevant category; and

Z is so much of the surplus of the relevant business as is allocated to persons entitled to the benefits provided for by policies or contracts of the category (or each of the categories) which is not a subsection (3) category.

[F2644References in this subsection to the amount determined in accordance with subsection (3) above are to that amount after making any deduction required by section 432F.**]**

(6) Where the category of business concerned is overseas life assurance business—

(a) if the part of the income brought into account that is attributable to assets of the overseas life assurance fund not **[**F2643linked**]** to overseas life assurance business is greater than the amount arrived at under subsection (3)(a) above, this section shall have effect as if that part of that income were the amount so arrived at; F2645. . .

(b) F2645. . . . . .**]]**

Textual Amendments

F2632 Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**

F2633 Words in s. 432E(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 16(3)** (with Sch. 8 para. 55(2))

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F2634 Words in s. 432E(1) substituted (with effect in accordance with Sch. 8 para. 53(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(2)(a)** (with Sch. 8 para. 55(2))
F2635 Words in s. 432E(1) substituted (with effect in accordance with Sch. 33 para. 10(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 10(2)**
F2636 Words in s. 432E(1) added (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 3(2)**
F2637 S. 432E(2)(a) repealed (with effect in accordance with Sch. 33 para. 10(5) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 10(3)(a), **Sch. 43 Pt. 3(12)**, Note 2
F2638 Words in s. 432E(2)(b) repealed (with effect in accordance with Sch. 33 para. 10(5) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 10(3)(b), **Sch. 43 Pt. 3(12)**, Note 2
F2639 S. 432E(2A) inserted (with effect in accordance with Sch. 33 para. 10(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 10(4)**
F2640 Words in s. 432E(2A) substituted (with effect in accordance with Sch. 9 para. 5(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 5(2)(a)**
F2641 Words in s. 432E(2A) inerted (with effect in accordance with Sch. 9 para. 5(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 5(2)(b)**
F2642 Words in s. 432E(2A) substituted (with effect in accordance with Sch. 9 para. 5(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 5(3)**
F2643 Words in s. 432E(3)(a)(b)(6)(a) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 12(1)(a)** (with Sch. 8 para. 55(2))
F2644 Words in s. 432E(5) inserted (with effect in accordance with Sch. 8 para. 53(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(2)(b)** (with Sch. 8 para. 55(2))
F2645 S. 432E(6)(b) and preceding word repealed (with effect in accordance with Sch. 3 para. 2(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 2(1), **Sch. 8 Pt. 2(6)**, Note

Modifications etc. (not altering text)
C443 Ss. 432B-432E excluded (31.7.1992 with effect as mentioned in reg. 1 of the amending S.I.) by S.I. 1992/1655, **regs. 1**,10
C444 S. 432E modified (20.3.1997 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 14 (as amended by S.I. 2004/822, **regs. 1**, 10)
C445 S. 432E modified (12.8.2005 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 12 (as amended by S.I. 2007/2134, **regs. 1(1)(2)**, 12)
C446 *For orders see* Part III Vol.5 (*under* "*Life assurance apportionment of participating funds: applicable percentage*").

Marginal Citations
M532 1989 c. 26.

[F2646 432E Section 432B apportionment: supplementary provisions.

(1) The provisions of this section provide for the reduction of the amount determined in accordance with section 432E(3) ("the subsection (3) figure") for an accounting period in which that amount exceeds, or would otherwise exceed, the amount determined in accordance with section 432E(2) ("the subsection (2) figure").

(2) For each category of business in relation to which section 432E falls to be applied there shall be determined for each accounting period the amount (if any) by which the subsection (2) figure, after making any reduction required by section 432E(5), exceeds the subsection (3) figure ("the subsection (2) excess").

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(3) Where there is a subsection (2) excess, the amount shall be carried forward and if in any subsequent accounting period the subsection (3) figure exceeds, or would otherwise exceed, the subsection (2) figure, it shall be reduced by the amount or cumulative amount of subsection (2) excesses so far as not previously used under this subsection.

(4) Where in an accounting period that amount is greater than is required to bring the subsection (3) figure down to the subsection (2) figure, the balance shall be carried forward and aggregated with any subsequent subsection (2) excess for use in subsequent accounting periods.**]**

Textual Amendments

F2646 S. 432F inserted (with effect in accordance with Sch. 8 para. 53 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(3)** (with Sch. 8 para. 55(2))

Modifications etc. (not altering text)

C447 S. 432F(1) modified (20.3.1997 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 15; and that modifying reg. 15 is omitted (8.4.2004 with effect in accordance with reg. 1 of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 11**

[F2647 432G Section 432B: apportionment of business transfer-in

(1) This section applies where an amount falls within section 83(2)(e) of the Finance Act 1989.

(2) Where—

(a) this section applies, and

(b) it is necessary in accordance with section 83 to determine what part of a business transfer-in is referable to life assurance business or any category of life assurance business,

a business transfer-in shall be apportioned to the categories of business of the transferee in the proportions which the amount of the liabilities transferred for each of those categories bear to the whole of the liabilities transferred.**]**

Textual Amendments

F2647 S. 432G inserted (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 4**

F2648 433 Profits reserved for policy holders and annuitants.

. . . . . .

Textual Amendments

F2648 S. 433 repealed (14.3.1989) by Finance Act 1989 (c. 26), s. 84(5), Sch. 8 para. 2, **Sch. 17 Pt. IV**, Note 3 (with s. 84(6))

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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[F2649 Miscellaneous provisions relating to life assurance business]

Textual Amendments

F2649 Cross-heading before s. 434 inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 51(4)** (with Sch. 8 para. 55(2))

434 Franked investment income etc.

[F2650[F2651(1) Section 208 shall not apply in relation to—

(a) the charge to corporation tax on the life assurance profits of an insurance company computed in accordance with the provisions of this Act applicable to Case I of Schedule D; or

(b) any computation of such profits in accordance with those provisions.

(1A) F2652. . . . . .

(1B) The reference in subsection (1) above to the life assurance profits of an insurance company is a reference to the profits of the company—

(a) in respect of its life assurance business; or

(b) in respect of any category of life assurance business which it carries on.]]

(2) F2653. . . . . .

[F2654(3) F2655. . . . . .

(3A) [F2656So much of the policy holders' share of the franked investment income from investments of a company's long-term insurance fund as is referable to its] life assurance business shall be left out of account in determining, under subsection (7) of section 13, the franked investment income forming part of the company's profits for the purposes of that section.]

[F2657(3B) F2658. . . . . .

(3C) F2658. . . . . .

(3D) F2658. . . . . .]

(4) *M533 Subject to subsection* (5)*below, the specified part shall be, in the case of any unrelieved income, the same fraction of it as the fraction which, on a computation of the profits of the company in respect of its life assurance business in accordance with the provisions applicable to Case* I*of Schedule D* (*whether or not the company is in fact charged to tax under that Case for the relevant accounting period or periods*)*,would be connoted by the words in section* 433 "*such part of those profits as belongs or is allocated to, or is reserved for, or expended on behalf of, policy holders or annuitants*". F2659

(5) *If the income exceeds the profits as computed in accordance with the provisions applicable to Case* I*of Schedule D other than section 433, the specified part shall be that fraction of the income so far as not exceeding the profits, together with the amount of the excess*. F2660

(6) F2655. . . . . .

[F2661(6A) For the purposes of this section—

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(a) "the policy holders' share" of any franked investment income is so much of that income as is not the shareholders' share within the meaning of section 89 of the Finance Act 1989, [F2662]. . .

[[F2664]. . . . . .

[F2663](aa)

(ab) [F2664]. . . . . .

(ac) [F2664]. . . . . .**]**

(b) "the policy holders' share of the relevant profits" has the same meaning as in section **[**[F2665]89**]** of that Act.**]**

(7) [F2653]. . . . . .

(8) [F2655]. . . . . .

Textual Amendments

F2650 S. 434(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 19(2)** (with Sch. 8 para. 55(2))

F2651 S. 434(1)-(1B) substituted for s. 434(1) (with effect in accordance with Sch. 3 para. 3(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 3(2)**

F2652 S. 434(1A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 177, **Sch. 3** (with Sch. 2)

F2653 S. 434(2)(7) repealed (with effect in accordance with Sch. 29 Pt. 8(5) Note 2 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**

F2654 S. 434(3)(3A) substituted for s. 434(3) by Finance Act 1989 (c. 26), s. 84(4)-(6), **Sch. 8 para. 3(1)**

F2655 S. 434(3)(6)(8) repealed (with effect in accordance with Sch. 3 para. 25(5)(6) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 25(2)-(4), **Sch. 27 Pt. 3(2)**, Note

F2656 Words in s. 434(3A) substituted (with effect in accordance with Sch. 33 para. 12(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 12(2)**

F2657 S. 434(3B)-(3D) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 5(4)**

F2658 S. 434(3B)-(3D) repealed (with effect in accordance with Sch. 6 para. 3(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 6(2), **Sch. 8 Pt. 2(11)**, Note

F2659 *Repealed by* 1989 ss.84*and* 187*and* Sch.8 para.3(2)*and* Sch.17 Part IV*with respect to accounting periods beginning on or after* 1*January* 1990.

F2660 *Repealed by* 1989 ss.84*and* 187*and* Sch.8 para.3(2)*and* Sch.17 Part IV*with respect to accounting periods beginning on or after* 1*January* 1990.

F2661 1990 s.45(7).

F2662 Word at the end of s. 434(6A)(a) repealed (3.5.1994) by Finance Act 1994 (c. 9), Sch. 16 para. 5(5), **Sch. 26 pt. 5(16)**

F2663 S. 434(6A)(aa)-(ac) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para 5(5)**

F2664 S. 434(6A)(aa)-(ac) repealed (with effect in accordance with Sch. 6 para. 6(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 6(3), **Sch. 8 Pt. 2(11)**, Note

F2665 Words in s. 434(6A)(b) substituted (with effect in accordance with Sch. 33 para. 6(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 6(7)(a)**

Modifications etc. (not altering text)

C448 S. 434 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

C449 S. 434(1)(1A)(1C)(1D) restricted by (Finance (No. 2) Act 1992 (c. 48), **s. 65** (as amended (31.7.1997) by (Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 15**)

Marginal Citations

M533 Source—1970 s.310(6)

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[F2666[F2667434A Computation of losses and limitation on relief.

(1) F2668. . . . . .

[F2669(2) Where for any accounting period the loss arising to an insurance company from its life assurance business falls to be computed in accordance with the provisions of this Act applicable to Case I of Schedule D—

(a) the loss resulting from the computation shall be reduced (but not below nil) by the aggregate of—

(i) F2670. . . . . .

(ii) any relevant non-trading deficit for that period on the company's debtor relationships; and

[F2671(iii) any loss for that period under section 441; and]]

(b) if the whole or any part of that loss as so reduced is set off—

(i) under section 393A, or

(ii) under section 403(1),

any losses for that period under section 436 [F2672or 439B] shall be reduced to nil, unless the aggregate of those losses exceeds the total of the amounts set off as mentioned in sub-paragraphs (i) and (ii) above, in which case each of those losses shall be reduced by an amount which bears to that total the proportion which the loss in question bears to that aggregate.

[F2673(2A) The reference in subsection [F2674(2)(a)(ii)] above to a relevant non-trading deficit for any period on a company's debtor relationships is a reference to the non-trading deficit on the company's loan relationships which would be produced by any separate computation made under paragraph 2 of Schedule 11 to the Finance Act 1996 for the company's basic life assurance and general annuity business if credits and debits given in respect of the company's creditor relationships (within the meaning of Chapter II of Part IV of that Act) were disregarded.]

(3) In the case of a company carrying on life assurance business, no relief shall be allowable [F2675—

(a) under Chapter II (loss relief) or Chapter IV (group relief) of Part X, or

(b) in respect of any amount representing a non-trading deficit on the company's loan relationships that has been computed otherwise than by reference to debits and credits referable to that business,]

against the policy holders' share of the relevant profits for any accounting period.

For the purposes of this subsection "the policy holders' share of the relevant profits" has the same meaning as in section [F2676]89] of the Finance Act 1989.]]

Textual Amendments

F2666 S. 434A inserted by Finance Act 1989 (c. 26), s. 84(4)-(6), **Sch. 8 para. 4**

F2667 S. 434A substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para 20(1)** (with Sch. 8 para. 55(2))

F2668 S. 434A(1) repealed (with effect in accordance with Sch. 3 para. 4(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 4(1), **Sch. 8 Pt. 2(6)**, Note

F2669 S. 434A(2) substituted (with effect in accordance with Sch. 31 paras. 2(1), 10(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 31 para. 2(1)(a)(2)**

F2670 S. 434A(2)(a)(i) repealed (with effect in accordance with s. 38(6) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), s. 38(4), **Sch. 11 Pt. 2(7)**, Note

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F2671 S. 434A(2)(a)(iii) inserted (with effect in accordance with Sch. 27 para. 12(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 8(a)**

F2672 Words in s. 434A(2) substituted (with effect in accordance with Sch. 27 para. 12(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 8(b)**

F2673 S. 434A(2A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 23(2)** (with Sch. 15)

F2674 Words in s. 434A(2A) substituted (with effect in accordance with Sch. 31 paras. 2(1), 10(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 31 para. 2(1)(b)**

F2675 Words in s. 434A(3) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 23(3)** (with Sch. 15)

F2676 Words in s. 434A(3) substituted (with effect in accordance with Sch. 33 para. 6(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 6(7)(b)**

Modifications etc. (not altering text)

C450 S. 434A(2) modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 23(1)** (with Sch. 15)

C451 S. 434A(2) modified by Finance Act 1996 (c. 8), **Sch. 31 para. 2(3)**

VALID FROM 21/07/2009

[F2677 434AZA Reduced loss relief for additions to non-profit funds

(1) Where this section applies in the case of a company carrying on life assurance business, relief allowable under section 393A or Chapter 4 of Part 10 in respect of losses incurred by the company in the life assurance business in an accounting period is reduced in accordance with section 434AZB.

(2) This section applies in the case of a company where—

(a) there has been a relevant addition to one or more non-profit funds in a period of account ending no later than the accounting period ("the relevant period of account") (see subsection (3)),

(b) the company is not a non-profit company in relation to the relevant period of account and has not elected under subsection (9) of section 83YA of the Finance Act 1989 to be treated for the purposes of that section as if it were, and

(c) condition A or B is met,

and, if the relevant period of account is not the period of account ending with the accounting period ("the current period of account"), condition C is also met.

(3) For the purposes of subsection (2), there is a relevant addition to a non-profit fund in the relevant period of account if an amount is shown as a transfer from non-technical account in line 32 of the Form 58 of the non-profit fund in the periodical return for that period of account.

(4) Condition A is that there is a relevant book value election in relation to assets of a non-profit fund of the company.

(5) For the purposes of subsection (4), there is a relevant book value election in relation to assets of a non-profit fund if an amount is shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account.

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(6) Condition B is that the company is party to arrangements the main purpose, or one of the main purposes, of which is to reduce the relevant admissible value of assets of a non-profit fund of the company, other than any structural assets.

(7) For the purposes of subsection (6) (and section 434AZB), the "relevant admissible value" means the value reflected in line 89 of Form 13 of the periodical return for the current period of account.

(8) Condition C is that the surplus arising since the last valuation shown in line 34 of the Form 58 of the non-profit fund, or any of the non-profit funds, in relation to which condition A or B is met in the periodical return for the current period of account is a negative amount.**]**

Textual Amendments

F2677 Ss. 434AZA-434AZC inserted (with effect in accordance with Sch. 23 para. 3(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 3(1)**

VALID FROM 21/07/2009

[F2677 434AZB Additions to non-profit funds: amount of loss reduction

(1) The amount of the relief allowable as mentioned in section 434AZA(1) is reduced by whichever of the following is the least—

(a) the amount of the loss,

(b) the amount specified in subsection (2), and

(c) the amount specified in subsection (4).

(2) The amount mentioned in subsection (1)(b) is—

(a) where only condition A in section 434AZA is met, the relevant amount relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant amounts relating to them,

(b) where only condition B is met, the amount of the relevant reduction relating to the non-profit fund in relation to which it is met or (where it is met in relation to more than one non-profit fund) the sum of the relevant reductions relating to them, and

(c) where both condition A and condition B are met, the aggregate of the amounts in paragraphs (a) and (b).

(3) In subsection (2)—

(a) "relevant amount", in relation to a non-profit fund, means the amount shown in relation to the non-profit fund as the excess of the value of net admissible assets in line 51 of the Form 14 of the non-profit fund in the periodical return for the current period of account (as reduced by any amount which has had effect to reduce relief for losses for a previous accounting period), and

(b) "relevant reduction", in relation to a non-profit fund, means the reduction of the relevant admissible value of assets of the non-profit fund (other than structural assets) which is attributable to the arrangements (as so reduced).

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(4) The amount mentioned in subsection (1)(c) is—

(a) if the relevant period of account is the current period of account, the amount referred to in section 434AZA(3) in the case of the non-profit fund, or of each of the non-profit funds, to which there has been a relevant addition in the relevant period of account, and

(b) otherwise, so much of the amount shown in line 31 of the Form 58 of the non-profit fund or non-profit funds in the periodical return for the current period of account as is attributable to the amount so referred to.**]**

Textual Amendments

F2677 Ss. 434AZA-434AZC inserted (with effect in accordance with Sch. 23 para. 3(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 3(1)**

VALID FROM 21/07/2009

[F2677 434AZC Sections 434AZA and 434AZB: supplementary

(1) For the purposes of sections 434AZA and 434AZB, a non-profit fund required to support a with-profits fund is to be treated as not being a non-profit fund.

(2) Sections 434AZA and 434AZB apply to a non-profit part of a with-profits fund as if references to something shown in the Form 14 or Form 58 of the non-profit fund in a periodical return were to what would be so shown if there were a Form 14 or Form 58 of the non-profit part of the with-profits fund in the periodical return.

(3) In sections 434AZA and 434AZB—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and

"structural assets" has the same meaning as in section 83XA of the Finance Act 1989 (see subsection (3) of that section and any regulations made under it).**]**

Textual Amendments

F2677 Ss. 434AZA-434AZC inserted (with effect in accordance with Sch. 23 para. 3(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 23 para. 3(1)**

[F2678 434B Treatment of interest and annuities.

(1) F2679 . . . . . .

(2) F2680 . . . . . .**]**

Textual Amendments

F2678 S. 434B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 21(1)** (with Sch. 8 para. 55(2))

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F2679 S. 434B(1) repealed (with effect in accordance with s. 165(4)(5) of the repealing Act) by Finance Act 1996 (c. 8), s. 165(3), **Sch. 41 Pt 5(25)**, Note (with Sch. 14 para. 24)
F2680 S. 434B(2) repealed (with effect in accordance with s. 67(7), Sch. 18 Pt. 6(6) Note of the repealing Act) by Finance Act 1997 (c. 16), s. 67(4), **Sch. 18 Pt. 6(6)**

[F2681 434C Interest on repayment of advance corporation tax.

F2682 . . . . . .]

Textual Amendments
F2681 S. 434C inserted (with effect in accordance with Sch. 8 paras. 54, 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 22** (with Sch. 8 para. 55(2))
F2682 S. 434C repealed (with effect in accordance with Sch. 3 para. 26(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 26(1), **Sch. 27 Pt. 3(2)**, Note

[F2683 434D Capital allowances: management assets.

F2684 . . . . . .

Textual Amendments
F2683 Ss. 434D, 434E inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 23(1)** (with Sch. 8 para. 55(2))
F2684 S. 434D repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 39, **Sch. 4**

434E Capital allowances: investment assets.

F2685 . . . . . .]

Textual Amendments
F2683 Ss. 434D, 434E inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 23(1)** (with Sch. 8 para. 55(2))
F2685 S. 434E repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 39, **Sch. 4**

F2686 435 Taxation of gains reserved for policy holders and annuitants.

. . . . . .

Textual Amendments
F2686 S. 435 repealed (with effect in accordance with s. 84(5)(b) of the repealing Act) by Finance Act 1989 (c. 26), s. 84(4), Sch. 8 para. 5, **Sch. 17 Pt. IV**, Note 3 (with s. 84(6))

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436 [F2687Pension business]: separate charge on profits.

(1) M534Subject to the provisions of this section, profits arising to an insurance company from F2688 . . . pension business shall be treated as income within Schedule D, and be chargeable under Case VI of that Schedule, and for that purpose—

(a) **[**F2689that business**]** shall be treated separately, and

(b) subject to paragraph (a) above, and to subsection (3) below, the profits therefrom shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(2) Subsection (1) above shall not apply to an insurance company charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its ordinary life assurance business.

(3) M535In making the computation referred to in subsection (1) above—

(a) **[**F2690sections **[**F269182 and 82B to 83AB**]** of the Finance Act 1989**]** shall apply with the necessary modifications F2692. . . ;

[F2693(aa) F2694. . . . . .**]**

(b) *no deduction shall be allowed in respect of any expenses of management deductible under section* 76; F2695

(c) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from pension business F2696 . . .in any previous accounting period or year of assessment;

(d) F2697. . . . . .

(e) F2697. . . . . .

(4) M536Section 396 shall not be taken to apply to a loss incurred by a company on its F2698 . . . pension business.

(5) M537Nothing in section 128 or 399(1) shall affect the operation of this section.

Textual Amendments

F2687 Words in s. 436 sidenote substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 51(5)** (with Sch. 8 para. 55(2))

F2688 Words in s. 436(1) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, 123, Sch. 7 paras. 4(1)(a), 18, **Sch. 19 Pt.V** Note 3

F2689 Words in s. 436(1)(a) substituted (for accounting periods beginning on or after 1. 1. 1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 4(1)(b), **18**

F2690 1989 s.84*and* Sch.8 para.6*and, subject to* s.84(6)*deemed to have come into force on* 14*March* 1989.*Previously*
"section 433".

F2691 Words in s. 436(3)(a) substituted (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 1(3)(a)**

F2692 Words in s. 436(3)(a) repealed (with effect in accordance with Sch. 33 para. 1(5) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 1(3)(b), **Sch. 43 Pt. 3(12)**, Note 1

F2693 S. 436(3)(aa) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 16(4)** (with Sch. 8 para. 55(2))

F2694 S. 436(3)(aa) repealed (with effect in accordance with Sch. 31 para. 10(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 31 para. 7(1)(a), **Sch. 41 Pt. 5(23)**, Note

F2695 *Words repealed by* 1989 ss.87(4)*and* 187*and* Sch.17 Part IV*with respect to accounting periods beginning on or after* 1*January* 1990. (See 1989 s.87(5)*in relation to straddling periods*).

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F2696 Words in s. 436(3)(c) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(2)(a), **18** Sch. 19 Pt. V, Note 3

F2697 S. 436(3)(d)(e) repealed (with effect in accordance with Sch. 3 para. 5(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 5(1), **Sch. 8 Pt. 2(6)**, Note

F2698 Words in s. 436(4) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(3), 18, **Sch. 19 Pt. V**, Note 3

Modifications etc. (not altering text)

C452 S. 436 modified (with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 19, 20 (as amended by S.I. 2004/822, **regs. 1**, 12, 14)

C453 S. 436 modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 13

C454 S. 436 modified (6.4.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 19A**, 20A (as inserted by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 25(3)(4), and as amended by S.I. 2004/822, **regs. 1**, 13, 15)

C455 S. 436 modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 11; S.I. 2004/3369, **art. 2(1)**

C456 S. 436 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 13 (which modifying reg. 13 is omitted by virtue of S.I. 2007/2134, **regs. 1(1)(2)**, 13)

C457 *See also* 1989 s.43—*certain Sch.D computations involving emoluments.*

Marginal Citations

M534 Source—1970 s.312(1); 1970(F) Sch.5 Part III 11(3)

M535 Source—1970 s.312(2), 314(5); 1970(F) Sch.5 Part III 11(6)(a)(b); 1972 Sch.18 5(1)(a)

M536 Source—1970 s.312(3); 1970(F) Sch.5 Part III 11(3)

M537 Source—1985 s.72(7)

VALID FROM 19/07/2007

[F2699 436A Gross roll-up business: separate charge on profits

(1) Profits arising to an insurance company from gross roll-up business—

(a) are to be treated as income within Schedule D, and

(b) are chargeable under Case VI of that Schedule.

(2) For that purpose—

(a) the gross roll-up business is to be treated separately, and

(b) the profits from it are to be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) In making that computation, sections 82 and 82B to **[**F2700 83ZA**]** of the Finance Act 1989 apply with the necessary modifications.

(4) If in any accounting period an insurance company incurs a loss, to be computed on the same basis as the profits, arising from its gross roll-up business—

(a) the loss must be set off against the amount of any profits chargeable under this section for any subsequent accounting period, and

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(b) accordingly, the amount of the company's profits so charged in any such accounting period is to be treated as reduced by the amount of the loss or so much of that amount as cannot be relieved under this section against profits of an earlier accounting period.

(5) Section 396 does not apply to a loss incurred by an insurance company on its gross roll-up business.

(6) No loss to which section 396 applies may be set off under subsection (4) above against the amount of any profits chargeable under this section.

(7) This section does not apply in relation to an insurance company for an accounting period if the profits of its long-term business for the accounting period are charged to tax under Case I of Schedule D.**]**

Textual Amendments

F2699 Ss. 436A, 436B inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 25** (with Sch. 7 Pt. 2)

F2700 S. 436A(3): "83ZA" substituted for "83AB" (with effect in accordance with Sch. 9 para. 17(2)(3) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 12**; S.I. 2008/379, **art. 2**

Modifications etc. (not altering text)

C458 S. 436A modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **reg. 13A** (as inserted (14.8.2007 with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2007 (S.I. 2007/2134), **regs. 1(1)**, 14)

VALID FROM 19/07/2007

[F2699 436B Gains referable to gross roll-up business not to be chargeable gains

(1) Gains referable to gross roll-up business are not chargeable gains.

(2) For the purposes of this section "gains referable to gross roll-up business" means gains which—

(a) accrue to an insurance company on the disposal by it of assets of its long-term insurance fund, and

(b) are referable (in accordance with section 432A) to gross roll-up business.**]**

Textual Amendments

F2699 Ss. 436A, 436B inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 25** (with Sch. 7 Pt. 2)

437 General annuity business.

[F2701 **[F2702** (1A) In the computation, otherwise than in accordance with the provisions applicable to Case I of Schedule D, of the **[F2703** relevant profits (within the meaning of section 88(1)

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of the Finance Act 1989) of an insurance company for any accounting period**]**, new annuities paid by the company in that period shall be brought into account by treating an amount equal to the income limit for that period **[**F2704 as expenses payable which fall to be brought into account for that period at Step 3 in section 76(7)**].]**

(1C) For the purposes of this section **[**F2705(but subject to subsections (1CA) to (1CD) below)**]**—

(a) "new annuity" means any annuity, so far as paid under a contract made by an insurance company in an accounting period beginning on or after 1st January 1992 and so far as referable to the company's basic life assurance and general annuity business;

(b) "the income limit" for an accounting period of an insurance company is the difference between—

(i) the total amount of the new annuities paid by the company in that accounting period; and

(ii) the total of the capital elements **[**F2706and amounts exempt under section 717 of ITTOIA 2005**]** contained in the new annuities so paid;

F2707 . . .

(c) the capital element contained in an annuity shall be determined in accordance with Chapter V of Part XIV, but for this purpose—

(i) it is immaterial whether or not an annuitant claims any relief to which he is entitled under that Chapter; and

(ii) where, by virtue of subsection (2) of section 657, section 656 does not apply to an annuity, the annuity shall be treated as containing the capital element that it would have contained apart from that subsection; **[**F2708and

(d) the amounts exempt under section 717 of ITTOIA 2005 shall be determined in accordance with Chapter 7 of Part 6 of that Act, but for this purpose—

(i) it is immaterial whether or not an annuitant claims any relief to which the annuitant is entitled under that section; and

(ii) where, by virtue of section 718 of that Act, section 717 does not apply to an annuity, the annuity shall be treated as being exempt to the same extent that it would have been apart from that section.**]**

F2709**[** Where a new annuity ("the actual annuity") is a steep-reduction annuity, the income (1CA) limit for an accounting period of the company paying the annuity shall be computed for the purposes of this section as if—

(a) the contract providing for the actual annuity provided instead for the annuities identified by subsections (1CB) and (1CC) below; and

(b) the consideration for each of those annuities were to be determined by the making of a just and reasonable apportionment of the consideration for the actual annuity.

(1CB) The annuities mentioned in subsection (1CA)(a) above are—

(a) an annuity the payments in respect of which are confined to the payments in respect of the actual annuity that fall to be made before the earliest time for the making in respect of the actual annuity of a reduced payment such as is mentioned in section 437A(1)(c); and

(b) subject to subsection (1CC) below, an annuity the payments in respect of which are all the payments in respect of the actual annuity other than those mentioned in paragraph (a) above.

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(1CC) Where an annuity identified by paragraph (b) of subsection (1CB) above ("the later annuity") would itself be a steep-reduction annuity, the annuities mentioned in subsection (1CA)(a) above—

(a) shall not include the later annuity; but

(b) shall include, instead, the annuities which would be identified by subsection (1CB) above (with as many further applications of this subsection as may be necessary for securing that none of the annuities mentioned in subsection (1CA)(a) above is a steep-reduction annuity) if references in that subsection to the actual annuity were references to the later annuity.

(1CD) Subsections (1CA) to (1CC) above shall be construed in accordance with section 437A.**]**

(1D) In any case where—

(a) a payment in respect of an annuity is made by an insurance company under a group annuity contract made in an accounting period beginning before 1st January 1992,

(b) the company's liabilities first include an amount in respect of that annuity in an accounting period beginning on or after that date, and

(c) the company's liability in respect of that annuity is referable to its basic life assurance and general annuity business,

the payment shall be treated for the purposes of this section, other than this subsection, as if the group annuity contract had been made in an accounting period beginning on or after 1st January 1992 (and, accordingly, as payment of a new annuity).

(1E) In any case where—

(a) a payment in respect of an annuity is made by a reinsurer under a reinsurance treaty made in an accounting period beginning before 1st January 1992,

(b) the reinsurer's liabilities first include an amount in respect of that annuity in an accounting period beginning on or after that date, and

(c) the reinsurer's liability in respect of that annuity is referable to its basic life assurance and general annuity business,

the payment shall, as respects the reinsurer, be treated for the purposes of this section, other than this subsection, as if the reinsurance treaty had been made in an accounting period beginning on or after 1st January 1992 (and, accordingly, as payment of a new annuity).

(1F) In this section—

"group annuity contract" means a contract between an insurance company and some other person under which the company undertakes to become liable to pay annuities to or in respect of such persons as may subsequently be specified or otherwise ascertained under or in accordance with the contract (whether or not annuities under the contract are also payable to or in respect of persons who are specified or ascertained at the time the contract is made);

"reinsurance treaty" means a contract under which one insurance company is obliged to cede, and another (in this section referred to as a "reinsurer") to accept, the whole or part of a risk of a class or description to which the contract relates.**]**

F2710(2) . . . . . .

F2711(3) . . . . . .

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F2712(4) . . . . . .

F2713(5) . . . . . .

(6) F2714. . . . . .

Textual Amendments

F2701 S. 437(1A)-(1F) substituted for s. 437(1) (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, Sch. 7 paras. 5, **18**

F2702 S. 437(1A) substituted for s. 437(1A)(1B) (with effect in accordance with s. 67(7) of the amending Act) by Finance Act 1997 (c. 16), **s. 67(1)**

F2703 Words in s. 437(1A) substituted (with effect in accordance with Sch. 33 para. 6(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 6(9)**

F2704 Words in s. 437(1A) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 18

F2705 Words in s. 437(1C) inserted (with effect in accordance with s. 67(8) of the amending Act) by Finance Act 1997 (c. 16), **s. 67(2)**

F2706 Words in s. 437(1C)(b)(ii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 178(2)** (with Sch. 2)

F2707 Word at the end of s. 437(1C)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 178(3), **Sch. 3** (with Sch. 2)

F2708 S. 437(1C)(d) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 178(4)** (with Sch. 2)

F2709 S. 437(1CA)-(1CD) inserted (with effect in accordance with s. 67(8) of the amending Act) by Finance Act 1997 (c. 16), **s. 67(2)**

F2710 S. 437(2)-(5) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(4), 18, **Sch. 19 Pt. V**, Note 3

F2711 S. 437(2)-(5) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(4), 18, **Sch. 19 Pt. V**, Note 3

F2712 S. 437(2)-(5) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(4), 18, **Sch. 19 Pt. V**, Note 3

F2713 S. 437(2)-(5) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 4(4), 18, **Sch. 19 Pt. V**, Note 3

F2714 S. 437(6) repealed (with effect in accordance with Sch. 8 para. 57 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

Modifications etc. (not altering text)

C459 S. 437 modified (10.8.1995) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **reg. 10A** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1995 (S.I. 1995/1916), **regs. 1**, 6)

C460 S. 437 modified (with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 21 (as amended (31.12.1997) with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment No. 2) Regulations 1997 (S.I. 1997/2877), **regs. 1(1)**, 4)

C461 S. 437 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 14

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[F2715 437A Meaning of "steep-reduction annuity" etc.

(1) For the purposes of section 437 an annuity is a steep-reduction annuity if—

(a) the amount of any payment in respect of the annuity (but not the term of the annuity) depends on any contingency other than the duration of a human life or lives;

(b) the annuitant is entitled in respect of the annuity to payments of different amounts at different times; and

(c) those payments include a payment ("a reduced payment") of an amount which is substantially smaller than the amount of at least one of the earlier payments in respect of that annuity to which the annuitant is entitled.

(2) Where there are different intervals between payments to which an annuitant is entitled in respect of any annuity, the question whether or not the conditions in subsection (1) (b) and (c) above are satisfied in the case of that annuity shall be determined by assuming—

(a) that the annuitant's entitlement, after the first payment, to payments in respect of that annuity is an entitlement to payments at yearly intervals on the anniversary of the first payment; and

(b) that the amount to which the annuitant is assumed to be entitled on each such anniversary is equal to the annuitant's assumed entitlement for the year ending with that anniversary.

(3) For the purposes of subsection (2) above an annuitant's assumed entitlement for any year shall be determined as follows—

(a) the annuitant's entitlement to each payment in respect of the annuity shall be taken to accrue at a constant rate during the interval between the previous payment and that payment; and

(b) his assumed entitlement for any year shall be taken to be equal to the aggregate of the amounts which, in accordance with paragraph (a) above, are treated as accruing in that year.

(4) In the case of an annuity to which subsection (2) above applies, the reference in section 437(1CB)(a) to the making of a reduced payment shall be construed as if it were a reference to the making of a payment in respect of that annuity which (applying subsection (3)(a) above) is taken to accrue at a rate that is substantially less than the rate at which at least one of the earlier payments in respect of that annuity is taken to accrue.

(5) Where—

(a) any question arises for the purposes of this section whether the amount of any payment in respect of any annuity—

(i) is substantially smaller than the amount of, or

(ii) accrues at a rate substantially less than,

an earlier payment in respect of that annuity, and

(b) the annuitant or, as the case may be, every annuitant is an individual who is beneficially entitled to all the rights conferred on him as such an annuitant,

that question shall be determined without regard to so much of the difference between the amounts or rates as is referable to a reduction falling to be made as a result of the occurrence of a death.

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(6) Where the amount of any one or more of the payments to which an annuitant is entitled in respect of an annuity depends on any contingency, his entitlement to payments in respect of that annuity shall be determined for the purposes of section 437(1CA) to (1CC) and this section according to whatever (applying any relevant actuarial principles) is the most likely outcome in relation to that contingency.

(7) Where any agreement or arrangement has effect for varying the rights of an annuitant in relation to a payment in respect of any annuity, that payment shall be taken, for the purposes of section 437(1CA) to (1CC) and this section, to be a payment of the amount to which the annuitant is entitled in accordance with that agreement or arrangement.

(8) References in this section to a contingency include references to a contingency that consists wholly or partly in the exercise by any person of any option.**]**

Textual Amendments

F2715 S. 437A inserted (with effect in accordance with s. 67(8) of the amending Act) by Finance Act 1997 (c. 16), **s. 67(3)**

438 Pension business: exemption from tax.

(1) **M538** Exemption from corporation tax shall be allowed in respect of income from, and chargeable gains in respect of, investments and deposits of so much of an insurance company's **[**F2716 long-term insurance fund**]** as is referable **[**F2717 (in accordance with section 432A)**]** to pension business.

(2) **M539** The exemption from tax conferred by subsection (1) above shall not exclude any sums from being taken into account as receipts in computing profits or losses for any purpose of the Corporation Tax Acts.

(3) **F2718** . . . . . .

[F2719 (3AA) **F2718** . . . . . .**]**

[F2720 (4) This section shall be disregarded in determining, in relation to an insurance company which is entitled to a tax credit in respect of a distribution, whether the condition in paragraph (a) or (b) of section 231(2) is satisfied.**]**

(5) **F2721** . . . . . .

(6) **F2721** . . . . . .

[F2722 (6A) **F2723** . . . . . .**]**

[F2724 (6B) **F2721** . . . . . .

(6C) **F2721** . . . . . .

(6D) **F2721** . . . . . .

(6E) **F2721** . . . . . .**]**

(7) **F2721** . . . . . .

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(8) [M540]Nothing in sections **[**[F2725]431B(2)(c)**]** or 643(2) of this Act or section **[**[F2726]271(1)(h) of the 1992 Act**]** shall be construed as affording relief in respect of any sums to be brought into account under this section.

[[F2727](9) [F2728]. . . . . .**]**

Textual Amendments

F2716 Words in s. 438(1) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(e)**

F2717 Words in s. 438(1) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 9(1)(a)**

F2718 S. 438(3)(3AA) repealed (with effect in accordance with Sch. 3 para. 6(7) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 6(2), **Sch. 8 Pt. 2(6)**, Note

F2719 S. 438(3AA) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 6(2)**

F2720 S. 438(4) substituted (with effect in accordance with Sch. 3 para. 6(7) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 6(3)**

F2721 S. 438(5)-(7) repealed (with effect in accordance with Sch. 3 para. 6(7)-(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 6(4)(5), **Sch. 8 Pt. 2(6)**, Note (with Sch. 3 para. 13(17))

F2722 1990 s.45(9).

F2723 S. 438(5)-(7) repealed (with effect in accordance with Sch. 3 para. 6(7)(8), Sch. 8 Pt. 2(6) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 6(4)(5), **Sch. 8 Pt. 2(6)**

F2724 S. 438(6B)-(6E) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 6(4)**

F2725 Words in s. 438(8) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 4(3)** (with Sch. 8 para. 55(2))

F2726 Words in s. 438(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(21)** (with ss. 60, 101(1), 171, 201(3))

F2727 S. 438(9) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(2)** (with Sch. 8 para. 55(2))

F2728 S. 438(9) repealed (with effect in accordance with Sch. 3 para. 6(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 6(6), **Sch. 8 Pt. 2(6)**, Note

Modifications etc. (not altering text)

C462 S. 438 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

C463 S. 438 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 18 para. 1(5)**

C464 S. 438 modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 14 (and as substituted (22.8.2000) by The Individual Savings Account (Insurance Companies) (Amendment) Regulations 2000 (S.I. 2000/2075), **regs. 1**, 4)

C465 S. 438(1) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 12; S.I. 2004/3369, **art. 2(1)**

Marginal Citations

M538 Source—1970 s.314(1); 1970(F) Sch.5 Part III 11(3), (6)(c)

M539 Source—1970 s.314(2)

M540 Source—1987 (No.2) s.39(3)

[[F2729]438A Pension business: payments on account of tax credits and deducted tax.

[F2730]. . . . . .**]**

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Textual Amendments

F2729 S. 438A inserted (2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), **s. 49(1)**; S.I. 1992/1746, **art.2**

F2730 S. 438A repealed (with effect in accordance with s. 87(2)(5) of the repealing Act) by Finance Act 2001 (c. 9), s. 87(1), **Sch. 33 Pt. 2(12)**

[F2731 438B Income or gains arising from property investment LLP

(1) Where an asset held by an insurance company as an asset of its [F2732 long-term insurance fund] is held by the company as a member of a property investment LLP, the policy holders' share of any income arising from, or chargeable gains accruing on the disposal of, the asset which—

(a) is attributable to the company, and

(b) would otherwise be referable by virtue of section 432A to pension business,

shall be treated for the purposes of the Corporation Tax Acts as referable to basic life assurance and general annuity business.

(2) For the purposes of this section the property business of the insurance company for the purposes of which the asset is held shall be treated as a separate business.

"Property business" means a Schedule A business or overseas property business.

(3) Where (apart from this subsection) an insurance company would not be carrying on basic life assurance and general annuity business, it shall be treated as carrying on such business if any income or chargeable gains of the company are treated as referable to the business by virtue of subsection (1) above.

(4) A company may be charged to tax by virtue of this section—

(a) notwithstanding section 439A, and

(b) whether or not the income or chargeable gains to which subsection (1) above applies is taken into account in computing the profits of the company for the purposes of any charge to tax in accordance with Case I of Schedule D.

(5) The policy holders' share of income or chargeable gains to which subsection (1) above applies—

(a) shall not be treated as relevant profits for the purposes of section 88 of the Finance Act 1989 (corporation tax on policy holders' fraction of profits), F2733 . . .

(b) F2733 . . . . . .

but the whole of the income or gains to which that subsection applies shall be chargeable to tax at the rate provided by [F2734 that section].

(6) So far as income is brought into account as mentioned in section 83(2) of the Finance Act 1989, sections 432B to 432F (apportionment of receipts brought into account) have effect as if subsection (1) above did not apply.]

Textual Amendments

F2731 Ss. 438B, 438C inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 5**

F2732 Words in s. 438B(1) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(f)**

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F2733 S. 438B(5)(b) repealed (with effect in accordance with Sch. 33 para. 13(11) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 13(6)(a), **Sch. 43 Pt. 3(12)**, Note 3

F2734 Words in s. 438B(5) substituted (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 13(6)(b)**

Modifications etc. (not altering text)

C466 S. 438B modified (with effect in accordance with regs. 21A(5), 21B(3) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 21A**, 21B (as inserted (1.1.2002) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2001 (S.I. 2001/3975), **regs. 1**, 6) (and as amended by: S.I. 2003/23, **regs. 1**, 7; S.I. 2004/822, **regs. 1**, 16, 17)

C467 S. 438B modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 15; and that modifying reg. 15 is omitted (14.8.2007 with effect in accordance with reg. 1(1)(2) of the revoking S.I.) by virtue of S.I. 2007/2134, **reg. 15**

[F2731 438C Determination of policy holders' share for purposes of s.438B

(1) For the purposes of section 438B the policy holders' share of any income or chargeable gains to which subsection (1) of that section applies is what remains after deducting the shareholders' share.

(2) The shareholders' share is found by applying to the whole the fraction—

$$\frac{A}{B}$$

where—

A is the amount of the profits of the company for the period which are chargeable to tax under section 436; and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits (apart from premiums and sums received by virtue of a claim under a reinsurance contract), over

(b) the amounts taken into account as expenses in computing those profits.

(3) Where there is no such excess as is mentioned in subsection (2) above, or where the profits are greater than any excess, the whole of the income or gains is treated as the shareholders' share.

(4) Subject to that, where there are no profits none of the income or gains is treated as the shareholders' share.**]**

Textual Amendments

F2731 Ss. 438B, 438C inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 5**

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439 Restricted government securities.

[F2735(1) For the purposes of this Chapter restricted government securities shall be treated as linked solely to pension business.

(2) In this section**]** "restricted government securities" means, subject to the following provisions of this section, government securities issued on the condition that, except in such circumstances as may be specified in the conditions of issue, they are to be held by insurance companies against and applied solely towards meeting pension business liabilities.

(6) M541Subject to subsection (7) below, the following Treasury Stock, namely—

(a) 2 per cent. Index-linked Treasury Stock 1996;

(b) 2 per cent. Index-linked Treasury Stock 2006;

(c) 2 per cent. Index-linked Treasury Stock 2011;

are not restricted government securities for the purposes of this section.

(7) If any of the index-linked stock referred to in subsection (6) above was on 27th March 1982 held by an insurance company against and applied solely towards meeting the liabilities of the company's pension business, then—

(a) M542if and so long as the stock continues to be so held by that company, it shall continue to be treated as restricted government securities for the purposes of this section; and

(b) M543if the stock ceases to be restricted government securities otherwise than by virtue of being actually disposed of or redeemed, on the day on which it so ceases the stock shall be deemed for the purposes of corporation tax, including (*subject to subsection* (8)*below*) F2736 corporation tax on chargeable gains, to have been disposed of and immediately re-acquired at its market value on that date.

(8) M544*For the purposes of sections* 67*and* 68*of the* 1979*Act* (*gilt-edged securities*)—

(a) *in ascertaining the date on which securities were acquired, no account shall be taken of any deemed disposal and reacquisition resulting from subsection* (7)(b)*above; and*

(b) *so long as any index-linked stock continues, by virtue of subsection* (7)(a)*above, to be treated as restricted government securities for the purposes of this section, it shall be regarded as being stock of a different kind from the index-linked stock referred to in subsection* (6)*above which is not so treated*. F2737

Textual Amendments

F2735 1990 s.41*and* Sch.6 para.7*on and after* 1*January* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*

"(1) This section applies where for any accounting period—(a) any division falls to be made between the pension business and any other kind of long-term business of an insurance company, and (b) any of the income or gains or losses of the company for that period relate to restricted government securities; and where this section applies section 431(3) shall have effect subject to the provisions of this section. (2) All income, gains or losses of the company which relate to restricted government securities shall be referred to its pension business. (3) Where the division of the other income, gains or losses of the company is made by reference to the liabilities at any time in the accounting period which are referable to pension business or to two or more kinds of business including pension business, those liabilities shall be treated as reduced by the appropriate amount. (4) In subsection (3) above "the appropriate

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amount" means—(a) in a case in which the total liabilities of the company at the time in question which are referable to long-term business are less than the market value at that time of the investments and deposits held by the company relating to all such business, such proportion of the market value of the restricted government securities held by the company at that time as those liabilities bear to the market value of those investments and deposits, and (b) in any other case, the market value of the restricted government securities at that time. (5) In this section— "long-term business" has the same meaning as in section 1(1) of the Insurance Companies Act 1982;".

F2736 *Repealed by* 1990 s.132 *and* Sch.19 Part IV.

F2737 *Repealed by* 1990 s.132 *and* Sch.19 Part IV.

Marginal Citations

M541 Source—1982 s.58(1), (3)

M542 Source—1982 s.58(4)

M543 Source—1982 s.58(5)

M544 Source—1982 s.58(6)

[F2738 439A Taxation of pure reinsurance business.

If a company does not carry on life assurance business other than reinsurance business, and none of that business is of a type excluded from this section by regulations made by the Board, the profits of that business shall be charged to tax in accordance with Case I of Schedule D and not otherwise.]

Textual Amendments

F2738 S. 439A inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 26** (with Sch. 8 para. 55(2))

[F2739 439B Life reinsurance business: separate charge on profits.

(1) Where a company carries on life reinsurance business and the profits arising from that business are not charged to tax in accordance with the provisions applicable to Case I of Schedule D, then, subject as follows, those profits shall be treated as income within Schedule D and be chargeable to tax under Case VI of that Schedule, and for that purpose—

(a) that business shall be treated separately, and

(b) subject to paragraph (a) above, the profits from it shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(2) Subsection (1) above does not apply to so much of reinsurance business of any description excluded from that subsection by regulations made by the Board.

Regulations under this subsection may describe the excluded business by reference to any circumstances appearing to the Board to be relevant.

(3) In making the computation referred to in subsection (1) above—

(a) sections [F2740 82 and 82B to 83AB] of the Finance Act 1989 shall apply with the necessary modifications F2741 . . . ,[F2742 and]

(b) F2743 . . . . . .

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(c) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from life reinsurance business in any previous accounting period beginning on or after 1st January 1995.

(4) Section 396 shall not be taken to apply to a loss incurred by a company on life reinsurance business.

(5) Nothing in section 128 or 399(1) shall affect the operation of this section.

(6) Gains accruing to a company which are referable **[**F2744(in accordance with section 432A)**]** to its life reinsurance business shall not be chargeable gains.

(7) F2745. . . . . .**]**

Textual Amendments

F2739 S. 439B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 27(1)** (with Sch. 8 para. 55(2))

F2740 Words in s. 439B(3)(a) substituted (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 1(4)(a)**

F2741 Words in s. 439B(3)(a) repealed (with effect in accordance with Sch. 33 para. 1(5) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 1(4)(b), **Sch. 43 Pt. 3(12)**, Note 1

F2742 Word at the end of s. 439B(3)(a) added (with effect in accordance with Sch. 31 para. 10(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 31 para. 7(2)**

F2743 S. 439B(3)(b) repealed (with effect in accordance with Sch. 31 para. 10(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 31 para. 7(1)(b), **Sch. 41 Pt. 5(23)**, Note

F2744 Words in s. 439B(6) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 9(1)(b)**

F2745 S. 439B(7) repealed (with effect in accordance with Sch. 3 para. 7(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 7(1), **Sch. 8 Pt. 2(6)**, Note

[F2746**440 Transfers of assets etc.**

(1) If at any time an asset (or a part of an asset) held by an insurance company ceases to be within one of the categories set out in subsection (4) below and comes within another of those categories, the company shall for the purposes of corporation tax be deemed to have disposed of and immediately re-acquired the asset (or part) for a consideration equal to its market value at that time.

(2) Where—

[F2747(a) an asset is acquired by a company as a result of an insurance business transfer scheme which has effect to transfer long-term business from any person ("the transferor") to the company, and**]**

(b) the asset (or part of it) is within one of the categories set out in subsection (4) below immediately before the acquisition and is within another of those categories immediately afterwards,

the transferor shall for the purposes of corporation tax be deemed to have disposed of and immediately re-acquired the asset (or part) immediately before the acquisition for a consideration equal to its market value at that time.

F2748(2A) **[** Where under subsection (1) or (2) above there is a deemed disposal and re-acquisition of any asset representing a loan relationship of a company, **[**F2749Chapter 2 of Part 4 of the Finance Act 1996 applies**]** as respects that asset as if the asset that is deemed to be disposed of and the asset that is deemed to be re-acquired were different assets.**]**

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[F2750(2B) Where under subsection (1) or (2) above there is a deemed disposal and re-acquisition of any derivative contract of a company, **[**F2751Schedule 26 to the Finance Act 2002 applies**]** as respects that contract as if the contract that is deemed to be disposed of and the contract that is deemed to be re-acquired were different assets.**]**

(3) Where, apart from this subsection, section **[**F2752171 or 173 the 1992 Act**]** (transfers within a group) would apply to a disposal or acquisition by an insurance company of an asset (or part of an asset) which, immediately before the disposal or (as the case may be) immediately after the acquisition, is within one of the categories set out in **[**F2753paragraphs (a) to (e)**]** of subsection (4) below, that section shall not apply to the disposal or acquisition.

[F2754(4) The categories referred to in subsections (1) to (3) above are—

(a) assets linked solely to pension business;

(b) assets linked solely to life reinsurance business;

(c) assets of the overseas life assurance fund;

(d) assets linked solely to basic life assurance and general annuity business;

(e) assets of the **[**F2755long-term insurance fund**]** not within any of the preceding paragraphs;

(f) other assets.**]**

(5) In this section "market value" has the same meaning as in the **[**F2756**1992]** Act.

[F2757(6) In a case where the profits of a company's life assurance business are charged to tax in accordance with Case I of Schedule D this section has effect with the modification specified in section 440B(3).**]]**

Textual Amendments

F2746 Ss. 440, 440A substituted for s. 440 (1.1.1990) by Finance Act 1990 (c. 29), Sch. 6 paras. 8, **11(2)** (with Sch. 6 para. 12)

F2747 S. 440(2)(a) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 28(2) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 28(1)**

F2748 S. 440(2A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 25** (with Sch. 15)

F2749 Words in s. 440(2A) substituted (with effect in accordance with s. 52(3) of the amending Act (which is amended (retrospectively) by FA 2005 (c. 7), Sch. 4 para. 50, Sch. 11 Pt. 2(7)) by Finance Act 2004 (c. 12), **Sch. 10 para. 43**

F2750 S. 440(2B) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 5** (with Sch. 28)

F2751 Words in s. 440(2B) substituted (with effect in accordance with s. 52(3) of the amending Act (which is amended (retrospectively) by FA 2005 (c. 7), Sch. 4 para. 50, Sch. 11 Pt. 2(7)) by Finance Act 2004 (c. 12), **Sch. 10 para. 70**

F2752 Words in s. 440(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(22)(a)** (with ss. 60, 101(1), 171, 201(3))

F2753 Words in s. 440(3) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 5(2)** (with Sch. 8 para. 55(2))

F2754 S. 440(4) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995, Sch. 8 para. 5(3), s. 55(2)

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F2755 Words in s. 440(4)(e) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(g)**

F2756 Words in s. 440(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(22)(b)** (with ss. 60, 101(1), 171, 201(3))

F2757 S. 440(6) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(3)** (with Sch. 8 para. 55(2))

Modifications etc. (not altering text)

C468 S. 440 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **reg 10C** (as inserted (10.8.1995) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1995 (S.I. 1995/1916), **regs. 1**, 6)

C469 S. 440 modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 22 (as amended by: S.I. 2001/3629, **arts. 1(2)(b)**, 158(1), 165(2)(d); S.I. 2004/822, **regs. 1**, 18)

C470 S. 440 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 16 (as amended by S.I. 2007/2134, **regs. 1(1)(2)**, 16)

C471 S. 440(1) excluded (25.7.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 6(4)**

C472 S. 440(2) modified (with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **regs. 4**, 5 (as amended (19.3.1997) by The Friendly Societies (Taxation of Transfers of Business) (Amendment) Regulations 1997 (S.I. 1997/472), **regs. 1**, 3)

C473 S. 440(2) modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 23 (as amended by S.I. 2001/3629, **arts. 1(2)(b)**, 158(2)); and that modifying reg. 23 is omitted (8.4.2004 with effect in accordance with reg. 1 of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 19**

C474 S. 440(2) modified (with effect in accordance with reg. 4A(3) of the modifying S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), **reg. 4A(1)(2)(a)** (as inserted (19.3.1997) by The Friendly Societies (Taxation of Transfers of Business) (Amendment) Regulations 1997 (S.I. 1997/472), **regs. 1**, 4)

C475 S. 440(4) modified (20.3.1997 with effect in accordance with reg. 1(2) of the amending Regulations) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 24, 25; and that modifying reg. 25 is omitted (8.4.2004 with effect in accordance with regs. 1, 20(2) of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 20(1)**

C476 S. 440(4) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 15

C477 S. 440(4)(a) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 13; S.I. 2004/3369, **art. 2(1)**

[F2758 440A Securities.

(1) Subsection (2) below applies where the assets of an insurance company include securities of a class all of which would apart from this section be regarded for the purposes of corporation tax on chargeable gains as one holding.

(2) Where this subsection applies—

[F2759 (a) so many of the securities as are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of—

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(i) pension business, or

(ii) life reinsurance business, or

(iii) basic life assurance and general annuity business,

shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,**]**

(c) so many of the securities as are included in the overseas life assurance fund shall be treated for those purposes as a separate holding which is an asset of that fund,

(d) so many of the securities as are included in the company's **[**F2760long-term insurance fund**]** but do not fall within any of the preceding paragraphs shall be treated for those purposes as a separate holding which is an asset of that fund (but not of any of the descriptions mentioned in those paragraphs, and

(e) any remaining securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.

(3) Subsection (2) above also applies where the assets of an insurance company include securities of a class and apart from this section some of them would be regarded as a 1982 holding, and the rest as a **[**F2761section 104 holding**]**, for the purposes of corporation tax on chargeable gains.

(4) In a case within subsection (3) above—

(a) the reference in any paragraph of subsection (2) above to a separate holding shall be construed, where necessary, as a reference to a separate 1982 holding and a separate **[**F2761section 104 holding**]**, and

(b) the questions whether such a construction is necessary in the case of any paragraph and, if it is, how many securities falling within the paragraph constitute each of the two holdings shall be determined in accordance with paragraph 12 of Schedule 6 to the Finance Act 1990 and the identification rules applying on any subsequent acquisitions and disposals.

(5) Section **[**F2762105 of the 1992 Act**]]** shall have effect where subsection (2) above applies as if securities regarded as included in different holdings by virtue of that subsection were securities of different kinds.

[F2763F2764(6) In this section—

"1982 holding" has the same meaning as in section 109 of the 1992 Act;

"**[**F2761section 104 holding**]**" has the same meaning as in section 104(3) of that Act; and

"securities" means shares, or securities of a company, and any other assets where they are of a nature to be dealt in without identifying the particular assets disposed or acquired.**]**

[F2763(7) In a case where the profits of a company's life assurance business are charged to tax in accordance with Case I of Schedule D this section has effect with the modification specified in section 440B(4).**]**

Textual Amendments

F2758 Ss. 440, 440A substituted for s. 440 (1.1.1990) by Finance Act 1990 (c. 29), Sch. 6 paras. 8, **11(2)** (with Sch. 6 para. 12)

F2759 S. 440A(2)(a) substituted for s. 440A(2)(a)(b) (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 6** (with Sch. 8 para. 55(2))

F2760 Words in s. 440A(2)(d) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(h)**

F2761 Words in s. 440A(3)(4)(6) substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(5)(a)**

F2762 Words in s. 440A(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(23)(a)** (with ss. 60, 101(1), 171, 201(3))

F2763 S. 440A(7) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(4)** (with Sch. 8 para. 55(2))

F2764 S. 440A(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(23)(b)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C478 S. 440A(2) modified (31.7.1992 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **regs. 1**, 14, 15 (as amended (31.12.1993 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1(1)**, 5)

C479 S. 440A(2) modified (31.7.1992 with effect in accordance with reg. 1 of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), **regs. 1**, 16 (as substituted (31.12.1993 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1993 (S.I. 1993/3111), **regs. 1(1)**, 10)

C480 S. 440A(2) modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 26, 27; and that modifying reg. 27 is omitted (8.4.2004 with effect in accordance with reg. 1 of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 21**

C481 S. 440A(2) modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 17 (as amended by S.I. 2007/2134, **regs. 1(1)(2)**, 17)

C482 S. 440A(2)(a)(i) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 16

C483 S. 440A(2)(a)(i) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 14; S.I. 2004/3369, **art. 2(1)**

C484 *See* 1990 s.41*and* Sch.6 para.12(2)—subs.(d)*omitted for period* 1*January* 1990*to* 19*March* 1990*inclusive.*

C485 *See* 1990 s.41*and* Sch.6 para.12(1), (3), (4), (6), (7)*and* (10)—*application and commencement provisions for*
"1982 holdings"
and
"new holdings".

C486 *See* 1990 s.41*and* Sch.6 para.12(1), (3), (4), (6), (7)*and* (10)—*application and commencement provisions for*
"1982 holdings"
and
"new holdings".

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[F2765 440B Modifications where tax charged under Case I of Schedule D.

(1) The following provisions apply where the profits of a company's life assurance business are charged to tax in accordance with Case I of Schedule D.

F2766 (1A) [F2767 . . . . . .]

(2) F2767 . . . . . .

(3) Section 440(1) and (2) apply as if the only categories set out in subsection (4) of that section were—

(a) assets of the [F2768 long-term insurance fund], and

(b) other assets.

(4) Section 440A applies as if for paragraphs (a) to (e) of subsection (2) there were substituted—

(") so many of the securities as are identified in the company's records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of [F2769 long-term] business, shall be treated for the purposes of corporation tax as a separate holding linked solely to that business, and

(b) any remaining securities shall be treated for those purposes as a separate holding which is not of the description mentioned in the preceding paragraph.".

(5) Section 212(1) of the 1992 Act does not apply, but without prejudice to the bringing into account of any amounts deferred under section 213(1) or 214A(2) of that Act from any accounting period beginning before 1st January 1995.]

Textual Amendments

F2765 S. 440B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(1)** (with Sch. 8 para. 55(2))

F2766 S. 440B(1A) inserted (with effect in accordance with Sch. 27 para. 5(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 27 para. 5(1)**

F2767 S. 440B(1A)(2) repealed (with effect in accordance with Sch. 3 para. 8(4)(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 8(2)(3), **Sch. 8 Pt. 2(6)**, Note

F2768 Words in s. 440B(3)(a) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(i)**

F2769 Words in s. 440B(4) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(g)**

VALID FROM 19/07/2007

[F2770 440C Modifications for change of tax basis

(1) Subsection (2) makes provision for a case where—

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(a) subsection (4) of section 431G applies in relation to the profits of the life assurance business of an insurance company for any accounting period, but

(b) the profits of that business for a succeeding accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of subsection (3) of that section.

(2) The loss referred to in section 431G(4)(b) (less any loss for the same accounting period set off under section 436A for any intervening accounting period and any amount deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989) may be set off under section 393 against profits of that succeeding accounting period (without being reduced in accordance with section 434A(2)(a)).

(3) In determining whether any loss has been set off under section 436A for any intervening accounting period, or whether any amount has been deducted for any such period in respect of the loss by virtue of section 85A(3)(b) of the Finance Act 1989, losses of earlier accounting periods are to be assumed to be set off before those of later accounting periods.

(4) Subsection (5) makes provision for a case where—

(a) a loss arises to an insurance company for an accounting period for which the profits of its life assurance business fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3)(b),

(b) the profits of that business for a subsequent accounting period are charged to tax under the I minus E basis, and

(c) had those profits (instead) been charged to tax in accordance with Case I of Schedule D, any of that loss would have been available to be set off against them under section 393.

(5) The loss is to be treated for the purposes of the operation of section 436A in relation to the subsequent accounting period as if it were a loss arising from its gross roll-up business in the accounting period in which it arose.

(6) Subsections (7) and (8) make provision for a case where—

(a) the profits of the life assurance business of an insurance company for an accounting period are charged to tax under the I minus E basis,

(b) the profits of that business for its next accounting period fall to be charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3), and

(c) that prevents the giving of relief in accordance with section 86(8) of the Finance Act 1989 (acquisition expenses relieved in fractions under section 76).

(7) Any relief which would have been so given in—

(a) the next accounting period, or

(b) any subsequent accounting period for which the profits of the company's life assurance business continue to be charged to tax in accordance with Case I of Schedule D,

may be given by set-off against any gains treated as accruing under section 213(1) of the 1992 Act at the end of the accounting period.

(8) But if the profits of the company's life assurance business for a subsequent accounting period are charged to tax under the I minus E basis, any relief not previously given

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under subsection (7) is to be treated for the purposes of the operation of section 76 in relation to the first subsequent accounting period for which profits are so charged as if it were an amount which is to be relieved under that section by virtue of section 86(8) and (9) of the Finance Act 1989.**]**

Textual Amendments

F2770 S. 440C inserted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 9** (with Sch. 8 Pt. 2)

VALID FROM 27/12/2007

[F2771 440D Modifications in relation to BLAGAB group reinsurers

Schedule 19ABA (which makes modifications of this Act in relation to BLAGAB group reinsurers) shall have effect.**]**

Textual Amendments

F2771 S. 440D inserted (27.12.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Taxation of Reinsurance Business) (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/3430), **art. 3(2)**

[F2772 441 Overseas life assurance business.

(1) This section F2773. . . shall apply for an accounting period of an insurance company F2774. . . if during the period the company carries on overseas life assurance business.

(2) Subject to the provisions of this section F2773. . . , profits arising to the company from the overseas life assurance business shall be treated as income within Schedule D, and the chargeable under Case VI of that Schedule, and for that purpose—

(a) that business shall be treated separately, and

(b) subject to paragraph (a) above, the profits from it shall be computed in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (2) above shall not apply if the company is charged to corporation tax in accordance with the provisions applicable to Case I of Schedule D in respect of the profits of its life assurance business.

(4) In making the computation referred to in subsection (2) above—

(a) sections [F2775 82 and 82B to 83AB] of the Finance Act 1989 shall apply with the necessary modifications F2776. . . , [F2777 and]

[F2778 (aa) F2779 . . . . . .]

(b) there may be set off against the profits any loss, to be computed on the same basis as the profits, which has arisen from overseas life assurance business in any previous accounting period beginning on or after 1st January 1990.

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(5) Section 396 shall not be taken to apply to a loss incurred by a company on overseas life assurance business.

(6) Nothing in section 128 or 399(1) shall affect the operation of this section.

(7) F2780 . . . . . .

(8) Gains accruing on the disposal by a company of assets of its overseas life assurance fund shall not be chargeable gains.]]

Textual Amendments

F2772 Ss. 441, 441A substituted for s. 441 by Finance Act 1990 (c. 29), Sch.7 paras. 3, **10**

F2773 Words in s. 441(1)(2) repealed (10.7.2003) by Finance Act 2003 (c. 14), Sch. 33 para. 12(3), **Sch. 43 Pt. 3(12)**

F2774 Words in s. 441(1) repealed (with effect in accordance with Sch. 8 para. 55 of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 para. 30, **Sch. 29 Pt. 8(5)**, Note 1

F2775 Words in s. 441(4)(a) substituted (with effect in accordance with Sch. 33 para. 1(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 1(4)(a)**

F2776 Words in s. 441(4)(a) repealed (with effect in accordance with Sch. 33 para. 1(5) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 1(4)(b), **Sch. 43 Pt. 3(12)**, Note 1

F2777 Word at the end of s. 441(4)(a) added (with effect in accordance with Sch. 31 para. 10(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 31 para. 7(2)**

F2778 S. 441(4)(aa) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 16(5)** (with Sch. 8 para. 55(2))

F2779 S. 441(4)(aa) repealed (with effect in accordance with Sch. 31 para. 10(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 31 para. 7(1)(c), **Sch. 41 Pt. 5(23)**, Note

F2780 S. 441(7) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2 (with Sch. 8 para. 55(2))

Modifications etc. (not altering text)

C487 S. 441 modified (with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 28 (as amended by S.I. 2004/822, **regs. 1**, 22)

C488 S. 441 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 18; and that modifying reg. 18 is omitted (14.8.2007 with effect in accordance with reg. 1(1)(2) of the revoking S.I.) by virtue of S.I. 2007/2134, **reg. 18(a)**

[F2781 441A Section 441: distributions.

(1) F2782 . . . . . .

(2) F2783 . . . . . .

[F2784 (3) F2783 . . . . . .

(4) F2783 . . . . . .

(5) F2783 . . . . . .]

(7) F2783 . . . . . .

(8) F2783 . . . . . .]

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Textual Amendments

F2781 Ss. 441, 441A substituted for s. 441 by Finance Act 1990 (c. 29), Sch.7 paras. 3, **10**

F2782 S. 441A(1) repealed (with effect in accordance with Sch. 3 para. 9(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 9(2), **Sch. 8 Pt. 2(6)**, Note

F2783 S. 441A(2)-(8) repealed (with effect in accordance with Sch. 4 para. 28(2), Sch. 8 Pt. 2(10) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 28(1), **Sch. 8 Pt. 2(10)**

F2784 S. 441A(3)-(5) substituted for s. 441A(3)-(6) (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 31** (with Sch. 8 para. 55(2))

[F2785 441B Treatment of UK land.

(1) This section applies to land in the United Kingdom which—

(a) is held by a company as an asset linked to the company's overseas life assurance business, or

(b) is held by a company which is charged to tax under Case I of Schedule D in respect of its life assurance business as an asset by reference to the value of which benefits under any policy or contract are to be determined, where the policy or contract (or, in the case of a reinsurance contract, the underlying policy or contract) is held by a person not residing in the United Kingdom.

(2) Income arising from land to which this section applies shall be treated for the purposes of this Chapter as referable to basic life assurance and general annuity business.

F2786 **[** (2A) For the purposes of subsection (2) above a Schedule A business for the exploitation of any land to which this section applies shall be treated as a separate business from any other such business.**]**

(3) Where (apart from this subsection) an insurance company would not be carrying on basic life assurance and general annuity business it shall be treated as carrying on such business if any income of the company is treated as referable to such business by subsection (2) above.

(4) A company may be charged to tax by virtue of this section—

(a) notwithstanding section 439A, and

(b) whether or not the income to which subsection (2) above relates is taken into account in computing the profits of the company for the purposes of any charge to tax in accordance with Case I of Schedule D.

(5) In this section "land" has the same meaning as in Schedule 19AA.**]**

Textual Amendments

F2785 S. 441B inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 32** (with Sch. 8 para. 55(2))

F2786 S. 441B(2A) inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 41** (with Sch. 5 para. 73)

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442 Overseas business of U.K. companies.

(1) [M545]Subsections (2) and (3) below apply where a company resident in the United Kingdom carries on insurance business outside the United Kingdom through a **[**[F2787]permanent establishment**]** and—

(a) that business, or part of it, together with the whole assets of the company used for the purposes of that business or part (or together with the whole of those assets other than cash), is transferred to a company not resident in the United Kingdom;

(b) the business or part is so transferred wholly or partly in exchange for shares, or for shares and loan stock, issued by the transferee company to the transferor company; and

(c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company.

(2) In making any computation in accordance with the provisions of this Act applicable to Case I of Schedule D of the profits or losses of the transferor company for the accounting period in which the transfer occurs, there shall be disregarded any profit or loss in respect of any asset transferred which, apart from this subsection, would fall to be taken into account in making that computation.

(3) Where by virtue of subsection (2) above any profit or loss is disregarded in making any computation [F2788]. . . the profit or loss shall be treated for the purposes of the **[**[F2789]1992 Act**]** as a chargeable gain or allowable loss accruing to the transferor company on the transfer.

(4) Where at any time a company resident in the United Kingdom—

(a) which carries on insurance business wholly outside the United Kingdom, and

(b) the whole or part of whose ordinary share capital is beneficially owned by one or more companies resident in the United Kingdom,

ceases to be resident in the United Kingdom, the profits or losses of the company in respect of that business for the accounting period ending at that time shall be computed for tax purposes without regard to the whole, or, as the case may be, a corresponding part of any profit or loss in respect of any asset which, apart from this subsection, would fall to be calculated in accordance with section 100(1)(b) and taken into account in making that computation.

Textual Amendments

F2787 Words in s. 442(1) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F2788 Words in s. 442(3) repealed (with effect in accordance with s. 164(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(24)**, Note

F2789 Words in s. 442(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(24)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C489 S. 442(3) excluded by Income and Corporation Taxes Act 1970 (c. 10), **s. 269C(8)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s.48**)

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Marginal Citations

M545 Source—1977 s.45(1)—(4); 1979(C) Sch.7

[F2790 442A Taxation of investment return where risk reinsured.

(1) Where an insurance company reinsures any risk in respect of a policy or contract attributable to its basic life assurance and general annuity business, the investment return on the policy or contract shall be treated as accruing to the company **[**F2791 while the risk remains reinsured by the company under**]** the reinsurance arrangement and shall be charged to tax under Case VI of Schedule D.

(2) The Board may make provision by regulations as to the amount of investment return to be treated as accruing in each accounting period during which the reinsurance arrangement is in force.

(3) The regulations may, in particular, provide that the investment return to be treated as accruing to the company in respect of a policy or contract in any accounting period shall be calculated by reference to—

(a) the aggregate of the sums paid by the company to the reinsurer during that accounting period and any earlier accounting periods by way of premium or otherwise;

(b) the aggregate of the sums paid by the reinsurer to the company during that accounting period and any earlier accounting periods by way of commission or otherwise;

(c) the aggregate amount of the net investment return treated as accruing to the company in any earlier accounting periods, that is to say, net of tax at such rate as may be prescribed; and

(d) such percentage rate of return as may be prescribed.

F2792 **[** (3A) Where a transfer of the reinsurance arrangement from one insurance company ("the transferor") to another ("the transferee") is effected by novation or an insurance business transfer scheme, for the purpose of calculating the investment return to be treated as accruing to the transferee in respect of the policy or contract after the transfer, the references to the company in subsection (3)(a), (b) and (c) above include (as well as the transferee)—

(a) the transferor, and

(b) any insurance company from which the reinsurance arrangement was transferred on an earlier transfer effected by novation or an insurance business transfer scheme.**]**

(4) The regulations shall provide that the amount of investment return to be treated as accruing F2793 . . . in respect of a policy or contract in the final accounting period during which the policy or contract is in force is the amount, ascertained in accordance with regulations, by which the profit over the whole period during which the policy or contract, and the reinsurance arrangement, were in force exceeds the aggregate of the amounts treated as accruing in earlier accounting periods.

If that profit is less than the aggregate of the amounts treated as accruing in earlier accounting periods, the difference shall go to reduce the amounts treated by virtue of this section as arising in that accounting period from other policies or contracts, and if not fully so relieved may be carried forward and set against any such amounts in subsequent accounting periods.

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(5) Regulations under this section—

(a) may exclude from the operation of this section such descriptions of insurance company, such descriptions of policies or contracts and such descriptions of reinsurance arrangements as may be prescribed;

(b) may make such supplementary provision as to the ascertainment of the investment return to be treated as accruing to the company as appears to the Board to be appropriate, including provision requiring payments made during an accounting period to be treated as made on such date or dates as may be prescribed; and

(c) may make different provision for different cases or descriptions of case.

(6) In this section "prescribed" means prescribed by regulations under this section.**]**

Textual Amendments

F2790 S. 442A inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 34** (with Sch. 8 paras. 55(2), 57(2))

F2791 Words in s. 442A(1) substituted (with effect in accordance with Sch. 33 para. 23(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 23(2)**

F2792 S. 442A(3A) inserted (with effect in accordance with Sch. 33 para. 23(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 23(3)**

F2793 Words in s. 442A(4) repealed (with effect in accordance with Sch. 33 para. 23(5) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 33 para. 23(4), **Sch. 43 Pt. 3(12)**, Note 4

Modifications etc. (not altering text)

C490 S. 442A restricted (28.7.1995 with effect in accordance with reg. 1 of the affecting S.I.) by The Insurance Companies (Taxation of Reinsurance Business) Regulations 1995 (S.I. 1995/1730), **regs. 9**, 10

C491 S. 442A(1) modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 29

C492 S. 442A(1) modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 19

443 Life policies carrying rights not in money.

M546 Where any investments or other assets are or have been, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder on or after 6th April 1967, the policy holder's acquisition of the assets, and the disposal of them to him, shall be deemed to be for a consideration equal to the market value of the assets for the purposes of computing income in accordance with Case I or VI of Schedule D.

Marginal Citations

M546 Source—1970 s.321(1)(b), (2)

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444 Life policies issued before 5th August 1965.

(1) [M547]This section applies in relation to policies of life assurance issued before 5th August 1965 by a company carrying on life assurance business, being policies which—

(a) provide for benefits consisting to any extent of investments of a specified description or of a sum of money to be determined by reference to the value of such investments, but

(b) do not provide for the deduction from those benefits of any amount by reference to tax chargeable in respect of chargeable gains.

(2) Where—

(a) the investments of the company's life assurance fund, so far as referable to those policies, consist wholly or mainly of investments of the description so specified, and

(b) on the company becoming liable under any of those policies for any such benefits (including benefits to be provided on the surrender of a policy), a chargeable gain accrues to the company from the disposal, in meeting or for the purpose of meeting that liability, of investments of that description forming part of its life assurance fund, or would so accrue if the liability were met by or from the proceeds of such a disposal,

then the company shall be entitled as against the person receiving the benefits to retain out of those benefits a part not exceeding in amount or value corporation tax, at the rate specified in subsection (3) below, in respect of the chargeable gain referred to in paragraph (b) above, computed without regard to any amount retained under this subsection.

(3) The amount to be retained under subsection (2) above shall, subject to subsection (4) below, be computed by reference to the rate of corporation tax for the time being in force or, if no rate of corporation tax has yet been fixed for the financial year, the rate last in force.

(4) In so far as the chargeable gain represents or would represent a gain belonging or allocated to, or reserved for, policy holders, the amount to be retained shall be computed by reference to a rate of tax not exceeding 37.5 per cent.

Marginal Citations

M547 Source—1970 s.322

[F2794444A Transfers of business.

[F2795(1) Subject to subsection (7) below, this section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").]

[F2796(2) Any expenses payable which (assuming the transferor had continued to carry on the business transferred after the transfer) would have fallen to be brought into account by the transferor in determining the deduction for expenses payable to be allowed under section 76 in computing profits for an accounting period following the period which ends with the day on which the transfer takes place shall, instead, be brought into account under and in accordance with that section by the transferee as expenses

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payable by him (and giving effect in the case of acquisition expenses, to section 86(6) to (9) of the Finance Act 1989).**]**

(3) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer)—

(a) would have been available under section 436(3)(c) **[**F2797or 439B(3)(c)**]** to be set off against profits of the transferor for the accounting period following that which ends with the day on which transfer takes place, or

(b) where **[**F2798the transfer relates to any overseas life assurance business or**]** in connection with the transfer the transferor also transfers the whole or part of any **[**F2799such**]** business, would have been so available under section 441(4)(b),

shall, instead, be treated as a loss of the transferee (and available to be set off against profits of the same **[**F2800category**]** of business as that in which it arose) **[**F2801if the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to the transfer).**]**

[F2802(3ZA) Where subsection (3) above has effect, sections **[**F2803343(4),**]** (5) and (7) to (12) and 344 apply in relation to the business in which the loss arose construing—

(a) references to the predecessor and the successor as to (respectively) the transferor and the transferee, and

(b) references to section 343(3) as to subsection (3) of this section,

except that nothing in section 343(8) to (10) and (12) applies in relation to the transferee.**]**

[F2804(3A) Any subsection (2) excess (within the meaning of section 432F(2)) which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available under section 432F(3) or (4) to reduce a subsection (3) figure (within the meaning of section 432F(1)) of the transferor in an accounting period following that which ends with the day on which transfer takes place—

(a) shall, instead, be treated as a subsection (2) excess of the transferee, and

(b) shall be taken into account in the first accounting period of the transferee ending after the date of the transfer (to reduce the subsection (3) figure or, as the case may be, to produce or increase a subsection (2) excess for that period),

in relation to the revenue account of the transferee dealing with or including the business transferred.**]**

(4) Where acquisition expenses are treated as **[**F2805expenses payable by the transferee**]** by virtue of subsection (2) above, the amount deductible for the first accounting period of the transferee ending after the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.

(5) Where the transfer is of part only of the transferor's **[**F2806long-term**]** business, **[**F2807subsection (2), (3) or (3A)**]** above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.

(6) Any question arising as to the operation of subsection (5) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

(7) Subject to subsection (8) below, this section shall not apply unless the transfer is effected for bona fide commercial reasons and does not form part of a scheme or

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arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.

(8) Subsection (7) above shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the transferee, notified the transferee that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any scheme or arrangements such as are mentioned in that subsection; and subsections (2) to (5) of section **[**F2808138 of the 1992 Act**]** shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.**]**

Textual Amendments

F2794 S. 444A inserted (with effect in accordance with Sch. 9 para. 7 of the amending Act) by Finance Act 1990 (c. 29), **Sch. 9 para. 4**

F2795 S. 444A(1) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 29(2) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 29(1)**

F2796 S. 444A(2) substituted (28.9.2004 with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 19(2)

F2797 Words in s. 444A(3)(a) inserted (with effect in accordance with Sch. 9 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 27(2)** (with Sch. 8 para. 55(2))

F2798 Words in s. 444A(3) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 1(3)(a)**

F2799 Word in s. 444A(3)(b) substituted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 1(3)(b)**

F2800 Word in s. 444A(3) substituted (with effect in accordance with Sch. 9 para. 19(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 19(2)**

F2801 Words in s. 444A(3) inserted (with effect in accordance with Sch. 33 para. 24(4) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 24(2)**

F2802 S. 444A(3ZA) inserted (with effect in accordance with Sch. 33 para. 24(4) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 24(3)**

F2803 Words in s. 444A(3ZA) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 1**

F2804 S. 444A(3A) inserted (with effect in accordance with Sch. 8 para. 53(1)(3) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(4)** (with Sch. 8 para. 55(2))

F2805 Words in s. 444A(4) substituted (28.9.2004 with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 19(3)

F2806 Words in s. 444A(5) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2000/3629), **art. 52(2)(h)**

F2807 Words in s. 444A(5) substituted (with effect in accordance with Sch. 8 para. 53(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 17(5)** (with Sch. 8 para. 55(2))

F2808 Words in s. 444A(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(25)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C493 S. 444A(1) modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **regs. 1(1)**, 30 (as amended (1.12.2001) by S.I. 2001/3629, **arts. 1(2)(b)**, 159); and that modifying reg. 30 is

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omitted (8.4.2004 with effect in accordance with reg. 1 of the revoking S.I.) by virtue of S.I. 2004/822, **reg. 23**

VALID FROM 19/02/2008

[F2809 444AZA Transfers of life assurance business: Case VI losses of the transferor

(1) This section applies where—

(a) an insurance business transfer scheme has effect to transfer life assurance business from one person ("the transferor") to another ("the transferee"),

(b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in respect of that business under the I minus E basis,

(c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3), and

(d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) Any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits chargeable under section 436A (a "Case VI loss") shall instead be treated as a loss of the transferee (a "Case I loss") available to be set off against GRBP in relation to a period of account.

(3) For the purposes of subsection (2) above "GRBP", in relation to a period of account, is—

$$P \times \frac{GRBTL}{TL}$$

where—

P is the amount of such profits of the transferee's life assurance business for the period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable),

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor's long-term business, subsection (2) above shall apply only to such part of any Case VI loss to which it would otherwise apply as is appropriate.

(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner

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as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.**]**

Textual Amendments

F2809 Ss. 444AZA, 444AZB inserted (19.2.2008 with effect in accordance with art. 1(5) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 9**

VALID FROM 19/02/2008

[F2809 444AZB Transfers of life assurance business: Case I losses of the transferor

(1) This section applies where—

(a) an insurance business transfer scheme has effect to transfer life assurance business from one person ("the transferor") to another ("the transferee"),

(b) assuming the transferor had continued to carry on the business transferred after the transfer, the amount of any profits would have been charged to tax in accordance with Case I of Schedule D by virtue of section 431G(3),

(c) the profits in respect of the business transferred for the first period of account of the transferee ending after the date on which the transfer takes effect are charged to tax under the I minus E basis, and

(d) the conditions in paragraphs (a) and (b) of section 343(1) are satisfied in relation to the business transferred (construing references to an event as to a transfer).

(2) The relevant fraction of any loss which (assuming the transferor had continued to carry on the business transferred after the transfer) would have been available to be set off against profits of that business (a "Case I loss") shall instead be treated as a loss of the transferee (a "Case VI loss") available to be set off against the amount of such profits chargeable under section 436A for a period of account as relate to the business transferred (that amount being determined in accordance with section 343(9) and (10), where applicable).

(3) For the purposes of subsection (2) above "the relevant fraction", in relation to a period of account, is—

$$\frac{GRBTL}{TL}$$

where—

GRBTL is the mean of the opening and closing liabilities of the transferred gross roll-up business for the period of account, and

TL is the mean of the opening and closing liabilities of the transferred life assurance business for the period of account.

(4) Where the transfer is of part only of the transferor's long-term business, subsection (2) above shall apply only to such part of the amount of any Case I loss to which it would otherwise apply as is appropriate.

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(5) Any question arising as to the operation of subsection (4) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.**]**

Textual Amendments

F2809 Ss. 444AZA, 444AZB inserted (19.2.2008 with effect in accordance with art. 1(5) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 9**

[F2810 444AA Transfers of business: deemed periodical return

(1) This section applies where an insurance business transfer scheme has effect to transfer the whole of the long-term business of one person ("the transferor").

(2) Where the last period covered by a periodical return of the transferor ends otherwise than immediately before the transfer, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the period—

(a) beginning immediately after the last period ending before the transfer which is covered by an actual periodical return of the transferor, and

(b) ending immediately before the transfer,

containing such entries as would have been included in an actual periodical return of the transferor covering that period (and so making that period a period of account of the transferor).

(3) Where the last period covered by a periodical return of the transferor (whether or not by virtue of subsection (2) above) ends immediately before the transfer, there is to be deemed for the relevant purpose to be a periodical return of the transferor—

(a) covering the time of the transfer, and

(b) containing such entries as would have been included in an actual periodical return covering the time of the transfer,

(and so making the time of the transfer a period of account of the transferor for the relevant purpose).

(4) Where the last period covered by a periodical return of the transferor ends after the transfer, the periodical return covering that period is to be ignored for all purposes of corporation tax other than the relevant purpose.

(5) In this section "the relevant purpose" means determining for the purposes of section 83(2B) of the Finance Act 1989 whether a transfer is brought into account as part of total expenditure.

(6) For the purposes of this section "insurance business transfer scheme" includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).

F2811 **[** (7) Where this section applies in relation to a transfer in a case in which the transferor continues, after the transfer, to carry on insurance business which is not long-term business—

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(a) references in this section to the last period covered by a periodical return (or deemed periodical return) of the transferor shall be taken to be references to the last period covered by a periodical return (or deemed periodical return) of the transferor containing entries relating to long-term business;

(b) subsection (4) above is to be read as if after "other than" there were inserted the purposes of sections 444BA to 444BD and.**]]**

Textual Amendments

F2810 S. 444AA inserted (with effect in accordance with Sch. 33 para. 18(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 18(1)**

F2811 S. 444AA(7) inserted (with effect in accordance with Sch. 9 para. 6(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 6(2)**

[F2812**444AB Transfers of business: charge on transferor retaining assets**

(1) This section applies where, immediately after an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to one or more others ("the transferee" or "the transferees"), the transferor—

(a) does not carry on long-term business, but

(b) holds assets which, immediately before the transfer, were assets of its long-term insurance fund.

(2) The transferor shall be charged to tax under Case VI of Schedule D in respect of the taxable amount as if it had been received by the transferor during the accounting period beginning immediately after the day of the transfer.

(3) If the transferor was charged to tax on the profits of its life assurance business under Case I of Schedule D for the accounting period **[**F2813ending immediately before the transfer**]**, the taxable amount is the whole of the previously untaxed amount.

(4) Otherwise, the taxable amount is the non-BLAGAB fraction of the previously untaxed amount.

(5) The previously untaxed amount is the lesser of—

[F2814(a) if there are no retained liabilities, the fair value of the retained assets or, if there are, so much of the fair value of the retained assets as exceeds the amount of the retained liabilities, and**]**

(b) the amount by which the fair value of the assets of the transferor's long-term insurance fund immediately before the transfer exceeds the amount of the relevant pre-transfer liabilities.

(6) In subsection (5) above "fair value", in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.

[In subsection (5) above—

F2815(6A) (a) "the retained assets" means such of the assets held by the transferor immediately after the transfer as were assets of its long-term insurance fund immediately before the transfer; and

(b) "the retained liabilities" means such of the liabilities of the transferor immediately after the transfer as were included in column 1 of line 14, 17,

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22, 31 or 38 of Form 14 in the periodical return of the transferor covering the period of account ending immediately before the transfer.**]**

(7) Subject to subsection (8) below, the amount of the relevant pre-transfer liabilities is the aggregate of the amounts shown in column 1 of lines 14 and 49 of Form 14 in the periodical return of the transferor covering the period of account ending immediately before the transfer.

(8) If the amount of the liabilities transferred exceeds the value of the assets so transferred, as brought into account for the first period of account of the transferee (or any of the transferees) ending after the transfer, the amount of the relevant pre-transfer liabilities is the amount arrived at by deducting the excess from the aggregate of the amounts shown as mentioned in subsection (7) above.

(9) For the purposes of subsection (4) above the non-BLAGAB fraction of the previously untaxed amount is the fraction of which—

(a) the numerator is the amount of the liabilities transferred, apart from those which are liabilities of basic life assurance and general annuity business, and

(b) the denominator is the amount of the liabilities transferred.

(10) References in this section to assets held by the transferor after the transfer do not include any held on trust for the transferee or any of the transferees.

(11) For the purposes of this section "insurance business transfer scheme" includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).**]**

Textual Amendments

F2812 S. 444AB inserted (with effect in accordance with Sch. 33 para. 19(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 19(1)**

F2813 Words in s. 444AB(3) substituted (with effect in accordance with Sch. 9 para. 20(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 20(4)**

F2814 S. 444AB(5)(a) substituted (with effect in accordance with Sch. 7 para. 2(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 7 para. 2(2)**

F2815 S. 444AB(6) inserted (with effect in accordance with Sch. 7 para. 2(4) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 7 para. 2(3)**

[F2816 444ABA Subsequent charge in certain cases within s.444AB

(1) This section applies where—

(a) section 444AB applies in relation to a transfer in the case of which there are retained liabilities, and

(b) in any accounting period of the transferor beginning after the day of the transfer there is a reduction in the amount of the retained liabilities occasioned otherwise than by the making of a payment in or towards their discharge.

(2) The transferor shall be charged to tax under Case VI of Schedule D in respect of the taxable amount as if it had been received by the transferor in the accounting period in which the reduction occurs.

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(3) If the transferor was charged to tax on the profits of its life assurance business under Case I of Schedule D for the accounting period **[**[F2817]ending immediately before the transfer**]**, the taxable amount is the whole amount of the reduction.

(4) Otherwise the taxable amount is the non-BLAGAB fraction of the amount of the reduction.

(5) The non-BLAGAB fraction of the amount of the reduction is the fraction of which—

(a) the numerator is the amount of the liabilities transferred, apart from those which are liabilities of basic life assurance and general annuity business, and

(b) the denominator is the amount of the liabilities transferred.

(6) Where in any accounting period of the transferor beginning after the transfer there is an increase in the amount of the retained liabilities, this section applies in relation to subsequent accounting periods of the transferor as if the amount of the retained liabilities were reduced by the amount of the increase.

(7) Where an amount is shown as post-transfer reduction liabilities in the transferor's accounts for any accounting period beginning after the transfer, this section applies as if the amount of the retained liabilities at the end of that accounting period (and the beginning of the next) were increased by the amount so shown.

(8) In subsection (7) above "post-transfer reduction liabilities" means liabilities of the transferor to make payments to relevant persons which, in accordance with the terms of the insurance business transfer scheme, have arisen in consequence of a reduction in the amount of the retained liabilities at any time after the transfer.

(9) In subsection (8) above "relevant persons" means—

(a) if the transferor's life assurance business immediately before the transfer was mutual business, persons who were policy holders or annuitants, or members of the transferor, at that time, and

(b) in any other case, persons who were policy holders or annuitants at that time.**]**

Textual Amendments

F2816 S. 444ABA inserted (with effect in accordance with Sch. 7 para. 3(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 7 para. 3(1)**

F2817 Words in s. 444ABA(3) substituted (with effect in accordance with Sch. 9 para. 20(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 20(5)**

VALID FROM 16/12/2010

[[F2818]**444ABA Non-profit fund transferred assets**

(1) For the purposes of section 444AB the relevant amount in relation to assets that are non-profit fund transferred assets is—

$$FVA - (ABTO + TL)$$

where—

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FVA is the fair value of the assets on the transfer date,

ABTO is any amount brought into account in respect of the assets as a business transfer-out and shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor for the period of account of the transferor including the transfer date, and

TL is the amount of any non-profit fund transferred liabilities which are shown (or treated as shown) in any of lines 17, 21 to 23 and 31 to 38, but not in line 61, in Form 14 in the periodical return for the period of account of the transferor ending (or treated as ending by section 444AA) immediately before the transfer date or, if there is no period of account of the transferor so ending (or treated as so ending), the amount of any liabilities which would be so shown if one did.

(2) In subsection (1) "non-profit fund transferred liabilities" means such of the liabilities of the transferor's long-term insurance fund as are transferred from the transferor to the transferee by the insurance business transfer scheme and were, immediately before their transfer, liabilities of a non-profit fund of the transferor.

(3) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F2818 S. 444ABAA inserted (with effect in accordance with s. 15(11) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **s. 15(10)**

VALID FROM 19/07/2007

[F2819 444ABB Retained assets

(1) For the purposes of section 444AB the relevant amount in relation to assets that are retained assets is the lesser of FVA and UTA, where—

(a) FVA is the fair value of the assets on the transfer date, and

(b) UTA is the amount by which the fair value of the assets of the long-term insurance fund of the transferor immediately before the transfer date exceeds the amount shown (or treated as shown) in line 32 of Form 40 in the periodical return of the transferor covering the transfer date.

(2) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F2819 Ss. 444AB-444ABC substituted for ss. 444AB, 444ABA (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 4(1)**; S.I. 2008/379, **art. 2**

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VALID FROM 19/02/2008

[F2820 444ABBA Transfers of business: election for transferee to pay tax of transferor

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If the transferor and the transferee jointly elect, the transferee (and not the transferor) is chargeable to any amount of additional corporation tax to which the transferor would otherwise be chargeable by virtue of section 444AB(4) in relation to relevant non-transferred assets.

(3) An election under subsection (2) above—

(a) is to be irrevocable, and

(b) is to be made by notice to an officer of Revenue and Customs no later than the end of the period of 90 days beginning with the day following the transfer date,

and a copy of the notice containing the election must accompany the tax return of the transferee for the first accounting period ending after the transfer. Paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.

(4) Where an election under subsection (2) above has been made, the transferor must inform the transferee of—

(a) the amount of any additional corporation tax to which the transferor considers the election to apply, and

(b) the day on which that tax is due and payable,

no later than the end of the period of 8 months beginning with the day following the transfer date.

(5) Tax chargeable on the transferee by virtue of an election under subsection (2) above—

(a) is due in accordance with section 59D of the Management Act [M548] on the day on which it would have been due if no election had been made, and

(b) for the purposes of that section, is to be treated as tax payable by the transferor (and not as tax payable by the transferee).

(6) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F2820 S. 444ABBA inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 14**

Marginal Citations

M548 1970 c. 9

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VALID FROM 19/07/2007

[F2821 444ABB Transfer scheme transferring part of business: transferor

(1) This section applies where an insurance business transfer scheme has effect to transfer part (but not the whole or substantially the whole) of the long-term business of a person ("the transferor") to another person ("the transferee") and the condition in subsection (2) below is met.

(2) That condition is that any of the assets of the transferor's long-term insurance fund which are transferred from the transferor to the transferee by the insurance business transfer scheme are not, immediately after their transfer—

(a) if the transferee is an insurance company, assets of the transferee's long-term insurance fund, or

(b) if the transferee is not an insurance company, assets of a with-profits fund of the transferee,

("relevant non-transferred assets").

(3) The relevant amount in relation to the relevant non-transferred assets (see subsection (4) below) is to be taken into account under section 83(2) of the Finance Act 1989 as an increase in value of the assets of the long-term insurance fund of the transferor for the period of account covering the transfer date.

(4) The relevant amount in relation to the relevant non-transferred assets is—

$$FVA - BTO$$

where

FVA is the fair value of the assets on the transfer date, and

BTO is any amount brought into account in respect of the assets as a business transfer-out.

(5) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F2821 Ss. 444AB-444ABC substituted for ss. 444AB, 444ABA (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 4(1)**; S.I. 2008/379, **art. 2**

VALID FROM 19/07/2007

[F2822 444ABC Transferor's period of account including transfer

(1) Any profits representing the amount by which—

(a) the value of the liabilities transferred by an insurance business transfer scheme, exceeds

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(b) the value of the assets transferred by the insurance business transfer scheme shown (or treated as shown) in line 32 of the periodical return of the transferor for the period of account of the transferor including the transfer date,

are to be taken into account as profits of that period of account.

(2) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F2822 S. 444ABD inserted (with effect in accordance with Sch. 9 para. 17(4) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 5**

444AC [F2823Transfers of business: excess of assets or liabilities]

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If—

(a) the element of the transferee's **[**F2824line 31 figure**]** representing the transferor's long-term insurance fund, exceeds

(b) **[**F2825the aggregate amount**]** of the liabilities to policy holders and annuitants transferred to the transferee **[**F2826and of any relevant debts**]**,

the excess is not to be regarded **[**F2827as a business transfer-in**]** of the transferee for the purposes of section **[**F2828**]**83(2)(e)**]** of the Finance Act 1989.

[F2829(2A) Subject to subsections (2C) and (2D) below, subsection (2B) below applies if—

(a) the aggregate amount of the liabilities to policy holders and annuitants transferred to the transferee and of any relevant debts, exceeds

(b) the element of the transferee's line 31 figure representing the transferor's long-term insurance fund.

(2B) Where this subsection applies—

(a) the excess is to be taken into account as a receipt of the transferee in computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits of its life assurance business for the period of account of the transferee in which the transfer takes place ("the relevant period of account"); and

(b) the relevant proportion of the excess is to be taken into account as a receipt of the transferee in so computing the profits of each category of its life assurance business for the relevant period of account;

and, for this purpose, "the relevant proportion", in relation to a category of the transferee's life assurance business, is the proportion that the liabilities of that category that are transferred bear to the total liabilities transferred.

(2C) Subsection (2B) above does not require the excess to be taken into account as a receipt of the transferee in so computing the profits of its life assurance business for the relevant period of account if—

(a) transferred liabilities of an aggregate amount equal to the excess are not taken into account in so computing those profits for that period of account, and

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(b) the amount of the closing liabilities of that period of account is taken into account as opening liabilities in so computing those profits for the next period of account.

(2D) Subsection (2B) above does not require the relevant proportion of the excess to be taken into account as a receipt of the transferee in so computing the profits of a category of its life assurance business for the relevant period of account if—

(a) transferred liabilities of an aggregate amount equal to the relevant proportion of the excess are not taken into account in so computing those profits for that period of account, and

(b) the amount of the closing liabilities of that period of account is taken into account as opening liabilities in so computing those profits for the next period of account.

(2E) In subsections (2C)(a) and (2D)(a) above "transferred liabilities" means—

(a) liabilities to policy holders or annuitants at the end of the relevant period of account that were transferred to the transferee, and

(b) payments made to discharge, during that period of account, liabilities to policy holders or annuitants that were transferred to the transferee.**]**

(3) In this section and section 444AD "the element of the transferee's **[**[F2824]line 31 figure**]** representing the transferor's long-term insurance fund" means so much of—

(a) the amount which is brought into account by the transferee **[**[F2827]as a business transfer-in**]** in the period of account of the transferee in which the transfer takes place, as represents

(b) the assets transferred to the transferee.

[[F2830](4) In this section "relevant debts" means debts which become debts of the transferee's long-term insurance fund as a result of the transfer.

(5) But if—

(a) the fair value, as at the date of the transfer, of the assets which become assets of the transferee's long-term insurance fund as a result of the transfer, exceeds

(b) the element of the transferee's line 31 figure representing the transferor's long-term insurance fund,

the amount of any relevant debts for the purposes of this section is to be reduced (but not below nil) by the excess.

(6) In determining the amount of the liabilities transferred for the purposes of this section, there is to be disregarded any reduction in the transferee's liabilities resulting from reinsurance under a contract of reinsurance which is a relevant financial reinsurance contract (within the meaning of section 82C of the Finance Act 1989).

(7) But where—

(a) such a reduction results from reinsurance under a contract which was entered into by the transferor as cedant before the day on which the transfer takes place, and

(b) the transferor's rights and obligations under the contract are transferred to the transferee under the transfer,

the amount of the reduction that would (apart from this subsection) be disregarded under subsection (6) above shall be reduced (but not below nil) by the amount given by subsection (8) below or, if less, the amount given by subsection (9) below.

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(8) The amount given by this subsection is the amount by which the liabilities at the end of the closing period which fell to be taken into account in computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits of the transferor's business for that period were reduced as a result of reinsurance under the contract.

(9) The amount given by this subsection is the amount given by paragraph (a) below reduced (but not below nil) by the amount given by paragraph (b) below—

(a) the amount given by this paragraph is the aggregate of the relevant amounts for any accounting period, and for this purpose the relevant amount for an accounting period is the amount in sub-paragraph (i) or (ii) below or, where applicable, the aggregate of those amounts—

(i) the amount by which the profits of the transferor's business, computed in accordance with the provisions of this Act applicable to Case I of Schedule D, were increased for that accounting period as a result of reinsurance under the contract;

(ii) the amount by which the losses of the transferor's business, so computed, were reduced for that accounting period as a result of reinsurance under the contract; and

(b) the amount given by this paragraph is the aggregate of the relevant amounts for any accounting period, and for this purpose the relevant amount for an accounting period is the amount in sub-paragraph (i) or (ii) below or, where applicable, the aggregate of those amounts—

(i) the amount by which the profits of the transferor's business, so computed, were reduced for that accounting period as a result of a reduction in reinsurance under the contract;

(ii) the amount by which the losses of the transferor's business, so computed, were increased for that accounting period as a result of a reduction in reinsurance under the contract.

(10) In subsections (8) and (9) above—

"the closing period" means the accounting period of the transferor ending with the day on which the transfer takes place;

"the transferor's business" means—

(a) the transferor's life assurance business, and

(b) any category of its life assurance business to which the liabilities relate.

(11) For the purposes of this section and section 444ACA—

"fair value" has the meaning given by section 444AB(6);

"insurance business transfer scheme" includes a scheme which would be such a scheme but for section 105(1)(b) of the Financial Services and Markets Act 2000 (which requires the business transferred to be carried on in an EEA State).**]**

Textual Amendments

F2823 S. 444AC heading substituted (with effect in accordance with Sch. 9 para. 7(6) of the amending Act) by virtue of Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 7(5)**

F2824 Words in s. 444AC(2)(3) substituted (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 5(2)(a)**

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F2825 Words in s. 444AC(2)(b) substituted (with effect in accordance with Sch. 9 para. 7(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 7(2)(a)**

F2826 Words in s. 444AC(2)(b) inserted (with effect in accordance with Sch. 9 para. 7(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 7(2)(b)**

F2827 Words in s. 444AC(2)(3) substituted (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 5(2)(b)**

F2828 Words in s. 444AC(2) substituted (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 5(3)**

F2829 S. 444AC(2A)-(2E) inserted (with effect in accordance with Sch. 9 para. 7(6)(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 7(3)**

F2830 S. 444AC(4)-(11) inserted (with effect in accordance with Sch. 9 para. 7(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 7(4)**

VALID FROM 19/07/2007

[F2831 444ACZA Transfer schemes transferring part of business: reduction in income of transferee

(1) This section applies where an insurance business transfer scheme has effect to transfer part (but not the whole or substantially the whole) of the long-term business of a person ("the transferor") to another person ("the transferee") and the condition in subsection (2) below is met.

(2) The condition is that the transferor did not carry on life assurance business that is mutual business during the period of account of the transferor covering the transfer date.

(3) The amount which (apart from this section) would be regarded as other income of the transferee for the purposes of section 83(2)(e) of the Finance Act 1989 for the period of account of the transferee which includes the transfer date is to be reduced by an amount equal to the transferred surplus.

(4) In subsection (4) above "the transferred surplus" means such part of the amount shown (or treated as shown) in line 13 of Form 14 in the periodical return of the transferor covering the last period of account of the transferor ending before the transfer date as it is just and reasonable to regard as being attributable to the transfer.

(5) See section 444AA for the meaning of "the transfer date" in this section.**]**

Textual Amendments

F2831 Ss. 444AC, 444ACZA substituted for s. 444AC (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 6(1)**; S.I. 2008/379, **art. 2**

[F2832 444ACA Transfers of business: transferor shares are assets of transferee's long-term insurance fund etc

(1) This section applies where an insurance business transfer scheme (see section 444AC(11)) has effect to transfer long-term business from one company ("the transferor") to another ("the transferee").

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(2) If—

(a) immediately before the transfer, the assets of the long-term insurance fund of the transferee comprise or include relevant shares or an interest in such shares, and

(b) the fair value (see section 444AC(11)) of the relevant shares, or of that interest, is reduced (whether or not to nil) as a result of the transfer,

an amount equal to that reduction in fair value is to be taken into account under section 83(2) of the Finance Act 1989 as a receipt of the transferee of the period of account of the transferee in which the transfer takes place.

(3) But if—

(a) the assets transferred to the transferee under the transfer comprise or include assets ("the relevant assets") which, immediately before the transfer,—

(i) were assets of the transferor, but

(ii) were not assets of the transferor's long-term insurance fund, and

(b) in respect of the transfer of the relevant assets, an amount is—

(i) brought into account by the transferee as other income of the transferee of the period of account of the transferee in which the transfer takes place, and

(ii) taken into account in computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits of the transferee's life assurance business and any category of its life assurance business to which the amount is referable,

the amount taken into account under section 83(2) of the Finance Act 1989 by virtue of subsection (2) above shall be reduced (but not below nil) by an amount equal to the amount referred to in paragraph (b) above.

(4) In subsection (2) above "relevant shares" means—

(a) some or all of the shares in the transferor, or

(b) some or all of the shares in a company (whether or not an insurance company) which owns, directly or indirectly,—

(i) some or all of the shares in the transferor, or

(ii) an interest in some or all of those shares.

(5) In subsection (4) above "shares", in relation to a company, includes any interests in the company possessed by members of the company.**]**

Textual Amendments

F2832 S. 444ACA inserted (with effect in accordance with Sch. 9 para. 8(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 8(1)**

444AD Transfers of business: modification of s.83(2B) FA 1989

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If the transferor and the transferee jointly elect, section 83(2B) of the Finance Act 1989 does not apply to the transferor by reason of the transfer as respects so much of

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the value of the assets to which it would otherwise so apply as does not exceed the amount specified in subsection (4) below.

(3) An election under subsection (2) above—

(a) is irrevocable, and

(b) is to be made by notice to an officer of the Board no later than the end of the period of 28 days beginning with the day following that on which the transfer takes place;

and a copy of the notice containing the election must accompany the tax return of the transferee for the first accounting period ending after the transfer.

Paragraphs 54 to 60 of Schedule 18 to the Finance Act 1998 (claims and elections for corporation tax purposes) do not apply to such an election.

(4) The amount referred to in subsection (2) above is the amount by which—

[F2833(a) the fair value of such of the assets of the long-term insurance fund of the transferee immediately after the transfer as were assets of the transferor's long-term insurance fund immediately before the transfer, is greater than**]**

(b) the element of the transferee's **[**F2834line 31 figure**]** representing the transferor's long-term insurance fund.

(5) In subsection (4) above "fair value", in relation to assets, means the amount which would be obtained from an independent person purchasing them or, if the assets are money, its amount.

Textual Amendments

F2833 S. 444AD(4)(a) substituted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 7 para. 4(1)**

F2834 Words in s. 444AD(4)(b) substituted (1.1.2005 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) Order 2004 (S.I. 2004/3266), **art. 6(2)**

444AE Transfers of business: modification of s.83ZA FA 1989

(1) This section applies where an insurance business transfer scheme has effect to transfer long-term business from one person ("the transferor") to another ("the transferee").

(2) If a contingent loan made to the transferor (within the meaning of subsection (1) of section 83ZA of the Finance Act 1989) is transferred to the transferee, that section has effect as if—

(a) the contingent loan had become repayable by the transferor immediately before the transfer, and

(b) the contingent loan were made to the transferee immediately after the transfer.

VALID FROM 19/07/2007

444AEA Transfer schemes: anti-avoidance rule

(1) This section applies where—

(a) as a result of the whole or any part of transfer scheme arrangements involving the transfer of long-term business from one person ("the transferor") to

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another ("the transferee") a Case I advantage is obtained by the transferor or the transferee (or by both), and

(b) the sole or main purpose, or one of the main purposes, of the whole or any part of the transfer scheme arrangements is the obtaining of that Case I advantage.

(2) In subsection (1) above "transfer scheme arrangements" means an insurance business transfer scheme ("the relevant transfer scheme") together with any relevant associated operations.

(3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AEB), the amount of the transferor's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferor for the period of account of the transferor covering the transfer date.

(4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AEC), the amount of the transferee's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferee for the first period of account of the transferee ending after the transfer date.

(5) In this section and sections 444AEB and 444AEC "relevant associated operations", in relation to the relevant transfer scheme, means—

(a) any other insurance business transfer scheme,

(b) any contract of reinsurance,

(c) any reconstruction or amalgamation involving the transferor, a dependant of the transferor which is an insurance undertaking or the transferee, or

(d) any surplus-increasing transfer of assets,

which is effected in connection with the relevant transfer scheme.

(6) In subsection (5) above—

"dependant" and "insurance undertaking" have the same meaning as in the Insurance Prudential Sourcebook, and

"surplus-increasing transfer of assets" means a transfer of assets of the transferor's long-term insurance fund to the transferee which is not brought into account for any period of account of the transferee but increases the amount of total surplus shown in line 39 of Form 58 in any periodical return of the transferee.

(7) See section 444AA for the meaning of "the transfer date" in this section.

VALID FROM 19/07/2007

444AEB Case I advantage: transferor

(1) A Case I advantage is obtained by the transferor if—

(a) Case I profits of its life assurance business for a period of account to which this section applies are less than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements, or

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(b) Case I losses of its life assurance business for such a period of account are greater than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements.

(2) If a Case I advantage is obtained by the transferor, the amount of the Case I advantage is the aggregate of—

(a) the amounts (if any) by which Case I profits for each period of account to which this section applies are less than they would be but for the transfer scheme arrangements or part, and

(b) the amounts (if any) by which Case I losses for each such period of account are greater than they would be but for the transfer scheme arrangements or part.

(3) This section applies to a period of account if it is—

(a) the period of account of the transferor covering the transfer date,

(b) any earlier period of account of the transferor, or

(c) where any relevant associated operations are effected in any later period of account, that period of account.

(4) In this section and section 444AEC "Case I profits" and "Case I losses" means profits and losses computed in accordance with the provisions of Case I of Schedule D.

(5) See section 444AA for the meaning of "the transfer date", and section 444AEA for the meaning of "relevant associated operations", in this section.

VALID FROM 19/07/2007

444AEC Case I advantage: transferee

(1) A Case I advantage is obtained by the transferee if—

(a) Case I profits of its life assurance business for a period of account to which this section applies are less than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements, or

(b) Case I losses of its life assurance business for such a period of account are greater than they would be but for the transfer scheme arrangements or any part of the transfer scheme arrangements.

(2) If a Case I advantage is obtained by the transferee, the amount of the Case I advantage is—

(a) the amount by which Case I profits for each period of account to which this section applies are less than they would be but for the transfer scheme arrangements or part, or

(b) the amount by which Case I losses for each such period of account are greater than they would be but for the transfer scheme arrangements or part.

(3) This section applies to a period of account if it is—

(a) the first period of account of the transferee ending after the transfer date or after the effecting of the first of any relevant associated operations (if that occurs before the transfer date),

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(b) the second period of account of the transferee ending after the transfer date or after the effecting of the last of any relevant associated operations (if that occurs after the transfer date), or

(c) any intervening period of account.

(4) See section 444AA for the meaning of "the transfer date", section 444AEA for the meaning of "relevant associated operations" and section 444AEB for the meaning of "Case I profits" and "Case I losses", in this section.

VALID FROM 19/02/2008

[F2835 444AECA Exits of transfer scheme arrangements: anti-avoidance rule

(1) This section applies where—

(a) as a result of any part of transfer scheme arrangements involving the transfer of long-term business from one person ("the transferor") to another ("the transferee") a Case I advantage is obtained by the transferor or the transferee (or by both), and

(b) the sole or main purpose, or one of the main purposes, of that part of the transfer scheme arrangements is the obtaining of that Case I advantage.

(2) In subsection (1) above "transfer scheme arrangements" has the same meaning as in section 444AEA.

(3) If a Case I advantage is obtained by the transferor (see subsection (1) of section 444AECB), the amount of the transferor's Case I advantage (see subsection (3) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferor—

(a) to the extent that the advantage is obtained by the transferor in the period of account covering the transfer date or any earlier period of account—

(i) for the period of account of the transferor ending (or treated as ending) immediately before the transfer date, or

(ii) where there is no such period, for the period of account of the transferor including the transfer date, and

(b) to the extent that the advantage is obtained by the transferor in any later period of account of the transferor in which any relevant associated operations are effected, for that later period of account.

(4) If a Case I advantage is obtained by the transferee (see subsection (1) of section 444AECC), the amount of the transferee's Case I advantage (see subsection (2) of that section) is to be taken into account as an increase in value of the assets of the long-term insurance fund of the transferee for the period of account of the transferee in which the advantage is obtained by the transferee.

(5) See section 444AA for the meaning of "the transfer date", and section 444AEA for the meaning of "relevant associated operations", in this section.**]**

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Textual Amendments

F2835 Ss. 444AECA-444AECC inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 22**

VALID FROM 19/02/2008

[F2835 444AECB Effects of transfer scheme arrangements: Case I advantage transferor

(1) A Case I advantage is obtained by the transferor if—

(a) Case I profits of its life assurance business for a period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for any part of the transfer scheme arrangements, or

(b) Case I losses of its life assurance business for such a period of account are, or at the relevant time are expected to be, greater than they would be but for any part of the transfer scheme arrangements.

(2) But if any of the relevant associated operations would, by itself, cause the Case I profits to be greater or the Case I losses to be less than they would be but for that operation, the amount by which those profits would be greater or those losses would be less shall be taken into account in determining whether a Case I advantage is obtained by the transferor.

(3) If a Case I advantage is obtained by the transferor, the amount of the Case I advantage is the aggregate of—

(a) the amounts (if any) by which Case I profits for each period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for the relevant part of the arrangements, and

(b) the amounts (if any) by which Case I losses for each such period of account are, or at the relevant time are expected to be, greater than they would be but for the relevant part of the arrangements.

(4) This section applies to a period of account if it is—

(a) the period of account of the transferor covering the transfer date,

(b) any earlier period of account of the transferor, or

(c) where any relevant associated operations are effected in any later period of account, that period of account.

(5) In this section and section 444AECC "the relevant part of the arrangements" means, in relation to a Case I advantage, the part of the transfer scheme arrangements as a result of which the Case I advantage is obtained.

(6) See section 444AA for the meaning of "the transfer date", section 444AEA for the meaning of "relevant associated operations" and section 444AEB for the meaning of "Case I profits" and "Case I losses" and "the relevant time", in this section.**]**

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Textual Amendments

F2835 Ss. 444AECA-444AECC inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 22**

VALID FROM 19/02/2008

[F2835 444AEC Cases of transfer scheme arrangements: Case I advantage transferee

(1) A Case I advantage is obtained by the transferee if—

(a) Case I profits of its life assurance business for a period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for any part of the transfer scheme arrangements, or

(b) Case I losses of its life assurance business for such a period of account are, or at the relevant time are expected to be, greater than they would be but for the any part of the transfer scheme arrangements.

(2) But if any of the relevant associated operations would, by itself, cause the Case I profits to be greater, or the Case I losses to be less, than they would be but for that operation, the amount by which those profits would be greater or those losses would be less shall be taken into account in determining whether a Case I advantage is obtained by the transferor.

(3) If a Case I advantage is obtained by the transferee, the amount of the Case I advantage is—

(a) the amount by which Case I profits for each period of account to which this section applies are, or at the relevant time are expected to be, less than they would be but for the relevant part of the arrangements, or

(b) the amount by which Case I losses for each such period of account are, or at the relevant time are expected to be, greater than they would be but for the relevant part of the arrangements.

(4) This section applies to a period of account if it is—

(a) the first period of account of the transferee ending after the transfer date or after the effecting of the first of any relevant associated operations (if that occurs before the transfer date),

(b) the second period of account of the transferee ending after the transfer date or after the effecting of the last of any relevant associated operations (if that occurs after the transfer date), or

(c) any intervening period of account.

(5) See section 444AA for the meaning of "the transfer date", section 444AEA for the meaning of "relevant associated operations", section 444AEB for the meaning of "Case I profits" and "Case I losses" and "the relevant time" and section 444AECB for the meaning of "the relevant part of the arrangements", in this section.**]**

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Textual Amendments

F2835 Ss. 444AECA-444AECC inserted (19.2.2008 with effect in accordance with art. 1(4) of the amending S.I.) by The Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381), **art. 22**

VALID FROM 19/07/2007

444AED Clearance: no avoidance or group advantage

(1) Section 444AEA does not apply in relation to the transferor or the transferee if, on an application under this section, the Commissioners for Her Majesty's Revenue and Customs ("the HMRC Commissioners") have given a notice under subsection (2) below.

(2) A notice under this subsection is a notice stating that the HMRC Commissioners are satisfied—

(a) that the obtaining of a Case I advantage by the applicant is not the sole or main purpose of the whole or any part of the transfer scheme arrangements, or

(b) that the transferor and the transferee are members of the same group of companies and that there is no advantage to the group arising from any Case I advantage obtained by the transferor or by the transferee.

(3) For the purposes of this section there is no advantage to a group arising from any Case I advantage obtained by the transferor or by the transferee if—

(a) as a result of transfer scheme arrangements, there is an increase in the liability to corporation tax of one or more companies which are members of the group of companies, and

(b) the amount (or aggregate amount) of that increase is not less than the reduction in the liability to corporation tax of the transferor or the transferee (or both) arising from the obtaining of the Case I advantage.

(4) An application under this section must be in writing and contain particulars of the transfer scheme arrangements.

(5) The HMRC Commissioners may by notice require the applicant to provide further particulars in order to enable them to determine the application.

(6) A requirement may be imposed under subsection (5) above within 30 days of the receipt of the application or of any further particulars required under that subsection.

(7) If a notice under subsection (5) above is not complied with within 30 days or such longer period as the HMRC Commissioners may allow, they need not proceed further on the application.

(8) The HMRC Commissioners must give notice of their decision on an application under this section to the applicant within 30 days of receiving the application or, if they give a notice under subsection (5) above, within 30 days of that notice being complied with.

(9) If the HMRC Commissioners—

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(a) give notice to the applicant under subsection (8) above that they are not satisfied as mentioned in subsection (2) above, or

(b) do not comply with subsection (8) above,

the applicant may require them to transmit the application to the Special Commissioners.

(10) A requirement under subsection (9) above must be imposed within 30 days of the giving of the notice or the failure to comply and must be accompanied by any notice given under subsection (5) above and further particulars provided pursuant to any such notice.

(11) Any notice given by the Special Commissioners has effect for the purposes of subsection (1) above as if it were given by the HMRC Commissioners.

(12) If any particulars provided under this section do not fully and accurately disclose all facts and considerations material for the decision of the HMRC Commissioners or the Special Commissioners, any resulting notice that they are satisfied as mentioned in subsection (2) above is void.

(13) For the purposes of this section two companies are members of the same group of companies if they are for the purposes of Chapter 4 of Part 10.

VALID FROM 19/07/2006

[F2836 Surpluses of mutual and former mutual businesses

Textual Amendments

F2836 Ss. 444AF-444AL and preceding cross-heading inserted (with effect in accordance with Sch. 11 para. 5(2)-(14) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 5(1)**

444AF Demutualisation surplus: life assurance business

(1) This section applies in relation to a period of account of an insurance company ("the relevant period") if—

(a) at any time in the relevant period the company carries on life assurance business that is not mutual business,

(b) the company has an amount of undistributed demutualisation surplus for the relevant period (see subsection (7)), and

(c) there is a reduction in the amount of the company's unappropriated surplus over the relevant period (see section 444AI).

(2) Where this section applies in relation to the relevant period, there shall be deemed for the purposes of section 83(2) of the Finance Act 1989 to be brought into account for the relevant period as an increase in the value of the assets of the company's long-term insurance fund whichever of the following amounts is the smallest—

(a) the amount of the reduction mentioned in subsection (1)(c) above;

(b) the amount of the company's undistributed demutualisation surplus for the relevant period;

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(c) the amount of the company's relevant receipts reduction for the relevant period (see section 444AJ).

(3) If the company prepares for the relevant period one or more such separate revenue accounts as are mentioned in section 83A(2)(b) of the Finance Act 1989—

(a) subsection (2) above shall apply separately in relation to each separate revenue account which is recognised for the purposes of section 83 of that Act; and

(b) for that purpose, any amount that falls to be determined in order to determine—

(i) whether that subsection applies in relation to any such separate revenue account, and

(ii) if so, the amount to be brought into account under that subsection in relation to that account,

shall be determined using only amounts or items which relate to the separate revenue account concerned.

(4) In applying subsection (2) above in relation to a revenue account or separate revenue account which—

(a) is recognised for the purposes of section 83 of that Act, and

(b) is one in relation to which sections 432C and 432D apply,

that subsection shall have effect as if for "smallest" there were substituted smaller and as if paragraph (c) were omitted.

(5) This section shall have effect—

(a) for the purposes of computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits of the company's life assurance business, and

(b) for the purposes of so computing the profits of any category of the company's life assurance business chargeable to tax under Case VI of Schedule D.

(6) But for the purposes mentioned in subsection (5)(b) above, this section and section 444AG have effect subject to the modification in section 444AH; and the Corporation Tax Acts have effect accordingly (so that there may, in particular, be a difference between—

(a) the amount deemed to be brought into account by virtue of subsection (2) above for a period of account for those purposes, and

(b) the amount so deemed to be brought into account for that period of account for the purposes mentioned in subsection (5)(a) above).

(7) For the purposes of this section, the undistributed demutualisation surplus of an insurance company for the relevant period is—

(a) an amount equal to (UDSP – AD + DTSI – DTSO); or

(b) if that amount is a negative amount, nil.

For this purpose—

UDSP is the undistributed demutualisation surplus of the company for the period of account immediately preceding the relevant period,

AD is any amount deemed under this section to be brought into account for the period of account immediately preceding the relevant period as an increase in the value of the assets of the company's long-term insurance fund,

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DTSI is the total amount of any demutualisation transfer surpluses accruing to the company during the relevant period (see section 444AG),

DTSO is the total amount of any demutualisation transfer surpluses accruing to any other company (or companies) during the relevant period on a transfer (or transfers) of life assurance business by the company to that other company (or companies).

444AG Section 444AF: "demutualisation transfer surplus"

(1) For the purposes of section 444AF and this section, a demutualisation transfer surplus accrues to an insurance company where—

(a) life assurance business is transferred to the company by a person ("the transferor"),

(b) after the transfer, the company carries on the transferred business otherwise than as mutual business, and

(c) the condition in subsection (2) below is satisfied in relation to the transfer.

(2) The condition is that—

(a) immediately before the transfer, the transferor carried on the transferred business as mutual business, or

(b) where paragraph (a) above does not apply, some or all of the transferred business was carried on by an insurance company as mutual business at a time on or after 1st January 1990 and before the transfer ("former mutual business").

(3) The demutualisation transfer surplus accrues to the company on the date of the transfer.

(4) The amount of the demutualisation transfer surplus is given by subsection (5) or (6) below.

(5) Where subsection (2)(a) above applies, the amount of the demutualisation transfer surplus is—

(a) where the whole of the transferor's life assurance business was transferred to the company under the transfer, the aggregate of—

(i) the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer, and

(ii) the amount of any added surplus accruing to the company in connection with the transfer (see subsection (10));

(b) otherwise, a just and reasonable portion of that aggregate amount, having regard to how much of the transferor's life assurance business was transferred to the company under the transfer.

(6) Where subsection (2)(b) above applies, the amount of the demutualisation transfer surplus is—

(a) where the whole of the transferor's life assurance business was transferred to the company under the transfer and all of the transferred business is former mutual business, the former mutual surplus of the transferor on the transfer date (see subsection (7));

(b) otherwise, so much of that former mutual surplus as it is just and reasonable to attribute to the company, having regard in particular to—

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(i) how much of the transferor's life assurance business was transferred to the company under the transfer, and

(ii) how much of the transferred business is former mutual business.

(7) For the purposes of subsection (6) above, the former mutual surplus of the transferor on the transfer date is—

(a) the amount given by subsection (8) below, or

(b) if less, the amount given by subsection (9) below.

(8) The amount given by this subsection is the total amount of any demutualisation transfer surpluses accruing to the transferor—

(a) on or after 1st January 1990, and

(b) on or before the date of the transfer.

(9) The amount given by this subsection is the lowest amount of unappropriated surplus of the transferor at the end of any period of account ending—

(a) on or after the date of the last occasion on which a demutualisation transfer surplus accrued to it as mentioned in subsection (8) above, and

(b) on or before the date of the transfer.

(10) For the purposes of this section, added surplus accrues to the company in connection with the transfer if—

(a) an amount of assets is received by the company in connection with the transfer, no later than six months after the date of the transfer,

(b) the amount is not brought into account by the company,

(c) the amount is added to the unappropriated surplus of the company, and

(d) the amount does not derive from any unappropriated surplus of the transferor;

and the amount of the added surplus is the amount referred to in paragraphs (a) to (d) above.

444AH Modification of section 444AG etc for Case VI businesses

(1) The modification in this section has effect for the purposes mentioned in section 444AF(5)(b) only.

(2) In relation to any demutualisation transfer surplus accruing to a company in a post-2002 period of account—

(a) the references in section 444AG(5) to the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer shall be taken to be references to—

(i) the amount of that unappropriated surplus, or

(ii) if less, the unappropriated surplus of the transferor at the end of the period of account immediately preceding the first post-2002 period of account of the transferor; and

(b) the references in sections 444AF and 444AG to the amount of any demutualisation transfer surplus are to have effect accordingly.

(3) In this section "post-2002 period of account", in relation to an insurance company, means a period of account of the company beginning on or after 1st January 2003 and ending on or after 9th April 2003.

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444AI Section 444AF: "reduction in company's unappropriated surplus"

(1) For the purposes of section 444AF—

(a) there is a reduction in the amount of the company's unappropriated surplus over the relevant period if CUS is less than (OUS + TSI – TSO);

(b) the amount of that reduction is the amount by which CUS is less than (OUS + TSI – TSO).

(2) In this section—

CUS is the amount of the company's unappropriated surplus at the end of the relevant period,

OUS is the amount of the company's unappropriated surplus at the end of the period of account immediately preceding the relevant period,

TSI is the total amount of any transfer surpluses accruing to the company during the relevant period (see subsections (3) to (7)),

TSO is the total amount of any transfer surpluses accruing to any other company (or companies) during the relevant period on a transfer (or transfers) of life assurance business by the company to that other company (or companies).

(3) For the purposes of this section, a transfer surplus accrues to an insurance company where life assurance business is transferred to the company by a person ("the transferor").

(4) The transfer surplus accrues to the company on the date of the transfer.

(5) The amount of the transfer surplus is equal to so much of the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer as is transferred to the company under the transfer.

(6) But if, immediately before the transfer, the transferor carried on the transferred business as mutual business, the amount of the transfer surplus is the aggregate of—

(a) the amount given by subsection (5) above, and

(b) the amount of any added surplus accruing to the company in connection with the transfer.

(7) Subsection (10) of section 444AG applies for the purposes of subsection (6) above as it applies for the purposes of that section.

444AJ Sections 444AF and 444AK: "relevant receipts reduction"

(1) For the purposes of sections 444AF and 444AK, the amount of the company's relevant receipts reduction for the relevant period is to be calculated by—

(a) determining, in the case of each with-profits fund of the company, the amount given by subsection (2) or (6) below for the relevant period, and

(b) aggregating each of those amounts.

(2) The amount, in the case of a fund other than a policy holder participation fund, is—

(a) where the gross transfer to non-technical account for the fund for the relevant period (see subsections (3) and (4)) is greater than the post-policy holder surplus for the fund for the relevant period (see subsection (5)), the amount of the difference;

(b) otherwise, nil.

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(3) In this section "the gross transfer to non-technical account" means the amount shown in line 13 of Form 58 for the fund.

(4) But if—

(a) there is a transfer from a with-profits fund of the company to another fund of the company ("the initial transfer") which is shown in (or included in an amount shown in) line 14 of Form 58 for the with-profits fund,

(b) there is a transfer from a fund of the company (whether or not the other fund mentioned in paragraph (a) above) to the non-technical account which is shown in (or included in an amount shown in) line 13 of Form 58 for that fund, and

(c) the transfer to the non-technical account can reasonably be regarded as connected with the initial transfer,

the amount of the gross transfer to non-technical account for the relevant period given by subsection (3) above in the case of the with-profits fund is to be increased by the amount transferred to the non-technical account.

(5) In this section "post-policy holder surplus" means an amount equal to—

$$SA - TAP$$

where—

SA is—

(a) the amount shown in line 34 of Form 58 for the fund (surplus arising since last valuation), or

(b) if that amount is a negative amount, nil;

TAP is the amount shown in line 46 of Form 58 for the fund (total allocated to policy holders).

(6) The amount, in the case of a policy holder participation fund, is—

(a) where TAP is greater than SA, the amount of the difference;

(b) otherwise, nil;

and for this purpose "SA" and "TAP" have the same meaning as in subsection (5) above.

(7) References in this section to Form 58 are references to that Form in the periodical return of the company for the relevant period.

(8) In this section "policy holder participation fund" means a fund in the case of which an amount equal to the amount shown in line 34 of Form 58 for the fund is allocated to policy holders for the relevant period.

444AK Mutual surplus: Case VI categories of life assurance business

(1) This section applies if at any time in a period of account of an insurance company ("the relevant period")—

(a) the company carries on life assurance business as mutual business, and

(b) the company carries on one or more categories of life assurance business chargeable to tax under Case VI of Schedule D.

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(2) If there is a reduction in the amount of the company's unappropriated surplus over the relevant period, there shall be deemed for the purposes of section 83(2) of the Finance Act 1989 to be brought into account for the relevant period as an increase in the value of the assets of the company's long-term insurance fund—

(a) the amount of that reduction, or

(b) if less, the amount of the company's relevant receipts reduction for the relevant period (see section 444AJ).

(3) But subsection (2) above shall have effect only for the purposes of computing in accordance with the provisions of this Act applicable to Case I of Schedule D the profits for the relevant period of any category of the company's life assurance business chargeable to tax under Case VI of Schedule D.

(4) If the company prepares for the relevant period one or more such separate revenue accounts as are mentioned in section 83A(2)(b) of the Finance Act 1989—

(a) subsection (2) above shall apply separately in relation to each separate revenue account which is recognised for the purposes of section 83 of that Act; and

(b) for that purpose, any amount that falls to be determined in order to determine—

(i) whether that subsection applies in relation to any such separate revenue account, and

(ii) if so, the amount to be brought into account under that subsection in relation to that account,

shall be determined using only amounts or items which relate to the separate revenue account concerned.

(5) In applying subsection (2) above in relation to a revenue account or separate revenue account which—

(a) is recognised for the purposes of section 83 of that Act, and

(b) is one in relation to which sections 432C and 432D apply,

that subsection shall have effect as if paragraph (b) and the word "or" before it were omitted.

(6) For the purposes of this section, there is a reduction in the amount of the company's unappropriated surplus over the relevant period if—

(a) CUS is less than OUS, and

(b) CUS is less than UUS.

(7) The amount of that reduction is—

(a) the amount by which CUS is less than OUS, or

(b) if OUS is greater than UUS, the amount by which CUS is less than UUS.

(8) In this section—

CUS is the amount of the company's unappropriated surplus at the end of the relevant period,

OUS is the amount of the company's unappropriated surplus at the end of the period of account immediately preceding the relevant period,

UUS is the amount of the company's unappropriated surplus at the end of the period of account immediately preceding the first period of account of the

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company to begin on or after 1st January 2003 and to end on or after 9th April 2003.

444AL Interpretation of sections 444AF to 444AK

(1) This section applies for the purposes of sections 444AF to 444AK.

(2) References to mutual business, in relation to any time, include business which at that time is treated for the purposes of section 432E as mutual business.

(3) "Unappropriated surplus", in relation to a period of account of an insurance company, means an unappropriated surplus on valuation as shown in the periodical return of the company for the period of account.

(4) References to the unappropriated surplus of the transferor at the end of the period of account of the transferor ending immediately before the transfer are, where a period of account of the transferor does not end at that time, references to the unappropriated surplus on valuation that would have been shown in a periodical return of the transferor for that period had such a return been drawn up.**]**

[F2837 Provisions applying in relation to overseas life insurance companies]

Textual Amendments
F2837 S. 444B and cross heading inserted (27.7.1993) by 1993 c.34, **s. 97(1)**

F2838 444B Modification of Act in relation to overseas life insurance companies.

Schedule 19AC (which makes modifications of this Act in relation to overseas life insurance companies) shall have effect.

Textual Amendments
F2838 S. 444B and cross heading inserted (27.7.1993) by 1993 c. 34, **s. 97(1)**

[F2839 Equalisation reserves

Textual Amendments
F2839 Ss. 444BA-444BD and preceding cross-heading inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 166, **Sch. 32 para. 1**

444BA Equalisation reserves for general business.

(1) Subject to the following provisions of this section and to sections 444BB to 444BD, the rules in subsection (2) below shall apply in making any computation, for the purposes of Case I or V of Schedule D, of the profits or losses for any accounting period of an insurance company whose business has at any time been or included business

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in respect of which it was required, by virtue of **[**F2840equalisation reserve rules**]**, to maintain an equalisation reserve.

(2) Those rules are—

(a) that amounts which, in accordance with **[**F2840equalisation reserve rules**]**, are transferred into the equalisation reserve in respect of the company's business for the accounting period in question are to be deductible;

(b) that amounts which, in accordance with any such regulations, are transferred out of the reserve in respect of the company's business for that period are to be treated as receipts of that business; and

(c) that it must be assumed that all such transfers as are required by **[**F2840equalisation reserve rules**]** to be made into or out of the reserve in respect of the company's business for any period are made as required.

(3) Where an insurance company having any business in respect of which it is required, by virtue of **[**F2840equalisation reserve rules**]**, to maintain an equalisation reserve ceases to trade—

(a) any balance which exists in the reserve at that time for the purposes of the Tax Acts shall be deemed to have been transferred out of the reserve immediately before the company ceases to trade; and

(b) that transfer out shall be deemed to be a transfer in respect of the company's business for the accounting period in which the company so ceases and to have been required by **[**F2840equalisation reserve rules**]**.

(4) Where—

(a) an amount is transferred into an equalisation reserve in respect of the business of an insurance company for any accounting period,

(b) the rule in subsection (2)(a) above would apply to the transfer of that amount but for this subsection,

(c) that company by notice in writing to an officer of the Board makes an election in relation to that amount for the purposes of this subsection, and

(d) the notice of the election is given not more than two years after the end of that period,

the rule mentioned in subsection (2)(a) above shall not apply to that transfer of that amount and, instead, the amount transferred (the "unrelieved transfer") shall be carried forward for the purposes of subsection (5) below to the next accounting period and (subject to subsection (6) below) from accounting period to accounting period.

(5) Where—

(a) in accordance with **[**F2840equalisation reserve rules**]**, a transfer is made out of an equalisation reserve in respect of an insurance company's business for any accounting period,

(b) the rule in subsection (2)(b) above would apply to the transfer but for this subsection, and

(c) the accounting period is one to which any amount representing one or more unrelieved transfers has been carried forward under subsection (4) above,

that rule mentioned in subsection (2)(b) above shall not apply to that transfer except to the extent (if any) that the amount of the transfer exceeds the aggregate of the amounts representing unrelieved transfers carried forward to that period.

(6) Where in the case of any company—

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(a) any amount representing one or more unrelieved transfers is carried forward to an accounting period in accordance with subsection (4) above, and

(b) by virtue of subsection (5) above the rule in subsection (2)(b) above does not apply to an amount representing the whole or any part of any transfer out of an equalisation reserve in respect of the company's business for that period,

the amount mentioned in paragraph (a) above shall not be carried forward under subsection (4) above to the next accounting period except to the extent (if any) that it exceeds the amount mentioned in paragraph (b) above.

(7) To the extent that any actual or assumed transfer in accordance with **[**F2840equalisation reserve rules**]** of any amount into an equalisation reserve is attributable to arrangements entered into wholly or mainly for tax purposes—

(a) the rule in subsection (2)(a) above shall not apply to that transfer; and

(b) the making of that transfer shall be disregarded in determining, for the purposes of the Tax Acts, whether and to what extent there is subsequently any requirement to make a transfer into or out of the reserve in accordance with **[**F2840equalisation reserve rules**]**;

and this subsection applies irrespective of whether the insurance company in question is a party to the arrangements.

(8) For the purposes of this section the transfer of an amount into an equalisation reserve is attributable to arrangements entered into wholly or mainly for tax purposes to the extent that the arrangements to which it is attributable are arrangements—

(a) the sole or main purpose of which is, or

(b) the sole or main benefit accruing from which might (but for subsection (7) above) be expected to be,

the reduction by virtue of this section of any liability to tax.

(9) Where—

(a) any transfer made into or out of an equalisation reserve maintained by an insurance company is made in accordance with **[**F2840equalisation reserve rules**]** in respect of business carried on by that company over a period ("the equalisation period"), and

(b) parts of the equalisation period are in different accounting periods,

the amount transferred shall be apportioned for the purposes of this section between the different accounting periods in the proportions that correspond to the number of days in the equalisation period that are included in each of those accounting periods.

(10) The Treasury may by regulations provide in relation to any accounting periods ending on or after 1st April 1996 for specified transitional provisions contained in **[**F2840equalisation reserve rules**]** to be disregarded for the purposes of the Tax Acts in determining how much is required, on any occasion, to be transferred into or out of any equalisation reserve in accordance with **[**F2841the rules**]**.

[F2842(11) In this section, and in sections 444BB to 444BD, "equalisation reserves rules" means the rules in **[**F2843chapter 7.5 of the Integrated Prudential Sourcebook**]**.**]**

Textual Amendments

F2840 Words in ss. 444BA-444BD substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(1)**

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F2841 Words in s. 444BA(10) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(3)**

F2842 S. 444BA(11) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(4)**

F2843 Words in s. 444BA(11) substituted (with effect in accordance with Sch. 9 para. 9(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 9(2)**

Modifications etc. (not altering text)

C494 S. 444BA modified (23.12.1996 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Reserves) (Tax) Regulations 1996 (S.I. 1996/2991), **regs. 4-12**

444BB Modification of s. 444BA for mutual or overseas business and for non-resident companies.

(1) The Treasury may by regulations make provision modifying section 444BA so as, in cases mentioned in subsection (2) below—

(a) to require—

(i) sums by reference to which the amount of any transfer into or out of an equalisation reserve falls to be computed, or

(ii) the amount of any such transfer,

to be apportioned between different parts of the business carried on for any period by an insurance company; and

(b) to provide for the purposes of corporation tax for the amounts taken to be transferred into or out of an equalisation reserve to be computed disregarding any such sum or, as the case may be, any such part of a transfer as is attributed, in accordance with the regulations, to a part of the business described for the purpose in the regulations.

(2) Those cases are cases where an insurance company which, in accordance with **[**[F2844]equalisation reserve rules**]**, is required to make transfers into or out of an equalisation reserve in respect of any business carried on by that company for any period is carrying on, for the whole or any part of that period—

(a) any business the income and gains of which fall to be disregarded in making a computation of the company's profits in accordance with the rules applicable to Case I of Schedule D, or

(b) any business by reference to which double taxation relief is afforded in respect of any income or gains.

(3) Section 444BA shall have effect (subject to any regulations under subsection (1) above) in the case of an equalisation reserve maintained by an insurance company which—

(a) is not resident in the United Kingdom, and

(b) carries on business in the United Kingdom through a **[**[F2845]permanent establishment**]**,

only if such conditions as may be prescribed by regulations made by the Treasury are satisfied in relation to that company and in relation to transfers into or out of that reserve.

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(4) Regulations under this section prescribing conditions subject to which section 444BA is to apply in the case of any equalisation reserve maintained by an insurance company may—

(a) contain conditions imposing requirements on the company to furnish the Board with information with respect to any matters to which the regulations relate, or to produce to the Board documents or records relating to any such matters; and

(b) provide that, where any prescribed condition is not, or ceases to be, satisfied in relation to the company or in relation to transfers into or out of that reserve, there is to be deemed for the purposes of the Tax Acts to have been a transfer out of that reserve of an amount determined under the regulations.

(5) Regulations under this section may—

(a) provide for apportionments under the regulations to be made in such manner, and by reference to such factors, as may be specified or described in the regulations;

(b) make different provision for different cases;

(c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit;

(d) make provision having retrospective effect in relation to accounting periods beginning not more than one year before the time when the regulations are made;

and the powers conferred by this section in relation to transfers into or out of any reserve shall be exercisable in relation to both actual and assumed transfers.

(6) In this section "double taxation relief" means—

(a) relief under double taxation arrangements which takes the form of a credit allowed against corporation tax, or

(b) unilateral relief under section 790(1) which takes that form;

and "double taxation arrangements" here means arrangements having effect by virtue of section 788.

Textual Amendments

F2844 Words in ss. 444BA-444BD substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(1)**

F2845 Words in s. 444BB(3)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

444BC Modification of s. 444BA for non-annual accounting etc.

(1) The Treasury may by regulations make provision modifying the operation of section 444BA in relation to cases where an insurance company has, for the purpose of preparing the documents it is required to prepare for the purposes of section **[**F2846 9.3 of the Prudential Sourcebook (Insurers)**]**, applied for any period an accounting method described in paragraph 52 or 53 of Schedule 9A to the M549 Companies Act 1985 (accounting on a non-annual basis).

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(2) Subsection (5) of section 444BB applies for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

F2846 Words in s. 444BC(1) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(5)**

Marginal Citations

M549 1985 c. 6.

444BD Application of s. 444BA rules to other equalisation reserves.

(1) The Treasury may by regulations provide for section 444BA to have effect, in such cases and subject to such modifications as may be specified in the regulations, in relation to any equivalent reserves as it has effect in relation to equalisation reserves maintained by virtue of **[**F2847equalisation reserve rules**]**.

(2) For the purposes of this section a reserve is an equivalent reserve if—

(a) it is maintained, otherwise than by virtue of **[**F2847equalisation reserve rules**]**, either—

[F2848(i) by an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to effect or carry out contracts of insurance in the United Kingdom, or

(ii) by a firm which has permission under paragraph 4 of Schedule 4 to that Act (as a result of qualifying for authorisation under paragraph 2 of that Schedule) to effect or carry out contracts of insurance in the United Kingdom, or

(iii) in respect of any business which consists of the effecting or carrying out of contracts of insurance and which is carried on outside the United Kingdom by a company resident in the United Kingdom;**]**

and

(b) the purpose for which, or the manner in which, it is maintained is such as to make it equivalent to an equalisation reserve maintained by virtue of **[**F2847equalisation reserve rules**]**.

(3) For the purposes of this section a reserve is also an equivalent reserve if it is maintained in respect of any credit insurance business in accordance with requirements imposed either—

(a) by or under any enactment, or

(b) under so much of the law of any territory as secures compliance with the requirements of Article 1 of the credit insurance directive (equalisation reserves for credit insurance).

(4) Without prejudice to the generality of subsection (1) above, the modifications made by virtue of that subsection may—

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(a) provide for section 444BA to apply in the case of an equivalent reserve only where such conditions as may be specified in the regulations are satisfied in relation to the company maintaining the reserve or in relation to transfers made into or out of it; and

(b) contain any other provision corresponding to any provision which, in the case of a reserve maintained by virtue of **[**F2847equalisation reserve rules**]**, may be made under sections 444BA to 444BC.

(5) Subsections (4) and (5) of section 444BB shall apply for the purposes of this section as they apply for the purposes of that section.

(6) Without prejudice to the generality of section 444BB(5), the transitional provision which by virtue of subsection (5) above may be contained in regulations under this section shall include—

(a) provision for treating the amount of any transfers made into or out of an equivalent reserve in respect of business carried on for any specified period as increased by the amount by which they would have been increased if no transfers into the reserve had been made in respect of business carried on for an earlier period; and

(b) provision for excluding from the rule in section 444BA(2)(b) so much of any amount transferred out of an equivalent reserve as represents, in pursuance of an apportionment made under the regulations, the transfer out of that reserve of amounts in respect of which there has been no entitlement to relief by virtue of section 444BA(2)(a).

(7) In this section—

[F2849"credit insurance business" means business which consists of the effecting or carrying out of contracts of insurance against risks of loss to the persons insured arising from—

(a) the insolvency of debtors of theirs, or

(b) from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due;**]**

"the credit insurance directive" means Council Directive 87/343/EEC of 22nd June 1987 amending, as regards credit insurance and suretyship insurance, First Directive 73/239 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; F2850. . .

F2850. . . . . .

Textual Amendments

F2847 Words in s. 444BC(1) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(5)**

F2848 S. 444BD(2)(a)(i)-(iii) substituted for s. 444BD(2)(a)(i)(ii) (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(7)**

F2849 Words in s. 444BD(7) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(8)(a)**

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F2850 S. 444BD(7): definition of "EC company" and preceding word repealed (1.12.2001 with effect in accordance with arts. 1(2)(a), 30(9) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 30(8)(b)**

444C Modification of section 440.

F2851 . . . . . .

Textual Amendments

F2851 Ss. 444C-444E repealed (with effect in accordance with Sch. 8 paras. 55, 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Notes 1, 2

444D Qualifying distributions, tax credits, etc.

F2852 . . . . . .

Textual Amendments

F2852 Ss. 444C-444E repealed (with effect in accordance with Sch. 8 paras. 55, 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Notes 1, 2

444E Income from investments attributable to BLAGAB, etc.

F2853 . . . . . .]

Textual Amendments

F2853 Ss. 444C-444E repealed (with effect in accordance with Sch. 8 paras. 55, 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Notes 1, 2

Provisions applying only to overseas life insurance companies

F2854 445 . . . . . .

Textual Amendments

F2854 S. 445 repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(a)(3)(4), 213, **Sch. 23 Pt. III(9)**, note

446 Annuity business.

F2855 (1) . . . . . .

F2856 (2) . . . . . .

F2856 (3) . . . . . .

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F2857(4) . . . . . .

Textual Amendments

F2855 S. 446(1) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(b)(3)(4), 213, **Sch. 23 Pt. III(9)**, note

F2856 S. 446(2)(3) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 para. 7(1)(b), **Sch. 19 Pt. V**, Note 3

F2857 S. 446(4) repealed by Finance Act 1990 (c. 29, SIF 63:1), s. 132, **Sch. 19 Pt. IV**.

447

F2858(1) . . . . . .

F2858(2) . . . . . .

F2859(3) . . . . . .

F2858(4) . . . . . .

Textual Amendments

F2858 S. 447(1)(2) and (4) repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(c)(3)(4), 213, **Sch. 23 Pt. III(9)**, note

F2859 S. 447(3) repealed (for accounting periods beginning on or after 1.1.1992) by Finance Act 1991 (c. 31, SIF 63:1), ss. 48, 123, Sch. 7 paras. 7(3), 18, **Sch. 19 Pt. V**, Note 3

F2860 448 . . . . . .

Textual Amendments

F2860 S. 448 repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, **ss. 103(2)**d), 213, Sch. 23 Pt.III (9), note

F2861 449 . . . . . .

Textual Amendments

F2861 S. 449 repealed (27.7.1993 with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, **ss. 103(2)(e)**,213, Sch. 23 Pt. III (9), note

Underwriters

F2862 450 . . . . . .

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Textual Amendments

F2862 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12) notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

F2863 451 . . . . . .

Textual Amendments

F2863 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the repealing Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes. 1 and 5

F2864 452 . . . . . .

Textual Amendments

F2864 SS. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

F2865 453 . . . . . .

Textual Amendments

F2865 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, **s. 213**, SCh. 23, Pt.III (12), notes 1 and 5)

F2866 454 . . . . . .

Textual Amendments

F2866 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** (12), notes 1 and 5

F2867 455 . . . . . .

Textual Amendments

F2867 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

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F2868 456 . . . . . .

Textual Amendments

F2868 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt.III** (12), notes 1 and 5

F2869 457 . . . . . .

Textual Amendments

F2869 Ss. 450-457 repealed (27.7.1993 with effect as mentioned in Sch. 23 Pt. III (12), notes 1 and 5 of the amending Act) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** (12), notes 1 and 5

Capital redemption business

458 Capital redemption business.

(1) **M550** Where any person carries on capital redemption business in conjunction with business of any other class, the capital redemption business shall, for the purposes of the Corporation Tax Acts (including the provisions about corporation tax on chargeable gains) and the Income Tax Acts, be treated as a separate business from any other class of business carried on by that person **[F2870** and where section 76 applies by virtue of subsection (5A) of that section, it shall apply separately to capital redemption business**]**.

(2) In ascertaining whether and to what extent any person has incurred a loss on his capital redemption business for the purposes of section 380 or sections 393 and **[F2871** 393A(1)**]**—

(a) any profits derived from investments held in connection with the capital redemption business (including franked investment income of **F2872** . . . a company resident in the United Kingdom) shall be treated as part of the profits of that business, and

(b) in determining whether any, and if so what, relief can be given under section 385(4) in the case of capital redemption business, the loss which may be carried forward under subsection (1) of that section shall be similarly computed.

[F2873 (3) In this section "capital redemption business" means any business in so far as it—

[F2874 (a) consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts of insurance under which, in return for one or more fixed payments, a sum or series of sums of a specified amount become payable at a future time or over a period; and

(b) is not life assurance business.**]]**

(4) This section shall not apply to any capital redemption business in so far as it consists of carrying out contracts of insurance effected before 1st January 1938.

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Textual Amendments

F2870 Words in s. 458(1) inserted (with effect in accordance with Sch. 33 para. 4 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 33 para. 2**; S.I. 1998/3173, **art. 2**

F2871 Words in s. 458(2) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 16**

F2872 Words in s. 548(2) repealed (with effect in accordance with Sch. 6 para. 7(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58). Sch. 6 para. 7(1), Sch. 8 Pt. 2(11), Note

F2873 S. 458(3) substituted (with effect in accordance with s. 168(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 168(1)**; S.I. 1998/3173, **art. 2**

F2874 S. 458(3)(a)(b) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 31**

Modifications etc. (not altering text)

C495 S. 458 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

C496 S. 458 modified (23.3.1999 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), **regs. 1**, 3, 7

Marginal Citations

M550 Source—1970 s.324

[F2875458A Capital redemption business: power to apply life assurance provisions.

(1) The Treasury may by regulations provide for the life assurance provisions of the Corporation Tax Acts to have effect in relation to companies carrying on capital redemption business as if capital redemption business were, or were a category of, life assurance business.

(2) Regulations under this section may provide that the provisions applied by the regulations are to have effect as respects capital redemption business with such modifications and exceptions as may be provided for in the regulations.

(3) Regulations under this section may—

(a) make different provision for different cases;

(b) include such incidental, supplemental, consequential and transitional provision (including provision modifying provisions of the Corporation Tax Acts other than the life assurance provisions) as the Treasury consider appropriate; and

(c) include retrospective provision.

(4) In this section references to the life assurance provisions of the Corporation Tax Acts are references to the following—

(a) the provisions of this Chapter so far as they relate to life assurance business or companies carrying on such business; and

(b) any other provisions of the Corporation Tax Acts making separate provision by reference to whether or not the business of a company is or includes life assurance business or any category of insurance business that includes life assurance business.

(5) In this section "capital redemption business" has the same meaning as in section 458.**]**

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Textual Amendments
F2875 S. 458A inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 168(3)**

CHAPTER II

FRIENDLY SOCIETIES, TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Unregistered friendly societies

459 Exemption from tax.

M551 An unregistered friendly society [F2876 (that is, a friendly society which is neither an incorporated friendly society nor a registered friendly society)] whose income does not exceed £160 a year shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains).

Textual Amendments
F2876 Words in s. 459 inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.4**; S.I. 1993/236, **art.2**

Marginal Citations
M551 Source—1970 s.331

Registered friendly societies

460 Exemption from tax in respect of life or endowment business.

(1) M552 Subject to subsection (2) below, a [F2877 friendly society] shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains) on its profits arising from life or endowment business.

(2) Subsection (1) above—

(a) M553 shall not, subject to section 462, exempt a [F2878 registered friendly society] registered after 31st December 1957 which at any time in the period of three months ending 3rd May 1966 entered into any transaction in return for a single premium, being a transaction forming part of its life or endowment business;

[F2879 (aa) shall not, subject to section 462, exempt an incorporated friendly society which, before its incorporation, was a registered friendly society such as is mentioned in paragraph (a) above;]

(b) M554 shall not apply to profits arising from pension business;

(c) M555 shall not apply to profits arising from life or endowment business consisting—

[F2880 (zai) where the profits relate to contracts made on or after the day on which the Finance Act 1995 was passed, of the assurance of gross sums under contracts under which the total premiums payable in any period

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of 12 months exceed £270 or of the granting of annuities of annual amounts exceeding £156;**]**

[F2881(ai) where the profits relate to contracts made on or after the day on which the Finance Act 1991 was passed **[**F2882but before the day on which the Finance Act 1995 was passed**]**, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £200 or of the granting of annuities of annual amounts exceeding £156;**]**

(i) where the profits relate to contracts made after **[**F2883 31st August 1990 but before the day on which the Finance Act 1991 was passed**]**, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed **[**F2884£150**]** or of the granting of annuities of annual amounts exceeding £156;

[F2885(ia) where the profits relate to contracts made after 31st August 1987 but before 1st September 1990, of the assurance of gross sums under contracts under which the total premiums payable in any period of 12 months exceed £100 **[**F2886or of the granting of annuities of annual amounts exceeding £156**]**.**]**

(ii) where the profits relate to contracts made after 13th March 1984 but before 1st September 1987, of the assurance of gross sums exceeding £750 or of the granting of annuities of annual amounts exceeding £156;

(iii) where the profits relate to contracts made before 14th March 1984, of the assurance of gross sums exceeding £500 or of the granting of annuities of annual amounts exceeding £104;

[F2887(ca) shall not apply to so much of the profits arising from life or endowment business as is attributable to contracts for the assurance of gross sums made on or after 20th March 1991 and expressed at the outset not to be made in the course of tax exempt life or endowment business;**]**

[F2888(cb) shall not apply to profits arising from investments, deposits or other property held as a member of a property investment LLP;**][**F2887and**]**

(d) M556as respects other life or endowment business ("tax exempt life or endowment business"), has effect subject to the following provisions of this Chapter.

(3) M557In determining for the purposes of **[**F2889**[**F2890subsection (2)(c)(zai), (ai),**]** (i) or (ia)**]** above the total premiums payable in any period of 12 months—

(a) where those premiums are payable more frequently than annually, there shall be disregarded an amount equal to 10 per cent. of those premiums; and

(b) so much of any premium as is charged on the ground that an exceptional risk of death **[**F2891or disability**]** is involved shall be disregarded;

and in applying the limit of £156 in **[**F2892**[**F2890subsection (2)(c)(zai), (ai),**]** (i) or (ia)**]** above, any bonus or addition declared upon an annuity shall be disregarded.

(4) In applying the limits referred to in subsection (2)(c)(ii) and (iii) above, any bonus or addition which either is declared upon an assurance of a gross sum or annuity or accrues upon such an assurance by reference to an increase in the value of any investments shall be disregarded.

[F2893(4A) Subsection (4B) below applies to contracts for the assurance of gross sums under tax exempt life or endowment business made after 31st August 1987 and before the day on which the **[**F2894the Finance Act 1995**]** was passed.

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(4B) Where the amount payable by way of premium under a contract to which this subsection applies is increased by virtue of a **[**F2895 variation made—

(a) in the period beginning with 25th July 1991 and ending with 31st July 1992, or

(b) in the period beginning with the day on which the Finance Act 1995 was passed and ending with 31st March 1996,

the contract shall, for the purposes of subsection (2)(c) above, be treated, in relation to any profits relating to it as varied, as made at the time of the variation.**]]**

(5) M558A **[**F2896friendly society**]** is within this subsection if its rules make no provision for it to carry on life or endowment business consisting of the assurance of gross sums exceeding £2,000 or of the granting of annuities of annual amounts exceeding £416.

(6) M559In the case of a **[**F2896friendly society**]** within subsection (5) above—

(a) subsection (2)(c)(iii) above shall have effect with the substitution of references to £2,000 and £416 respectively for the references to £500 and £104; and

(b) references in this Chapter to tax exempt life or endowment business shall be construed accordingly.

(7) M560Where at any time a **[**F2896friendly society**]** within subsection (5) above amends its rules so as to cease to be within that subsection, any part of its life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was tax exempt life or endowment business,

shall thereafter continue to be tax exempt life or endowment business for the purposes of this Chapter.

(8) Where at any time a **[**F2896friendly society**]** not within subsection (5) above amends its rules so as to bring itself within that subsection, any part of its life or endowment business consisting of business which—

(a) related to contracts made before that time; and

(b) immediately before that time was not tax exempt life or endowment business,

shall thereafter continue not to be tax exempt life or endowment business for the purposes of this Chapter.

(9) Where at any time a **[**F2896friendly society**]** not within subsection (5) above acquires by way of transfer of engagements or amalgamation from another **[**F2896friendly society**]** any life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was tax exempt life or endowment business,

that business shall thereafter continue to be tax exempt life or endowment business for the purposes of this Chapter.

(10) Where at any time a **[**F2896 friendly society**]** within subsection (5) above acquires by way of transfer of engagements or amalgamation from another **[**F2896friendly society**]** any life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was not tax exempt life or endowment business,

that business shall thereafter continue not to be tax exempt life or endowment business for the purposes of this Chapter.

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[F2897(10A) **[**F2898Where at any time an insurance business transfer scheme has effect to transfer to a friendly society long-term business,**]** any life or endowment business which relates to contracts included in the transfer **[**F2899, other than any to which subsection (11) or (12) below applied immediately before the transfer had effect,**]** shall not thereafter be tax exempt life or endowment business for the purposes of this Chapter.**]**

[F2900(10B) In subsection (10A) "insurance business transfer scheme" means a scheme falling within section 105 of the Financial Services and Markets Act 2000, including an excluded scheme falling within Case 2, 3 or 4 of subsection (3) of that section.**]**

(11) M561Where at any time a **[**F2901friendly society**]** ceases F2902. . . by virtue of **[**F2901section 91 of the Friendly Societies Act 1992**]** (conversion into company) to be registered under **[**F2903that Act**]**, any part of its life or endowment business consisting of business which—

(a) relates to contracts made before that time; and

(b) immediately before that time was tax exempt life or endowment business,

shall **[**F2904continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.**]**

(12) M562For the purposes of the Corporation Tax Acts any part of a company's business which continues to be tax exempt life or endowment business by virtue of subsection (11) above shall be treated as a separate business from any other business carried on by the company.

Textual Amendments

F2877 Words in s. 460(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(2)**; S.I. 1993/236, **art.2**

F2878 Words in s. 460(2)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(3)(a)**; S.I. 1993/236, **art.2**

F2879 S. 460(2)(aa) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(3)(b)**; S.I. 1993/236, **art.2**

F2880 S. 460(2)(c)(zai) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(2)**

F2881 S. 460(2)(ai) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(3)**

F2882 Words in s. 460(2)(c)(ai) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(3)**

F2883 Words in s. 460(2)(c)(i) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(4)**

F2884 1990 s.49(1)(a) Previously £100

F2885 1990 s.49(1)(b).

F2886 Words in s. 460(2)(c)(ia) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(5)**

F2887 S. 460(2)(ca) and word "and" substituted for word "and" by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(6)**

F2888 S. 460(2)(cb) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 8(1)**

F2889 Words in s. 460(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(7)(a)**

F2890 Words in s. 460(3) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(4)**

F2891 Words in s. 460(3)(b) inserted (retrospectively) by Finance Act 2003 (c. 14), **s. 172(5)(6)**

F2892 Words in s. 460(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(7)(b)**

F2893 S. 460(4A)(4B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(8)**

F2894 Words in s. 460(4A) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(5)**

F2895 Words in s. 460(4B) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(6)**

F2896 Words in s. 460(5)-(10) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(4)**; S.I. 1993/236, **art. 2**

F2897 1990 s. 48 and Sch. 9 para. 6 in relation to transfers of business on or after 1 January 1990

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F2898 Words in s. 460(10A) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 32(5) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 32(2)**

F2899 Words in s. 460(10A) inserted (retrospectively for specified purposes, and otherwise with effect in accordance with Sch. 12 para. 6(3) of the amending Act) by Finance Act 2007 (c. 11), Sch. 12 paras. 1(2), **6(1)(3)**

F2900 S. 460(10B) inserted (1.12.2001 with effect in accordance with arts. 1(2)(a), 32(5) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 32(3)**

F2901 Words in s. 460(11) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 5(5)**; S.I. 1993/236, **art.2**

F2902 Words in s. 460(11) omitted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 32(4)(a)**

F2903 Words in s. 460(11) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 32(4)(b)**

F2904 Words in s. 460(11) substituted (retrospectively) by Finance Act 2007 (c. 11), Sch. 12 paras. 1(3), **6(1)**

Modifications etc. (not altering text)

C497 S. 460(2) modified (6.4.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 31** (as inserted by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 25(5))

C498 S. 460(2) modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 20; and that modifying reg. 20 is omitted (14.8.2007 with effect in accordance with reg. 1(2) of the revoking S.I.) by virtue of S.I. 2007/2134, **regs. 1(1)**, 18(b)

Marginal Citations

M552 Source—1970 s.332(1). 1974 s.27(1)(a)
M553 Source—1970 s.333(1)
M554 Source—1970 s.332(2)(aa); 1987 (No.2) Sch.2 2(1)
M555 Source—1970 s.332(2)(a); 1984 s.73(2); 1987 s.30(2)
M556 Source—1970 s.332(2)(b)
M557 Source—1970 s.332(3); 1987 s.30(3)
M558 Source—1970 s.332(4); 1975 (No.2) s.52(1); 1980 s.57(1)
M559 Source—1970 s.332(5); 1975 (No.2) s.52(1); 1984 s.73(3)
M560 Source—1970 s.332(6)—(9); 1975 (No.2) s.52(1)
M561 Source—1970 s.332(10); 1976 s.48(1)
M562 Source—1970 s.332(12)(a); 1976 s.48(1)

461 Taxation in respect of other business.

(1) **M563** Subject to the following provisions of this section, a registered friendly society other than a society to which subsection (2) below applies shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains) on its profits other than those arising from life or endowment business.

(2) **M564** This subsection applies to any society registered after 31st May 1973 unless—

(a) its business is limited to the provision, in accordance with the rules of the society, of benefits for or in respect of employees of a particular employer or

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such other group of persons as is for the time being approved for the purposes of this section by the **[**F2905Board**]** ; or

(b) it was registered before 27th March 1974 and its rules limit the aggregate amount which may be paid by a member by way of contributions and deposits to not more than £1 per month or such greater amount as the **[**F2905Board**]** may authorise for the purposes of this section;

and also applies to any society registered before 1st June 1973 with respect to which a direction under subsection **[**F2906(7)**]** below is in force.

(3) M565If a society to which subsection (2) above applies, after 26th March 1974 or such later date as may be specified in a direction under this section, makes a payment to a member in respect of his interest in the society and the payment is made otherwise than in the course of life or endowment business and exceeds the aggregate of any sums paid by him to the society by way of contributions or deposits, after deducting from that aggregate the amount of—

(a) any previous payment so made to him by the society after that date, and

(b) any earlier repayment of such sums paid by him,

the excess shall be treated for the purposes of corporation tax and income tax as a qualifying distribution.

[F2907(3A) The exemption conferred by subsection (1) above does not apply to profits arising from investments, deposits or other property held as a member of a property investment LLP.**]**

(4) M566Where a registered friendly society—

(a) at any time ceases F2908. . . by virtue of **[**F2909section 91 of the Friendly Societies Act 1992**]** (conversion into company) to be registered under **[**F2910that Act**]**; and

(b) immediately before that time was exempt from income tax or corporation tax on profits arising from any business carried on by it other than life or endowment business,

the company into which the society is converted shall be so exempt on its profits arising from any part of that business which relates to contracts made before that time so long as there is no increase in the scale of benefits which it undertakes to provide in the course of carrying on that part of its business.

(5) For the purposes of the Corporation Tax Acts any part of a company's business in respect of the profits from which the company is exempt by virtue of subsection (4) above shall be treated as a separate business from any other business carried on by the company.

(6) M567If—

(a) a friendly society registered before 1st June 1973 begins after 26th March 1974 to carry on business other than life or endowment business or, in the opinion of **[**F2911the Board**]**, begins to carry on business other than life or endowment business on an enlarged scale or of a new character; and

(b) it appears to **[**F2911the Board**]**, having regard to the restrictions imposed by this section on friendly societies registered later, that for the protection of the revenue it is expedient to do so;

[F2912the Board may give a direction to the society under subsection (7) below.**]**

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[F2913(7) A direction under this subsection is that (and has the effect that) the society to which it is given is to be treated for the purposes of this Act as a society registered after 31st May 1973 with respect to business carried on after the date of the direction.

(8) A society to which a direction is given may, within 30 days of the date on which it is given, appeal against the direction to the Special Commissioners on the ground that—

(a) it has not begun to carry on business as mentioned in subsection (6)(a) above; or

(b) the direction is not necessary for the protection of the revenue.

(9) If a registered friendly society in respect of which a direction is in force under subsection (7) above becomes an incorporated friendly society, the direction shall continue to have effect, so that the incorporated friendly society shall be treated for the purposes of this Act as a society registered after 31st May 1973.**]**

(10) For the purposes of this section a registered friendly society formed on the amalgamation of two or more friendly societies shall be treated as registered before 1st June 1973 if at the time of the amalgamation subsection (2) above did not apply to any of the societies amalgamated, but otherwise shall be treated as registered at that time.

[F2914(11) For the purposes of this section and section 461C—

(a) any group of persons which was approved for the purposes of this section (as mentioned in subsection (2)(a) above) immediately before 1st December 2001 shall be treated as having been approved for the purposes of this section by the Board on that date;

(b) any greater amount which was authorised for the purposes of this section (as mentioned in subsection (2)(b) above) immediately before 1st December 2001 shall be treated as having been authorised for the purposes of this section by the Board on that date; and

(c) where a direction that subsection (2) above applies to a society was in force immediately before 1st December 2001, a direction in relation to that society shall be treated as having been made under subsection (7) above by the Board on that date.**]**

Textual Amendments

F2905 Words in s. 461(2)(a)(b) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(2)(a)**

F2906 Word in s. 461(2) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(2)(b)**

F2907 S. 461(3A) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch 25 para. 8(2)**

F2908 Words in s. 461(4)(a) omitted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(3)(a)**

F2909 Words in s. 461(4)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 6**; S.I. 1993/236, **art. 2**

F2910 Words in s. 461(4)(a) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(3)(b)**

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F2911 Words in s. 461(6)(a)(b) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2110/3629), **art. 33(4)(a)**

F2912 Words in s. 461(6) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(4)(b)**

F2913 S. 461(7)-(9) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(5)**

F2914 S. 461(11) added (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 33(6)**

Marginal Citations

M563 Source—1970 s.332(1); 1974 s.27(1)(a)
M564 Source—1974 s.27(2)
M565 Source—1974 s.27(1)(b)
M566 Source—1970 s.332(11), (12)(b); 1976 s.48(1)
M567 Source—1974 s.27(3)—(7); 1985 s.41(10); 1987 Sch.15 6

[461A F2915 Taxation in respect of other business: incorporated friendly societies qualifying for exemption.

(1) For the purposes of sections 461B and 461C, a "qualifying society" is an incorporated friendly society which—

(a) immediately before its incorporation, was a registered friendly society to which section 461(2) did not apply,

(b) was formed otherwise than by the incorporation of a registered friendly society or the amalgamation of two or more friendly societies and satisfies subsection (2) below, or

(c) was formed by the amalgamation of two or more friendly societies and satisfies subsection (3) below,

and in respect of which no direction under section 461C(5) is in force.

(2) A society satisfies this subsection if its business is limited to the provision, in accordance with the rules of the society, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of this section by the **[**F2916Board**]**.

(3) If at the time of the amalgamation referred to in subsection (1)(c) above—

(a) section 461(2) applied to none of the registered friendly societies being amalgamated (if any), and

(b) all of the incorporated friendly societies being amalgamated (if any) were qualifying societies,

the society formed by the amalgamation satisfies this subsection.

F2917 **[** (4) For the purposes of this section and section 461C, any group of persons which was approved for the purposes of this section (as mentioned in subsection (2) above) by the Friendly Societies Commission immediately before 1st December 2001 shall be treated as having been approved for the purposes of this section by the Board on that date.**]]**

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Textual Amendments

F2915 Ss. 461A-461C inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.7**; S.I. 1993/236, **art.2**

F2916 Word in s. 461A(2) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 34(2)**

F2917 S. 461A(4) added (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 34(3)**

F2918 461B Taxation in respect of other business: incorporated friendly societies etc.

(1) Subject to the following provisions of this section, a qualifying society shall, on making a claim, be entitled to exemption from income tax and corporation tax (whether on income or chargeable gains) on its profits other than those arising from life or endowment business.

(2) Subsection (1) above shall not apply to any profits arising or accruing to the society from, or by reason of its interest in, a body corporate which is a subsidiary (within the meaning of the Friendly Societies Act 1992) of the society or of which the society has joint control (within the meaning of that Act).

[F2919(2A) Subsection (1) above shall not apply to any profits arising or accruing to the society from or by reason of its membership of a property investment LLP.**]**

(3) If an incorporated friendly society which is not a qualifying society makes a payment to a member in respect of his interest in the society and the payment is made otherwise than in the course of life or endowment business and exceeds the aggregate of any sums paid by him to the society by way of contributions or deposits, after deducting from that aggregate the amount of—

(a) any previous payment so made to him by the society, and

(b) any earlier repayment of such sums paid by him,

the excess shall be treated for the purposes of corporation tax and income tax as a qualifying distribution.

(4) In relation to an incorporated friendly society which, immediately before its incorporation, was a registered friendly society to which section 461(2) applied—

(a) the references in subsection (3) above to sums paid to the society shall include sums paid to the registered friendly society,

(b) the reference in subsection (3)(a) above to any payment made by the society shall include any payment made by the registered friendly society after 26 March 1974 or such later date as was specified in any direction under section 461 **[**F2920(7)**]** relating to it, and

(c) the reference in subsection (3)(b) above to any repayment shall include any repayment made by the registered friendly society.

(5) Where a qualifying society at any time ceases by virtue of section 91 of the Friendly Societies Act 1992 (conversion into company) to be registered under that Act, the company into which the society is converted shall be exempt from income tax or corporation tax on its profits arising from any part of its business, other than life or endowment business, which relates to contracts made before that time.

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(6) Subsection (5) above shall apply so long as there is no increase in the scale of benefits which the company undertakes to provide in the course of carrying on the relevant part of its business.

(7) Any part of a company's business to which an exemption under subsection (5) above relates shall be treated for the purposes of the Corporation Tax Acts as a separate business from any other business carried on by the company.

Textual Amendments

F2918 Ss. 461A-461C inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.7**; S.I. 1993/236, **art. 2**

F2919 S. 461B(2A) inserted (6.4.2001) by Finance Act 2001 (s. 9), s. 76, Sch. 25 para. 8(3)

F2920 Word in s. 461B(4)(b) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 35**

[F2921] 461C Taxation in respect of other business: withdrawal of "qualifying" status from incorporated friendly society.

(1) Subject to subsection (2) below, subsections (3) **[**[F2922]and (4)**]** below apply where a qualifying society—

(a) begins to carry on business other than life or endowment business, or

(b) in the opinion of the **[**[F2923]Board**]**, begins to carry on business other than life or endowment business on an enlarged scale or of a new character.

(2) Subsections (3) **[**[F2924]and (4)**]** below do not apply if—

(a) the society's business is limited to the provision, in accordance with the rules of the society, of benefits for or in respect of employees of a particular employer or such other group of persons as is for the time being approved for the purposes of section 461 or 461A by the **[**[F2925]Board**]**, or

(b) the society's rules limit the aggregate amount which may be paid by a member by way of contributions and deposits to not more than £1 per month or such greater amount as is authorised for the purposes of section 461.

(3) If it appears to the **[**[F2926]Board**]**, having regard to the restrictions imposed by section 461 on registered friendly societies registered after 31st May 1973, that for the protection of the revenue it is expedient to do so, the **[**[F2926]Board**]** may **[**[F2927]give a direction to the society under subsection (4) below.**]**

[[F2928](4) A direction under this subsection is that (and has the effect that) the society to which it is given shall cease to be a qualifying society as from the date of the direction.

(5) A society to which a direction is given may, within 30 days of the date on which it is given, appeal against the direction to the Special Commissioners on the ground that—

(a) it has not begun to carry on business as mentioned in subsection (1) above;

(b) subsections (3) and (4) above do not apply to it by reason of subsection (2) above; or

(c) the direction is not necessary for the protection of the revenue.**]**

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Textual Amendments

F2921 Ss. 461A-461C inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.7**; S.I. 1993/236, **art. 2**

F2922 Words in s. 461C(1) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 36(2)(a)**

F2923 Word in s. 461C(1) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 36(2)(b)**

F2924 Words in s. 461C(2) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 36(3)(a)**

F2925 Word in s. 461C(2)(a) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 36(3)(b)**

F2926 Words in s. 461C(3) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 36(4)(a)**

F2927 Words in s. 461C(3) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **arts. 36(4)(b)**

F2928 S. 461C(4)(5) substituted for s. 461C(4)-(7) (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 36(5)**

VALID FROM 21/07/2008

[F2929 461D Transfers of other business

(1) Where—

(a) at any time a friendly society ("the transferee") acquires by way of transfer of engagements or amalgamation from another friendly society ("the transferor") any business, other than life or endowment business, consisting of business which relates to contracts made before that time, and

(b) immediately before that time the transferor was exempt from corporation tax on profits arising from that business,

the transferee is so exempt after that time.

(2) But if during an accounting period of the transferee there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on that business, the transferee shall not be exempt from corporation tax by virtue of subsection (1) above for that or any subsequent accounting period.

(3) Where—

(a) at any time a friendly society ("the transferee") acquires by way of transfer of engagements or amalgamation from another friendly society ("the transferor") any business, other than life or endowment business, consisting of business which relates to contracts made before that time, and

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(b) immediately before that time the transferor was not exempt from corporation tax on profits arising from that business,

the transferee is not so exempt after that time.

(4) The Treasury may by regulations provide that, where any business of a friendly society is exempt from corporation tax by virtue of subsection (1) above, or not so exempt by virtue of subsection (3) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.

(5) Regulations under subsection (4) above—

(a) may make different provision for different cases,

(b) may include any incidental, supplementary, consequential or transitional provisions which the Treasury consider appropriate, and

(c) may include retrospective provision.**]**

Textual Amendments

F2929 S. 461D inserted (with effect in accordance with Sch. 18 para. 3(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 18 para. 3(1)**

462 Conditions for tax exempt business.

(1) [M568]Subject to subsections (2) to (4) below, section 460(1) shall not apply to so much of the profits arising from tax exempt life or endowment business as is attributable to a policy which, by virtue of paragraph 6(2) of Schedule 15—

(a) is not a qualifying policy; and

(b) would not be a qualifying policy if all policies with other friendly societies were left out of account.

(2) **[**[F2930M569]Section 460(2)(a) or (aa)**]** and subsection (1) above shall not withdraw exemption under section 460(1) for profits arising from any part of a life or endowment business relating to contracts made not later than 3rd May 1966.

(3) If, with respect to a policy issued in respect of an insurance made on or after 1st June 1984 and before 19th March 1985 for the assurance of a gross sum, there is or has been an infringement of any of the conditions in paragraph 3(2) to (11) of Schedule 15, section 460(1) shall not apply to so much as is attributable to that policy of the profits of the **[**[F2931]friendly society or registered branch**]** concerned which arise from tax exempt life or endowment business.

(4) Nothing in subsection (3) above shall be taken to affect the status of a policy as a qualifying policy.

Textual Amendments

F2930 Words in s. 462(2)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9** par. 8(2) S.I. 1993/236, **art.2**

F2931 Words in s. 462(3) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 8(3) S.I.** 1993/236, art.2

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Marginal Citations
M568 Source—1970 s.334(1); 1985 s.41(6)
M569 Source—1970 s.336; 1985 Sch.10 Part II

[462A F2932 Election as to tax exempt business.

(1) Where a registered friendly society has tax exempt life or endowment business which includes contracts—
  (a) made before 20th March 1991, and
  (b) expressed at the outset not to be made in the course of such business,
the society may by notice to the inspector elect that section 460(1) shall not apply to so much of the profits arising from such business as is attributable to such contracts.

(2) Where a registered friendly society has tax exempt life or endowment business which includes contracts falling within subsection (3) below, the society may by notice to the inspector elect that section 460(1) shall not apply to so much of the profits arising from such business as is attributable to such contracts.

(3) A contract falls within this subsection if—
  (a) at the outset, it is neither expressed to be made in the course of tax exempt life or endowment business nor expressed not to be so made but is assumed by the society not to be so made, and
  (b) the policy issued in pursuance of it falls within paragraph 21(1)(b) of Schedule 15.

(4) An election under subsection (2) above shall only be valid if the society satisfies the inspector (or the Commissioners on appeal) that it is possible to identify all the contracts to which the election relates.

(5) If the inspector decides that he is not satisfied as mentioned in subsection (4) above, he shall give notice of his decision to the society; and section 42(3), (4) and (9) of, and paragraph 1(1) to (1E) of Schedule 2 to, the Management Act shall apply in relation to such a decision as they apply in relation to a decision of an inspector on a claim.

(6) An election under subsection (1) or (2) above shall have effect for accounting periods ending on or after the day on which the Finance Act 1991 was passed.

(7) No election under subsection (1) or (2) above may be made after 31st July 1992.

(8) Where a friendly society has made an election under subsection (1) or (2) above, then, for any accounting period for which the election has effect—
  (a) section 460(1) shall apply to profits arising from life or endowment business which would have been included in the society's tax exempt life or endowment business had no account been taken of the contracts to which the election relates, and
  (b) section 462(1), in its application to the society, shall have effect with the insertion after "societies" of "and all policies issued in pursuance of contracts to which an election under section 462A(1) or (2) relates".

F2933(9) If a friendly society which (or a branch of which) has made an election under subsection (1) or (2) above becomes an incorporated friendly society, the election shall have effect in relation to the incorporated friendly society as it had effect in relation to the society (or branch) which made the election (and accordingly, in relation to

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accounting periods of the incorporated friendly society, "the society" in subsection (8)(a) and (b) above shall be read as referring to the incorporated friendly society).**]**

Textual Amendments

F2932 S. 462A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 2**

F2933 S. 462A(9) added (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.9**; S.I. 1993/236, **art. 2**

463 Life or endowment business: application of the Corporation Tax Acts.

(1) **M570**Subject to section 460(1), the Corporation Tax Acts shall apply to the life or endowment business carried on by **[F2934**friendly societies**]** in the same way as they apply to mutual life assurance business **[F2935**(or other **[F2936**long-term**]** business)**]** carried on by insurance companies, so however that the Treasury may by regulations provide that those Acts as so applied shall have effect subject to such modifications and exceptions as may be prescribed by the regulations, and those regulations may in particular require any part of any business to be treated as a separate business.

[F2937(2) The provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the **[F2936**long-term**]** business of an insurance company shall apply in the same way—

(a) on the transfer of the whole or part of the business of a friendly society to another friendly society (and on the amalgamation of friendly societies), and

(b) on the transfer of the whole or part of the business of a friendly society to a company which is not a friendly society (and on the conversion of a friendly society into such a company),

so however that the Treasury may by regulations provide that those provisions as so applied shall have effect subject to such modifications and exceptions as may be prescribed by the regulations.

(3) The Treasury may by regulations provide that the provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the **[F2936**long-term**]** business of an insurance company to another company shall have effect where the transferee is a friendly society subject to such modifications and exceptions as may be prescribed by the regulations.

(4) Regulations under this section may make different provision for different cases and may include provision having retrospective effect.**]**

Textual Amendments

F2934 Words in s. 463(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.10**; S.I. 1993/236, **art.2**

F2935 Words in s. 463(1) inserted (with effect in accordance with s. 171(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 171(5)**

F2936 Words in s. 463(1)(2)(3) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(i)**

F2937 1990 s.50(2).

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Modifications etc. (not altering text)
C499 *See* 1990 s.50(1)—s.463*was renumbered as* s.463(1).
C500 *For regulations see* Part III Vol.5 (*under* "*Friendly Societies*").

Marginal Citations
M570 Source—1970 s.335(1)

464 Maximum benefits payable to members.

(1) M571Subject to subsections (2) and (3) below, a member of a **[**F2938friendly society or registered branch**]** shall not be entitled to have at any time outstanding contracts with any one or more such societies or branches (taking together all such societies or branches throughout the United Kingdom) for the assurance of—

(a) more than £750 by way of gross sum under tax exempt life or endowment business;

(b) more than £156 by way of annuity under tax exempt life or endowment business.

In any case where the member's outstanding contracts were all made before 14th March 1984 this subsection shall have effect with the substitution for "£750" and "£156" of " £2,000 " and " £416 " respectively.

(2) Subsection (1)(a) above shall not apply as respects sums assured under contracts made after 31st August 1987.

(3) With respect to contracts for the assurance of gross sums under tax exempt life or endowment business, a member of a **[**F2938friendly society or registered branch**]** shall not be entitled to have outstanding with any one or more such societies or branches (taking together all such societies or branches throughout the United **[**F2939Kingdom)—

[F2940(zza) contracts under which the total premiums payable in any period of 12 months exceed £270; or**]**

[F2941(za) contracts **[**F2942made before the day on which the Finance Act 1995 was passed and**]** under which the total premiums payable in any period of 12 months exceed £200; or**]]**

(a) contracts **[**F2943made before the day on which the Finance Act 1991 was passed and**]** under which the total premiums payable in any period of 12 months exceed £150; or

(b) contracts made before 1st September 1990 under which the total premiums payable in any period of 12 months exceed £100,

unless all those contracts were made before 1st September 1987.

(4) In applying the **[**F2939limits**]** in subsection (3) above, the premiums under any contract for an annuity which was made before 1st June 1984 by a new society shall be brought into account as if the contract were for the assurance of a gross sum.

[F2944(4A) Subsection (4B) below applies to contracts for the assurance of gross sums under tax exempt life or endowment business made after 31st August 1987 and before the day on which **[**F2945the Finance Act 1995**]** was passed.

(4B) Where the amount payable by way of premium under a contract to which this subsection applies is increased by virtue of a **[**F2946 variation made—

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(a) in the period beginning with 25th July 1991 and ending with 31st July 1992, or

(b) in the period beginning with the day on which the Finance Act 1995 was passed and ending with 31st March 1996,

the contract shall, for the purposes of subsection (3) above, be treated, in relation to times when the contract has effect as varied, as made at the time of the variation.**]]**

(5) In applying the limits in this section there shall be disregarded—

(a) any bonus or addition which either is declared upon assurance of a gross sum or annuity or accrues upon such an assurance by reference to an increase in the value of any investments;

(b) any approved annuities as defined in section 620(9) or any policy of insurance or annuity contract by means of which the benefits to be provided under an occupational pension scheme as defined in **[**F2947section 1 of the Pension Schemes Act 1993**]** are secured;

(c) any increase in a benefit under a friendly society contract, as defined in section 6 of the M572Decimal Currency Act 1969, resulting from the adoption of a scheme prescribed or approved in pursuance of subsection (3) of that section; and

(d) so far as concerns the total premiums payable in any period of 12 months—

(i) 10 per cent. of the premiums payable under any contract under which the premiums are payable more frequently than annually; and

(ii) £10 of the premiums payable under any contract made before 1st September 1987 by a **[**F2948friendly society other than**]** a new society; and

(iii) so much of any premium as is charged on the ground that an exceptional risk of death is involved.

(6) In applying the limits in this section in any case where a member has outstanding with one or more society or branch one or more contracts made after 13th March 1984 and one or more contracts made on or before that date, any contract for an annuity which was made before 1st June 1984 by a new society shall be regarded not only as a contract for the annual amount concerned but also as a contract for the assurance of a gross sum equal to 75 per cent. of the total premiums which would be payable under the contract if it were to run for its full term or, as the case may be, if the member concerned were to die at the age of 75 years.

(7) A **[**F2949friendly society or registered branch**]** may require a member to make and sign a statutory declaration that the total amount assured under outstanding contracts entered into by that member with any one or more **[**F2949friendly societies or registered branches**]** (taking together all such societies or branches throughout the United Kingdom) does not exceed the limits applicable by virtue of this section and that the total premiums under those contracts do not exceed those limits.

Textual Amendments

F2938 Words in s. 464(1)(3) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 11(2)**; S.I. 1993/236, **art. 2**

F2939 1990 s.49(3), (4) Previously "Kingdom) contracts under which the total premiums payable in any period of 12 months exceed £100 unless all those contracts were entered into before 1st September 1987" and "limit" respectively

F2940 S. 464(3)(zza) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(2)**

F2941 S. 464(3)(za) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(2)**

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F2942 Words in s. 464(3)(za) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(3)**
F2943 Words in s. 464(3)(a) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(3)**
F2944 S. 464(4A)(4B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(4)**
F2945 Words in s. 464(4A) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(4)**
F2946 Words in s. 464(4B) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(5)**
F2947 Words in s. 464(5)(b) substituted (7.2.1994) by 1993 c. 48, ss. 190, 193(2)(3), **Sch. 8 para. 20(1)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**
F2948 Words in s. 464(5)(d)(ii) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 11(3)**; S.I. 1993/236, **art. 2**
F2949 Words in s. 464(7) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 11(4)**; S. I. 1993/236, **art. 2**

Modifications etc. (not altering text)
C501 S. 464: power to amend conferred (7.2.1994) by 1993 c. 48, **ss. 162**, 193(2)(3) (with ss. 6(8), 164); S. I. 1994/86, **art. 2**

Marginal Citations
M571 Source—FSA 1974 s.64(1), (2), (2A), (6); 1985 s.41(1), (2); 1984 s.73(5), (6); 1976/598; FSA 1984 s.2; 1987 s.30(4), (5), (7)
M572 1969 c. 19.

465 Old societies.

(1) [M573]In this section "old society" means a friendly society which is not a new society.

(2) This section applies if, on or after 19th March 1985, an old society—
(a) begins to carry on tax exempt life or endowment business; or
(b) in the opinion of the Board begins to carry on such business on an enlarged scale or of a new character.

(3) If it appears to the Board, having regard to the restrictions placed on qualifying policies issued by new societies by paragraphs 3(1)(b) [F2950] . . . and 4(3)(b) of Schedule 15, that for the protection of the revenue it is expedient to do so, the Board may give a direction to the old society under subsection (4) below.

(4) A direction under this subsection is that (and has the effect that) the old society to which it is given is to be treated for the purposes of this Act as a new society with respect to business carried on after the date of the direction.

(5) An old society to which a direction is given may, within 30 days of the date on which it is given, appeal against the direction to the Special Commissioners on the ground that—
(a) it has not begun to carry on business as mentioned in subsection (2) above; or
(b) that the direction is not necessary for the protection of the revenue.

[[F2951](6) If a registered friendly society in respect of which a direction is in force under subsection (4) above becomes an incorporated friendly society, the direction shall continue to have effect, so that the incorporated friendly society shall be treated for the purposes of this Act as a new society.**]**

Textual Amendments
F2950 Words in s. 465(3) repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 7

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F2951 S. 465(6) added (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.12** ; S.I. 1993/236, **art.2**

Marginal Citations

M573 Source—1985 Sch.10 Part III

[465A F2952 Assets of branch of registered friendly society to be treated as assets of society after incorporation.

(1) This section applies where any assets of a branch of a registered friendly society have been identified in a scheme under section 6(5) of the Friendly Societies Act 1992 (property, rights etc. excluded from transfer to the society on its incorporation).

(2) In relation to any time after the incorporation of the society, the assets shall be treated for the purposes of the Tax Acts as assets of the society (and, accordingly, any tax liability arising in respect of them shall be a liability of the society rather than of the branch).

(3) Where, by virtue of this section, tax in respect of any of the assets becomes chargeable on and is paid by the society, the society may recover from the trustees in whom those assets are vested the amount of the tax paid.**]**

Textual Amendments

F2952 S. 465A inserted (19.12.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 para.13, **22**; S.I. 1993/236, **art.2**

466 Interpretation of Chapter II.

[F2953(1) In this Chapter "life or endowment business" means, subject to subsections (1A) and (1B) below,—

(a) any business **[**F2954 of effecting or carrying out contracts of insurance which fall within paragraphs I, II or III of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;**]**

(b) pension business;

(c) any other life assurance business;

(d) any business within **[**F2955 paragraph IV of Part II**]** of that Schedule, if—

(i) the contract is one made before 1st September 1996; or

(ii) the contract is one made on or after 1st September 1996 and the effecting and carrying out of the contract also constitutes business within **[**F2956 paragraphs I, II or III of Part II**]** of that Schedule.

(1A) Life or endowment business does not include the issue, in respect of a contract made before 1st September 1996, of a policy affording provision for sickness or other infirmity (whether bodily or mental), unless—

(a) the policy also affords assurance for a gross sum independent of sickness or other infirmity;

(b) not less than 60 per cent. of the amount of the premiums is attributable to the provision afforded during sickness or other infirmity; and

(c) there is no bonus or addition which may be declared or accrue upon the assurance of the gross sum.

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(1B) Life or endowment business does not include the assurance of any annuity the consideration for which consists of sums obtainable on the maturity, or on the surrender, of any other policy of assurance issued by the friendly society, being a policy of assurance forming part of the tax exempt life or endowment business of the friendly society.**]**

(2) In this Chapter—

[F2957 "friendly society", without qualification, means (except in section 459) an incorporated friendly society or a registered friendly society;

"incorporated friendly society" means a society incorporated under the Friendly Societies Act 1992;**]**

[F2958"insurance company" shall be construed in accordance with section 431;**]**

"life assurance business" means the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life, not being industrial assurance business;

[F2959"**[**F2960long-term**]** business" shall be construed in accordance with section 431;**]**

[F2961"new society" means—

(a) a registered friendly society which was registered after 3rd May 1966 or which was registered in the period of three months ending on that date but which at no time earlier than that date carried on any life or endowment business, or

(b) an incorporated friendly society other than one which, before its incorporation, was a registered friendly society not within paragraph (a) above;**]**

"pension business" shall be construed in accordance with section 431;

"policy", in relation to life or endowment business, includes an instrument evidencing a contract to pay an annuity upon human life;

[F2962 "registered branch" means the same as in the Friendly Societies Act 1992 (and includes any branch that by virtue of section 96(3) of that Act is to be treated as a registered branch);

"registered friendly society" means the same as in the Friendly Societies Act 1992 (and includes any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society);**]**

F2963 . . .

"tax exempt life or endowment business" has, subject to subsections (7) to **[**F2964(10A)**]** of section 460, the meaning given by subsection (2)(d) of that section, that is to say, it means (subject to those subsections) life or endowment business other than business profits arising from which are excluded from subsection (1) of that section by subsection (2)(b) or (c) of that section (read, where appropriate, with subsection (6) of that section);

and references in sections 460 to 465 and this subsection to a friendly society **[**F2965include, in the case of a registered friendly society, references to any branch of that society**]**.

(3) M574It is hereby declared that for the purposes of this Chapter (except where provision to the contrary is made) a **[**F2966friendly society**]** formed on the amalgamation of two or more friendly societies is to be treated as different from the amalgamated societies.

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(4) A registered friendly society formed on the amalgamation of two or more friendly societies shall, for the purposes of this Chapter, be treated as registered not later than 3rd May 1966 if at the time of the amalgamation—

(a) all the friendly societies amalgamated were registered friendly societies eligible for the exemption conferred by section 460(1); and

(b) at least one of them was not a new society;

or, if the amalgamation took place before 19th March 1985, the society was treated as registered not later than 3rd May 1966 by virtue of the proviso to section 337(4) of the 1970 Act.

[F2967(5) An incorporated friendly society formed on the amalgamation of two or more friendly societies shall, for the purposes of this Chapter, be treated as a society which, before its incorporation, was a registered friendly society registered not later than 3rd May 1966 if at the time of the amalgamation—

(a) all the friendly societies amalgamated were registered friendly societies eligible for the exemption conferred by section 460(1); and

(b) at least one of them was not a new society.**]**

Textual Amendments

F2953 S. 466(1)-(1B) substituted for s. 466(1) (29.4.1996) by Finance Act 1996 (c. 8), **s. 171(1)**

F2954 Words in s. 466(1)(a) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 37(a)**

F2955 Words in s. 466(1)(d) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 37(b)(i)**

F2956 Words in s. 466(1)(d)(ii) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 37(b)(ii)**

F2957 Definitions in s. 466(2) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(4)**; S.I. 1993/236, **art. 2**

F2958 S. 466(2): definition of "insurance company" inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 171(2)(a)**

F2959 S. 466(2): definition of "long term business" inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 171(2)(b)**

F2960 S. 466(2): word in definition of "long term business" substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2000/3629), **art. 52(2)(j)**

F2961 Definition in s. 466(2) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(5)**; S.I. 1993/236, **art. 2**

F2962 Definitions in s. 466(2) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(6)**; S.I. 1993/236, **art. 2**

F2963 Definition of "registrar" in s. 466(2) repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(2), **Sch. 22 Pt. I**; S.I. 1993/2213, **Sch.6** APPENDIX

F2964 S. 466(2): word in definition of "tax exempt life or endowment business" substituted (retrospectively) by Finance Act 2007 (c. 11), Sch. 12 paras. 3, **6(1)**

F2965 Words in s. 466(2) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(7)**; S.I. 1993/236, **art. 2**

F2966 Words in s. 466(3) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14**(8; S.I. 1993/236, **art. 2**)

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F2967 S. 466(5) added (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 14(9)**; S.I. 1993/236, **art. 2**

Modifications etc. (not altering text)

C502 S. 466(2) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 17

C503 S. 466(2) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 15; S.I. 2004/3369, **art. 2(1)**

Marginal Citations

M574 Source—1970 s.337(4); 1985 s.41(7)(e)

Trade unions and employers' associations

467 Exemption for trade unions and employers' associations.

(1) [M575]A trade union which is precluded by Act of Parliament or by its rules from assuring to any person a sum exceeding **[**[F2968]£4,000**]** by way of gross sum or **[**[F2969]£825**]** by way of annuity shall on making a claim be entitled—

(a) to exemption from income tax and corporation tax in respect of its income which is not trading income and which is applicable and applied for the purpose of provident benefits;

(b) to exemption from tax in respect of chargeable gains which are applicable and applied for the purpose of provident benefits.

(2) In this section "provident benefits" includes any payment, expressly authorised by the rules of the trade union, which is made to a member during sickness or incapacity from personal injury or while out of work, or to an aged member by way of superannuation, or to a member who has met with an accident, or has lost his tools by fire or theft, and includes a payment in discharge or aid of funeral expenses on the death of a member or the **[**[F2970]spouse**][**[F2971]or civil partner**]** of a member or as provision for the children of a deceased member.

(3) In determining for the purposes of this section whether a trade union is by Act of Parliament or its rules precluded from assuring to any person a sum exceeding **[**[F2972]£825**]** by way of annuity, there shall be disregarded any approved annuities (as defined in section 620(9)).

[[F2973](3A) The Treasury may by order substitute for any figure for the time being specified in this section such greater figure as may be specified in the order; and any amendment made in exercise of the power conferred by this subsection shall have effect in relation to such income or gains as may be specified in the order.**]**

(4) In this section "trade union" means—

(a) [M576]any trade union the name of which is entered in the list of trade unions maintained by the **[**[F2974]Certification Officer**]** under **[**[F2975]section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992**]**;

(b) any employers' association the name of which is entered in the list of employers' associations maintained by the **[**[F2974]Certification Officer**]** under **[**[F2976]section 123 of the Trade Union and Labour Relations (Consolidation) Act 1992**]** and which on 30th September 1971 was a registered trade union for the purposes of section 338 of the 1970 Act;

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[F2977(ba) any trade union the name of which is entered in the list of trade unions maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992;

(bb) any employers' association the name of which is entered in the list of employers' associations maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992 and which immediately before the coming into operation of that Article was a trade union for the purposes of this section; and**]**

(c) M577the Police Federation for England and Wales, the Police Federation for Scotland, the Police Federation for Northern Ireland and any other organisation of persons in police service which has similar functions.

Textual Amendments

F2968 Words in s. 467(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(2)(a)**,(6)

F2969 Words in s. 467(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(2)(b)**,(6)

F2970 1988(F) s.35*and* Sch.3 para.17*for chargeable period beginning on or after* 6*April* 1990.*Previously* "wife".

F2971 Words in s. 467(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 74

F2972 Words in s. 467(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(3)(6)**

F2973 S. 467(3A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(4)**

F2974 Words in s. 467(4)(a)(b) substituted (*retrospectively*) by Finance Act 1991 (c. 31, SIF 63:1), **s. 74(5)(a)**,(7)

F2975 Words in s. 467(4)(a) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 37(a)**

F2976 Words in s. 467(4)(b) substituted (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(2), 302, **Sch. 2 para. 37(b)**

F2977 S. 467(4)(ba)(bb) substituted (1.7.1992) for s. 467(4)(ba) by S.I. 1992/808, **art. 2**; S.R. 1992/212, **art. 2(2)(a)**

Modifications etc. (not altering text)

C504 *See* 1970 s.338*for amounts applicable in earlier years.*

C505 *See*Employment Protection Act 1975 (c.71) ss.7, 125(1)*and* Sch.16 Part III para.1—*list now maintained by the Certification Officer.*

Marginal Citations

M575 Source—1970 s.338(1)—(3); 1982 s.36(1); 1974 s.28(1)(b); 1987 s.31

M576 Source—1974 s.28(1)(a)

M577 Source—1977 s.47

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CHAPTER III

UNIT TRUST SCHEMES, DEALERS IN SECURITIES ETC.

Unit trust schemes

468 Authorised unit trusts.

(1) M578In respect of income arising to the trustees of an authorised unit trust, and for the purposes of the provisions relating to relief for capital expenditure, the Tax Acts shall have effect as if—

(a) the trustees were a company resident in the United Kingdom; and

(b) the rights of the unit holders were shares in the company;

[F2978but paragraph (b) above is without prejudice to the making of distributions which are interest distributions (within the meaning of section 468L) to unit holders**]**

[F2979(1A) In relation to any authorised unit trust the rate of corporation tax for the financial year 1996 and subsequent financial years shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned **[**F2980and sections 13 **[**F2981, 13AA and 13AB**]** shall not apply**].]**

(2) F2982. . . . . .

(3) References in the Corporation Tax Acts to a body corporate shall be construed in accordance with **[**F2983subsection (1) above**]**, and section **[**F2984234A**]** shall apply with any necessary modifications.

(4) F2985. . . . . .

(5) F2986. . . . . .

(6) **[**F2987 Subject to subsections (7) to (9) below**]** in this section—

"authorised unit trust" means, as respects an accounting period, a unit trust scheme in the case of which an order under section **[**F2988 243 of the Financial Services and Markets Act 2000**]** is in force during the whole or part of that accounting period;

F2989. . . . . .

"unit holder" means a person entitled to a share of the investments subject to the trusts of a unit trust scheme; and

"unit trust scheme" has the same meaning as in section 469.

[F2990(7) Each of the parts of an umbrella scheme shall be regarded for the purposes of this Chapter as an authorised unit trust and the scheme as a whole shall not be so regarded.

(8) In this section, "umbrella scheme" means a unit trust scheme—

(a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are to be made to them;

(b) under which the participants are entitled to exchange rights in one pool for rights in another; and

(c) in the case of which an order under section **[**F2988243 of the Financial Services and Markets Act 2000**]** is in force;

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and any reference to a part of an umbrella scheme is a reference to such of the arrangements as relate to a separate pool.

(9) In relation to a part of an umbrella scheme, any reference—

(a) to investments subject to the trusts of an authorised unit trust, shall have effect as a reference to such of the investments as under the arrangements form part of the separate pool to which the part of the umbrella scheme relates; and

(b) to a unit holder, shall have effect as a reference to a person for the time being having rights in that separate pool.**]**

Textual Amendments

F2978 Words in s. 468(1) inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 3(2)**

F2979 S. 468(1A) inserted (with effect in accordance with Sch. 6 paras. 10(2), 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 10(1)**

F2980 Words in s. 468(1A) inserted (with effect in accordance with s. 28(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 28(3)**

F2981 Words in s. 468(1A) substituted (22.7.2004) by Finance Act 2004 (c. 12), **s. 28(3)**

F2982 S. 468(2) repealed (with effect in accordance with Sch. 14 para. 7 of the repealing Act) by Finance Act 1994 (c. 9), Sch. 14 para. 3(3), **Sch. 25 Pt. 5(13)**, Note

F2983 Words in s. 468(3) substituted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 3(4)**

F2984 Words in s. 468(3) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(3)(4)**

F2985 S. 468(4) repealed (28.9.2004 with effect in accordance with art. 1(2) of the repealing S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 20

F2986 S. 468(5) repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

F2987 Words in s. 468(6) inserted (with effect in accordance with s. 113(4)-(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 113(1)**

F2988 Words in s. 468(6)(8) substituted (1.12.2001) by Financial Services and Markets Act 2000 (c. 8), s. 431(2), **Sch. 20 para. 4(3)**; S.I. 2001/3538, **art. 2(1)**

F2989 S. 468(6): definition of "distribution period" repealed (with effect in accordance with Sch. 14 para. 7 of the repealing Act) by Finance Act 1994 (c. 9), Sch. 14 para. 3(5), **Sch. 26 Pt. 5(13)**, Note

F2990 S. 468(7)-(9) added (with effect in accordance with s. 113(4)-(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 113(2)**

Modifications etc. (not altering text)

C506 S. 468 modified (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I 1997/1154), regs. 1, 9, 10 (as amended (1.12.2001) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 166**)

C507 *Definition employed for the purposes of* s.46(7)*—insurance companies: annual deemed disposal of holdings of unit trusts etc.*

Marginal Citations

M578 Source—1970 ss.354, 358; 1980 s.60; 1987 s.38, 40(1); 1987 (No.2) s.40(1)

[F2991 468AAuthorised unit trusts: futures and options.

F2992 . . . . . .**]**

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Textual Amendments

F2991 S. 468AA inserted by Finance Act 1990 (c. 29), **s. 81(1)(5)**

F2992 S. 468AA repealed (with effect in accordance with s. 83(3) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 27 para. 6, **Sch. 40 Pt. 3(13)**, Note (with Sch. 28)

[F2993 468A Certified unit trusts.

F2994 . . . . . .]

Textual Amendments

F2993 Ss. 468A-468C inserted by Finance Act 1989 (c. 26), **s. 78**

F2994 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

[F2995 468AA Open-ended investment companies

(1) In relation to an open-ended investment company the rate of corporation tax for the financial year 2005 and subsequent financial years shall be deemed to be the rate at which income tax at the lower rate is charged for the year of assessment which begins on 6th April in the financial year concerned (and sections 13, 13AA and 13AB shall not apply).

(2) In this section "open-ended investment company" means a company incorporated in the United Kingdom to which section 236 of the Financial Services and Markets Act 2000 applies.

(3) Each of the parts of an umbrella company shall be regarded for the purposes of this section as an open-ended investment company and the umbrella company as a whole shall not be so regarded (and shall not, unless an enactment expressly provides otherwise, be regarded as a company for any other purpose of the Tax Acts).

(4) In subsection (3) "umbrella company" means an open-ended investment company—

(a) in respect of which the instrument of incorporation provides arrangements for separate pooling of the contributions of the shareholders and the profits or income out of which payments are to be made to them, and

(b) the shareholders of which are entitled to exchange rights in one pool for rights in another,

and a reference to part of an umbrella company is a reference to a separate pool.]

Textual Amendments

F2995 S. 468A inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 16**

F2996 468B Certified unit trusts: corporation tax.

F2997 . . . . . .

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Textual Amendments

F2996 Ss. 468A-468C inserted by Finance Act 1989 (c. 26), **s. 78**

F2997 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

[F2998 468C Certified unit trusts: distributions.

F2999 . . . . . .

Textual Amendments

F2998 Ss. 468A-468C inserted by Finance Act 1989 (c. 26), **s. 78**

F2999 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

[F3000 468D Funds of funds: distributions.

F3001 . . . . . .]

Textual Amendments

F3000 S. 468D inserted by Finance Act 1989 (c. 26), **s. 79**

F3001 Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7

[F3002 468E Authorised unit trusts: corporation tax.

F3003 . . . . . .]

Textual Amendments

F3002 Ss. 468E-468G inserted by Finance Act 1990 (c. 29), **s. 51**

F3003 S. 468E repealed (with effect in accordance with Sch. 6 paras. 10(3), 28 of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(1)**, Note 1

[F3004 468EE Corporation tax: cases where lower rate applies.

F3005 . . . . . .]

Textual Amendments

F3004 S. 468EE inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 111(2)**

F3005 S. 468EE repealed (with effect in accordance with Sch. 6 paras. 10(3), 28 of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(1)**, Note 1

F3006 468F Authorised unit trusts: distributions.

F3007 . . . . . .

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Textual Amendments

F3006 Ss. 468E-468G inserted by Finance Act 1990 (c. 29), **s. 51**

F3007 S. 468F repealed (with effect in accordance with Sch. 14 para. 7 of the repealing Act) by Finance Act 1994 (c. 9), Sch. 14 para. 4, **Sch. 26 Pt. 5(13)**, Note

F3008 468G Dividends paid to investment trusts.

F3009 . . . . . .

Textual Amendments

F3008 Ss. 468E-468G inserted by Finance Act 1990 (c. 29), **s. 51**

F3009 S. 468G repealed (with effect in accordance with Sch. 14 para. 7 of the repealing Act) by Finance Act 1994 (c. 9), Sch. 14 para. 4, **Sch. 26 Pt. 5(13)**, Note

[F3010 Distributions of authorised unit trusts: general

Textual Amendments

F3010 Ss. 468H-468R and cross-headings inserted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 2**

468H Interpretation.

(1) This section has effect for the interpretation of sections 468I to 468R.

(2) The making of a distribution by an authorised unit trust to a unit holder includes investing an amount on behalf of the unit holder in respect of his accumulation units.

(3) In relation to an authorised unit trust—

(a) "distribution period" means a period by reference to which the total amount available for distribution to unit holders is ascertained; and

(b) "distribution accounts" means accounts showing how that total amount is computed.

(4) The distribution date for a distribution period of an authorised unit trust is—

(a) the date specified by or in accordance with the terms of the trust for any distribution for that distribution period; or

(b) if no date is so specified, the last day of that distribution period.

(5) F3011 . . . . . .

(6) Sections 468I **[**F3012to 468Q**]** do not apply to an authorised unit trust which is also an approved personal pension scheme (within the meaning of Chapter IV of Part XIV).

Textual Amendments

F3011 S. 468(5) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(1)(a), **Sch. 8 Pt. 2(11)**, Note

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F3012 Words in s. 468H(6) substituted (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 6 para. 8(1)(b)**

468I Distribution accounts.

(1) The total amount shown in the distribution accounts as available for distribution to unit holders shall be shown as available for distribution in one of the ways set out below.

(2) It may be shown as available for distribution as dividends [F3013]. . . .

(3) [F3014]. . . . . .

(4) It may be shown as available for distribution as yearly interest.

(5) [F3014]. . . . . .

[[F3015](5A) [F3014]. . . . . .**]**

(6) Amounts deriving from income under Schedule A may not be included in any amount shown in the distribution accounts as available for distribution as yearly interest.

(7) [F3014]. . . . . .

Textual Amendments

F3013 Words in s. 468I(2) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(2)(a), **Sch. 8 Pt. 2(11)**, Note

F3014 Ss. 468I(3)(5)(5A)(7) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(2)(b), **Sch. 8 Pt. 2(11)**, Note

F3015 S. 468I(5A) inserted (with effect in accordance with Sch. 7 para. 11(2) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 7 para. 11(1)**

Modifications etc. (not altering text)

C508 S. 468I modified (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **regs. 1**, 9, 12

Dividend and foreign income distributions

468J Dividend distributions.

(1) Subsection (2) below applies where the total amount [F3016]. . . shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as dividends [F3016]. . . .

(2) The **[**[F3017]Corporation Tax Acts**]** shall have effect as if the total amount [F3018]. . . were dividends on shares paid on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.

(3) [F3019]. . . . . .

(4) In the following provisions of this Chapter "a dividend distribution" means a dividend treated as paid by virtue of subsection (2) above **[**[F3020](including a dividend treated as paid to a unit holder who is not liable to corporation tax)**]**.

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Textual Amendments

F3016 Words in s. 468J(1) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(3)(a), **Sch. 8 Pt. 2(11)**, Note

F3017 Words in s. 468J(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 179(2)** (with Sch. 2)

F3018 Words in s. 468J(2) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(3)(b), **Sch. 8 Pt. 2(11)**, Note

F3019 S. 468J(3) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(3)(c), **Sch. 8 Pt. 2(11)**, Note

F3020 Words in s. 468J(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 179(3)** (with Sch. 2)

468K Foreign income distributions.

F3021 . . . . . .

Textual Amendments

F3021 S. 468K repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(4), **Sch. 8 Pt. 2(11)**

Interest distributions

468L Interest distributions.

(1) Subsection (2) below applies where the total amount shown in the distribution accounts as available for distribution to unit holders is shown as available for distribution as yearly interest.

[F3022(1A) For the purposes of this Chapter **[**F3023and Chapter 2 of Part 4 of ITTOIA 2005 (interest)**]** no amount shall be shown as so available unless the authorised unit trust in question satisfies the qualifying investments test throughout the distribution period.**]**

(2) The **[**F3024Corporation Tax Acts**]** shall have effect (subject to what follows) as if the total amount were payments of yearly interest made on the distribution date by the company referred to in section 468(1) to the unit holders in proportion to their rights.

(3) In the following provisions of this Chapter "an interest distribution" means a payment of yearly interest treated as made by virtue of subsection (2) above **[**F3025(including a payment of interest treated as made to a unit holder who is not liable to corporation tax)**]**.

(4) The obligation under section 349(2) to deduct a sum in its application to an interest distribution is subject to **[**F3026section 468M**]** (and, in its application to an interest distribution to a unit holder in respect of his accumulation units, is an obligation to deduct a sum out of the amount being invested on the unit holder's behalf).

(5) **[**F3027Nothing in subsection (2) above or Chapter II of Part IV of the Finance Act 1996 (loan relationships) shall require any amount relating to an interest distribution to be brought into account for the purposes of that Chapter otherwise than by virtue of paragraph 4(4) of Schedule 10 to that Act; but the interest distributions of an authorised

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unit trust for a distribution period**]** shall be allowed as a deduction against the profits of the authorised unit trust for the accounting period in which the last day of that distribution period falls.

(6) The deduction mentioned in subsection (5) above may be made—

(a) in computing the total profits for the accounting period, after the deduction of any expenses deductible in computing profits apart from section 75 and either before or after the deduction under that section of **[**F3028expenses of management**]**; or

(b) against total profits as reduced by any other relief from tax or against total profits not so reduced.

(7) Where in any accounting period the amount deductible by virtue of subsection (5) above exceeds the amount from which the deduction is made—

(a) the excess may be carried forward to the succeeding accounting period; and

(b) the amount so carried forward shall be treated as if it were deductible in that succeeding accounting period by virtue of subsection (5) above.

[F3029(8) For the purposes of this section an authorised unit trust satisfies the qualifying investments test throughout a distribution period ("the relevant period") if at all times in that period, the market value of the qualifying investments exceeds 60 per cent. of the market value of all the investments of that trust.

(9) Subject to subsection (13) below, in this section "qualifying investments", in relation to an authorised unit trust, means the investments of that trust which are of any of the following descriptions—

(a) money placed at interest;

(b) securities;

(c) shares in a building society;

(d) qualifying entitlements to a share in the investments of another authorised unit trust;

[F3030(e) qualifying shares in an open-ended investment company;**]**

[F3031(f) derivative contracts whose underlying subject matter consists wholly of any one or more of the matters referred to in paragraphs (a) to (e) above;

(g) contracts for differences whose underlying subject matter consists wholly of interest rates or creditworthiness or both of those matters.**]**

(10) For the purposes of subsection (9) above an entitlement to a share in the investments of another authorised unit trust is a qualifying entitlement at any time in the relevant period if, and only if, the other authorised unit trust would itself (on the relevant assumption) satisfy the qualifying investments test throughout that period.

(11) For the purposes of subsection (10) above the relevant assumption is that the only investments of the other authorised unit trust which are to be regarded as qualifying investments are those falling within paragraphs (a) to (c) **[**F3032, (f) and (g)**]** of subsection (9) above.

(12) In this section "security" does not include shares in a company; and references in this section to investments of an authorised unit trust are references to investments subject to the trusts of that authorised unit trust but do not include references to cash awaiting investment.

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[For the purposes of subsection (9) above shares in an open-ended investment company F3033(12A) are qualifying shares at any time in the relevant period if, and only if, throughout that period the aggregate market value of those investments of the company falling within paragraphs (a) to (c) of that subsection exceeds 60 per cent. of the market value of all its investments.

(12B) In subsection (12A) above references to investments of an open-ended investment company are references to investments comprised in the scheme property of that company, but do not include references to cash awaiting investment.

(12C) In this section—

"collective investment scheme" has the meaning given by section **[**F3034235 of the Financial Services and Markets Act 2000**]**;

"open-ended investment company" means, subject to subsection (12D) below, an open-ended investment company within the meaning given by section **[**F3035236 of the Financial Services and Markets Act 2000**]** which is incorporated in the United Kingdom;

"scheme property" of an open-ended investment company means, subject to subsection (12E)(b) below, the property subject to the collective investment scheme constituted by the company.

(12D) Each of the parts of an umbrella company shall be regarded for the purposes of subsections (9) and (12A) above as an open-ended investment company and the umbrella company as a whole shall not be so regarded and shall not be regarded as a company.

(12E) In relation to a part of an umbrella company—

(a) references in subsections (12A) and (12B) above to investments of an open-ended investment company shall have effect as references to such of the investments as under the arrangements referred to in subsection (12F) below form part of the separate pool to which that part of the umbrella company relates;

(b) the reference in subsection (12B) above to the scheme property of an open-ended investment company shall have effect as if it were a reference to such property subject to the collective investment scheme constituted by the umbrella company as is comprised in the separate pool to which that part of the umbrella company relates;

(c) a person for the time being having rights in that part shall be regarded as the owner of shares in the open-ended investment company which that part is deemed to be by virtue of subsection (12D) above, and not as the owner of shares in the umbrella company itself.

(12F) In subsections (12D) and (12E) above "umbrella company" means a company—

(a) which falls within the definition of "open-ended investment company" in section **[**F3036236 of the Financial Services and Markets Act 2000**]** ,

(b) which is incorporated in the United Kingdom,

(c) whose instrument of incorporation provides for arrangements for such pooling as is mentioned in section **[**F3037235(3)(a)**]** of that Act in relation to separate parts of the scheme property of the company, and

(d) the owners of shares in which are entitled to exchange rights in one part for rights in another;

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and any reference to a part of an umbrella company is a reference to such of the arrangements as relate to a separate pool.

(12G) For the purposes of subsections (12E) and (12F) above, "owner of shares" in relation to an open-ended investment company means—

(a) the beneficial owner of the shares, or

(b) where the shares are held on trust (other than a bare trust), the trustees of the trust, or

(c) where the shares are comprised in the estate of a deceased person, the deceased's personal representatives.**]**

[For the purposes of this section—

F3038(12H) "contract for differences" has the same meaning as in paragraph 12 of Schedule 26 to the Finance Act 2002;

"derivative contract" means—

(a) a contract which is a derivative contract within the meaning of that Schedule, or

(b) a contract which is, in the accounting period in question, treated as if it were a derivative contract by virtue of paragraph 36 of that Schedule (contracts relating to holdings in unit trust schemes, open-ended investment companies and offshore funds);

"underlying subject matter" has the same meaning as in paragraph 11 of that Schedule.**]**

(13) The Treasury may by order amend subsection (9) above so as to extend or restrict the descriptions of investments of an authorised unit trust that are qualifying investments.

(14) An order made by the Treasury under subsection (13) above may—

(a) make different provision for different cases; and

(b) contain such incidental, supplemental, consequential and transitional provision as the Treasury may think fit;

and, without prejudice to the generality of paragraph (b) above, such an order may make such incidental modifications of subsection (11) above as the Treasury may think fit.**]**

Textual Amendments

F3022 S. 468L(1A) inserted (with effect in accordance with Sch. 6 para. 11(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 11(1)**

F3023 Words in s. 468L(1A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 180(2)** (with Sch. 2)

F3024 Words in s. 468L(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 180(3)** (with Sch. 2)

F3025 Words in s. 468L(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 180(4)** (with Sch. 2)

F3026 Words in s. 468L(4) substituted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(2)**

F3027 Words in s. 468L(5) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14**, para. 26 (with Sch. 15)

F3028 Words in s. 468L(6)(a) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 21

F3029 S. 468L(8)-(14) inserted (with effect in accordance with Sch. 6 para. 11(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 10 para. 11(2)**

F3030 S. 468L(9)(e) added (25.2.1997) by The Authorised Unit Trusts (Interest Distributions) (Qualifying Investments) Order 1997 (S.I. 1997/212), **art. 3**

F3031 S. 468L(9)(f)(g) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 7(2)** (with Sch. 28)

F3032 Words in s. 468L(11) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 7(3)** (with Sch. 28)

F3033 S. 468L(12A)-(12G) inserted (25.2.1997) by The Authorised Unit Trusts (Interest Distributions) (Qualifying Investments) Order 1997 (S.I. 1997/212), **art. 4**

F3034 Words in s. 468L(12C) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 38(2)(a)**

F3035 Words in s. 468L(12C) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 38(2)(b)**

F3036 Words in s. 468L(12F)(a) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 38(3)(a)**

F3037 Words in s. 468L(12F)(c) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 38(3)(b)**

F3038 S. 468L(12H) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 7(4)** (with Sch. 28)

Modifications etc. (not altering text)

C509 S. 468L modified (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **regs. 1**, 9, 13

C510 S. 468L(9)(a) modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 4**

[F3039 468M Cases where no obligation to deduct tax

(1) Where an interest distribution is made for a distribution period to a unit holder, any obligation to deduct under section 349(2) does not apply to the interest distribution if—

(a) the unit holder is a company or the trustees of a unit trust scheme, or

(b) either the residence condition or the reputable intermediary condition is on the distribution date fulfilled with respect to the unit holder.

(2) Section 468O makes provision about the circumstances in which the residence condition or the reputable intermediary condition is fulfilled with respect to a unit holder.]

Textual Amendments

F3039 S. 468M substituted for ss. 468M, 468N (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(3)**

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Modifications etc. (not altering text)

C511 Ss. 468M, 468O, 468PA applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 7

C512 S. 468M(1)(a) applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 3, 4

468O Residence condition [F3040and reputable intermediary condition].

(1) For the purposes of **[**F3041section 468M**]**, the residence condition is fulfilled with respect to a unit holder if—

(a) there is a valid declaration made by him that he is not ordinarily resident in the United Kingdom; or

(b) he holds the rights as a personal representative of a unit holder and—

(i) before his death the deceased made a declaration valid at the time of his death that he was not ordinarily resident in the United Kingdom; or

(ii) the personal representative has made a declaration that the deceased, immediately before his death, was not ordinarily resident in the United Kingdom.

[F3042(1A) For the purposes of section 468M, the reputable intermediary condition is fulfilled with respect to a unit holder if—

(a) the interest distribution is paid on behalf of the unit holder to a company,

(b) the company either is subject to the EC Money Laundering Directive, or to equivalent non-EC provisions, or is an associated company resident in a regulating country or territory of a company which is so subject, and

(c) the trustees of the authorised unit trust have reasonable grounds for believing that the unit holder is not ordinarily resident in the United Kingdom.

(1B) For the purposes of subsection (1A)(b) above—

(a) a company is subject to the EC Money Laundering Directive if it is a credit institution or financial institution as defined by Article 1 of Directive 91/308/EEC, as amended by Directive 2001/97/EC,

(b) a company is subject to equivalent non-EC provisions if it is required by the law of any country or territory which is not a member State to comply with requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions,

(c) a company is to be treated as another's associated company if it would be so treated for the purposes of Part 11 (see section 416), and

(d) a country or territory is a regulating country or territory if it either is a member State or imposes requirements similar to those which, under Article 3 of that Directive (as so amended), member States must ensure are complied with by credit institutions and financial institutions.

(1C) If Directive 91/308/EEC ceases to have effect, or is further amended, the Treasury may by order make consequential amendments in subsections (1A) and (1B) above.**]**

(2) F3043. . . . . .

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(3) F3043. . . . . .

(4) F3043. . . . . .

Textual Amendments

F3040 Words in s. 468O sidenote inserted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(7)**

F3041 Words in s. 468O(1) substituted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(5)**

F3042 S. 468(1A)-(1C) inserted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(6)**

F3043 S. 468O(2)-(4) repealed (with effect in accordance with Sch. 43 Pt. 5(3) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 5(3)**

Modifications etc. (not altering text)

C513 Ss. 468O, 468P applied (with modifications) (27.9.1994) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994 (S.I. 1994/2318), **regs. 1**, 3-6

C514 S. 468O applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 3, 5

C515 Ss. 468M, 468O, 468PA applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 7

468P Residence declarations.

(1) A declaration made for the purposes of section **[**F3044468O(1)**]** must—

(a) be in such form as may be required or authorised by the Board;

(b) be made in writing to the trustees of the authorised unit trust in question; and

(c) contain any details or undertakings required by **[**F3045subsection (2) or (3)**]** below.

(2) A declaration made as mentioned in section 468O(1)(a) or (b)(i) must contain—

(a) the name and principal residential address of the person making it; and

(b) an undertaking that he will notify the trustees if he becomes ordinarily resident in the United Kingdom.

(3) A declaration made as mentioned in section 468O(1)(b)(ii) must contain the name of the deceased and his principal residential address immediately before his death.

(4) F3046. . . . . .

(5) For the purposes of determining whether an interest distribution should be made with or without any deduction, the trustees may not treat a declaration as valid if—

(a) they receive a notification in compliance with an undertaking under subsection (2) F3047. . . above that the person in question has become ordinarily resident F3047. . . in the United Kingdom; or

(b) they come into possession of information by some other means which indicates that the person in question is or may be ordinarily resident F3047. . . in the United Kingdom;

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but, subject to that, they are entitled to treat the declaration as valid.

(6) The trustees shall, on being required to do so by a notice given by an officer of the Board, make available for inspection by such an officer any declarations made to them under this section or any specified declaration or description of declarations.

(7) Where a notice has been given to the trustees under subsection (6) above, the declarations shall be made available within such time as may be specified in the notice and the person carrying out the inspection may take copies of or extracts from them.

(8) F3048 . . . . . .

(9) F3048 . . . . . .

Textual Amendments

F3044 Words in s. 468P(1) substituted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(8)(a)**

F3045 Words in s. 468P(1)(c) substituted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(8)(b)**

F3046 S. 468P(4) repealed (with effect in accordance with Sch. 43 Pt. 5(3) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 5(3)**

F3047 Words in s. 468P(5) repealed (with effect in accordance with Sch. 43 Pt. 5(3) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 5(3)**

F3048 S. 468P(8)(9) repealed (with effect in accordance with Sch. 43 Pt. 5(3) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 5(3)**

Modifications etc. (not altering text)

C516 Ss. 468O, 468P applied (with modifications) (27.9.1994) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 1994 (S.I. 1994/2318), **regs. 1**, 3-6

C517 S. 468P applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 3, 6

[F3049 468PA Section 468O(1A): consequences of reasonable but incorrect belief

Where—

(a) an interest distribution is made to a unit holder by the trustees of an authorised unit trust,

(b) the trustees, in reliance on the reputable intermediary condition being fulfilled with respect to the unit holder, do not comply with the obligation under section 349(2) to make a deduction from the interest distribution,

(c) that obligation would apply but for that condition being so fulfilled, and

(d) (contrary to the belief of the trustees) the unit holder is in fact ordinarily resident in the United Kingdom,

section 350 and Schedule 16 have effect as if that obligation applied.**]**

Textual Amendments

F3049 Ss. 468PA, 468PB inserted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(9)**

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Modifications etc. (not altering text)

C518 Ss. 468M, 468O, 468PA applied (with modifications) (7.8.2003 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Income Tax (Authorised Unit Trusts) (Interest Distributions) Regulations 2003 (S.I. 2003/1830), **regs. 1(1)**, 7

[F3049 468R Regulations supplementing sections 468M to 468PA

(1) The Board may by regulations make provision for giving effect to sections 468M to 468PA.

(2) The regulations may, in particular, include provision modifying the application of those sections in relation to interest distributions made to or received under a trust.

(3) The regulations may, in particular, include provision for the giving by officers of the Board of notices requiring trustees of authorised unit trusts to supply information and make available books, documents and other records for inspection on behalf of the Board.

(4) The regulations may—

(a) make provision in relation to times before they are made,

(b) make different provision for different cases, and

(c) make such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.**]**

Textual Amendments

F3049 Ss. 468PA, 468PB inserted (with effect in accordance with s. 203(14) of the amending Act) by Finance Act 2003 (c. 14), **s. 203(9)**

Distributions to corporate unit holder

468Q Dividend distribution to corporate unit holder.

(1) Subsection (2) below applies where—

(a) a dividend distribution for a distribution period is made to a unit holder by the trustees of an authorised unit trust; and

(b) on the distribution date for that distribution period the unit holder is within the charge to corporation tax.

(2) For the purpose of computing corporation tax chargeable in the case of the unit holder the unfranked part of the dividend distribution shall be deemed—

(a) to be an annual payment and not a dividend distribution F3050. . . or an interest distribution; and

(b) to have been received by the unit holder after deduction of income tax at the lower rate for the year of assessment in which the distribution date falls, from a corresponding gross amount.

(3) This is how to calculate the unfranked part of the dividend distribution—

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$$U = \frac{A \times C}{D}$$

Where—

U = the unfranked part of the dividend distribution to the unit holder;

A = the amount of the dividend distribution;

F3051 . . . . . .

[F3052C = such amount of the gross income as does not derive from franked investment income, as reduced by an amount equal to the trustees' net liability to corporation tax in respect of the gross income;**]**

[F3053D = the amount of the gross income, as reduced by an amount equal to the trustees' net liability to corporation tax in respect of the gross income;**]**

[F3054(3A) Any reference in this section to the trustees' net liability to corporation tax in respect of the gross income is a reference to the amount of the liability of the trustees of the authorised unit trust to corporation tax in respect of that gross income less the amount (if any) of any reduction of that liability which is given or falls to be given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1).**]**

(4) F3055 . . . . . .

(5) Where the unit holder is on the distribution date the manager of the scheme, subsection (2) above shall not apply in so far as the rights in respect of which the dividend distribution is made are held by him in the ordinary course of his business as manager of the scheme.

[F3056(5A) Where, in relation to a dividend distribution, any tax is deemed to have been deducted by virtue of the application of subsection (2)(b) above, the amount to which the unit holder is entitled by way of repayment of that tax shall not exceed the amount of the unit holder's portion of the trustees' net liability to corporation tax in respect of the gross income.

(5B) For the purposes of subsection (5A) above the unit holder's portion shall be determined by reference to the proportions in which unit holders have rights in the authorised unit trust in the distribution period in question.

(5C) The trustees of the authorised unit trust shall in the appropriate statement sent to the unit holder under section 234A include a statement showing their net liability to corporation tax in respect of the gross income.**]**

(6) For the purposes of this section the references to the gross income are references to the gross income entered in the distribution accounts for the purpose of computing the total amount available for distribution to unit holders for the distribution period in question.

Textual Amendments

F3050 Words in s. 468Q(2)(a) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(6)(a), **Sch. 8 Pt. 2(11)**, Note

F3051 Words in s. 468Q(3) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(6)(b)(ii), **Sch. 8 Pt. 2(11)**, Note

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F3052 Words in s. 468Q(3) substituted (with effect in accordance with Sch. 3 para. 27(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 27(2)(a)**

F3053 Words in s. 468Q(3) substituted (with effect in accordance with Sch. 3 para. 27(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 27(2)(b)**

F3054 S. 468Q(3A) inserted (with effect in accordance with Sch. 3 para. 27(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 27(3)**

F3055 S. 468Q(4) repealed (with effect in accordance with s. 36, Sch. 6 para. 8(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(6)(c), **Sch. 8 Pt. 2(11)**, Note

F3056 S. 468Q(5A)-(5C) inserted (with effect in accordance with Sch. 3 para. 27(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 27(4)**

468R Foreign income distribution to corporate unit holder.

F3057 . . . . . .

Textual Amendments

F3057 S. 468R repealed (with effect in accordance with s. 36, Sch. 6 para. 8(9) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 8(7), **Sch. 8 Pt. 2(11)**, Note

469 Other unit trusts.

(1) This section applies to—

(a) **M579** any unit trust scheme **[F3058** that is neither an authorised unit trust nor an umbrella scheme**]**; **F3059** . . .

(b) **F3059** . . . . . .

except where the trustees of the scheme are not resident in the United Kingdom.

(2) Income arising to the trustees of the scheme shall be regarded for the purposes of the Tax Acts as income of the trustees (and not as income of the unit holders) **[F3060** and, in the case of income to which section 1A applies, chargeable to income tax at the basic rate, instead of at the **[F3061** rate applicable in accordance with subsection (1A) of that section**]]**; and the trustees (and not the unit holders) shall be regarded as the persons to or on whom allowances or charges are to be made under the provisions of those Acts relating to relief for capital expenditure.

[F3062 (2A) **[F3063** Section 397(1) of ITTOIA 2005**]** shall not apply where the recipient of the distribution there mentioned is the trustees of the scheme.

[F3064 (2B) Section 348(4)(a) above and sections 399(2) and (6) and 400(2) and (3) of ITTOIA 2005 shall not apply where the recipient of the distribution in question is the trustees of the scheme.**]]**

F3065 (3) For the purposes of the Tax Acts **[F3066** other than ITTOIA 2005**]** the unit holders shall be treated as receiving annual payments (made by the trustees under deduction of tax) in proportion to their rights **[F3067** (and see Chapter 10 of Part 4 of that Act for their treatment under that Act)**]**.

(4) The total amount of those annual payments in respect of any distribution period shall be the amount which, after deducting income tax at the basic rate in force for the year of assessment in which the payments are treated as made, is equal to the aggregate

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amount shown in the accounts of the scheme as income available for payment to unit holders or for investment.

(5) The date on which the annual payments are treated as made shall be the date or latest date provided by the terms of the scheme for any distribution in respect of the distribution period in question, except that, if—

(a) the date so provided is more than 12 months after the end of the period; or

(b) no date is so provided,

the date on which the payments are treated as made shall be the last day of the period.

[F3068(5A) Subsection (5B) below applies where for any year of assessment—

(a) the trustees are (or, apart from this subsection, would be) chargeable under section 350 with tax on payments treated as made by them under subsection (3) above, and

(b) there is an uncredited surplus in the case of the scheme.

(5B) Where this subsection applies, the amount on which the trustees would otherwise be so chargeable shall be reduced—

(a) if the surplus is greater than that amount, to nil, or

(b) if it is not, by an amount equal to the surplus.

(5C) For the purposes of subsections (5A) and (5B) above whether there is an uncredited surplus for a year of assessment in the case of a scheme (and, if so, its amount) shall be ascertained by—

(a) determining, for each earlier year of assessment in which the income on which the trustees were chargeable to tax by virtue of subsection (2) above exceeded the amount treated by subsection (3) above as annual payments received by the unit holders, the amount of the excess,

(b) aggregating the amounts determined in the case of the scheme under paragraph (a) above, and

(c) deducting from that aggregate the total of any reductions made in the case of the scheme under subsection (5B) above for earlier years of assessment.

(5D) The references in subsection (5C)(a) above to subsections (2) and (3) above include references to subsections (2) and (3) of section 354A of the 1970 Act.**]**

(6) In this section "distribution period"**[**F3069means a period beginning on or after 1st April 1987 over which income from the investments subject to the trusts is aggregated for the purposes of ascertaining the amount available for distribution to unit holders, but**]**—

(a) if the scheme does not make provision for distribution periods, then for the purposes of this section its distribution periods shall be taken to be successive periods of 12 months the first of which began with the day on which the scheme took effect; and

(b) if the scheme makes provision for distribution periods of more than 12 months, then for the purposes of this section each of those periods shall be taken to be divided into two (or more) distribution periods, the second succeeding the first after 12 months (and so on for any further periods).

[F3070(6A) In this section "umbrella scheme" has the same meaning as in section 468.**]**

(7) In this section "unit trust scheme" has the same meaning as in the **[**F3071Financial Services and Markets Act 2000**]**, except that the Treasury may by regulations provide

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that any scheme of a description specified in the regulations shall be treated as not being a unit trust scheme for the purposes of this section.

(8) Regulations under this section may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

(9) Sections 686 **[**F3072, 686A**]** and 687 shall not apply to a scheme to which this section applies **[**F3073except as respects income to which section 686 is treated as applying by virtue of **[**F3074section 568 of ITTOIA 2005**].]**

(10) Section 720(5) shall not apply in relation to profits or gains treated as received by the trustees of a scheme to which this section applies if or to the extent that those profits or gains represent accruals of interest (within the meaning of Chapter II of Part XVII) which are treated as income in the accounts of the scheme.

(11) This section shall have effect in relation to distribution periods beginning on or after 6th April 1987.

Textual Amendments

F3058 Words in s. 469(1)(a) substituted (with effect in accordance with s. 113(4)-(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 113(3)(a)**

F3059 S. 469(1)(b) and preceding word repealed (with effect in accordance with Sch. 41 Pt. 5(1) Note 2 of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(1)**

F3060 Words in s. 469(2) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 12**

F3061 Words in s. 469(2) substituted (with effect in accordance with Sch. 4 para. 12(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 12(2)**

F3062 S. 469(2A)(2B) inserted (with effect in accordance with Sch. 4 para. 12(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 12(3)**

F3063 Words in s. 469(2A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 181(2)** (with Sch. 2)

F3064 S. 469(2B) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 181(3)** (with Sch. 2)

F3065 Words in s. 469(3) repealed (with effect in accordance with Sch. 41 Pt. 5(1) Note 2 of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(1)**

F3066 Words in s. 469(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 181(4)(a)** (with Sch. 2)

F3067 Words in s. 469(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 181(4)(b)** (with Sch. 2)

F3068 S. 469(5A)-(5D) inserted by Finance Act 1988 (c. 39), **s. 71**

F3069 Words in s. 469(6) substituted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 5**

F3070 S. 469(6A) inserted (with effect in accordance with s. s. 113(4)-(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 113(3)(b)**

F3071 Words in s. 469(7) substituted (1.12.2001) by Financial Services and Markets Act 2000 (c. 8), s. 431(2), **Sch. 20 para. 4(4)**; S.I. 2001/3538, **art. 2(1)**

F3072 Words in s. 469(9) inserted (with effect in accordance with Sch. 4 para. 12(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 12(4)**

F3073 Words in s. 469(9) inserted (with effect in accordance with s. 80(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 80(5)**

F3074 Words in s. 469(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 181(5)** (with Sch. 2)

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Modifications etc. (not altering text)
C519 S. 469 extended (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 22(1)(2)**
C520 For regulations see Part III Vol. 5

Marginal Citations
M579 Source—1970 s.354A; 1987 s.39; 1987 (No.2) s.40(1)

[F3075 469A Court common investment funds.

(1) The Tax Acts shall have effect in relation to any common investment fund established under section 42 of the M580 Administration of Justice Act 1982 (common investment funds for money paid into court) as if—

(a) the fund were an authorised unit trust;

(b) the person who is for the time being the investment manager of the fund were the trustee of that authorised unit trust; and

(c) **[**F3076 the persons with qualifying interests**]** were the unit holders in that authorised unit trust.

F3077 **[** (1A) For the purposes of subsection (1)(c) above, the persons with qualifying interests are—

(a) in relation to shares in the fund held by the Accountant General, the persons whose interests entitle them, as against him, to share in the fund's investments;

(b) in relation to shares in the fund held by any other person authorised by the Lord Chancellor to hold such shares on behalf of others (an "authorised person")—

(i) if there are persons whose interests entitle them, as against the authorised person, to share in the fund's investments, those persons;

(ii) if not, the authorised person;

(c) in relation to shares in the fund held by persons authorised by the Lord Chancellor to hold such shares on their own behalf, those persons.**]**

(2) In this section "the Accountant General" means F3078 . . . the Accountant General of the Supreme Court of Judicature in England and Wales or the Accountant General of the Supreme Court of Judicature of Northern Ireland.

(3) F3079 . . . . . .**]**

Textual Amendments
F3075 S. 469A inserted (with effect in accordance with s. 68(3)-(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 68(1)**
F3076 Words in s. 469A(1)(c) substituted (with effect in accordance with s. 183(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 183(2)**
F3077 S. 469A(1A) inserted (with effect in accordance with s. 183(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 183(3)**
F3078 Words in s. 469A(2) repealed (with effect in accordance with Sch. 43 Pt. 3(17) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(17)**
F3079 S. 469A(3) repealed (with effect in accordance with Sch. 43 Pt. 3(17) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 3(17)**

Marginal Citations
M580 1982 c.53.

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470 Transitional provisions relating to unit trusts.

(1) F3080 . . . . . .

F3081(2) . . . . . .

(3) F3080 . . . . . .

Textual Amendments

F3080 S. 470(1)(3) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(23)**

F3081 S. 470(2) ceased to have effect (29.4.1988) by virtue of s. 470(3) below and S.I. 1988/745, **art. 2**

Dealers in securities, banks and insurance businesses

471 Exchange of securities in connection with conversion operations, nationalisation etc.

F3082 . . . . . .

Textual Amendments

F3082 S. 471 repealed (with effect in accordance with s. 101(3) of the repealing Act) by Finance Act 1998 (c. 36), s. 101(1), **Sch. 27 Pt. 3(23)**, Note 1

472 Distribution of securities issued in connection with nationalisation etc.

F3083 . . . . . .

Textual Amendments

F3083 S. 472 repealed (with effect in accordance with s. 101(4) of the repealing Act) by Finance Act 1998 (c. 36), s. 101(2), **Sch. 27 Pt. 3(23)**, Note 2

[F3084 472A Trading profits etc. from securities: taxation of amounts taken to reserves

(1) This section applies in relation to securities—

(a) which are held by a **[**F3085company**]** carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities; and

(b) which are such that a profit on their sale would form part of the trading profits of that business.

(2) Profits and losses arising from such securities that in accordance with generally accepted accounting practice are—

(a) calculated by reference to the fair value of the securities, and

(b) recognised in that **[**F3086company's**]** statement of recognised gains and losses or statement of changes in equity,

shall be brought into account in computing the profits or losses of a business in accordance with the provisions of this Act applicable to Case I of Schedule D.

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(3) Subsection (2) does not apply—

(a) to an amount to the extent that it derives from or otherwise relates to an amount brought into account under that subsection in an earlier period of account, or

(b) to an amount recognised for accounting purposes by way of correction of a fundamental error.

(4) In this section, "securities"—

(a) includes shares and any rights, interests or options that by virtue of section 99, 135(5) or 136(5) of the Taxation of Chargeable Gains Act 1992 are treated as shares for the purposes of sections 126 to 136 of that Act; but

(b) does not include a loan relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996).**]**

Textual Amendments

F3084 S. 472A inserted (with effect in accordance with s. 54(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 54** (as amended (retrospectively) by Finance Act 2005 (c.7), Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**)

F3085 Word in s. 472A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 182(a)** (with Sch. 2)

F3086 Word in s. 472A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 182(b)** (with Sch. 2)

473 Conversion etc. of securities held as circulating capital.

(1) M581Subsections (3) and (4) below shall have effect where a transaction to which this section applies occurs in relation to any securities ("the original holding")—

(a) to which a **[**F3087company**]** carrying on a banking business, an insurance business or a business consisting wholly or partly in dealing in securities is beneficially entitled; and

(b) which are such that a profit on their sale would form part of the trading profits of that business.

(2) This section applies to any transaction which F3088. . . —

(a) **[**F3089results**]** in the original holding being equated with a new holding by virtue of sections **[**F3090126 to 136 of the 1992**]** Act (capital gains tax roll-over relief in cases of conversion etc.); or

(b) **[**F3091is**]** treated by virtue of section **[**F3090134**]** of that Act (compensation stock) as an exchange for a new holding which does not involve a disposal of the original holding;

F3092. . . . . .

[F3093(2A) This section does not apply to securities in respect of which unrealised profits or losses, calculated by reference to the fair value of the securities at the end of a period of account, are taken into account in the period of account in which the transaction mentioned in subsection (2) above occurs.

(2B) Subsection (2A) above shall be disregarded in determining for the purposes of section 66 of the Finance Act 2002 (election to continue postponement of mark to market) whether an asset was held by a person on 1st January 2002.**]**

(3) Subject to subsection (4) below, in making any computation in accordance with the provisions of this Act applicable to Case I of Schedule D of the profits or losses of the business—

(a) the transaction shall be treated as not involving any disposal of the original holding, and

(b) the new holding shall be treated as the same asset as the original holding.

(4) Where under the transaction the **[**F3087company**]** concerned receives or becomes entitled to receive any consideration in addition to the new holding, subsection (3) above shall have effect as if references to the original holding were references to the proportion of it which the market value of the new holding at the time of the transaction bears to the aggregate of that value and the market value at that time (or, if it is cash, the amount) of the consideration.

(5) F3094 . . . . . .

(6) In this section "securities" includes shares, any security within the meaning of section **[**F3095132 of the 1992 Act**]** and any rights, interests or options which by virtue of section **[**F3095**[**F3096135(5), 136(5)**]**, 147 or 99**]** of that Act are treated as shares for the purposes of sections **[**F3095126 to 136**]** of that Act.

(7) In determining for the purposes of subsection (2)(a) above whether a transaction **[**F3089results**]** in the original holding being equated with a new holding by virtue of section **[**F3097135 or 136 of the 1992**]** Act the reference in section **[**F3097137(1)**]** of that Act to capital gains tax shall be construed as a reference to income tax.

Textual Amendments

F3087 Words in s. 473(1)(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 183** (with Sch. 2)

F3088 Words in s. 473(2) repealed (with effect in accordance with s. 67(4)(a) of the repealing Act) by Finance Act 2002 (c. 23), s. 67(1)(a), **Sch. 40 Pt. 3(8)**, Note

F3089 Words in s. 473(2)(a)(7) substituted (with effect in accordance with s. 67(4)(a) of the amending Act) by Finance Act 2002 (c. 23), **s. 67(1)(b)**

F3090 Words in 473(2)(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(27)(a)** (with ss. 60, 101(1), 171, 201(3))

F3091 Word in s. 473(2)(b) substituted (with effect in accordance with s. 67(4)(a) of the amending Act) by Finance Act 2002 (c. 23), **s. 67(1)(c)**

F3092 Words in s. 473(2) repealed (with effect in accordance with s. 101(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(23)**, Note 1

F3093 S. 473(2A)(2B) inserted (with effect in accordance with s. 67(4)(a) of the amending Act) by Finance Act 2002 (c. 23), **s. 67(2)**

F3094 S. 473(5) repealed (with effect in accordance with s. 164(5) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(24)**, Note

F3095 Words in s. 473(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(27)(b)** (with ss. 60, 101(1), 171, 201(3))

F3096 Words in s. 473(6) substituted (with effect in accordance with Sch. 9 para. 8(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(4)**

F3097 Words in s. 473(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(27)(c)** (with ss. 60, 101(1), 171, 201(3))

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Marginal Citations

M581 Source—1977 s.46; 1979(C) Sch.7

474 Treatment of tax-free income.

(1) F3098 . . . . . .

(2) F3099 . . . . . .

F3100(3) **[** F3098 . . . . . **]]**

Textual Amendments

F3098 S. 474(1)(3) repealed (with effect in accordance with Sch. 7 para. 32-35, Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8). Sch. 7 para. 18, Sch. 41 Pt. 5(2)

F3099 S. 474(2) repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 28 para. 2, **Sch. 41 Pt. 5(18)**, Note

F3100 S. 474(3) inserted (with effect in accordance with Sch. 8 para. 55 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 25(2)**

475 Tax-free Treasury securities: exclusion of interest on borrowed money.

[F3101(1) This section has effect where a banking business, an insurance business or a business consisting wholly or partly in dealing in securities—

(a) is carried on in the United Kingdom by a person not ordinarily resident there; and

(b) in computing for any of the purposes of the Tax Acts the profits arising from, or loss sustained, in the business, any amount which would otherwise be brought into account is disregarded by virtue of a condition subject to which any 3½% War Loan 1952 or after was issued;

and for this purpose insurance business includes insurance business of any category.**]**

(2) Up to the amount determined under this section ("the amount ineligible for relief"), interest on money borrowed for the purposes of the business—

(a) shall be excluded in any computation under the Tax Acts of the profits (or losses) arising from the business F3102. . . , and

[F3103(b) shall not be brought into account by way of any debit given for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships).**]**

(3) Subject to subsection (4) below, in determining the amount ineligible for relief, account shall be taken of all money borrowed for the purposes of the business which is outstanding in the accounting or basis period, up to the total cost of the **[**F3104 3½% War Loan 1952 or after**]** held for the purpose of the business in that period.

(4) Where the person carrying on the business is a company, account shall not be taken of any borrowed money carrying interest which, apart from subsection (2) above, does not fall to be included in the computations under paragraph (a) of that subsection **[**F3105 or to be brought into account by way of a debit given for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships).**]**

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(5) F3106. . . The amount ineligible for relief shall be equal to a year's interest on the amount of money borrowed which is to be taken into account under subsection (3) above at a rate equal to the average rate of interest in the accounting or basis period on money borrowed for the purposes of the business, except that in the case of a period of less than 12 months interest shall be taken for that shorter period instead of for a year.

(6) F3107. . . . . .

(7) F3107. . . . . .

(8) For the purposes of this section the cost of a holding of **[**F3104 3½% War Loan 1952 or after**]** which has fluctuated in the accounting or basis period shall be the average cost of acquisition of the initial holding, and of any subsequent acquisitions in the accounting or basis period, applied to the average amount of the holding in the accounting or basis period, F3108. . . .

(9) In this section "accounting or basis period" means the company's accounting period or the period by reference to which the profits or gains arising in the year of assessment are to be computed.

Textual Amendments

F3101 S. 475(1) substituted (with effect in accordance with s. 154(9) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 28 para. 3(1)**

F3102 Words in s. 475(2)(a) repealed (with effect in accordance with Sch. 8 para. 55 of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 para. 25(1)(b), **Sch. 29 Pt. 8(5)**, Note 1

F3103 S. 475(2)(b) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 27(1)** (with Sch. 15)

F3104 Words in s. 475(3)(8) substituted (with effect in accordance with s. 154(9) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 28 para. 3(2)**

F3105 Words in s. 475(4) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 27(2)** (with Sch. 15)

F3106 Words in s. 475(5) repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(18)**, Note

F3107 S. 475(6)(7) repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(18)**, Note

F3108 Words in s. 475(8) repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(18)**, Note

CHAPTER IV

BUILDING SOCIETIES, BANKS, SAVINGS BANKS, INDUSTRIAL AND PROVIDENT SOCIETIES AND OTHERS

476 Building societies: regulations for payment of tax.

F3109. . . . . .

Textual Amendments

F3109 S. 476 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 2, **Sch. 19 Pt. 4**, Note 8

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477 Investments becoming or ceasing to be relevant building society investments.

F3110 . . . . . .

Textual Amendments

F3110 S. 477 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 3, **Sch. 19 Pt. 4**, Note 8

[F3111 477A Building societies: regulations for deduction of tax.

(1) The Board may by regulations make provision with respect to any year of assessment requiring any building society—

(a) in such cases as may be prescribed by the regulations to deduct out of any dividend or interest paid or credited in the year in respect of shares in, or deposits with or loans to, the society a sum representing the amount of income tax on it, and

(b) to account for and pay any amount required to be deducted by the society by virtue of this subsection.

F3112 **[** (1A) Regulations under subsection (1) above may not make provision with respect to any dividend or interest paid or credited, on or after the day on which the Finance Act 1991 was passed, in respect of a security (other than a qualifying certificate of deposit **[**F3113 and other than a qualifying deposit right**]]**) which was quoted, or capable of being **[**F3114 listed**]**, on a recognised stock exchange at the time the dividend or interest became payable.

(2) Regulations under subsection (1) above may—

(a) make provision with respect to the furnishing of information by building societies or their investors, including, in the case of societies, the inspection of books, documents and other records on behalf of the Board;

(b) contain such incidental and consequential provisions as appear to the Board to be appropriate, including provisions requiring the making of returns.

F3115 **[** (2A) Without prejudice to the generality of subsection (2)(a) above, regulations under subsection (1) above may make provision with respect to the furnishing of information to or by building societies corresponding to any provision that is made by, or may be made under, section 482 with respect to the furnishing of information to or by deposit-takers.**]**

(3) For any year of assessment to which regulations under subsection (1) above apply, dividends or interest payable in respect of shares in, or deposits with or loans to, a building society shall be dealt with for the purposes of corporation tax as follows—

F3116 **[** (a) F3117 **[** to the extent that it would not otherwise fall to be so regarded,**]** liability to pay the dividends or interest shall be treated for the purposes of Chapter II of Part IV of the Finance Act 1996 as a liability arising under a loan relationship of the building society;

(aa) if the dividends or interest are payable to a company, **[**F3118 then, to the extent that they would not otherwise fall to be so regarded,**]** they shall be treated for those purposes as payable to that company in pursuance of a right arising under a loan relationship of that company;**]**

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(b) no part of any such dividends or interest paid or credited in the year of assessment shall be treated as a distribution of the society or as franked investment income of any company resident in the United Kingdom.

[F3119(3A) F3120. . . . . .

(3B) F3120. . . . . .

(3C) F3120. . . . . .**]**

(4) Subsection (3)(a) above shall apply to any **[**F3121interest**]** paid by the society under a certified **[**F3122SAYE savings arrangement**]** as if it were a dividend on a share in the society.

(5) F3123. . . . . .

(6) F3123. . . . . .

(7) Notwithstanding anything in sections 348 to 350, for any year of asesssment to which regulations under subsection (1) above apply income tax shall not be deducted upon payment to the society of any interest on advances, being interest payable in that year.

(8) F3124. . . . . .

(9) In this section "dividend" has the meaning given by regulations under subsection (1) above F3125. . . .

[F3126(10) In this section—

[F3127"certified SAYE savings arrangement" has the meaning given by section 703 of ITTOIA 2005

"qualifying certificate of deposit" has the same meaning as in section 349, and

F3128 "qualifying deposit right" has the meaning given by section 349(4), reading "paid" as "paid or credited", and**]**

"security" includes share.**]]**

Textual Amendments

F3111 S. 477A inserted (with effect in accordance with Sch. 5 para. 4(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 4(1)**

F3112 S. 477A(1A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 2(2)**

F3113 Words in s. 477A(1A)(3A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 3(2), **6**

F3114 Word in s. 477A(1A) substituted (with effect in accordance with Sch. 38 para. 6(7) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(g)**

F3115 S. 477A(2A) inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 111(4)**

F3116 S. 477A(3)(a)(aa) substituted for s. 477A(3)(a) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 28(1)** (with Sch. 15)

F3117 Words in s. 477A(3)(a) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 47(2)**

F3118 Words in s. 477A(3)(aa) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 47(3)**

F3119 S. 477A(3A)-(3C) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 52(2)(3)**

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F3120 S. 477(3A)-(3C) repealed with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 28(2), **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

F3121 Words in s. 477A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 184(2)(a)** (with Sch. 2)

F3122 Words in s. 477A(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 184(2)(b)** (with Sch. 2)

F3123 S. 477A(5)(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 184(3), **Sch. 3** (with Sch. 2)

F3124 S. 477(8) repealed (with effect in accordance with s. 38(3)(4) of the repealing Act) by Finance Act 1999 (c. 16), **Sch. 20 Pt. 3(7)**, Note 4

F3125 Words in s. 477A(9) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 184(4), **Sch. 3** (with Sch. 2)

F3126 S. 477A(10) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 2(3)**

F3127 S. 477A(10): definition of "certified SAYE savings arrangement" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 184(5)** (with Sch. 2)

F3128 S. 477A(10): definition of "qualifying deposit right" inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 3(3), **6**

Modifications etc. (not altering text)

C521 S. 477A applied (with effect in accordance with s. 56 of the affecting Act) by Finance Act 2005 (c. 7), **Sch. 2** para,. 5

C522 *See* 1990 Sch.5 para.16(1), (2), (3)—*regulations may also require building societies to account for tax on transitional sums.*

C523 *See* 1990 Sch.5 para.16(1), (4), (5)—*for the year* 1991-92,*the words from* "actual"
to the end of the paragraph are replaced by
"appropriate amount";*and the following subs. is inserted after* subs.(3):— "(3A) In subsection (3)(a) above the reference to the appropriate amount is to the actual amount paid or credited in the accounting period of any such dividends or interest together with—(a) in the case of dividends or interest paid or credited in the year 1990-91, any amount accounted for and paid by the society in respect thereof as representing income tax, and (b) in the case of dividends or interest paid or credited in the year 1991-92, any amount of income tax accounted for and paid by the society in respect thereof."

[F3129 477B Building societies: incidental costs of issuing qualifying shares.

(1) In computing for the purposes of corporation tax the income of a building society from the trade carried on by it, there shall be allowed as a deduction, if subsection (2) below applies, the incidental costs of obtaining finance by means of issuing shares in the society which are qualifying shares.

F3130 **[** (1A) A deduction shall not be allowed by virtue of subsection (1) above to the extent that the costs in question fall to be brought into account as debits for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships).**]**

(2) This subsection applies if any amount payable in respect of the shares by way of dividend or interest is deductible in computing for the purposes of corporation tax the income of the society from the trade carried on by it.

(3) In subsection (1) above, "the incidental costs of obtaining finance" means expenditure on fees, commissions, advertising, printing and other incidental matters (but not including stamp duty), being expenditure wholly and exclusively incurred for the

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purpose of obtaining the finance (whether or not it is in fact obtained), or of providing security for it or of repaying it.

(4) This section shall not be construed as affording relief—

(a) for any sums paid in consequence of, or for obtaining protection against, losses resulting from changes in the rate of exchange between different currencies, or

(b) for the cost of repaying qualifying shares so far as attributable to their being repayable at a premium or to their having been issued at a discount.

(5) In this section—

"dividend" has the same meaning as in section 477A, and

"qualifying share" has the same meaning as in section **[**F3131117(4) of the 1992 Act**]**.

Textual Amendments

F3129 S. 477B inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 3(1)(2)**

F3130 S. 477B(1A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 48**

F3131 Words in s. 477B(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(28)** (with ss. 60, 101(1), 171, 201(3))

478 Building societies: time for payment of tax.

F3132 . . . . . .

Textual Amendments

F3132 S. 478 repealed (with effect in accordance with s. 199(2) of the repealing Act) by Finance Act 1994 (c. 9), **Sch. 26 Pt. 5(23)**, Note 4; S.I. 1998/3173, **art. 2**

479 Interest paid on deposits with banks etc.

F3133 . . . . . .

Textual Amendments

F3133 S. 479 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 5, **Sch. 19 Pt. 4**, Note 8

480 Deposits becoming or ceasing to be composite rate deposits.

F3134 . . . . . .

Textual Amendments

F3134 S. 480 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 6, **Sch. 19 Pt. 4**, Note 8

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[F3135 480A Relevant deposits: deduction of tax from interest payments.

(1) Any deposit-taker making a payment of interest in respect of a relevant deposit shall, on making the payment, deduct out of it a sum representing the amount of income tax on it for the year of assessment in which the payment is made.

(2) Any payment of interest out of which an amount is deductible under subsection (1) above shall be a relevant payment for the purposes of Schedule 16 whether or not the deposit-taker making the payment is resident in the United Kingdom.

(3) Schedule 16 shall apply in relation to any payment which is a relevant payment by virtue of subsection (2) above—

(a) with the substitution for any reference to a company of a reference to a deposit-taker,

(b) as if paragraph 5 applied only in relation to payments received by the deposit-taker and falling to be taken into account in computing his income chargeable to corporation tax, and

(c) as if in paragraph 7 the reference to section 7(2) included a reference to sections 11(3) and 349(1).

(4) In relation to any deposit-taker who is not a company, Schedule 16 shall have effect as if—

(a) paragraph 5 were omitted, and

(b) references to accounting periods were references to periods for which the deposit-taker makes up his accounts.

(5) For the purposes of this section, crediting interest shall be treated as paying it.**]**

Textual Amendments

F3135 Ss. 480A-480C inserted (with effect in accordance with Sch. 5 para. 7(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 7(1)**

Modifications etc. (not altering text)

C524 Ss. 480A-482 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 6**

C525 *See* S.I. 1990 No. 2232.

[F3136 480B Relevant deposits: exception from section 480A.

(1) The Board may by regulations provide that section 480A(1) shall not apply as regards a payment of interest if such conditions as may be prescribed by the regulations are fulfilled.

(2) In particular, the regulations may include—

(a) provision for a certificate to be supplied to the effect that the person beneficially entitled to a payment is unlikely to be liable to pay any amount by way of income tax for the year of assessment in which the payment is made;

(b) provision for the certificate to be supplied by that person or such other person as may be prescribed by the regulations;

(c) provision about the time when, and the manner in which, a certificate is to be supplied;

(d) provision about the form and contents of a certificate.

(3) Any provision included under subsection (2)(d) above may allow the Board to make requirements, in such manner as they see fit, as to the matters there mentioned.

(4) For the purposes of this section, crediting interest shall be treated as paying it.**]**

Textual Amendments

F3136 Ss. 480A-480C inserted (with effect in accordance with Sch. 5 para. 7(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 7(1)**

Modifications etc. (not altering text)

C526 Ss. 480A-482 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 6**

[F3137480C Relevant deposits: computation of tax on interest.

F3138 . . . . . .**]**

Textual Amendments

F3137 Ss. 480A-480C inserted (with effect in accordance with Sch. 5 para. 7(2) of the amending Act) by Finance Act 1990 (c. 29), **Sch. 5 para. 7(1)**

F3138 S. 480C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 185, **Sch. 3** (with Sch. 2)

481 "Deposit-taker", "deposit" and "relevant deposit".

(1) In this section "the relevant provisions" means **F3139**. . . this section and section 482.

[F3140(1A) In this section "the relevant provisions" also means **[F3141**section 480A**].]**

(2) In the relevant provisions "deposit-taker" means any of the following—

(a) the Bank of England;

[F3142(b) any person falling within section 840A(1)(b) whose permission under Part 4 of the Financial Services and Markets Act 2000 includes permission to accept deposits which are relevant deposits;

(ba) any company within the meaning of the Companies Act 1985 **M582**—

(i) in respect of which a resolution has been passed by a local authority under section 48(3) of the Banking Act 1979 **M583** or section 103(3) of the Banking Act 1987; and

(ii) which is exempt from the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 in relation to the acceptance of deposits which are relevant deposits;**]**

(c) **F3143** . . . . . .

[F3144(ca) any local authority;**]**

F3145(d) . . . . . .

F3145(e) . . . . . .

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(f) any person or class of person who receives deposits in the course of his business or activities and which is for the time being prescribed by order made by the Treasury for the purposes of this paragraph.

(3) [M584]In the relevant provisions "deposits" means a sum of money paid on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person to whom it is made.

(4) For the purposes of the relevant provisions a deposit is a relevant deposit if, but only if—

(a) the person who is beneficially entitled to any interest in respect of the deposit is an individual or, where two or more persons are so entitled, all of them are individuals; or

(b) in Scotland, the person who is so entitled is a partnership all the partners of which are individuals; or

(c) the person entitled to any such interest receives it as a personal representative in his capacity as such;**[**[F3146] or

(d) any interest in respect of the deposit is income arising to the trustees of a discretionary or accumulation trust in their capacity as such;**]**

and the deposit is not prevented from being a relevant deposit by **[**[F3147]any of subsections (5) to (5B)**]** below.

[[F3148](4A) For the purposes of the relevant provisions a trust is a discretionary or accumulation trust if it is such that some or all of any income arising to the trustees would fall (unless treated as income of the settlor [F3149]. . .) to be comprised for the year of assessment in which it arises in income to which section 686 applies.**]**

(5) A deposit is not a relevant deposit if—

(a) a qualifying certificate of deposit has been issued in respect of it or it is a qualifying time deposit;

(b) it is a debt on a debenture ("debenture" having the meaning given in section 744 of the [M585]Companies Act 1985) issued by the deposit-taker;

(c) it is a loan made by a deposit-taker in the ordinary course of his business or activities;

(d) it is a debt on a security which is listed on a recognised stock exchange;

(e) it is a general client account deposit;

(f) it forms part of a premiums trust fund (within the meaning of **[**[F3150]section 184 of the Finance Act 1993) of an underwriting or former underwriting member**]** of Lloyd's;

(g) [F3151] . . . . . .

(h) in the case of a deposit-taker resident in the United Kingdom for the purposes of income tax or corporation tax, it is held at a branch of his situated outside the United Kingdom;

(j) in the case of a deposit-taker who is not so resident, it is held otherwise than at a branch of his situated in the United Kingdom; or

(k) the appropriate person has declared in writing to the deposit-taker liable to pay interest in respect of the deposit [F3152]. . . —

(i) **[**[F3153]in a case falling within subsection (4)(a) or (b) above, that**]** at the time when the declaration is made, the person who is beneficially

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entitled to the interest is not, or, as the case may be, all the persons who are so entitled are not, ordinarily resident in the United Kingdom;

(ii) in a case falling within subsection (4)(c) above **[**F3154, that**]** the deceased was, immediately before his death, not ordinarily resident in the United Kingdom.

[F3155(iii) in a case falling within subsection (4)(d) above, that, at the time when the declaration is made, the trustees are not resident in the United Kingdom and do not have any reasonable grounds for believing that any of the beneficiaries of the trust is an individual who is ordinarily resident in the United Kingdom or a company which is resident in the United Kingdom.**]**

[F3156(5A) In a case where—

(a) there is an arrangement falling within section 56A **[**F3157above or an uncertificated right falling within section 552(1)(c) of ITTOIA 2005**]**,

(b) the deposit is with a deposit-taker,

(c) no certificate of deposit **[**F3158or uncertificated eligible debt security units have**]** been issued in respect of the right at the time the interest mentioned in section 480A F3159. . . is paid, and

(d) the conditions set out in paragraphs (a) and (b) in the definition of "qualifying certificate of deposit" in section 482(6) apply,

the deposit is not a relevant deposit.**]**

[F3160(5B) In a case falling within subsection (4)(d) above, a deposit shall not be taken to be a relevant deposit in relation to a payment of interest in respect of that deposit if—

(a) the deposit was made before 6th April 1995; and

(b) the deposit-taker has not, at any time since that date but before the making of the payment, been given a notification by the Board or any of the trustees in question that interest in respect of that deposit is income arising to the trustees of a discretionary or accumulation trust.**]**

(6) M586The Treasury may by order make amendments in this section and sections **[**F3161480A F3162. . . **]**. . . and 482 providing for deposits of a kind specified in the order to be or, as the case may be, not to be relevant deposits in relation to all deposit-takers or such deposit-takers or classes of deposit-takers as may be so specified.

Textual Amendments

F3139 Words in s. 481(1) repealed by Finance Act 1990 (c. 29), **Sch. 19 Part IV**, Note 8

F3140 1990 s. 30 and Sch. 5 para. 8(2)

F3141 Words in s. 481(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 186(2)** (with Sch. 2)

F3142 S. 481(2)(b)(ba) substituted for s. 481(2)(b) (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 39(2)**

F3143 S. 481(2)(c) repealed (26.3.2001) by The Postal Services Act 2000 (Consequential Modifications No. 1) Order 2001 (S.I. 2001/1149), art. 1(2), **Sch. 2**

F3144 1990 s. 30 and Sch. 5 para. 8(3) as regards interest paid or credited on or after 6 April 1991

F3145 S. 481(2)(d)(e) repealed by Finance Act 1990 (c. 29), Sch. 5 para. 8(3)(5), **Sch. 19 Part IV**, Note 8

F3146 S. 481(4)(d) and word inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(1)** (with s. 86(14))

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F3147 Words in s. 481(4) substituted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(1)** (with s. 86(14))
F3148 S. 481(4A) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(2)** (with s. 86(14))
F3149 Words in s. 481(4A) repealed (with effect in accordance with Sch. 7 para. 12(4) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(7)**, Note 1
F3150 Words in s. 481(5)(f) substituted (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 183(2)**, 184(3)
F3151 S. 481(5)(g) omitted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 39(3)**
F3152 Word in s. 481(5)(k) repealed (with effect in accordance with s. 86(10) of the repealing Act) by Finance Act 1995 (c. 4), s. 86(3)(a), **Sch. 29 Pt. 8(11)**, Note
F3153 Words in s. 481(5)(k)(i) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(3)(b)** (with s. 86(14))
F3154 Word in s. s. 481(5)(k)(ii) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(3)(c)** (with s. 86(14))
F3155 S. 481(5)(k)(iii) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(3)(d)** (with s. 86(14))
F3156 S. 481(5A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 4, **6**
F3157 Words in s. 481(5A)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 186(3)(a)** (with Sch. 2)
F3158 Words in s. 481(5A)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 186(3)(b)(i)** (with Sch. 2)
F3159 Words in s. 481(5A)(c) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 186(3)(b)(ii), **Sch. 3** (with Sch. 2)
F3160 S. 481(5B) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(4)** (with s. 86(14))
F3161 1990 s. 30 and Sch. 5 para. 8(4)
F3162 Words in s. 481(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 186(4), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)
C527 Ss. 480A-482 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 6**

Marginal Citations
M582 1985 c. 6.
M583 1979 c. 37; section 48(3) was repealed, together with other sections, by section 108(2) of, and Part 1 of Schedule 7 to, the Banking Act 1987 (c. 22).
M584 Source—1984 Sch.8 3(1)-(3); 1985 s.38(3), (4)
M585 1985 c. 6.
M586 Source—1984 Sch.8 3A(1); 1985 s.38(7)

482 Supplementary provisions.

(1) [M587]For the purposes of sections [F3163]. . . 481 and this section, any amount which is credited as interest in respect of a relevant deposit shall be treated as a payment of interest.

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(2) [M588]A declaration under section 481(5)(k) shall—

[[F3164](a) if made under sub-paragraph (i) or (iii), contain an undertaking by the person making it that where—

(i) the individual or any of the individuals in respect of whom it is made becomes ordinarily resident in the United Kingdom,

(ii) the trustees or any company in respect of whom it is made become or becomes resident in the United Kingdom, or

(iii) an individual who is ordinarily resident in the United Kingdom or a company which is resident in the United Kingdom becomes or is found to be a beneficiary of a trust to which the declaration relates,

the person giving the undertaking will notify the deposit-taker accordingly; and**]**

(b) in any case, be in such form as may be prescribed or authorised, and contain such information as may reasonably be required, by the Board.

[[F3165](2A) A declaration under section 481(5)(k)(i) must contain—

(a) in a case falling within section 481(4)(a), the name and principal residential address of the individual who is beneficially entitled to the interest or, where two or more individuals are so entitled, of each of them;

(b) in a case falling within section 481(4)(b), the name and principal residential address of each of the partners.**]**

(3) [M589]A deposit-taker shall, on being so required by notice given to him by an inspector, make all declarations which have been made to him under section 481(5) available for inspection by the inspector or by a named officer of the Board.

(4) Where a notice has been given to a deposit-taker under subsection (3) above, the declarations shall be made available within such time as may be specified in the notice, and the person to whom they are to be made available may take copies of or extracts from them.

(5) A deposit-taker shall treat every deposit made with him as a relevant deposit unless satisfied that it is not a relevant deposit, but where he has satisfied himself that a deposit is not a relevant deposit he shall be entitled to continue to so treat it until such time as he is in possession of information which can reasonably be taken to indicate that the deposit is or may be a relevant deposit.

[[F3166](5A) The persons who are to be taken for the purposes of section 481(5)(k)(iii) and subsection (2) above to be the beneficiaries of a discretionary or accumulation trust shall be every person who, as a person falling wholly or partly within any description of actual or potential beneficiaries, is either—

(a) a person who is, or will or may become, entitled under the trust to receive the whole or any part of any income under the trust; or

(b) a person to or for the benefit of whom the whole or any part of any such income may be paid or applied in exercise of any discretion conferred by the trust;

and for the purposes of this subsection references, in relation to a trust, to income under the trust shall include references to so much (if any) of any property falling to be treated as capital under the trust as represents amounts originally received by the trustees as income.**]**

(6) In section 481(5) **[**[F3167]and (5A)**]**—

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"appropriate person", in relation to a deposit, means any person who is beneficially entitled to any interest in respect of the deposit or entitled to receive any such interest **[**F3168 in his capacity as a personal representative or as a trustee of a discretionary or accumulation trust**]** or to whom any such interest is payable;

[F3169"certificate of deposit" for corporation tax purposes has the meaning given in section 56(5) above and for income tax purposes has the meaning given in section 552(2) of ITTOIA 2005,**]**

"general client account deposit" means a deposit, held by the deposit-taker in a client account (other than one which is identified by the deposit-taker as one in which sums are held only for one or more particular clients of the person whose account it is) in respect of which that person is required by provision made under any enactment to make payments representing interest to some or all of the clients for whom, or on whose account, he received the sums deposited in the account;

"qualifying certificate of deposit" means a certificate of deposit **[**F3170or uncertificated eligible debt security units, being a certificate or units**]** issued by a deposit-taker and under which—

(a) the amount payable by the deposit-taker, exclusive of interest, is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made); and

(b) the obligation of the deposit-taker to pay that amount arises after a period of not less than seven days beginning with the date on which the deposit is made; and

"qualifying time deposit" means a deposit which is made by way of loan for an amount which is not less than £50,000 (or, for a deposit denominated in foreign currency, not less than the equivalent of £50,000 at the time when the deposit is made) and on terms which—

(a) prevent repayment of the deposit before the expiry of the period of seven days beginning with the date on which the deposit is made, but which require repayment at the end of a specified period;

(b) do not make provision for the transfer of the right to repayment; and

(c) prevent partial withdrawals of, or additions to, the deposit.

[F3171"uncertificated eligible debt security units" has the meaning given in section 552(2) of ITTOIA 2005**]**

F3172 . . . . . .

(7) For the purposes of section 481(5)(h) and (j) a deposit is held at a branch of a deposit-taker if it is recorded in his books as a liability of that branch.

(8) M590A certificate of deposit, as defined in **[**F3173subsection (6) above**]**, which was issued before 13th March 1984 on terms which provide for interest to be payable on the deposit at any time after 5th April 1985 (whether or not interest is payable on it before that date) shall, if it is not a qualifying certificate of deposit, be treated for the purposes of section 481(5) as if it were a qualifying certificate of deposit.

(9) M591Any deposit which was made before 6th July 1984 but which is not a qualifying time deposit shall, where it is made on terms which—

(a) do not make provision for the transfer of the right to repayment;

(b) prevent partial withdrawals of, or additions to, the deposit; and

(c) require—

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(i) the deposit-taker to repay the sum at the end of a specified period which ends after 5th April 1985; or

(ii) in a case where interest is payable only at the time of repayment of the deposit, the deposit-taker to repay the sum on demand or on notice;

be treated for the purposes of section 481(5) as if it were a qualifying time deposit.

(10) A [M592]n order under section 481(2)(f) may prescribe a person or class of person in relation to all relevant deposits or only in relation to relevant deposits of a kind specified in the order.

(11) The Board may by regulations make provision—

(a) [F3174]. . . . . .

[[F3175](aa) with respect to the furnishing of information by depositors or deposit-takers, including, in the case of deposit-takers, the inspection of books, documents and other records on behalf of the Board; and**]**

[[F3176](ab) with respect to—

(i) the manner and form in which a notification for the purposes of section 481(5B) is to be given or may be withdrawn, and

(ii) the circumstances in which the deposit-taker is to be entitled to delay acting on such a notification,

and**]**

(b) generally for giving effect to sections 479 to 481 and this section.

[[F3177](11A) In subsection (11)(aa) above the reference to depositors is to persons who are appropriate persons (within the meaning given by subsection (6) above) in relation to deposits.**]**

(12) [M593]Regulations under subsection (11) above or an order under section 481(6) may contain such incidental and consequential provision as appears to the Board or the Treasury, as the case may be, to be appropriate.

Textual Amendments

F3163 Words in s. 482(1) repealed by Finance Act 1990 (c. 29), **Sch. 19 Part IV**, Note 8

F3164 S. 482(2)(a) substituted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(5)** (with s. 86(14))

F3165 S. 482(2A) inserted (with effect in accordance with s. 111(6)(c) of the amending Act) by Finance Act 2000 (c. 17), **s. 111(3)(a)**

F3166 S. 482(5A) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(6)** (with s. 86(14))

F3167 Words in s. 482(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 187(2)(a)** (with Sch. 2)

F3168 Words in s. 482(6) substituted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(7)** (with s. 86(14))

F3169 S. 482(6): definition of "certificate of deposit" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 187(2)(b)** (with Sch. 2)

F3170 S. 482(6): words in definition of "qualifying certificate of deposit" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 187(2)(c)** (with Sch. 2)

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F3171 S. 482(6): definition of "uncertificated eligible debt security units" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 187(2)(d)** (with Sch. 2)
F3172 Words in s. 482(6) repealed by Finance Act 1990 (c. 29), **Sch. 19 Part IV**, Note 8
F3173 Words in s. 482(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 187(3)** (with Sch. 2)
F3174 S. 482(11)(a) repealed (with effect in accordance with s. 111(6)(c) of the repealing Act) by Finance Act 2000 (c. 17), s. 111(3)(b), **Sch. 40 Pt. 2(17)**, Note 3
F3175 1990 s. 30 and Sch. 5 para. 9(4)
F3176 S. 482(11)(ab) inserted (with effect in accordance with s. 86(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 86(8)** (with s. 86(14))
F3177 1990 s. 30 and Sch.5 para.9(5)

Modifications etc. (not altering text)
C528 Ss. 480A-482 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 6**
C529 See 1990 s. 30 and Sch. 5 para. 9(2)(6)— words "less than seven days" replaced by "more than 5 years" as regards interest paid or credited on or after 6 April 1991
C530 See 1990 s. 30 and Sch. 5 para. 9(3)(6)— sub (a) replaced by the following as regards interest paid or credited on or after 6 April1991:— "(a) require repayment of the deposit at a specified time falling before the end of the period of five years beginning with the date on which the deposit is made;"

Marginal Citations
M587 Source—1984 Sch. 8 1(2)
M588 Source—1984 Sch.8 3(4), (4A); 1985 s.38(5)
M589 Source—1984 Sch.8 3(5)-(9); 1985 s.38(6); 1986 No.771
M590 Source—1984 Sch.8 6(2)
M591 Source—1984 Sch.8 6(3)
M592 Source—1984 Sch.8 2(2); 1985 s.38(2)
M593 Source—1984 Sch.8 3A(3); 1985 s.38(7)

[F3178 482A Audit powers in relation to non-residents.

F3179 . . . . . .]

Textual Amendments
F3178 S. 482A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s.75**
F3179 S. 482A repealed (with effect in accordance with s. 145(11), Sch. 40 Pt. 5 Note of the repealing Act) by Finance Act 2000 (c. 17), s. 145(10), **Sch. 40 Pt. 5**

483 Determination of reduced rate for building societies and composite rate for banks etc.

F3180 (1) . . . . . .

F3180 (2) . . . . . .

F3180 (3) . . . . . .

(4) If the order made under section 26 of the Finance Act 1984 in the year 1987-88 is made in pursuance of subsection (4) of that section, that order shall, notwithstanding

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that that subsection is not re-enacted by this Act, apply for the purposes of sections 476 and 479 for the year 1988-89.

F3180(5) . . . . . .

Textual Amendments

F3180 S. 483(1)-(3)(5) repealed by Finance Act 1990 (c. 29), Sch. 5 para. 12, **Sch. 19 Part IV**, Note 8

484 Savings banks: exemption from tax.

F3181 . . . . . .

Textual Amendments

F3181 S. 484 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para 29, **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

485 Savings banks: supplemental.

F3182 . . . . . .

Textual Amendments

F3182 S. 485 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 29, **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

486 Industrial and provident societies and co-operative associations.

(1) M594Notwithstanding anything in the Tax Acts, share interest or loan interest paid by a registered industrial and provident society shall not be treated as a distribution **[**F3183for the purposes of corporation tax**]**; **[**F3184but interest payable by such a society (whether as share interest or loan interest) shall be treated for **[**F3185those purposes**]** as interest under a loan relationship of the society.**]**

(2) Notwithstanding anything in sections 348 to 350, any share interest or loan interest paid by a registered industrial and provident society, except any to which subsection (3) below applies, shall be paid without deduction of income tax.

(3) This subsection applies to any share interest or loan interest payable to a person whose usual place of abode is not within the United Kingdom, and in any such case section 349(2) shall apply to the payment as it applies to a payment of yearly interest, and income tax shall be deducted accordingly.

(4) Any share interest or loan interest paid by a registered industrial and provident society shall be chargeable under Case III of Schedule D **[**F3186for the purposes of corporation tax**]**.

(5) F3187 . . . . . .

(6) Every registered industrial and provident society shall, within three months after the end of any accounting period of the society, deliver to the inspector a return showing—

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(a) the name and place of residence of every person to whom the society has by virtue of this section paid without deduction of income tax sums amounting to more than £15 in that period; and

(b) the amount so paid in that period to each of those persons.

(7) If for any accounting period a return under subsection (6) above is not duly made by a registered industrial and provident society, share and loan interest paid by the society in that period shall **[**F3188not be brought into account in that period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships).**]**

(8) If in the course of, or as part of, a union or amalgamation of two or more registered industrial and provident societies, or a transfer of engagements from one registered industrial and provident society to another, there is a disposal of an asset by one society to another, both shall be treated for the purposes of corporation tax in respect of chargeable gains as if the asset were acquired from the society making the disposal for a consideration of such amount as would secure that neither a gain nor a loss would accrue to that society on the disposal.

(9) Subsections (1) and (8) above shall have effect as if references to a registered industrial and provident society included any co-operative association established and resident in the United Kingdom, and having as its object or primary object to assist its members in the carrying on of agricultural or horticultural businesses on land occupied by them in the United Kingdom or in the carrying on of businesses consisting in the catching or taking of fish or shellfish.

(10) It is hereby declared that, in computing, for the purposes of any provision of the Tax Acts relating to **[**F3189profits**]** chargeable under Case I of Schedule D ("the tax computation"), any **[**F3189profits**]** of—

(a) any registered industrial and provident society which does not sell to persons not members thereof; or

(b) any registered industrial and provident society the number of the shares in which is not limited by its rules or practice;

there are to be deducted as expenses any sums which—

(i) represent a discount, rebate, dividend or bonus granted by the company to members or other persons in respect of amounts paid or payable by or to them on account of their transactions with the company, being transactions which are taken into account in the tax computation; and

(ii) are calculated by reference to those amounts or to the magnitude of those transactions and not by reference to the amount of any share or interest in the capital of the company.

(11) No dividends or bonus deductible in computing income as mentioned in subsection (10) above shall be regarded as a distribution.

(12) In this section—

"co-operative association" means a body of persons having a written constitution from which the Minister is satisfied, having regard to the provision made as to the manner in which the income of the body is to be applied for the benefit of its members and all other relevant provisions, that the body is in substance a co-operative association;

"the Minister" means—

the **[**F3190Secretary of State**]**, as regards England and Wales;

the Secretary of State, as regards Scotland; and

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the Department of Agriculture for Northern Ireland, as regards Northern Ireland;

"registered industrial and provident society" means a society registered or deemed to be registered under the [M595]Industrial and Provident Societies Act 1965 or under the [M596]Industrial and Provident Societies Act (Northern Ireland) 1969;

"share interest" means any interest, dividend, bonus or other sum payable to a shareholder of the society by reference to the amount of his holding in the share capital of the society;

"loan interest" means any interest payable by the society in respect of any mortgage, loan, loan stock or deposit;

and references to the payment of share interest or loan interest include references to the crediting of such interest.

Textual Amendments

F3183 Words in s. 486(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 188(2)(a)** (with Sch. 2)

F3184 Words in s. 486(1) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 30(a)** (with Sch. 15)

F3185 Words in s. 486(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 188(2)(b)** (with Sch. 2)

F3186 Words in s. 486(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 188(3)** (with Sch. 2)

F3187 S. 486(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 188(4), **Sch. 3** (with Sch. 2)

F3188 Words in s. 486(7) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 30(b)** (with Sch. 15)

F3189 Words in s. 486(10) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3190 Words in s. 486(12) substituted (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 1(2), **Sch. 1 para. 31**

Modifications etc. (not altering text)

C531 *See* 1988(F) Sch.8 para.1—*re-basing to* 1982.

C532 S. 486(8) excluded (with effect in accordance with s. 131(4) of the affecting Act) by Finance Act 1995 (c. 4), **s. 131(1)(2)(b)**

C533 S. 486(8) excluded by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 117A(7)(8)(b)**, 117B(5)(6)(b) (as inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), Sch. 14 para. 62 (with **Sch. 15**))

Marginal Citations

M594 Source—1970 s.340, 345; CUA 1979 s.25(2)

M595 1965 c. 12.

M596 1969 c. 24 (N.I.).

487 Credit unions.

(1) [M597]Subject to subsection (2) below, in computing for the purposes of corporation tax the income of a credit union for any accounting period—

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(a) neither the activity of the credit union in making loans to its members nor in placing on deposit or otherwise investing from time to time its surplus funds shall be regarded as the carrying on of a trade or part of a trade; and

[F3191(b) no credits shall be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of any loan relationship of a credit union as respects which a member of the union stands in the position of a debtor as respects the debt in question.**]**

(2) Paragraph (b) of subsection (1) above shall not apply to an accounting period of a credit union for which the credit union is obliged to make a return under section 486(6) and has not done so within three months after the end of that accounting period or such longer period as the inspector shall allow.

(3) **[**F3192An annuity or other annual payment (not being a payment of share interest or loan interest) which is**]** paid or payable by a credit union in any accounting period shall **[**F3193not**]** be deductible in computing for the purposes of corporation tax the income of the credit union for that period from any trade carried on by it F3194. . . .

[F3195(3A) No debits shall be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of any loan relationship of a credit union as respects which a member of the union stands in the position of a creditor as respects the debt in question.**]**

(4) A credit union shall not be regarded as **[**F3196a company with investment business**]** for the purposes of section 75 above or **[**F3197Part 2 of the Capital Allowances Act (plant and machinery allowances)**]**.

(5) In this section—

"credit union" means a society registered as a credit union under the M598Industrial and Provident Societies Act 1965 or the M599Credit Unions (Northern Ireland) Order 1985;

"share interest" and "loan interest" have the same meaning as in section 486;

"surplus funds", in relation to a credit union, means funds not immediately required for its purposes;

and references to the payment of share interest or loan interest include references to the crediting of such interest.

Textual Amendments

F3191 S. 487(1)(b) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 31(1)** (with Sch. 15)

F3192 Words in s. 487(3) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 31(2)(a)** (with Sch. 15)

F3193 Word in s. 487(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 31(2)(b)** (with Sch. 15)

F3194 Words in s. 487(3) repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

F3195 S. 487(3A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 31(3)** (with Sch. 15)

F3196 Words in s. 487(4) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 22

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F3197 Words in s. 487(4) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 40**

Marginal Citations

M597 Source—1970 s.340A; CUA 1979 s.25(1)
M598 1965 c. 12.
M599 S.I. 1985/1205 (N.I. 12.).

488 Co-operative housing associations.

(1) Where a housing association makes a claim in that behalf for any year or part of a year of assessment during which the association was approved for the purposes of this section—

(a) [M600]rent to which the association was entitled from its members for the year or part shall be disregarded for tax purposes; and

(b) any yearly interest payable by the association for the year or part shall be treated for tax purposes **[**[F3198]in relation to the association as if there were no interest so payable**]**.

(c) [F3199] . . . . . .

(2) Where the property, or any of the properties, to which any such interest as is mentioned in paragraph (b) of subsection (1) above relates is for any period not subject to a tenancy—

(a) that paragraph shall not apply in relation to so much of the interest as is attributable to the property not subject to a tenancy;[F3200] . . .

(b) [F3200] . . . . . .

(3) [F3201] . . . . . .

(4) Where a claim under subsection (1) above has effect, any adjustment of the liability to tax of [F3202] . . . the association which is required in consequence of the claim may be made by an assessment or by repayment or otherwise, as the case may require.

(5) Where a housing association makes a claim in that behalf for an accounting period or part of an accounting period during which it was approved for the purposes of this section, the housing association shall be exempt from corporation tax on chargeable gains accruing to it in the accounting period or part on the disposal by way of sale of any property which has been or is being occupied by a tenant of the housing association.

(6) References in this section to the approval of an association shall be construed as references to approval—

(a) by the Secretary of State in the case of a housing association in Great Britain;

(b) by the Head of the Department of the Environment for Northern Ireland in the case of a housing association in Northern Ireland;

and an association shall not be approved unless the approving authority is satisfied—

(i) that the association is, or is deemed to be, duly registered under the [M601]Industrial and Provident Societies Act 1965 or the [M602]Industrial and Provident Societies Act (Northern Ireland) 1969, and is a housing association within the meaning of the [M603]Housing Associations Act 1985 or **[**[F3203]Article 3 of the Housing (Northern Ireland) Order 1992**]**;

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(ii) that the rules of the association restrict membership to persons who are tenants or prospective tenants of the association, and preclude the granting or assignment (or, in Scotland, the granting or assignation) of tenancies to persons other than members; and

(iii) that the association satisfies such other requirements as may be prescribed by **[**F3204the Secretary of State as respects Great Britain, or the Head of the Department for Social Development for Northern Ireland as respects Northern Ireland**]**, and will comply with such conditions as may for the time being be so prescribed.

(7) An approval given for the purposes of this section shall have effect as from such date (whether before or after the giving of the approval) as may be specified by the approving authority and shall cease to have effect if revoked.

[F3205(7A) The Secretary of State may delegate any of his functions under subsections (6) and (7)—

(a) to the Housing Corporation, in the case of a body registered as a social landlord in the register maintained by the Housing Corporation under Part I of the Housing Act 1996, F3206. . .

(b) F3206. . . . . .

to such extent and subject to such conditions as he may specify.**]**

(8) The Secretary of State as respects Great Britain, or the Head of the Department of the Environment for Northern Ireland as respects Northern Ireland, may make regulations for the purpose of carrying out the provisions of this section; and, from the coming into operation of regulations under this subsection prescribing requirements or conditions for the purposes of subsection (6)(iii) above, "prescribed" in subsection (6)(iii) above shall mean prescribed by or under such regulations.

The power to make regulations under this subsection shall be exercisable by the Secretary of State by statutory instrument and by the Head of the Department of the Environment for Northern Ireland by statutory rule for the purposes of the M604Statutory Rules (Northern Ireland) Order 1979.

[F3207(9) A claim under this section may be made at any time not later than two years after the end of the year of assessment or accounting period to which, or to a part of which, it relates.**]**

Section 42 of the Management Act shall not apply to a claim under this section.

(10) Subject to subsection (11) below, **[**F3208no claim shall be made under this section unless**]** during the year or accounting period, or part thereof, to which the claim relates—

(a) no property belonging to the association making the claim was let otherwise than to a member of the association;

(b) no property let by the association, and no part of such property, was occupied, whether solely or as joint occupier, by a person not being a member of the association;

(c) the association making the claim satisfies the conditions specified in subsection (6)(i) and (ii) above and has complied with the conditions prescribed under subsection (6)(iii) for the time being in force; and

(d) any covenants required to be included in grants of tenancies by those conditions have been observed.

For the purposes of paragraph (b) above occupation by any other person in accordance with the will, or the provisions applicable on the intestacy, of a deceased member, shall be treated during the first six months after the death as if it were occupation by a member.

[F3209(11) A housing association may make a claim under this section notwithstanding anything in subsection (10) above, if the association reasonably considers that the requirements of that subsection are substantially complied with.

(11A) If as a result of an enquiry—

(a) **[**F3210into a company tax return**]**, in which a claim under this section by a housing association is included, or

(b) under paragraph 5 of Schedule 1A to that Act into a claim under this section by a housing association, or an amendment of such a claim,

an amendment is made to the association's **[**F3211return**]** or, as the case may be, to the claim, the liability of **[**F3212the association**]** to tax for all relevant years or accounting periods may also be adjusted by the making of assessments or otherwise.**]**

(12) F3213. . . . . .

Textual Amendments

F3198 Words in s. 488(1)(b) substituted (with effect in accordance with Sch. 4 para. 18(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 15(2)(a)**

F3199 S. 488(1)(c) repealed (with effect in accordance with Sch. 4 para. 18(2) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 15(2)(b), **Sch. 20 Pt. 3(7)**, Note 2

F3200 S. 488(2)(b) and preceding word repealed (with effect in accordance with Sch. 4 para. 18(2) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 15(3), **Sch. 20 Pt. 3(7)**, Note 2

F3201 S. 488(3) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note

F3202 Words in s. 488(4) repealed (with effect in accordance with Sch. 4 para. 18(2) of the repealing Act) by Finance Act 1999 (c, 16), Sch. 4 para. 15(4), Sch. 20 Pt. 3(7), Note 2

F3203 Words in s. 488(6) substituted (15.9.1992) by S.I. 1992/1725 (N.I. 15), arts. 1(2), 107, **Sch. 8 para. 5**

F3204 Words in s. 488(6)(iii) substituted (29.7.2004) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2004 (S.I. 2004/2030), **arts. 1(1)**, 5

F3205 S. 488(7A) inserted (1.10.1996) by Housing Act 1996 (c. 52), s. 232(3), **Sch. 3 para. 8(2)**; S.I. 1996/2402, **art. 3** (with Sch.)

F3206 S. 488(7A)(b) and preceding word repealed (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140, 158, Sch. 16 para. 56, **Sch. 18 Pt. 6**; S.I. 1998/2244, **art. 5**

F3207 S. 488(9) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 28(2)**

F3208 Words in s. 488(10) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 28(3)**

F3209 S. 488(11)(11A) substituted for s. 488(11) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 28(4)**

F3210 Words in s. 488(11A)(a) substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c, 36), Sch. 19 para. 48(2)(a); S.I. 1998/3173, **art. 2**

F3211 Words in s. 488(11A) substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 48(2)(b)**; S.I. 1998/3173, **art. 2**

F3212 Words in s. 488(11A) substituted (with effect in accordance with Sch. 4 para. 18(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 15(5)**

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F3213 S. 488(12) repealed (with effect in accordance with Sch. 4 para. 18(2) of the repealing Act) by Finance Act 1999 (c. 16), Sch. 4 para. 15(6), **Sch. 20 Pt. 3(7)**, Note 2

Modifications etc. (not altering text)

C534 S. 488: functions transferred (1.7.1999 with effect in accordance with art. 1(2) of the affecting S.I.) by The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), art. 2, **Sch. 1**

C535 *See reference to approved housing associations in* 1988(F) s.43(3)*and* 44.

C536 S. 488(7A) modified (1.12.2008) by The Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (S.I. 2008/2839), arts. 1(1), 3, **Sch. para. 1**; S.I. 2008/3068, **arts. 1(2)**, 2(1)(b)

Marginal Citations

M600 Source—1970 s.341; 1972 Sch.11 6

M601 1965 c. 12.

M602 1969 c.24 (N.I.).

M603 1985 c. 68.

M604 S.I. 1979/1573 (N.I.12.).

489 Self-build societies.

(1) **M605**Where a self-build society makes a claim in that behalf for any year or part of a year of assessment during which the society was approved for the purposes of this section, rent to which the society was entitled from its members for the year or part shall be disregarded for tax purposes.

(2) Where a claim under subsection (1) above has effect, any adjustment of the society's liability to tax which is required in consequence of the claim may be made by an assessment or by repayment or otherwise, as the case may require.

(3) Where a self-build society makes a claim in that behalf for an accounting period or part during which it was approved for the purposes of this section, the society shall be exempt from corporation tax on chargeable gains accruing to it in the accounting period or part thereof on the disposal of any land to a member of the society.

(4) References in this section to the approval of a self-build society are references to its approval by the Secretary of State, and the Secretary of State shall not approve a self-build society for the purposes of this section unless he is satisfied—

(a) that the society is, or is deemed to be, duly registered under the **M606**Industrial and Provident Societies Act 1965; and

(b) that the society satisfies such other requirements as may be prescribed by or under regulations under subsection (6) below and will comply with such conditions as may for the time being be so prescribed.

(5) An approval given for the purposes of this section shall have effect as from such date (whether before or after the giving of the approval) as may be specified by the Secretary of State and shall cease to have effect if revoked by him.

[F3214(5A) The Secretary of State may delegate any of his functions under subsections (4) and (5) to—

(a) the Housing Corporation, where the society has its registered office in England for the purposes of the Industrial and Provident Societies Act 1965,F3215. . .

(b) F3215. . . . . .

to such extent and subject to such conditions as he may specify.**]**

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(6) The Secretary of State may by statutory instrument make regulations for the purpose of carrying out the provisions of this section; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of the House of Commons.

[F3216(7) A claim under this section may be made at any time not later than two years after the end of the year of assessment or accounting period to which, or to a part of which, it relates.**]**

(8) Subject to subsection (9) below, **[**F3217no claim shall be made under this section unless**]** during the year or accounting period, or part thereof, to which the claim relates—

(a) no land owned by the society was occupied, in whole or in part and whether solely or as joint occupier, by a person who was not, at the time of his occupation, a member of the society; and

(b) the society making the claim satisfies the condition specified in paragraph (a) of subsection (4) above and has complied with the conditions prescribed under paragraph (b) of that subsection and for the time being in force;

and for the purposes of paragraph (a) above, occupation by any other person in accordance with the will, or the provisions applicable on the intestacy, of a deceased member, shall be treated during the first six months after the death as if it were occupation by a member.

[F3218(9) A self-build society may make a claim under this section notwithstanding anything in subsection (8) above, if the society reasonably considers that the requirements of that subsection are substantially complied with.

(9A) If as a result of an enquiry—

(a) **[**F3219into a company tax return**]**, in which a claim under this section by a self-build society is included, or

(b) under paragraph 5 of Schedule 1A to that Act into a claim under this section by a self-build society or an amendment of such a claim,

an amendment is made to the society's **[**F3220return**]** or, as the case may be, to the claim, the society's liability to tax for all relevant years or accounting periods may also be adjusted by the making of assessments or otherwise.**]**

(10) A claim under this section shall be in such form and contain such particulars as may be prescribed by the Board.

(11) In this section—

"self-build society" has the same meaning as in the M607Housing Associations Act 1985 or, in Northern Ireland, Part VII of the M608Housing (Northern Ireland) Order 1981; and

"rent" includes any sums to which a self-build society is entitled in respect of the occupation of any of its land under a licence or otherwise.

(12) In the application of this section to Northern Ireland—

(a) any reference in subsections (4) and (5) above to the Secretary of State shall be construed as a reference to the Department of the Environment for Northern Ireland;

(b) the reference in subsection (4)(a) to the M609Industrial and Provident Societies Act 1965 shall be construed as a reference to the M610Industrial and Provident Societies Act (Northern Ireland) 1969; and

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(c) for subsection (6) there shall be substituted the following subsection—

"(6) the Department of the Environment for Northern Ireland may by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 make regulations for the purpose of carrying out the provisions of this section; and a statutory rule containing any such regulations shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954."

Textual Amendments

F3214 S. 489(5A) inserted (1.10.1996) by Housing Act 1996 (c. 52), s. 232(3), **Sch. 3 para. 8(3)**; S.I. 1996/2402, **art. 3** (with Sch.)

F3215 S. 489(5A)(b) and preceding word repealed (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140, 158, Sch. 16 para. 57, **Sch. 18 Pt. 6**; S.I. 1998/2244, **art. 5**

F3216 S. 489(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 29(2)**

F3217 Words in s. 489(8) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 29(3)**

F3218 S. 489(9)(9A) substituted for s. 489(9) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 29(4)**

F3219 Words in s. 489(9A)(a) substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 49(a)**; S.I. 1998/3173, **art. 2**

F3220 Word in s. 489(9A) substituted (with effect in accordance with s. 117(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 19 para. 49(b)**; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

C537 S. 489: functions transferred (1.7.1999 with effect in accordance with art. 1(2) of the affecting S.I.) by The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), art. 2, **Sch. 1**

C538 See 1976(D)—*exemption of certain housing associations from development land tax.* 1976(D)*repealed from* 19*March* 1985.

C539 *See reference to approved self-build societies in* 1988(F) s.43(3)*and* s.44.

C540 S. 489(5A) modified (1.12.2008) by The Transfer of Housing Corporation Functions (Modifications and Transitional Provisions) Order 2008 (S.I. 2008/2839), arts. 1(1), 3, **Sch. para. 1**; S.I. 2008/3068, **arts. 1(2)**, 2(1)(b)

Marginal Citations

M605 Source—1970 s.341A

M606 1965 c. 12.

M607 1985 c. 68.

M608 S.I. 1981/156 (N.I. 3).

M609 1965 c. 12.

M610 1969 c. 24 (N.I.).

490 Companies carrying on a mutual business or not carrying on a business.

(1) [M611]Subject to subsection (2) below, where a company carries on any business of mutual trading or mutual insurance or other mutual business the provisions of the Tax Acts relating to distributions shall apply to distributions made by the company notwithstanding that they are made to persons participating in the mutual activities of that business and derive from those activities, but shall so apply only to the extent to

which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income [F3221]. . . [F3222]. . . .

(2) In the case of a company carrying on any mutual life assurance business, the provisions of the Tax Acts relating to distributions shall not apply to distributions made to persons participating in the mutual activities of that business and derived from those activities [F3223]. . . .

(3) Subject to subsections (1) and (2) above, the fact that a distribution made by a company carrying on any such business is derived from the mutual activities of that business and the recipient is a person participating in those activities shall not affect the character which the payment or other receipt has for purposes of corporation tax or income tax in the hands of the recipient.

(4) Where a company does not carry on, and never has carried on, a trade or a business of holding investments, and is not established for purposes which include the carrying on of a trade or of such a business, the provisions of the Tax Acts relating to distributions shall apply to distributions made by the company only to the extent to which the distributions are made out of profits of the company which are brought into charge to corporation tax or out of franked investment income [F3224]. . . .

(5) [F3225]. . . . . .

Textual Amendments

F3221 Words in s. 490(1) repealed (with effect in accordance with Sch. 3 para. 28(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 28(2), **Sch. 27 Pt. 3(2)**, Note

F3222 Words in s. 490(1) repealed (with effect in accordance with Sch. 6 para. 9(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 9(2), **Sch. 8 Pt. 2(11)**, Note

F3223 Words in s. 490(2) repealed (with effect in accordance with Sch. 18 Pt. 6(6) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(6)**

F3224 Words in s. 490(4) repealed (with effect in accordance with Sch. 6 para. 9(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 9(3), **Sch. 8 Pt. 2(11)**, Note

F3225 S. 490(5) repealed (with effect in accordance with Sch. 6 para. 9(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 9(4), **Sch. 8 Pt. 2(11)**, Note

Modifications etc. (not altering text)

C541 S. 490 amended (27.7.1993) by 1993 c. 34, **s. 78(6)(11)**

Marginal Citations

M611 Source—1970 s.346

491 Distribution of assets of body corporate carrying on mutual business.

(1) [M612]Where **[**[F3226]any company**]** receives any money or money's worth—

(a) forming part of the assets of a body corporate, other than assets representing capital; or

(b) forming part of the consideration for the transfer of the assets of a body corporate, other than assets representing capital, as part of a scheme of amalgamation or reconstruction which involves the winding up of the body corporate; or

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(c) consisting of the consideration for a transfer or surrender of a right to receive anything falling under paragraph (a) or (b) above, being a receipt not giving rise to any charge to tax on the recipient apart from this section,

and the body corporate has at any time carried on a trade which consists of or includes the conducting of any mutual business (whether confined to members of the body corporate or not), and is being or has been wound up or dissolved, the provisions of this section shall apply to the receipt.

(2) If a transfer or surrender of a right under subsection (1)(c) above is not at arm's length, **[**F3227the company**]** making the transfer or surrender shall, for the purposes of this section, be deemed then to have received consideration equal to the value of the right.

(3) If in respect of a payment of any amount made to the body corporate for the purposes of its mutual business any deduction has been allowed for **[**F3228the purposes of corporation tax**]** in computing the **[**F3229profits**]** or losses of a trade, then—

(a) if at the time of the receipt **[**F3230the recipient company**]** is the person, or one of the persons, carrying on that trade, the amount or value of the receipt shall be treated for **[**F3228the purposes of corporation tax**]** as a trading receipt of that trade; and

(b) if at the time of the receipt **[**F3230the recipient company**]** is not the person, or one of the persons, carrying on that trade, but was the person, or one of the persons, carrying on that trade when any payment was made to the body corporate for the purposes of its mutual business in respect of which a deduction was allowed for **[**F3228the purposes of corporation tax**]** in computing the **[**F3229profits**]** or losses of the trade, **[**F3230the recipient company**]** shall, subject to subsection (6) below, be charged **[**F3231to corporation tax**]** under Case VI of Schedule D for the **[**F3232accounting period**]** in which the receipt falls on an amount equal to the amount or value of the receipt.

(4) Subsection (3)(a) above applies notwithstanding that, as a result of a change in the persons carrying on the trade, the **[**F3229profits**]** are under section F3233. . . 337(1) determined as if it had been permanently discontinued and a new trade set up and commenced.

(5) F3234. . . . . .

(6) If the trade mentioned in subsection (3)(b) above was permanently discontinued before the time of the receipt, then in computing the charge to tax under subsection (3)(b) above there shall be deducted from the amount or value of the receipt—

(a) any loss, expense or debit (not being a loss, expense or debit arising directly or indirectly from the discontinuance itself) which, if the trade had not been discontinued, would have been deducted in computing for tax purposes the **[**F3229profits**]** or losses of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those profits as so computed, and

(b) any capital allowance to which the person who carried on the trade was entitled immediately before the discontinuance and to which effect has not been given by way of relief before discontinuance.

(7) Relief shall not be given under subsection (6) above or under section 105(1) in respect of any loss, expense, debit or allowance if and so far as it has been so given by reference to another charge to tax under this section or under section 103.

(8) For the purposes of subsection (1) above assets representing capital consist of—

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(a) assets representing any loan or other capital subscribed, including income derived from any investment of any part of that capital, but not including profits from the employment of that capital for the purposes of the mutual business of the body corporate;

(b) assets representing any **[**F3229profits**]** charged to tax as being **[**F3229profits**]** of any part of the trade carried on by the body corporate which does not consist of the conducting of any mutual business;

(c) (so far as not comprised in paragraphs (a) and (b) above) assets representing taxed income from any investments.

(9) In this section "mutual business" includes any business of mutual insurance or mutual trading.

(10) Subsections (3) to (7) above shall apply with any necessary modifications—

(a) to a profession F3235. . . ; and

(b) to the occupation of woodlands the profits or gains of which are assessable under Schedule D;

as they apply to a trade.

(11) It is hereby declared that the description of trades in subsection (1) above does not include any trade all the **[**F3229profits**]** of which are chargeable to tax and, in particular, does not include such a trade carried on by any registered industrial and provident society.

Textual Amendments

F3226 Words in s. 491(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 189(2)** (with Sch. 2)

F3227 Words in s. 491(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 189(3)** (with Sch. 2)

F3228 Words in s. 491(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 189(4)(a)** (with Sch. 2)

F3229 Words in s. 491(3)(4)(5)(6)(8)(b)(11) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3230 Words in s. 491(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 189(4)(b)** (with Sch. 2)

F3231 Words in s. 491(3)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 189(4)(c)** (with Sch. 2)

F3232 Words in s. 491(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 189(4)(d)** (with Sch. 2)

F3233 Words in s. 491(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 189(5), **Sch. 3** (with Sch. 2)

F3234 S. 491(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 189(6), **Sch. 3** (with Sch. 2)

F3235 Words in s. 491(10)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 189(7), **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C542 *See* 1988(F) Sch.14 Part V—*repeal of* (b)*from* 6*April* 1993.

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Marginal Citations
M612 Source—1970 s.347

CHAPTER V

Modifications etc. (not altering text)
C543 Pt. 12 Ch. 5 modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 98**

PETROLEUM EXTRACTION ACTIVITIES

Modifications etc. (not altering text)
C544 Pt. 12 Ch. 5 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 8 para. 1(4)**

492 Treatment of oil extraction activities etc. for tax purposes.

(1) Where a person carries on as part of a trade—

(a) any oil extraction activities; or

(b) any of the following activities, namely, the acquisition, enjoyment or exploitation of oil rights; or

(c) activities of both those descriptions,

those activities shall be treated **[**F3236for the purposes of the charge of corporation tax on income**]** as a separate trade, distinct from all other activities carried on by him as part of the trade.

(2) Relief in respect of a loss incurred by a person shall not be given under section 380 or 381 against income arising from oil extraction activities or from oil rights ("ring fence income") except to the extent that the loss arises from such activities or rights.

(3) Relief in respect of a loss incurred by a person shall not be given under section **[**F3237393A(1)**]** against his ring fence profits except to the extent that the loss arises from oil extraction activities or from oil rights.

(4) In any case where—

(a) in any chargeable period a person incurs a loss in activities ("separate activities") which, for that or any subsequent chargeable period, are treated by virtue of **[**F3238section 16(1) of ITTOIA 2005 or**]** subsection (1) above as a separate trade for **[**F3239income tax purposes or (as the case may be) for the purposes of the charge of corporation tax on income**]**; and

(b) in any subsequent chargeable period any of his trading income is derived from activities ("related activities") which are not part of the separate activities but which, apart from **[**F3240section 16(1) of ITTOIA 2005 or**]** subsection (1) above, would together with those activities constitute a single trade,

then, notwithstanding anything in that **[**F3241section or**]** subsection, the amount of the loss may be set off, in accordance with section 385 or 393(1), against so much of his trading income in any subsequent chargeable period as is derived from the related activities.

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(5) Subject to subsection (7) below, a capital allowance which is to be given to any person by discharge or repayment of tax shall not to any extent be given effect under **[**F3242section 258 of the Capital Allowances Act**]** by deduction from or set off against his ring fence income.

(6) Subject to subsection (7) below, a capital allowance which is to be given to any person by discharge or repayment of tax shall not to any extent be given effect under **[**F3243section 259 or 260 of the Capital Allowances Act**]** by deduction from or set off against his ring fence profits.

(7) Subsection (5) or (6) above shall not apply to a capital allowance which falls to be made to a company for any accounting period in respect of an asset used in the relevant accounting period by a company associated with it and so used in carrying on oil extraction activities. For the purposes of this subsection, the relevant accounting period is that in which the allowance in question first falls to be made to the company (whether or not it can to any extent be given effect in that period under **[**F3244section 259 of the Capital Allowances Act**]**.

(8) On a claim for group relief made by a claimant company in relation to a surrendering company, group relief shall not be allowed against the claimant company's ring fence profits except to the extent that the claim relates to losses incurred by the surrendering company that arose from oil extraction activities or from oil rights.

Textual Amendments

F3236 Words in s. 492(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 190(2)** (with Sch. 2)

F3237 Words in s. 492(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 17**

F3238 Words in s. 492(4)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 190(3)(a)** (with Sch. 2)

F3239 Words in s. 492(4)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 190(3)(b)** (with Sch. 2)

F3240 Words in s. 492(4)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 190(3)(c)** (with Sch. 2)

F3241 Words in s. 492(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 190(3)(d)** (with Sch. 2)

F3242 Words in s. 492(5) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 41(1)**

F3243 Words in s. 492(6) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 41(2)**

F3244 Words in s. 492(7) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 41(3)**

Modifications etc. (not altering text)

C545 S. 492(1)(a)(b) applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 198(5)(b)** (with ss. 60, 101(1), 171, 201(3))

493 Valuation of oil disposed of or appropriated in certain circumstances.

(1) Where a person disposes of any oil in circumstances such that the market value of that oil in a particular month falls to be taken into account under section 2 of the M613Oil Taxation Act 1975 ("the 1975 Act"), otherwise than by virtue of paragraph 6

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of Schedule 3 to that Act, in computing for the purposes of petroleum revenue tax the assessable profit or allowable loss accruing to him in any chargeable period from an oil field (or as would so fall but for section 10 of that Act), then—

(a) for all purposes of income tax, and

(b) for the purposes of the charge of corporation tax on income,

the disposal of the oil and its acquisition by the person to whom it was disposed of shall be treated as having been for a consideration equal to the market value of the oil as so taken into account under section 2 of that Act (or as would have been so taken into account under that section but for section 10 of that Act).

(2) Where a person makes a relevant appropriation of any oil without disposing of it and does so in circumstances such that the market value of that oil in a particular month falls to be taken into account under section 2 of the 1975 Act in computing for the purposes of petroleum revenue tax the assessable profit or allowable loss accruing to him in any chargeable period from an oil field (or would so fall but for section 10 of that Act), then for all the purposes of income tax and for the purposes of the charge of corporation tax on income, he shall be treated—

(a) as having, at the time of the appropriation—

(i) sold the oil in the course of the separate trade consisting of activities **[**[F3245] falling within the definition of "oil-related activities" in section 16(2) of ITTOIA 2005 or within section 492(1)(a) or (b) above**]**; and

(ii) bought it in the course of the separate trade consisting of activities not so falling; and

(b) as having so sold and bought it at a price equal to its market value as so taken into account under section 2 of the 1975 Act (or as would have been so taken into account under that section but for section 10 of that Act).

In this subsection "relevant appropriation" has the meaning given by section 12(1) of the 1975 Act.

(3) Where—

(a) a person disposes otherwise than in a sale at arm's length (as defined in paragraph 1 of Schedule 3 to the 1975 Act) of oil acquired by him in the course of oil extraction activities carried on by him or by virtue of oil rights held by him, and

(b) subsection (1) above does not apply in relation to the disposal,

then, for all purposes of income tax and for the purposes of the charge of corporation tax on income, the disposal of the oil and its acquisition by the person to whom it was disposed of shall be treated as having been for a consideration equal to the market value of the oil in the calendar month in which the disposal was made.

(4) If a person appropriates oil acquired by him in the course of oil extraction activities carried on by him or by virtue of oil rights held by him and the appropriation is to refining or to any use except for production purposes of an oil field, within the meaning of Part I of the 1975 Act, then, unless subsection (2) above applies, for all purposes of income tax and for the purposes of the charge of corporation tax on income—

(a) he shall be treated as having, at the time of the appropriation, sold and bought the oil as mentioned in subsection (2)(a)(i) and (ii) above; and

(b) that sale and purchase shall be deemed to have been at a price equal to the market value of the oil in the calendar month in which it was appropriated.

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(5) For the purposes of subsections (3) and (4) above—

(a) "calendar month" means a month of the calendar year; and

(b) paragraph 2 of Schedule 3 to the 1975 Act shall apply as it applies for the purposes of Part I of that Act, but with the following modifications, that is to say—

(i) for sub-paragraph (2)(f) there shall be substituted—

"(f) the contract is for the sale of the whole quantity of oil of which the market value falls to be ascertained for the purposes of section 493(3) or (4) of the Income and Corporation Taxes Act 1988 and of no other oil; and for the avoidance of doubt it is hereby declared that the terms as to payment which are to be implied in the contract shall be those which are customarily contained in contracts for sale at arm's length of oil of the kind in question."; and

(ii) sub-paragraphs (3) and (4) shall be omitted.

[F3246(6) In subsections (3) and (4) above the references to the market value of any oil in the calendar month in which a disposal of the oil was made or, as the case may be, in which it was appropriated shall each have effect in relation to light gases (within the meaning of the 1975 Act) as a reference to the amount which, if paragraph 3A of Schedule 3 to the 1975 Act applied, would be the market value of that oil in relation to the disposal or appropriation in question.**]**

Textual Amendments

F3245 Words in s. 493(2)(a)(i) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 191** (with Sch. 2)

F3246 S. 493(6) inserted (with effect in accordance with s. 152(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 152(3)**

Marginal Citations

M613 1975 c. 22

494 [F3247Loan relationships etc.]

(1) F3248. . . **[**F3249Chapter II of Part IV of the Finance Act 1996 (loan relationships)**]** shall have effect subject to the following provisions of this section.

[F3250(2) Debits shall not be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of any loan relationship of a company in any manner that results in a reduction of what would otherwise be the company's ring fence profits except—

(a) to the extent that the loan relationship is in respect of money borrowed by the company which has been—

(i) used to meet expenditure incurred by the company in carrying on oil extraction activities or in acquiring oil rights otherwise than from a connected person; or

(ii) appropriated to meeting expenditure to be so incurred by the company;

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(b) in the case of debits falling to be brought into account by virtue of subsection (4) of section 84 of that Act in respect of a loan relationship that has not been entered into, to the extent that the relationship would have been one entered into for the purpose of borrowing money to be used or appropriated as mentioned in paragraph (a) above; **[**F3251and**]**

(c) in the case of debits in respect of **[**F3252a relationship to which section 100 of that Act applies,**]** to the extent that—

[F3253(i)**]** the payment of interest under that relationship is expenditure incurred as mentioned in sub-paragraph (i) of paragraph (a) above;**[**F3254 or

(ii) the exchange loss arising from that relationship is in respect of a money debt on which the interest payable (if any) is, or would be, such expenditure;

as the case may be;**]**F3255. . .

(d) F3255. . . . . .

In this subsection "debtor relationship" and "creditor relationship" have the same meanings as in Chapter II of Part IV of the Finance Act 1996, and references to a loan relationship, in relation to the borrowing of money, do not include references to **[**F3256any relationship to which section 100 of that Act applies**]**.**]**

Section 839 shall apply for the purposes of this subsection.

[F3257F3258. . . . . .**]**

[F3259(2ZA) Credits in respect of exchange gains from a company's loan relationships shall not be brought into account for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 in respect of any loan relationship of a company in any manner that results in an increase of what would otherwise be the company's ring fence profits, except to the extent that, if the credit had been a debit in respect of an exchange loss from the relationship, it would have been brought into account by virtue of any of paragraphs (a) to (c) of subsection (2) above.**]**

[F3260(2A) Where any debit **[**F3261or credit**]**—

(a) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in respect of any loan relationship of a company, but

(b) in accordance with subsection (2) **[**F3262or (2ZA)**]** above cannot be brought into account in a manner that results in any reduction **[**F3263or, as the case may be, increase**]** of what would otherwise be the company's ring fence profits,

then (notwithstanding anything in section 82(2) of that Act) that debit **[**F3264or credit**]** shall be brought into account for those purposes as a non-trading debit **[**F3265or, as the case may be, non-trading credit**]**.**]**

[F3266(2B) F3267. . . . . .**]**

(3) F3268. . . . . .

[F3269(4) F3270. . . . . .

(5) F3270. . . . . .**]**

Textual Amendments

F3247 S. 494 sidenote substituted (with effect in accordance with s. 38(7)-(13) of the amending Act) by virtue of Finance (No. 2) Act 2005 (c. 22), **s. 38(5)**

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F3248 Words in s. 494(1) repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

F3249 Words in s. 494(1) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 32(1)** (with Sch. 15)

F3250 Words in s. 494(2) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 32(2)** (with Sch. 15)

F3251 Word at the end of s. 494(2)(b) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 3(2)(a)**

F3252 Words in s. 494(2)(c) substituted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(3)(a)** (with s. 81(4)(5))

F3253 Words in s. 494(2)(c) renumbered as s. 494(2)(c)(i) (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by virtue of Finance Act 2002 (c. 23), **Sch. 23 para. 17(3)(b)** (with s. 81(4)(5))

F3254 S. 494(2)(c)(ii) and words inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(3)(c)** (with s. 81(4)(5))

F3255 S. 494(2)(d) and preceding word repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 5 para. 3(2)(b), **Sch. 42 Pt. 2(1)**, Note

F3256 Words in s. 494(2) substituted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(5)** (with s. 81(4)(5))

F3257 Words in s. 494(2) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(6)** (with s. 81(4)(5))

F3258 Words in s. 494(2) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 5 para. 3(2)(c), **Sch. 42 Pt. 2(1)**, Note

F3259 S. 494(2ZA) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(7)** (with s. 81(4)(5))

F3260 S. 494(2A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 32(3)** (with Sch. 15)

F3261 Words in s. 494(2A) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(8)(a)** (with s. 81(4)(5))

F3262 Words in s. 494(2A)(b) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(8)(b)(i)** (with s. 81(4)(5))

F3263 Words in s. 494(2A)(b) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(8)(b)(ii)** (with s. 81(4)(5))

F3264 Words in s. 494(2A) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(8)(c)(i)** (with s. 81(4)(5))

F3265 Words in s. 494(2A) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(8)(c)(ii)** (with s. 81(4)(5))

F3266 S. 494(2B) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 17(9)** (with s. 81(4)(5))

F3267 S. 494(2B) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 5 para. 3(3), **Sch. 42 Pt. 2(1)**, Note

F3268 S. 494(3) repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

F3269 S. 494(4)(5) substituted for s. 494(4) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch 14 para. 32(4)** (with Sch. 15)

F3270 S. 494(4)(5) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note

[F3271 494A Sale and lease-back.

(1) This section applies where—

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(a) a company ("the seller") carrying on a trade has disposed of an asset which was used for the purposes of that trade, or an interest in such an asset;

(b) the asset is used, under a lease, by the seller or a company associated with the seller ("the lessee") for the purposes of a ring fence trade carried on by the lessee; and

(c) the lessee uses the asset before the end of the period of two years beginning with the disposal.

(2) Subject to subsection (4) below, subsection (3) below applies to so much (if any) of the expenditure incurred by the lessee under the lease as—

(a) falls, in accordance with **[**[F3272]generally accepted accounting practice**]**, to be treated in the accounts of the lessee as a finance charge;[F3273] . . .

(b) [F3273] . . . . . .

(3) The expenditure shall not be allowable in computing for the purposes of Schedule D the profits of the ring fence trade.

(4) Expenditure shall not be disallowed by virtue of subsection (3) above to the extent that the disposal referred to in subsection (1) above is made for a consideration which—

(a) is used to meet expenditure incurred by the seller in carrying on oil extraction activities or in acquiring oil rights otherwise than from a company associated with the seller; or

(b) is appropriated to meeting expenditure to be so incurred by the seller.

(5) Where any expenditure—

(a) would apart from subsection (3) above be allowable in computing for the purposes of Schedule D the profits of the ring fence trade for an accounting period, but

(b) by virtue of that subsection is not so allowable,

that expenditure shall be brought into account for the purposes of Chapter II of Part IV of the [M614]Finance Act 1996 as if it were a non-trading debit in respect of a loan relationship of the lessee for that accounting period.

(6) In this section, "lease", in relation to an asset, has the same meaning as in sections 781 to 784.**]**

Textual Amendments

F3271 S. 494AA inserted (with application in accordance with s. 100(2)(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 100(1)**

F3272 Words in s. 494AA(2) substituted (24.7.2002) by Finance Act 2002 (c. 23), **s. 103(4)(a)**

F3273 S. 494AA(2)(b) and preceding word repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

Marginal Citations

M614 1996 c.8.

[[F3274]494A Computation of amount available for surrender by way of group relief.

(1) In section 403(3) (availability of charges, Schedule A losses and management expenses for surrender as group relief) the reference to the gross profits of the

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surrendering company for an accounting period does not include the company's relevant ring fence profits for that period.

(2) If for that period—

(a) there are no charges on income paid by the company that are allowable under section 338, [F3275]. . .

(b) [F3275]. . . . . .

all the company's ring fence profits are relevant ring fence profits.

(3) In any other case the company's relevant ring fence profits are so much of its ring fence profits as exceeds the amount of the charges on income paid by the company as—

(a) are allowable under section 338 for that period, [F3276]. . .

(b) [F3276]. . . . . .**]**

Textual Amendments

F3274 S. 494A inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 30** (with Sch. 5 para. 73)

F3275 S. 494A(2)(b) and preceding word repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

F3276 S. 494A(3)(b) and preceding word repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

495 Regional development grants.

(1) Subsection (2) below applies in any case where—

(a) a person has incurred expenditure (by way of purchase, rent or otherwise) on the acquisition of an asset in a transaction to which paragraph 2 of Schedule 4 to the 1975 Act applies (transactions between connected persons and otherwise than at arm's length), and

(b) the expenditure incurred by the other person referred to in that paragraph in acquiring, bringing into existence or enhancing the value of the asset as mentioned in that paragraph has been or is to be met by a regional development grant and, in whole or in part, falls to be taken into account **[**[F3277]Part 2, 3 or 6 of the Capital Allowances Act (capital allowances relating to plant and machinery, industrial buildings or research and development)**]**.

(2) Where this subsection applies, for the purposes of the charge of income tax or corporation tax on the income arising from those activities of the person referred to in paragraph (a) of subsection (1) above which are treated by virtue of **[**[F3278]section 16(1) of ITTOIA 2005 or section 492(1) above**]** as a separate trade for those purposes, the expenditure referred to in that paragraph shall be treated as reduced by the amount of the regional development grant referred to in paragraph (b) of that subsection.

(3) Subsections (4) to (6) below apply where—

(a) expenditure incurred by any person in relation to an asset in any relevant period ("the initial period") has been or is to be met by a regional development grant; and

(b) notwithstanding the provisions of section 137 of the [M615]Finance Act 1982 and subsections (1) and (2) above, in determining that person's liability to income tax or corporation tax for the initial period the whole or some part of that

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expenditure falls to be taken into account **[**F3279Part 2, 3 or 6 of the Capital Allowances Act**]**; and

(c) in a relevant period subsequent to the initial period either expenditure on the asset becomes allowable under section 3 or 4 of the 1975 Act or the proportion of any such expenditure which is allowable is different as compared with the initial period;

and in subsections (4) to (6) below the subsequent relevant period referred to in paragraph (c) above is referred to as "the adjustment period".

(4) Where this subsection applies—

(a) there shall be redetermined for the purposes of subsections (5) and (6) below the amount of the expenditure referred to in subsection (3)(a) above which would have been taken into account as mentioned in subsection (3)(b) if the circumstances referred to in subsection (3)(c) had existed in the initial period; and

(b) according to whether the amount as so redetermined is greater or less than the amount actually taken into account as mentioned in subsection (3)(b), the difference is in subsections (5) and (6) below referred to as the increase or the reduction in the allowance.

(5) If there is an increase in the allowance, then, for the purposes of the provisions referred to in subsection (3)(b) above, an amount of capital expenditure equal to the increase shall be deemed to have been incurred by the person concerned in the adjustment period on an extension of or addition to the asset referred to in subsection (3)(a) above.

(6) If there is a reduction in the allowance, then, for the purpose of determining the liability to income tax or corporation tax of the person concerned, he shall be treated as having received in the adjustment period, as income of the trade in connection with which the expenditure referred to in subsection (3)(a) above was incurred, a sum equal to the amount of the reduction in the allowance.

(7) In this section—

"regional development grant" **[**F3280means a grant falling within section 534(1) of the Capital Allowances Act**]**; and

"relevant period" means an accounting period of a company or a year of assessment.

Textual Amendments

F3277 Words in s. 495(1) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 42(1)**

F3278 Words in s. 495(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 192** (with Sch. 2)

F3279 Words in s. 495(3) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 42(2)**

F3280 Words in s. 495(7) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 42(3)**

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M615 1982 c. 39

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496 [F3281Tariff receipts and tax-exempt tariffing receipts]

(1) Any sum which—

(a) constitutes a tariff receipt [F3282or tax-exempt tariffing receipt] of a person who is a participator in an oil field, and

(b) constitutes consideration in the nature of income rather than capital, and

(c) would not, apart from this subsection, be treated for the purposes of this Chapter as a receipt of the separate trade referred to in [F3283section 16(1) of ITTOIA 2005 or section 492(1) above],

shall be so treated for those purposes.

(2) To the extent that they would not otherwise be so treated, the activities of a participator in an oil field or a person connected with him in making available an asset in a way which gives rise to tariff receipts [F3284or tax-exempt tariffing receipts] of the participator shall be treated for the purposes of this Chapter as oil extraction activities.

(3) In determining for the purposes of subsection (1) above whether any sum constitutes a tariff receipt [F3285or tax-exempt tariffing receipt] of a person who is a participator, no account shall be taken of any sum which—

(a) is in fact received or receivable by a person connected with the participator, and

(b) constitutes a tariff receipt [F3286or tax-exempt tariffing receipt] of the participator,

but in relation to the person by whom such a sum is actually received, subsection (1) above shall have effect as if he were a participator and as if the condition in paragraph (a) of that subsection were fulfilled.

(4) References in this section to a person connected with a participator include references to a person with whom the person is associated within the meaning of paragraph 11 of Schedule 2 to [M616the Oil Taxation Act 1983.

Textual Amendments

F3281 S. 496 sidenote substituted (with effect in accordance with s. 285(7) of the amending Act) by virtue of Finance Act 2004 (c. 12), **Sch. 37 para. 11(5)**

F3282 Words in s. 496(1)(a) inserted (with effect in accordance with s. 285(7) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 37 para. 11(2)**

F3283 Words in s. 496(1)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 193** (with Sch. 2)

F3284 Words in s. 496(2) inserted (with effect in accordance with s. 285(7) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 37 para. 11(3)**

F3285 Words in s. 496(3) inserted (with effect in accordance with s. 285(7) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 37 para. 11(4)(a)**

F3286 Words in s. 496(3)(b) inserted (with effect in accordance with s. 285(7) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 37 para. 11(4)(b)**

Marginal Citations

M616 1983 c. 56.

[F3287496A Exploration expenditure supplement

Schedule 19B to this Act (exploration expenditure supplement) shall have effect.]

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Textual Amendments

F3287 S. 496A inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 286(2)**

VALID FROM 19/07/2006

[F3288 496B Ring fence expenditure supplement

Schedule 19C to this Act (ring fence expenditure supplement) shall have effect.**]**

Textual Amendments

F3288 S. 496B inserted (19.7.2006) by Finance Act 2006 (c. 25), **s. 154(2)**

497 Restriction on setting ACT against income from oil extraction activities etc.

F3289 . . . . . .

Textual Amendments

F3289 S. 497 repealed (with effect in accordance with Sch. 3 para. 29(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 29(1), **Sch. 27 Pt. 3(2)**, Note

498 Limited right to carry back surrendered ACT.

F3290 . . . . . .

Textual Amendments

F3290 S. 498 repealed (with effect in accordance with Sch. 3 para. 30(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 30(1), **Sch. 27 Pt. 3(2)**, Note (with Sch. 3 para. 30(3))

499 Surrender of ACT where oil extraction company etc. owned by a consortium.

F3291 . . . . . .

Textual Amendments

F3291 S. 499 repealed (with effect in accordance with Sch. 3 para. 31(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 31(1), **Sch. 27 Pt. 3(2)**, Note

500 Deduction of PRT in computing income for corporation tax purposes.

(1) Where a participator in an oil field has paid any petroleum revenue tax with which he was chargeable for a chargeable period, then, in computing for corporation tax the amount of his income arising in the relevant accounting period from oil extraction

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activities or oil rights, there shall be deducted an amount equal to that petroleum revenue tax.

(2) There shall be made all such adjustments of assessments to corporation tax as are required in order to give effect to subsection (1) above.

(3) For the purposes of subsection (1) above, the relevant accounting period, in relation to any petroleum revenue tax paid by a company, is—

(a) the accounting period of the company in or at the end of which the chargeable period for which that tax was charged ends; or

(b) if that chargeable period ends after the accounting period of the company in or at the end of which the trade giving rise to the income referred to above is permanently discontinued, that accounting period.

(4) **[**F3292Subject to the following provisions of this section**]** if some or all of the petroleum revenue tax in respect of which a deduction has been made under subsection (1) above is subsequently repaid, that deduction shall be reduced or extinguished accordingly; and any additional assessment to corporation tax required in order to give effect to this subsection may be made at any time not later than six years after the end of the **[**F3293calendar year**]** in which the first-mentioned tax was repaid.

[F3294(5) If, in a case where paragraph 17 of Schedule 2 to the 1975 Act applies, an amount of petroleum revenue tax in respect of which a deduction has been made under subsection (1) above is repaid by virtue of an assessment under that Schedule or an amendment of such an assessment, then, so far as concerns so much of that repayment as constitutes the appropriate repayment,—

(a) subsection (4) above shall not apply; and

(b) the following provisions of this section shall apply in relation to the company which is entitled to the repayment.

(6) In subsection (5) above and the following provisions of this section—

(a) "the appropriate repayment" has the meaning assigned by sub-paragraph (2) of paragraph 17 of Schedule 2 to the 1975 Act;

(b) in relation to the appropriate repayment, a "carried back loss" means an allowable loss which falls within sub-paragraph (1)(a) of that paragraph and which (alone or together with one or more other carried back losses) gives rise to the appropriate repayment;

(c) in relation to a carried back loss, "the operative chargeable period" means the chargeable period in which the loss accrued; and

(d) in relation to the company which is entitled to the appropriate repayment, "the relevant accounting period" means the accounting period in or at the end of which ends the operative chargeable period or, if the company's ring fence trade is permanently discontinued before the end of the operative chargeable period, the last accounting period of that trade.

(7) In computing for corporation tax the amount of the company's income arising in the relevant accounting period from oil extraction activities or oil rights there shall be added an amount equal to the appropriate repayment; but this subsection has effect subject to subsection (8) below in any case where—

(a) two or more carried back losses give rise to the appropriate repayment; and

(b) the operative chargeable period in relation to each of the carried back losses is not the same; and

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(c) if subsection (6)(d) above were applied separately in relation to each of the carried back losses there would be more than one relevant accounting period.

(8) Where paragraphs (a) to (c) of subsection (7) above apply, the appropriate repayment shall be treated as apportioned between each of the relevant accounting periods referred to in paragraph (c) of that subsection in such manner as to secure that the amount added by virtue of that subsection in relation to each of those relevant accounting periods is what it would have been if—

(a) relief for each of the carried back losses for which there is a different operative chargeable period had been given by a separate assessment or amendment of an assessment under Schedule 2 to the 1975 Act; and

(b) relief for a carried back loss accruing in an earlier chargeable period had been so given before relief for a carried back loss accruing in a later chargeable period.

(9) Any additional assessment to corporation tax required in order to give effect to the addition of an amount by virtue of subsection (7) above may be made at any time not later than six years after the end of the calendar year in which is made the repayment of petroleum revenue tax comprising the appropriate repayment.

(10) In this section "allowable loss" and "chargeable period" have the same meaning as in Part I of the 1975 Act and "calendar year" means a period of twelve months beginning on 1st January.**]**

Textual Amendments

F3292 Words in s. 500(4) inserted by Finance Act 1990 (c. 29), **s. 62(1)(a)**

F3293 Words in s. 500(4) substituted by Finance Act 1990 (c. 29), **s. 62(1)(b)**

F3294 S. 500(5)-(10) substituted for s. 500(5) by Finance Act 1990 (c. 29), **s. 62(2)**

501 Interest on repayment of PRT.

Where any amount of petroleum revenue tax paid by a participator in an oil field is, under any provision of Part I of the 1975 Act, repaid to him with interest, the amount of the interest paid to him shall be disregarded in computing the amount of his income for the purposes of corporation tax.

[F3295 501A Supplementary charge in respect of ring fence trades

(1) Where in any accounting period beginning on or after 17th April 2002 a company carries on a ring fence trade, a sum equal to 10 per cent of its adjusted ring fence profits for that period shall be charged on the company as if it were an amount of corporation tax chargeable on the company.

(2) A company's adjusted ring fence profits for an accounting period are the amount which, on the assumption mentioned in subsection (3) below, would be determined for that period (in accordance with this Chapter) as the profits of the company's ring fence trade chargeable to corporation tax.

(3) The assumption is that financing costs are left out of account in computing—

(a) the amount of the profits or loss of any ring fence trade of the company's for each accounting period beginning on or after 17th April 2002; and

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(b) where for any such period the whole or part of any loss relief is surrendered to the company in accordance with section 492(8), the amount of that relief or, as the case may be, that part.

(4) For the purposes of this section, "financing costs" means the costs of debt finance.

(5) In calculating the costs of debt finance for an accounting period the matters to be taken into account include—

(a) any costs giving rise to debits in respect of debtor relationships of the company under Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) **[**F3296, other than debits in respect of exchange losses from such relationships (see section 103(1A) and (1B) of that Act)**]**;

[F3297(b) any exchange gain or loss from a debtor relationship, within the meaning of that Chapter (see section 103(1A) and (1B) of that Act), in relation to debt finance;**]**

[F3298(c) any credit or debit falling to be brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts) in relation to debt finance;**]**

(d) the financing cost implicit in a payment under a finance lease; and

(e) any other costs arising from what would be considered in accordance with generally accepted accounting practice to be a financing transaction.

(6) Where an amount representing the whole or part of a payment falling to be made by a company—

(a) falls (or would fall) to be treated as a finance charge under a finance lease for the purposes of accounts relating to that company and one or more other companies and prepared in accordance with generally accepted accounting practice, but

(b) is not so treated in the accounts of the company,

the amount shall be treated for the purposes of this section as financing costs falling within subsection (5)(d) above.

(7) If—

(a) in computing the adjusted ring fence profits of a company for an accounting period, an amount falls to be left out of account by virtue of subsection (5)(d) above, but

(b) the whole or any part of that amount is repaid,

the repayment shall also be left out of account in computing the adjusted ring fence profits of the company for any accounting period.

(8) In this section "finance lease" means any arrangements—

(a) which provide for an asset to be leased or otherwise made available by a person to another person ("the lessee"), and

(b) which, under generally accepted accounting practice,—

(i) fall (or would fall) to be treated, in the accounts of the lessee or a person connected with the lessee, as a finance lease or a loan, or

(ii) are comprised in arrangements which fall (or would fall) to be so treated.

(9) For the purposes of applying subsection (8)(b) above, the lessee and any person connected with the lessee are to be treated as being companies which are incorporated in a part of the United Kingdom.

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(10) In this section "accounts", in relation to a company, includes any accounts which—

(a) relate to two or more companies of which that company is one, and

[[F3299](b) are drawn up in accordance with generally accepted accounting practice.**]]**

Textual Amendments

F3295 S. 501A inserted (24.7.2002) by Finance Act 2002 (c. 23), **ss. 91**, 93

F3296 Words in s. 501A(5)(a) inserted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 18(2)** (with s. 81(4)(5))

F3297 S. 501A(5)(b) substituted (with effect in accordance with s. 79(3), Sch. 23 para. 25 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 18(3)** (with s. 81(4)(5))

F3298 S. 501A(5)(c) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 8** (with Sch. 28)

F3299 S. 501A(10)(b) substituted (with effect in accordance with s. 80(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 23**

[[F3300]**501B Assessment, recovery and postponement of supplementary charge**

(1) Subject to subsection (3) below, the provisions of section 501A(1) relating to the charging of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including—

(a) those relating to returns of information and the supply of accounts, statements and reports;

(b) those relating to the assessing, collecting and receiving of corporation tax;

(c) those conferring or regulating a right of appeal; and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

(2) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if any reference to corporation tax included a reference to a sum chargeable under section 501A(1) as if it were an amount of corporation tax.

(3) In any regulations made under section 32 of the Finance Act 1998 (as at 17th April 2002, the Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999)—

(a) references to corporation tax do not include a reference to a sum chargeable on a company under section 501A(1) as if it were corporation tax; and

(b) references to profits charged to corporation tax do not include a reference to adjusted ring fence profits, within the meaning of section 501A(1).

(4) In this section "the Taxes Acts" has the same meaning as in the Management Act.**]**

Textual Amendments

F3300 S. 501B inserted (24.7.2002) by Finance Act 2002 (c. 23), **ss. 92(1)**, 93

502 Interpretation of Chapter V.

(1) In this Chapter—

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"the 1975 Act" means the Oil Taxation Act 1975 [M617];

"oil" means any substance won or capable of being won under the authority of a licence granted under either **[**[F3301]Part I of the Petroleum Act 1998**]** or the [M618]Petroleum (Production) Act (Northern Ireland) 1964, other than methane gas won in the course of operations for making and keeping mines safe;

"oil extraction activities" means any activities of a person—

(a) in searching for oil in the United Kingdom or a designated area or causing such searching to be carried out for him; or

(b) in extracting or causing to be extracted for him oil at any place in the United Kingdom or a designated area under rights authorising the extraction and held by him or, if the person in question is a company, by the company or a company associated with it; or

(c) in transporting or causing to be transported for him [F3302] . . . oil extracted at any such place not on dry land under rights authorising the extraction and so held **[**[F3303]where the transportation is—

(i) to the place where the oil is first landed in the United Kingdom, or

(ii) to the place in the United Kingdom or, in the case of oil first landed in another country, the place in that or any other country (other than the United Kingdom) at which the seller in a sale at arm's length could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction**]**; or

(d) in effecting or causing to be effected for him the initial treatment or initial storage of oil won from any oil field under rights authorising its extraction and so held;

"oil field" has the same meaning as in Part I of the 1975 Act;

"oil rights" means rights to oil to be extracted at any place in the United Kingdom or a designated area, or to interests in or to the benefit of such oil;

"participator" has the same meaning as in Part I of the 1975 Act; and

"ring fence income" means income arising from oil extraction activities or oil rights; and

"ring fence profits" has the **[**[F3304] meaning given by subsection (1A) below**]** or, in any case where that subsection does not apply, means ring fence income; **[**[F3305]and

"ring fence trade" means activities which—

(a) fall within **[**[F3306] the definition of "oil-related activities" in section 16(2) of ITTOIA 2005 or within section 492(1) above**]**; and

(b) constitute a separate trade (whether by virtue of **[**[F3307]section 16(1) of ITTOIA 2005 or section 492(1) above**]** or otherwise)**]**.

[[F3308](1A) Where in accordance with section 197(3) of the 1992 Act a person has an aggregate gain for any chargeable period, that gain and his ring fence income (if any) for that period together constitute his ring fence profits for the purposes of this Chapter.**]**

(2) For the purposes of subsection (1) above—

(a) "designated area" means an area designated by Order in Council under section 1(7) of the [M619]Continental Shelf Act 1964;

(b) "initial treatment" has the same meaning as in Part I of the 1975 Act; and

(c) the definition of "initial storage" in section 12(1) of the 1975 Act shall apply but, in its application for those purposes in relation to the person mentioned in

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subsection (1)(d) above and to oil won from any one oil field shall have effect as if the reference to the maximum daily production rate of oil for the field as there mentioned were a reference to that person's share of that maximum daily production rate, that is to say, a share thereof proportionate to his share of the oil won from that field.

(3) For the purposes of this Chapter two companies are associated with one another if—

(a) one is a 51 per cent. subsidiary of the other;

(b) each is a 51 per cent. subsidiary of a third company; or

(c) one is owned by a consortium of which the other is a member.

[F3309(3A) Section 413(6) applies for the purposes of subsection (3)(c) above but as if section 413 were modified as follows—

(a) as if the definition of "company" in subsection (2) were omitted;

(b) as if at the beginning of subsection (5) there were inserted "References in this Chapter to a company apply only to bodies corporate resident in the United Kingdom; and"; and

(c) as if in that subsection, after the word "receipt", in the second place where it occurs, there were inserted "; or

(c) of any share capital which it owns directly or indirectly in a body corporate not resident in the United Kingdom."**]**

(4) Without prejudice to subsection (3) above, for the purposes of this Chapter, two companies are also associated with one another if one has control of the other or both are under the control of the same person or persons; and in this subsection "control" shall be construed in accordance with section 416.

Textual Amendments

F3301 S. 502(1): words in definition of "oil" substituted (15.2.1999) by Petroleum Act 1998 (c. 17), **Sch. 4 para. 25**, s. 52(4); S.I. 1999/161, **art. 2(1)**

F3302 S. 502(1): words in definition of "oil extraction activities" repealed (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), ss. 55(1)(a)(2), 82, **Sch. 18 Pt.VII**

F3303 S. 502(1): words in definition of "oil extraction activities" inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 55(1)(b)(2)**

F3304 S. 502(1): words in definition of "ring fence profits" substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(30)** (with ss. 60, 101(1), 171(1), 201(3))

F3305 S. 502(1): definition of "ring fence trade" added by Finance Act 1990 (c. 29), **s. 62(3)**

F3306 S. 502(1): words in definition of "ring fence trade" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 194(a)** (with Sch. 2)

F3307 S. 502(1): words in definition of "ring fence trade" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 194(b)** (with Sch. 2)

F3308 S. 502(1A) inserted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 300(1), **Sch. 10 para. 14(30)** (with ss. 60, 101(1), 171, 201(3))

F3309 S. 502(3A) substituted for words in s. 502(3) (with effect in accordance with Sch. 27 para. 12(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 9**

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Marginal Citations
M617 1975 c. 22.
M618 1964 c. 28 (N.I.)
M619 1964 c. 29.

VALID FROM 19/07/2006

CHAPTER 5A

SPECIAL RULES FOR LONG FUNDING LEASES OF PLANT OR MACHINERY: CORPORATION TAX

[F3310 Introductory

Textual Amendments
F3310 Pt. 12 Ch. 5A (ss. 502A-502L) inserted (with effect in accordance with Sch. 8 para. 15 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 8 para. 11**

502A Scope of Chapter 5A

This Chapter has effect for the purposes of corporation tax only.

Lessors under long funding finance leases

502B Lessor under long funding finance lease: rental earnings

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account in which it is the lessor of any plant or machinery under a long funding finance lease.

(2) The amount to be brought into account as the lessor's taxable income from the lease for the period of account is the amount of the rental earnings in respect of the lease for the period of account.

(3) The "rental earnings" for any period is the amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be treated as the gross return on investment for that period in respect of the lease where it meets the finance lease test.

(4) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan in the accounts in question, so much of the rentals under the lease as fall (or would fall) to be treated as interest are to be treated for the purposes of this section as rental earnings.

Modifications etc. (not altering text)
C546 S. 502B excluded (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 20 para. 11(2)**

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C547 S. 502B excluded (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 33 para. 5**

502C Lessor under long funding finance lease: exceptional items

(1) This section applies for determining for the purposes of corporation tax the profits of a company which is or has been the lessor under a long funding finance lease.

(2) This section has effect where a profit or loss (whether of an income or capital nature) —

(a) arises to the company in connection with the lease, and

(b) in accordance with generally accepted accounting practice falls to be recognised for accounting purposes in a period of account, but

(c) would not, apart from this section, be brought into account in computing the profits of the company for the purposes of corporation tax.

(3) The profit or loss is to be treated—

(a) in the case of a profit, as income of the company attributable to the lease,

(b) in the case of a loss, as a revenue expense incurred by the company in connection with the lease.

(4) Any reference in this section to an amount falling to be recognised for accounting purposes in a period of account is a reference to an amount falling to be recognised for accounting purposes—

(a) in the company's profit and loss account or income statement,

(b) in the company's statement of recognised gains and losses or statement of changes in equity, or

(c) in any other statement of items brought into account in computing the company's profits or losses for that period.

Modifications etc. (not altering text)
C548 S. 502C excluded (21.7.2008) by Finance Act 2008 (c. 9), **Sch. 20 para. 11(8)**
C549 S. 502C excluded (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 33 para. 7**

502D Lessor under long funding finance lease making termination payment

(1) This section applies for determining the liability to corporation tax of a company which is or has been the lessor under a long funding finance lease.

(2) Where—

(a) the lease terminates, and

(b) a sum calculated by reference to the termination value is paid to the lessee,

no deduction in respect of the sum paid to the lessee is allowed in computing the profits of the company.

(3) This section does not prevent a deduction in respect of a sum to the extent that the sum is brought into account in determining the company's rental earnings.

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Lessors under long funding operating leases

502E Lessor under long funding operating lease: periodic deduction

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account—

(a) for the whole of which, or

(b) for any part of which,

the company is the lessor of any plant or machinery under a long funding operating lease.

(2) A deduction is allowed in computing the profits of the company for the period of account.

(3) The amount of the deduction for any period of account is to be determined as follows.

(4) First, find the "relevant value" for the purposes of subsection (6)(a) below, which is—

(a) if the only use of the plant or machinery by the lessor has been the leasing of it under the long funding operating lease as a qualifying activity, cost;

(b) if the last previous use of the plant or machinery by the lessor was the leasing of it under another long funding operating lease as a qualifying activity, market value;

(c) if the last previous use of the plant or machinery by the lessor was the leasing of it under a long funding finance lease as a qualifying activity, the recognised value;

(d) if the last previous use of the plant or machinery by the lessor was for the purposes of a qualifying activity other than leasing under a long funding lease, the lower of cost and market value;

(e) if the lessor owns the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but—

(i) the plant or machinery is brought into use by the lessor for the purposes of a qualifying activity on or after 1st April 2006, and

(ii) that qualifying activity is the leasing of the plant or machinery under the long funding operating lease,

the relevant value is the lower of first use market value and first use amortised value.

(5) In subsection (4) above—

"cost" means the amount of the expenditure incurred by the lessor on the provision of the plant or machinery;

"first use amortised value" means the value that the plant or machinery would have at the time when it is first brought into use for the purposes of the qualifying activity, on the assumption that—

(a) the cost of acquiring the plant or machinery had been written off on a straight line basis over the remaining useful economic life of the plant or machinery, and

(b) any further capital expenditure incurred had been written off on a straight line basis over so much of the remaining economic life of

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the plant or machinery as remains at the time when the expenditure is incurred;

"first use market value" means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity;

"market value" means the market value of the plant or machinery at the commencement of the term of the long funding operating lease;

"recognised value" means the value at which the plant or machinery is recognised in the books or other financial records of the lessor at the commencement of the long funding operating lease.

(6) From—

(a) the relevant value determined in accordance with subsection (4) above,

subtract

(b) the amount which, at the commencement of the term of the lease, is (or, in a case falling within subsection (4)(e) above, would have been) expected to be the residual value of the plant or machinery,

to find the expected gross reduction in value over the term of the lease.

(7) Apportion the amount of that expected gross reduction in value to each period of account in which any part of the term of the lease falls.

(8) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each period of account.

(9) The amount of the deduction for any period of account is the amount so apportioned to that period.

502F Long funding operating lease: lessor's additional expenditure

(1) This section applies if in any period of account—

(a) a company is the lessor of any plant or machinery under a long funding operating lease,

(b) the company incurs capital expenditure in relation to the plant or machinery, and

(c) that capital expenditure (the "additional expenditure") is not reflected in the market value of the plant or machinery at the commencement of the term of the lease.

(2) In a case falling within section 502E(4)(e) above, subsection (1)(c) above has effect as if the reference to the commencement of the term of the lease were a reference to the time when the plant or machinery is first brought into use by the lessor for the purposes of the qualifying activity.

(3) Where this section applies, an additional deduction is allowed in computing the profits of the company for each post-expenditure period of account in which the company is the lessor of the plant or machinery under the lease.

(4) The amount of the deduction for any such period of account is to be determined as follows.

(5) Find ARV, CRV, PRV, and TRV where—

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"ARV" is the amount which, at the time when the additional expenditure is incurred, is expected to be the residual value of the plant or machinery;

"CRV" is the amount which, at the commencement of the term of the lease, is expected to be the residual value of the plant or machinery;

"PRV" is the sum of any amounts that fell to be taken into account as RRV (see subsection (6)) in the application of this section in relation to any previous additional expenditure incurred by the company in relation to the leased plant or machinery;

"TRV" is the total of CRV and PRV.

(6) Find RRV, where—

(a) if ARV exceeds TRV, RRV is the portion of the excess that is a result of the additional expenditure, but

(b) if ARV does not exceed TRV, RRV is nil.

(7) From—

(a) the amount of the additional expenditure,

subtract

(b) RRV,

to find the expected partial reduction in value over the remainder of the term of the lease.

(8) Apportion the amount of that expected partial reduction in value to each post-expenditure period of account in which any part of the term of the lease falls.

(9) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each post-expenditure period of account.

(10) The amount of the additional deduction for any period of account is the amount so apportioned to that period.

(11) In this section "post-expenditure period of account" means any period of account ending after the incurring of the additional expenditure.

502G Lessor under long funding operating lease: termination of lease

(1) This section applies for determining the liability to corporation tax of a company which is the lessor immediately before the termination of a long funding operating lease.

(2) Step 1 is to find—

(a) the termination amount (TA);

(b) the total of any sums paid to the lessee that are calculated by reference to the termination value (LP).

(3) Step 2 is to find—

(a) the relevant value for the purposes of section 502E(6)(a) (RV);

(b) the total of the deductions allowable under section 502E for periods of account for the whole or part of which the company was the lessor before the termination of the lease (TD1);

(c) the amount, if any, (ERV) by which RV exceeds TD1.

(4) Step 3 is to find—

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(a) the total of any amounts of capital expenditure incurred by the company which constitute additional expenditure for the purposes of section 502F in the case of the lease (TAE);

(b) the total of any deductions allowable under section 502F for periods of account for the whole or part of which the company was the lessor before the termination of the lease (TD2);

(c) the amount, if any, (EAE) by which TAE exceeds TD2.

(5) Step 4 is to find the total of ERV and EAE (T).

(6) If (TA – LP) exceeds T, treat a profit of an amount equal to the excess as arising to the company in the period of account in which the lease terminates.

(7) If T exceeds (TA – LP), treat a loss of an amount equal to the excess as arising to the company in that period of account.

(8) A profit or loss treated as arising to the company under subsection (6) or (7) above is to be treated—

(a) in the case of a profit, as income of the company attributable to the lease,

(b) in the case of a loss, as a revenue expense incurred by the company in connection with the lease.

(9) In computing the profits of the company, no deduction is allowed in respect of any sums paid to the lessee that are calculated by reference to the termination value.

VALID FROM 21/07/2008

Lessors under long funding finance or operating leases: avoidance etc

502GA Cases where ss. 502B to 502G do not apply: plant or machinery held as trading stock

(1) Sections 502B to 502G do not apply in the case of a company which is or has been the lessor of any plant or machinery under a long funding lease if the following condition is met.

(2) The condition is that any part of the expenditure incurred by the company on the acquisition of the plant or machinery for leasing under the lease—

(a) is (apart from those sections) allowable as a deduction in calculating its profits or losses for the purposes of corporation tax, and

(b) is so allowable as a result of the plant or machinery forming part of its trading stock.

(3) For the purposes of this section the cases in which expenditure incurred by a company on the acquisition of any plant or machinery for leasing under a lease is allowable as such a deduction include any case where—

(a) the company becomes entitled to the deduction at any time after the expenditure is incurred, and

(b) the deduction arises as a result of the plant or machinery forming part of its trading stock at that time.

(4) If—

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(a) at any time any of sections 502B to 502G has applied for determining the amounts to be taken into account in calculating the profits or losses of the company for the purposes of corporation tax, and

(b) the condition in subsection (2) is met at any subsequent time,

those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.

(5) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (4).

[F3311 502GB Cases where ss. 502B to 502G do not apply: lessor also lessee under non-long funding lease

(1) This section applies if—

(a) a company is the lessee of any plant or machinery under a lease ("lease A") that is not a long funding lease,

(b) it enters into a lease ("lease B") of any of that plant or machinery (as lessor), and

(c) lease B is a long funding lease.

(2) Sections 502B to 502G do not apply in relation to lease B.

(3) If by virtue of section 70H of the Capital Allowances Act (tax return by lessee treating lease as long funding lease) lease A becomes a long funding lease (and does not cease to be such a lease), treat this section as never having applied in relation to lease B.**]**

Textual Amendments

F3311 S. 502GB inserted (with effect in accordance with Sch. 20 para. 9(6) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 9(3)**

[F3312 502GC Cases where ss. 502B to 502G do not apply: other avoidance

(1) Sections 502B to 502G do not apply in the case of a company which is or has been the lessor of any plant or machinery under a long funding lease if conditions A to C are met.

(2) Condition A is that the long funding lease forms part of any arrangement entered into by the company which includes one or more other transactions (whether the arrangement is entered into before or after or at the inception of the lease).

(3) Condition B is that the main purpose, or one of the main purposes, of the arrangement is to secure that, over the relevant period, there would be a substantial difference between—

(a) the total amount of the amounts under the arrangement which are, in accordance with generally accepted accounting practice, recognised in determining the company's profit or loss for any period or taken into account in calculating the amounts which are so recognised, and

(b) the total amount of the amounts under the arrangement which are taken into account in calculating the profits or losses of the company for the purposes of corporation tax.

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(4) For the purposes of condition B "the relevant period" means the period which begins with the inception of the lease and ends with the end of the term of the lease.

(5) Condition C is that the difference would be attributable (wholly or partly) to the application of any of sections 502B to 502G in relation to the company by reference to the plant or machinery under the lease.

(6) The reference in this section to an amount being recognised in determining a company's profit or loss for a period is to an amount being recognised for accounting purposes—

(a) in the company's profit and loss account or income statement,

(b) in the company's statement of recognised gains and losses or statement of changes in equity, or

(c) in any other statement of items brought into account in calculating the company's profits and losses for that period.

(7) For the purposes of this section it does not matter whether the parties to any transaction which forms part of the arrangement differ from the parties to any of the other transactions.

(8) For the purposes of this section the cases in which two or more transactions are to be taken as forming part of an arrangement include any case in which it would be reasonable to assume that one or more of them—

(a) would not have been entered into independently of the other or others, or

(b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(9) If—

(a) at any time any of sections 502B to 502G has applied for determining the amounts to be taken into account in calculating the profits or losses of the company for the purposes of corporation tax, and

(b) conditions A to C are met at any subsequent time,

those amounts, and any other amounts which (as a result of this section) are to be so taken into account, are subject to such adjustments as are just and reasonable.

(10) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (9).**]**

Textual Amendments

F3312 S. 502GC inserted (with effect in accordance with Sch. 20 para. 9(7) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 9(4)**

VALID FROM 21/07/2009

[F3314 502GD F3313 Cases where ss 502B to 502G do not apply: films]

(1) If a company is or has been a lessor under a long funding lease of a film, sections 502B to 502G do not apply in respect of the lease.

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(2) "Film" has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).**]**

Textual Amendments

F3313 S. 502GA and preceding cross-heading inserted (with effect in accordance with Sch. 20 para. 9(5) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 9(2)**

F3314 S. 502GD inserted (with effect in accordance with Sch. 33 para. 3 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 33 para. 1**

Insurance company as lessor

502H Insurance company as lessor

(1) This section applies to a company carrying on life assurance business if it is the lessor under a long funding lease in a period of account.

(2) In this section—

(a) subsections (3) to (7) have effect in relation to—

(i) basic life assurance and general annuity business, and

(ii) long-term business which is not life assurance business, and

(b) subsections (8) to (10) have effect in relation to certain computations falling to be made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(3) Subsection (4) below applies in the case of each of the following amounts—

(a) an amount of rental earnings which the company is required by section 502B (long funding finance lease) to bring into account as taxable income,

(b) an amount treated under section 502C(3)(a) (long funding finance lease: lessor's exceptional items) as a profit arising to the company,

(c) an amount of rental income arising to the company from a long funding operating lease,

(d) an amount treated under section 502G(8)(a) (long funding operating lease: lessor's excess termination amount) as a profit arising to the company,

but only if the leased asset is an asset of the company's long-term insurance fund.

(4) In determining for the purposes of the Corporation Tax Acts in any such case the extent to which any such amount is referable to—

(a) basic life assurance and general annuity business, or

(b) long-term business which is not life assurance business,

section 432A (apportionment of insurance companies' income) is to have effect in relation to the amount as it has effect in relation to the income arising from an asset.

This subsection is subject to subsections (5) and (6) below.

(5) Before applying subsection (4) above in a case where—

(a) that subsection applies by virtue of subsection (3)(a) above in relation to an amount of rental earnings, and

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(b) there is an amount which is deductible as a revenue expense by virtue of section 502C(3)(b) (long funding finance lease: lessor's exceptional items),

the amount so deductible is to be given effect by applying it, so far as possible, in reducing the amount of the rental earnings.

(6) Before applying subsection (4) above by virtue of subsection (3)(c) above in relation to an amount of rental income,—

(a) any deduction falling to be made under section 502E, or

(b) any reduction falling to be made under section 502F,

is to be given effect by applying it, so far as possible, in reducing (or further reducing) the amount of the rental income.

(7) Where, after applying amounts in making reductions required by subsection (5) or (6) above, there remains unapplied an amount in respect of—

(a) a deduction falling to be made under section 502E,

(b) a reduction falling to be made under section 502F, or

(c) an amount deductible as a revenue expense by virtue of section 502C(3)(b),

the amount is to be apportioned under section 432A in the same way as income.

(8) Where—

(a) the leased asset is an asset of the company's long-term insurance fund, and

(b) a computation falling within subsection (9) below falls to be made,

subsection (10) below applies to the computation.

(9) A computation falls within this subsection if it is a computation of profits of—

(a) life assurance business carried on by the company, or

(b) any category of life assurance business carried on by the company,

and falls to be made in accordance with the provisions of this Act applicable to Case I of Schedule D.

(10) In making the computation, no amount shall be brought into account by virtue of any of the following provisions—

(a) section 502B (long funding finance lease: rental earnings),

(b) section 502C(3)(a) or (b) (long funding finance lease: profit or loss in respect of exceptional items),

(c) section 502E (long funding operating lease: periodic deduction),

(d) section 502F (long funding operating lease: lessor's additional expenditure),

(e) section 502G(8)(a) or (b) (long funding operating lease: lessor's profit or loss in respect of termination amount).

Lessees under long funding finance leases

502I Lessee under long funding finance lease: limit on deductions

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account in which it is the lessee of any plant or machinery under a long funding finance lease.

(2) In calculating the company's profits for the period of account,—

(a) the amount deducted in respect of amounts payable under the lease,

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must not exceed

(b) the amounts which, in accordance with generally accepted accounting practice, fall (or would fall) to be shown in the company's accounts as finance charges in respect of the lease.

(3) If the lease is one which, under generally accepted accounting practice, falls (or would fall) to be treated as a loan, subsection (2) above applies as if the lease were one which, under generally accepted accounting practice, fell to be treated as a finance lease.

502J Lessee under long funding finance lease: termination

(1) This section applies where—

(a) a company is or has been the lessee under a long funding finance lease, and

(b) in connection with the termination of the lease, a payment calculated by reference to the termination value falls to be made to the company.

(2) The payment is not to be brought into account in determining for the purposes of corporation tax the profits of the company for any period of account.

(3) Subsection (2) above does not affect the amount of any disposal value that falls to be brought into account by the company under the Capital Allowances Act.

Lessees under long funding operating leases

502K Lessee under long funding operating lease

(1) This section applies for determining for the purposes of corporation tax the profits of a company for any period of account in which it is the lessee of any plant or machinery under a long funding operating lease.

(2) The deductions that may be allowed in computing the profits of the company for the period of account are to be reduced in accordance with the following provisions of this section.

(3) The amount of the reduction for any period of account is to be determined as follows.

(4) First, find the "relevant value" for the purposes of subsection (6)(a) below, which is—

(a) the market value of the plant or machinery at the commencement of the term of the lease, unless paragraph (b) below applies;

(b) if the lessee—

(i) has the use of the plant or machinery as a result of having incurred expenditure on its provision for purposes other than those of a qualifying activity, but

(ii) brings the plant or machinery into use for the purposes of a qualifying activity on or after 1st April 2006,

the lower of first use market value and first use amortised market value.

(5) In subsection (4) above—

"first use amortised market value" means the value that the plant or machinery would have—

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(a) at the time when it is first brought into use for the purposes of the qualifying activity, but

(b) on the assumption that the market value of the plant or machinery at the commencement of the term of the lease had been written off on a straight line basis over the remaining useful economic life of the plant or machinery;

"first use market value" means the market value of the plant or machinery at the time when it is first brought into use for the purposes of the qualifying activity.

(6) From—

(a) the relevant value determined in accordance with subsection (4) above,

subtract

(b) the amount which, at the commencement of the term of the lease, is (or, in a case falling within subsection (4)(b) above, would have been) expected to be the market value of the plant or machinery at the end of the term of the lease,

to find the expected gross reduction over the term of the lease.

(7) Apportion the amount of that expected gross reduction to each period of account in which any part of the term of the lease falls.

(8) The apportionment must be on a time basis according to the proportion of the term of the lease that falls in each period of account.

(9) The amount of the reduction for any period of account is the amount so apportioned to that period.

*Interpretation of Chapter**]***

502L Interpretation of this Chapter

(1) This section has effect for the interpretation of this Chapter.

(2) In this Chapter—

"qualifying activity" has the same meaning as in Part 2 of the Capital Allowances Act;

"residual value", in relation to any plant or machinery leased under a long funding operating lease, means—

(a) the estimated market value of the plant or machinery on a disposal at the end of the term of the lease,

less

(b) the estimated costs of that disposal.

(3) Any reference in this Chapter to a sum being written off on a straight line basis over a period of time (the "writing-off period") is a reference to—

(a) the sum being apportioned between each of the periods of account in which any part of the writing-off period falls,

(b) that apportionment being made on a time basis, according to the proportion of the writing-off period that falls in each of the periods of account, and

(c) the sum being written off accordingly.

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(4) Chapter 6A of Part 2 of the Capital Allowances Act (interpretation of provisions about long funding leases) applies in relation to this Chapter as it applies in relation to that Part.

CHAPTER VI

MISCELLANEOUS BUSINESSES AND BODIES

[F3316 503 Letting of furnished holiday accommodation treated as a trade for certain [F3315 corporation tax] purposes.

(1) For the purposes [F3317 of Chapter 2 of Part 10 (loss relief for corporation tax)]—

(a) a Schedule A business which consists in, or so far as it consists in, the commercial letting of furnished holiday accommodation F3318 . . . shall be treated as if it were a trade the profits of which are chargeable to [F3319 corporation] tax under Case I of Schedule D, and

(b) all such lettings made by a [F3320 particular company or partnership] shall be treated as one trade.

The "commercial letting of furnished holiday accommodation" is defined below in section 504.

(2) F3321 . . . . . .

(3) F3321 . . . . . .

(4) Where there is a letting of accommodation only part of which is holiday accommodation, such apportionments shall be made for the purposes of this section as are just and reasonable.

(5) Relief shall not be given for the same loss, or the same portion of a loss, both under a provision of [F3322 Chapter 2 of Part 10] as applied by this section and under any other provision of the [F3323 Corporation] Tax Acts.]

Textual Amendments

F3315 Words in s. 503 sidenote inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 195(5)** (with Sch. 2)

F3316 S. 503 substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 42** (with Sch. 5 para. 73)

F3317 Words in s. 503(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 195(2)(a)** (with Sch. 2)

F3318 Words in s. 503(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 195(2)(b), **Sch. 3** (with Sch. 2)

F3319 Word in s. 503(1)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 195(2)(c)** (with Sch. 2)

F3320 Words in s. 503(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 195(2)(d)** (with Sch. 2)

F3321 S. 503(2)(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 195(3), **Sch. 3** (with Sch. 2)

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F3322 Words in s. 503(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 195(4)(a)** (with Sch. 2)

F3323 Word in s. 503(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 195(4)(b)** (with Sch. 2)

Modifications etc. (not altering text)

C550 S. 503 applied (with effect in accordance with s. 579 of the affecting Act) by Capital Allowances Act 2001 (c. 2), **s. 249(2)** (with Sch. 3 paras. 54, 55)

C551 S. 503 applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 32(4)**

504 Supplementary provisions.

(1) [M620]This section has effect for the purposes of section 503.

(2) A letting—

(a) is a commercial letting if it is let on a commercial basis and with a view to the realisation of profits; and

(b) is of furnished accommodation if the tenant is entitled to the use of furniture.

(3) Accommodation shall not be treated as holiday accommodation for the purposes of this section unless—

(a) it is available for commercial letting to the public generally as holiday accommodation for periods which amount, in the aggregate, to not less than 140 days;

(b) the periods for which it is so let amount in the aggregate to at least 70 days; and

(c) for a period comprising at least seven months (which need not be continuous but includes any months in which it is let as mentioned in paragraph (b) above) it is not normally in the same occupation for a continuous period exceeding 31 days.

(4) [F3324] . . . . . .

(5) Any question whether accommodation let by a company is at any time in an accounting period holiday accommodation shall be determined—

(a) if the accommodation was not let by it as furnished accommodation in the period of 12 months immediately preceding the accounting period but is so let in the period of 12 months immediately following the accounting period, by reference to the 12 months beginning with the date in the accounting period on which it first so let it;

(b) if the accommodation was let by it as furnished accommodation in the period of 12 months immediately preceding the accounting period but is not so let by it in the period of 12 months immediately following the accounting period, by reference to the 12 months ending with the date in the accounting period on which it ceased so to let it;

(c) in any other case, by reference to the period of 12 months ending with the last day of the accounting period.

(6) Where, in any [F3325]. . . accounting period, a **[**[F3326]company**]** lets furnished accommodation which is treated as holiday accommodation for the purposes of this section in that [F3327]. . . period ("the qualifying accommodation"), **[**[F3328]the company**]** may make a claim under this subsection, within **[**[F3329]the time specified in

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subsection (6A) below**]**, for averaging treatment to apply for that F3327. . . period to that and any other accommodation specified in the claim which was let by **[**F3330the company**]** as furnished accommodation during that F3327. . . period and would fall to be treated as holiday accommodation in that F3327. . . period if subsection (3)(b) above were satisfied in relation to it.

[F3331(6A) The time mentioned in subsection (6) **[**F3332above is the period of two years beginning at the end of the accounting period in which the accommodation was let.**]]**

(7) Where a claim is made under subsection (6) above in respect of any F3333. . . accounting period, any such other accommodation shall be treated as being holiday accommodation in that F3334. . . period if the number of days for which the qualifying accommodation and any other such accommodation was let by the claimant as mentioned in subsection (3)(a) above during the F3334. . . period amounts on average to at least 70.

(8) Qualifying accommodation may not be specified in more than one claim in respect of any one F3335. . . accounting period.

(9) For the purposes of this section **[**F3336a company**]** lets accommodation if **[**F3337it**]** permits another person to occupy it, whether or not in pursuance of a lease; and "letting" and "tenant" shall be construed accordingly.

Textual Amendments

F3324 S. 504(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 196(2), **Sch. 3** (with Sch. 2)

F3325 Words in s. 504(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 196(3)(a), **Sch. 3** (with Sch. 2)

F3326 Word in s. 504(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 196(3)(b)** (with Sch. 2)

F3327 Words in s. 504(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 196(3)(c), **Sch. 3** (with Sch. 2)

F3328 Words in s. 504(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 196(3)(d)** (with Sch. 2)

F3329 Words in s. 504(6) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 14(2)**

F3330 Words in s. 504(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 196(3)(e)** (with Sch. 2)

F3331 S. 504(6A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 14(3)**

F3332 Words in s. 504(6A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 196(4)** (with Sch. 2)

F3333 Words in s. 504(7) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 196(5)(a), **Sch. 3** (with Sch. 2)

F3334 Words in s. 504(7) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 196(5)(b), **Sch. 3** (with Sch. 2)

F3335 Words in s. 504(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 196(6), **Sch. 3** (with Sch. 2)

F3336 Words in s. 504(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 196(7)(a)** (with Sch. 2)

F3337 Word in s. 504(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 196(7)(b)** (with Sch. 2)

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Modifications etc. (not altering text)

C552 S. 504 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 241(2)**, 289 (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M620 Source—1984 s.50(2)-(9)

[F3338 504A Letting of furnished holiday accommodation treated as trade for certain income tax purposes

(1) For the purposes specified in subsection (2)—

(a) a UK property business which consists in, or so far as it consists in, the commercial letting of furnished holiday accommodation is treated as if it were a trade the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005, and

(b) all such lettings made by a particular person or partnership or body of persons are treated as one trade.

The "commercial letting of furnished holiday accommodation" has the same meaning as it has for the purposes of Chapter 6 of Part 3 of ITTOIA 2005.

(2) Subsection (1) applies for the purposes of—

(a) Chapter 1 of Part 10 (loss relief for income tax),

(b) section 833(4)(c) (income regarded as earned income), and

(c) section 189(2)(b) of the Finance Act 2004 (income regarded as relevant UK earnings for pension purposes).

(3) Chapter 1 of Part 10 as applied by this section has effect with the following adaptations—

(a) no relief is to be given to an individual under section 381 (relief for losses in early years of trade) in respect of a year of assessment if any of the accommodation in respect of which the trade is carried on in that year was first let by that person as furnished accommodation more than three years before the beginning of that year of assessment;

(b) section 384 (restrictions on right of set-off) has effect with the omission of subsections (6) to (8) (which relate to certain losses attributable to capital allowances);

(c) section 390 (treatment of interest as loss) has effect as if the reference to a trade carried on wholly or partly in the United Kingdom were a reference to the UK property business so far as it is treated as a trade.

(4) If there is a letting of accommodation only part of which is holiday accommodation, such apportionments are to be made for the purposes of this section as are just and reasonable.

(5) Relief is not to be given for the same loss, or the same portion of a loss, both under a provision of Chapter 1 of Part 10 as applied by this section and under any other provision of the Income Tax Acts.]

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Textual Amendments

F3338 S. 504A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 197** (with Sch. 2)

505 Charities: general.

(1) M621 Subject to subsections (2) and (3) below, the following exemptions shall be granted on a claim in that behalf to the Board—

[F3339 (a) exemption from tax under Schedules A and D **[**F3340, or under Parts 2 and 3 of ITTOIA 2005,**]** in respect of any profits or gains arising in respect of rents or other receipts from an estate, interest or right in or over any land (whether situated in the United Kingdom or elsewhere) to the extent that the profits or gains—

(i) arise in respect of rents or receipts from an estate, interest or right vested in any person for charitable purposes; and

(ii) are applied to charitable purposes only;**]**

F3341 (b) . . . . . .

(c) exemption—

(i) F3342 . . . . . .

[F3343 (ii) from tax under Case III of Schedule D **[**F3344 or under Chapter 2, 7, 8 or 10 of Part 4 of ITTOIA 2005 (interest, purchased life annuity payments, profits from deeply discounted securities and distributions from unauthorised unit trusts), section 579 of that Act so far as it relates to annual payments (royalties etc. from intellectual property), Chapter 4 of Part 5 of that Act so far as it relates to annual payments (certain telecommunication rights: non-trading income) or Chapter 7 of Part 5 of that Act (annual payments not otherwise charged)**]**,

(iia) from tax under Case F3345 . . . V of Schedule D in respect of income equivalent to income chargeable under Case III of that Schedule but arising from securities or other possessions outside the United Kingdom,

[F3346 (iiaa) from tax under Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies) or from tax under Chapter 8 of Part 5 of that Act (income not otherwise charged) so far as it applies to relevant foreign distributions,**]**

(iib) from tax under Case V of Schedule D in respect of **[**F3347 such dividends as would, in the case of income tax, be chargeable to tax under Chapter 4 of Part 4 of ITTOIA 2005 or such distributions (other than dividends) as would, in the case of income tax, be chargeable to tax under Chapter 8 of Part 5 of that Act so far as it would apply to what would be a relevant foreign distribution,**]]**

[F3348 (iic) from tax under Case VI of Schedule D in respect of non-trading gains on intangible fixed assets under Schedule 29 to the Finance Act 2002, and**]**

(iii) from tax under **[**F3349 Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.)**]** in respect of any distribution,

where the income in question forms part of the income of a charity, or is, according to rules or regulations established by Act of Parliament, charter,

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decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only;

[F3350(d) exemption from tax under Schedule D **[**F3351or Chapter 2 of Part 4 of ITTOIA 2005 (interest)**]** in respect of public revenue dividends on securities which are in the name of trustees, to the extent that the dividends are applicable and applied only for the repair of—

(i) any cathedral, college, church or chapel, or

(ii) any building used only for the purposes of divine worship;**]**

(e) exemption from tax under Schedule D **[**F3352or Part 2 of ITTOIA 2005 (trading income)**]** in respect of the profits of any trade carried on by a charity **[**F3353(whether in the United Kingdom or elsewhere)**]**, if the profits are applied solely to the purposes of the charity and either—

(i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity; or

(ii) the work in connection with the trade is mainly carried out by beneficiaries of the charity;

[F3354(f) exemption from tax under Schedule D **[**F3355or Part 2 or 5 of ITTOIA 2005 (trading and miscellaneous income)**]** in respect of profits accruing to a charity from a lottery if—

(i) the lottery is promoted and conducted in accordance with section 3 or 5 of the M622Lotteries and Amusements Act 1976 or Article 133 or 135 of the M623Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; and

(ii) the profits are applied solely to the charity's purposes.**]**

[F3356(1AA) In subsection (1)(c)(iiaa) and (iib) "relevant foreign distribution" means any distribution of a company not resident in the United Kingdom which—

(a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but

(b) would be chargeable under Chapter 3 of that Part of that Act if the company were resident in the United Kingdom.**]**

[F3357(1A) In subsection (1)(d) above "public revenue dividends" means—

(a) income from securities which is payable out of the public revenue of the United Kingdom or Northern Ireland;

(b) income from securities issued by or on behalf of a government or a public or local authority in a country outside the United Kingdom.**]**

(2) M624Any payment which—

(a) is received by a charity from another charity; and

(b) is not made for full consideration in money or money's worth; and

(c) is not chargeable to tax apart from this subsection; and

(d) is not, apart from this subsection, of a description which (on a claim) would be eligible for relief from tax by virtue of any provision of subsection (1) above;

shall be chargeable to **[**F3358income tax under Chapter 7 of Part 5 of ITTOIA 2005 (annual payments not otherwise charged) so far as it does not apply to relevant foreign income and shall be chargeable to corporation**]** tax under Case III of Schedule D but shall be eligible for relief from tax under subsection (1)(c) above as if it were an annual payment.

(3) M625If in any chargeable period of a charity—

(a) its relevant income and gains are not less than £10,000; and

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(b) its relevant income and gains exceed the amount of its qualifying expenditure; and

(c) the charity incurs, or is treated as incurring, non-qualifying expenditure;

relief shall not be available under either subsection (1) above or section **[**F3359256 of the 1992 Act**]** for so much of the excess as does not exceed the non-qualifying expenditure incurred in that period.

(4) In relation to a chargeable period of less than 12 months, subsection (3) above shall have effect as if the amount specified in paragraph (a) of that subsection were proportionately reduced.

(5) In subsection (3) above "relevant income and gains" means—

(a) income which apart from subsection (1) above would not be exempt from tax together with any income which is taxable notwithstanding that subsection; and

(b) gains which apart from section **[**F3359256 of the 1992 Act**]** would be chargeable gains together with any gains which are chargeable gains notwithstanding that section.

(6) M626Where by virtue of subsection (3) above there is an amount of a charity's relevant income and gains for which relief under subsection (1) above and section **[**F3359256 of the 1992 Act**]** is not available, the charity may, by notice to the Board, specify which items of its relevant income and gains are, in whole or in part, to be attributed to that amountF3360. . . ; and if within 30 days of being required to do so by the Board, a charity does not give notice under this subsection, the items of its relevant income and gains which are to be attributed to the amount in question shall be such as the Board may determine.

(7) Where it appears to the Board that two or more charities acting in concert are engaged in transactions of which the main purpose or one of the main purposes is the avoidance of tax (whether by the charities or by any other person), the Board may by notice given to the charities provide that, for such chargeable periods as may be specified in the notice, subsection (3) above shall have effect in relation to them with the omission of paragraph (a).

(8) An appeal may be brought against a notice under subsection (7) above as if it were notice of the decision of the Board on a claim made by the charities concerned.

Textual Amendments

F3339 S. 505(1)(a) substituted (with effect in accordance with s. 146(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 146(2)**

F3340 Words in s. 505(1)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(a)** (with Sch. 2)

F3341 *Repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

F3342 S. 505(1)(c)(i) repealed (with effect in accordance with Sch. 7 para. 32, Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), Sch. 7 para. 19(1), **Sch. 41 Pt. 5(2)** (with Sch. 7 paras. 33-35)

F3343 S. 505(1)(c)(ii)-(iib) substituted for s. 505(1)(c)(ii) (with effect in accordance with s. 146(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 146(3)**

F3344 Words in s. 505(1)(c)(ii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(b)** (with Sch. 2)

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F3345 Words in s. 505(1)(c)(iia) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 198(2)(c), **Sch. 3** (with Sch. 2)
F3346 S. 505(1)(c)(iiaa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(d)** (with Sch. 2)
F3347 Words in s. 505(1)(c)(iib) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(e)** (with Sch. 2)
F3348 S. 505(1)(c)(iic) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 3**
F3349 Words in s. 505(1)(c)(iii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(f)** (with Sch. 2)
F3350 S. 505(1)(d) substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 19(2)** (with Sch. 7 paras. 33-35)
F3351 Words in s. 505(1)(d) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(g)** (with Sch. 2)
F3352 Words in s. 505(1)(e) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(h)** (with Sch. 2)
F3353 Words in s. 505(1)(e) inserted (with effect in accordance with s. 146(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 146(4)**
F3354 S. 505(1)(f) inserted (with effect in accordance with s. 138(2) of the amending Act) by Finance Act 1995 (c. 4), **s. 138(1)**
F3355 Words in s. 505(1)(f) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(2)(i)** (with Sch. 2)
F3356 S. 505(1AA) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(3)** (with Sch. 2)
F3357 S. 505(1A) inserted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para 19(3)** (with Sch. 7 paras. 33-35)
F3358 Words in s. 505(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 198(4)** (with Sch. 2)
F3359 Words in s. 505(3)(5)(b)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(31)** (with ss. 60, 101(1), 171(1), 201(3))
F3360 Words in s. 505(6) repealed (with effect in accordance with s. 41(9) of the repealing Act) by Finance Act 2000 (c. 17), s. 41(5), **Sch. 40 Pt. 2(1)**, Note 3

Modifications etc. (not altering text)
C553 S. 505 modified (3.5.1994) by Finance Act 1994 (c. 9), **s. 171**

Marginal Citations
M621 Source—1970 s.360(1)
M622 1976 c. 32.
M623 S.I. 1985/1204 (N.I.11).
M624 Source—1986 s.30(1)
M625 Source—1986 s.31(1), (2), (3)(c), (d)
M626 Source—1986 s.31(7)-(9)

506 Qualifying expenditure and non-qualifying expenditure.

(1) **M627** In this section, section 505 and Schedule 20—

"charity" means any body of persons or trust established for charitable purposes only;

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"qualifying expenditure", in relation to a chargeable period of a charity, means, subject to subsection (3) below, expenditure incurred in that period for charitable purposes only; and

"non-qualifying expenditure" means expenditure which is not qualifying expenditure.

(2) [M628]For the purposes of section 505 and subsection (1) above, where expenditure which is not actually incurred in a particular chargeable period properly falls to be charged against the income of that chargeable period as being referable to commitments (whether or not of a contractual nature) which the charity has entered into before or during that period, it shall be treated as incurred in that period.

(3) A payment made (or to be made) to a body situated outside the United Kingdom shall not be qualifying expenditure by virtue of this section unless the charity concerned has taken such steps as may be reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

(4) [M629]If in any chargeable period a charity—

(a) invests any of its funds in an investment which is not a qualifying investment, as defined in Part I of Schedule 20; or

(b) makes a loan (not being an investment) which is not a qualifying loan, as defined in Part II of that Schedule;

then, subject to subsection (5) below, the amount so invested or lent in that period shall be treated for the purposes of this section as being an amount of expenditure incurred by the charity, and, accordingly, as being non-qualifying expenditure.

(5) If, in any chargeable period, a charity which has in that period made an investment or loan falling within subsection (4) above—

(a) realises the whole or part of that investment; or

(b) is repaid the whole or part of that loan;

any further investment or lending in that period of the sum realised or repaid shall, to the extent that it does not exceed the sum originally invested or lent, be left out of account in determining the amount which, by virtue of subsection (4) above, is treated as non-qualifying expenditure incurred in that period.

(6) If the aggregate of the qualifying and non-qualifying expenditure incurred by a charity in any chargeable period exceeds the relevant income and gains of that period, Part III of Schedule 20 shall have effect to treat, in certain cases, some or all of that excess as non-qualifying expenditure incurred in earlier periods.

Modifications etc. (not altering text)

C554 *Definition employed for purposes of*1990 s.25—*donation to charity by individuals.*1990 s.56*and* Sch.10 para.21—*exemption for convertible securities held by charities.*1990 s.94(1)—*inspection powers* (*definition extended to cover bodies mentioned in* sections 507*and* 508).

Marginal Citations

M627 Source—1970 s.360(3); 1986 s.31(1)(a), (c), Sch.7 1(1)

M628 Source—1986 Sch.7 1(2), (3)

M629 Source—1986 s.31(4)-(6)

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VALID FROM 19/07/2006

[F3361 506A Transactions with substantial donors

(1) This section applies to the following transactions—

(a) the sale or letting of property by a charity to a substantial donor,

(b) the sale or letting of property to a charity by a substantial donor,

(c) the provision of services by a charity to a substantial donor,

(d) the provision of services to a charity by a substantial donor,

(e) an exchange of property between a charity and a substantial donor,

(f) the provision of financial assistance by a charity to a substantial donor,

(g) the provision of financial assistance to a charity by a substantial donor, and

(h) investment by a charity in the business of a substantial donor.

(2) For the purposes of this section a person is a substantial donor to a charity in respect of a chargeable period if—

(a) the charity receives relievable gifts of at least £25,000 from him in a period of 12 months in which the chargeable period wholly or partly falls, or

(b) the charity receives relievable gifts of at least £100,000 from him in a period of six years in which the chargeable period wholly or partly falls;

and if a person is a substantial donor to a charity in respect of a chargeable period by virtue of paragraph (a) or (b), he is a substantial donor to the charity in respect of the following five chargeable periods.

(3) A payment made by a charity to a substantial donor in the course of or for the purposes of a transaction to which this section applies shall be treated for the purposes of section 505 as non-charitable expenditure.

(4) If the terms of a transaction to which this section applies are less beneficial to the charity than terms which might be expected in a transaction at arm's length, the charity shall be treated for the purposes of section 505 as incurring non-charitable expenditure equal to that amount which the Commissioners for Her Majesty's Revenue and Customs determine as the cost to the charity of the difference in terms.

(5) A payment by a charity of remuneration to a substantial donor shall be treated for the purposes of section 505 as non-charitable expenditure unless it is remuneration, for services as a trustee, which is approved by—

(a) the Charity Commission,

(b) another body with responsibility for regulating charities by virtue of legislation having effect in respect of any Part of the United Kingdom, or

(c) a court.**]**

Textual Amendments

F3361 Ss. 506A-506C inserted (with effect in accordance with s. 54(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 54(1)**

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VALID FROM 19/07/2006

[F3361 506B Section 506A: exceptions

(1) Section 506A shall not apply to a transaction within section 506A(1)(b) or (d) if the Commissioners for Her Majesty's Revenue and Customs determine that the transaction—

(a) takes place in the course of a business carried on by the substantial donor,

(b) is on terms which are no less beneficial to the charity than those which might be expected in a transaction at arm's length, and

(c) is not part of an arrangement for the avoidance of any tax.

(2) Section 506A shall not apply to the provision of services to a substantial donor if the Commissioners determine that the services are provided—

(a) in the course of the actual carrying out of a primary purpose of the charity, and

(b) on terms which are no more beneficial to the substantial donor than those on which services are provided to others.

(3) Section 506A shall not apply to the provision of financial assistance to a charity by a substantial donor if the Commissioners determine that the assistance—

(a) is on terms which are no less beneficial to the charity than those which might be expected in a transaction at arm's length, and

(b) is not part of an arrangement for the avoidance of any tax.

(4) Section 506A shall not apply to investment by a charity in the business of a substantial donor where the investment takes the form of the purchase of shares or securities listed on a recognised stock exchange.

(5) A disposal at an undervalue to which section 587B applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).

(6) A disposal at an undervalue to which section 257(2) of the 1992 Act (gifts of chargeable assets) applies shall not be a transaction to which section 506A applies (but may be taken into account in the application of section 506A(2)).

(7) In the application of section 506A payments by a charity, or benefits arising to a substantial donor from a transaction, shall be disregarded in so far as they—

(a) relate to a donation by the donor, and

(b) do not exceed the relevant limit in relation to the donation for the purposes of section 339 or section 25 of the Finance Act 1990.

(8) A company which is wholly owned by a charity within the meaning of section 339(7AB) shall not be treated as a substantial donor in relation to the charity which owns it (or any of the charities which own it).

(9) A registered social landlord or housing association shall not be treated as a substantial donor in relation to a charity with which it is connected; and for that purpose—

(a) "registered social landlord or housing association" means a body entered on a register maintained under—

(i) section 1 of the Housing Act 1996,

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(ii) section 57 of the Housing (Scotland) Act 2001, or

(iii) Article 14 of the Housing (Northern Ireland) Order 1992, and

(b) a body and a charity are connected if (and only if)—

(i) the one is wholly owned, or subject to control, by the other, or

(ii) both are wholly owned, or subject to control, by the same person.**]**

Textual Amendments

F3361 Ss. 506A-506C inserted (with effect in accordance with s. 54(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 54(1)**

VALID FROM 19/07/2006

[F3361 506C Sections 506A and 506B: supplemental

(1) A gift is "relievable" for the purposes of section 506A(2) if relief is available in respect of it under—

(a) section 83A,

(b) section 339,

(c) sections 587B and 587C,

(d) section 25 of the Finance Act 1990 (individual gift aid),

(e) section 257 of the 1992 Act (gifts of chargeable assets),

(f) section 63 of the Capital Allowances Act (gifts of plant and machinery),

(g) sections 713 to 715 of ITEPA 2003 (payroll giving),

(h) section 108 of ITTOIA 2005 (gifts of trading stock), or

(i) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts).

(2) A charity is treated as incurring expenditure in accordance with section 506A(4) at such time (or times) as the Commissioners determine.

(3) Section 506A applies to a transaction entered into in a chargeable period with a person who is a substantial donor in respect of that period, even if it was not until after the transaction was entered into that he first satisfied the definition of "substantial donor" in respect of that period.

(4) Either or both of subsections (3) and (4) of section 506A may be applied to a single transaction; but any amount of non-charitable expenditure which a charity is treated as incurring under section 506A(3) in respect of a transaction shall be deducted from any amount which it would otherwise be treated as incurring under section 506A(4) in respect of the transaction.

(5) Two or more connected charities shall be treated as a single charity for the purposes of section 506A and 506B and this section; and for this purpose "connected" means connected in a matter relating to the structure, administration or control of a charity.

(6) Where remuneration is paid otherwise than in money, section 506A(5) shall apply as to a payment in money of the amount that would, under Part 3 of ITEPA 2003, be the cash equivalent of the remuneration as a benefit.

(7) In sections 506A and 506B and this section—

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(a) a reference to a substantial donor or other person includes a reference to a person connected with him within the meaning of section 839,

(b) "financial assistance" includes, in particular—

(i) the provision of a loan, guarantee or indemnity, and

(ii) entering into alternative finance arrangements within the meaning of section 46 of the Finance Act 2005, and

(c) a reference to a gift of a specified amount includes a reference to a non-monetary gift of that value.

(8) On an appeal against an assessment the Special Commissioners may review a decision of the Commissioners in connection with section 506A.

(9) The Treasury may by regulations vary a sum, or a period of time, specified in section 506A(2).**]**

Textual Amendments

F3361 Ss. 506A-506C inserted (with effect in accordance with s. 54(2)(3) of the amending Act) by Finance Act 2006 (c. 25), **s. 54(1)**

507 The National Heritage Memorial Fund, the Historic Buildings and Monuments Commission for England and the British Museum.

(1) [M630]There shall on a claim in that behalf to the Board be allowed in the case of—

(a) the Trustees of the National Heritage Memorial Fund;

(b) the Historic Buildings and Monuments Commission for England;

[[F3362](c) the Trustees of the British Museum;

(d) the Trustees of the **[**[F3363]Natural History Museum**]**;**]**

[[F3364](e) [F3365]. . . . . .**]**

[[F3366](f) the National Endowment for Science, Technology and the Arts;**]**

such exemption from tax as falls to be allowed under section 505 in the case of a charity the whole income of which is applied to charitable purposes.

[F3367](2) . . . . . .

Textual Amendments

F3362 1989 s.60(1)*in relation to accounting periods ending on or after* 14*March* 1989.

F3363 Words in s. 507(1)(d) substituted (1.9.1992) by Museums and Galleries Act 1992 (c. 44), s. 11(2), **Sch. 8 para. 1(8)**; S.I. 1992/1874, **art. 2**

F3364 S. 507(1)(e) inserted (1.11.1992) by S.I. 1992/2383, reg. 2(2), **Sch. para.11**

F3365 S. 507(1)(e) omitted (19.4.1999) by virtue of The United Kingdom Ecolabelling Board (Abolition) Regulations 1999 (S.I 1999/931), regs. 1, 9

F3366 S. 507(1)(f) inserted (2.7.1998) by National Lottery Act 1998 (c. 22), **s. 24(1)**, 27(4)(b)

F3367 *Repealed by* 1989 ss.60(1)*and* 187*and* Sch.17 Part IV*in relation to accounting periods ending on or after* 14*March* 1989.

Modifications etc. (not altering text)

C555 *See* 1989 s.59—*these bodies treated as established for charitable purposes for purposes of* s.59 (*covenanted subscriptions*).1990 s.25—*donations to charity by individuals.*

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Marginal Citations

M630 Source—1980 s.118(1); 1983 s.46(1)

508 Scientific research organisations.

(1) [M631]Where—

[F3368](a) an Association has as its object the undertaking of research and development which may lead to or facilitate an extension of any class or classes of trade; and]

(b) the memorandum of association or other similar instrument regulating the functions of the Association precludes the direct or indirect payment or transfer to any of its members of any of its income or property by way of dividend, gift, division, bonus or otherwise howsoever by way of profit;

there shall, on a claim in that behalf to the Board [F3369in relation to any accounting period, be allowed in the case of the Association for that accounting period] such exemption from tax as falls to be allowed under section 505 in the case of a charity the whole income of which is applied to charitable purposes.

[F3370(1A) The Treasury may by regulations prescribe circumstances in which the conditions in subsection (1) above shall be deemed not to be complied with.

(1B) The Treasury may by regulations make provision specifying for the purposes of paragraph (a) of that subsection—

(a) what shall be deemed to be, or not to be, an Association,

(b) circumstances in which an Association shall be deemed to have, or not to have, the undertaking of research and development as its object,

(c) circumstances in which the undertaking of research and development shall be deemed to be, or not to be, capable of leading to or facilitating an extension of a class of trade, or

(d) what shall be deemed to be, or not to be, a class of trade.]

(2) The condition specified in paragraph (b) of subsection (1) above shall not be deemed not to be complied with in the case of any Association by reason only that the memorandum or other similar instrument regulating its functions does not prevent the payment to its members of reasonable remuneration for goods, labour or power supplied, or for services rendered, of reasonable interest for money lent, or of reasonable rent for any premises.

[F3371(3) Section 837A (meaning of "research and development") applies for the purposes of subsection (1)(a) above.

(4) Regulations under subsection (3) of that section (power to prescribe activities which are, or are not, research and development) may make provision for the purposes of that section as it applies by virtue of subsection (3) of this section which is additional to, or different from, the provision made otherwise for the purposes of that section.]

Textual Amendments

F3368 S. 508(1)(a) substituted (with effect in accordance with s. 13(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 13(2)**

F3369 Words in s. 508(1) substituted (with effect in accordance with s. 13(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 13(3)**

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F3370 S. 508(1A)(1B) inserted (with effect in accordance with s. 13(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 13(4)**

F3371 S. 508(3)(4) substituted for s. 508(3) (with effect in accordance with s. 13(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 13(5)**

Marginal Citations

M631 Source—1970 s.362

[F3372 508A Investment trusts investing in housing.

(1) Where any company that is an investment trust has eligible rental income for any accounting period—

(a) the rate of corporation tax chargeable for any financial year on the trust's housing investment profits for that period shall be deemed to be the small companies' rate for that year; and

(b) its housing investment profits for that period shall be treated for the purposes of section 13 as excluded from its basic profits for that period.

(2) For the purposes of this section—

(a) a company's eligible rental income for any period is so much of its income for that period as consists in rents or other receipts deriving from lettings by the company of eligible properties; and

(b) its housing investment profits for any period are so much of its profits for that period as represents the amount chargeable to tax under Schedule A in respect of its eligible rental income for that period.

(3) In computing the amount mentioned in subsection (2)(b) above for any period, deductions shall be made which (except in so far as they exceed the amount from which they are deducted) are, in aggregate, not less than the sum of the following amounts—

(a) every amount which is both—

(i) deductible (otherwise than as a debit brought into account under Chapter II of Part IV of the Finance Act 1996) in the computation of any income of the company, or of its total profits, for that period, and

(ii) referable to, or to activities connected with, the letting by the company on assured tenancies of dwelling-houses that are eligible properties when so let,

and

(b) any amount that is so referable that would represent a non-trading deficit on the company's loan relationships for that period.

(4) For the purposes of subsection (3) above any question—

(a) whether for any period there is an amount referable to any matter that would represent a non-trading deficit on a company's loan relationships, or

(b) as to what that amount is for that period,

shall be determined by computing whether and to what extent there would for that period have been a non-trading deficit on the company's loan relationships if debits and credits fell to be brought into account under Chapter II of Part IV of the Finance Act 1996 to the extent only that they are referable to that matter.]

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Textual Amendments

F3372 Ss. 508A, 508B inserted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 1**

[F3372 508B Interpretation of section 508A.

(1) In section 508A "eligible property", in relation to a company, means (subject to the following provisions of this section) any dwelling-house as respects which the following conditions are satisfied—

(a) the company first acquired an interest in the dwelling-house on or after 1st April 1996;

(b) that interest was not, at the time when it was acquired, subject to any letting or to any statutory tenancy;

(c) at that time no arrangements had been made by the company or any person connected with it for the letting of the dwelling-house;

(d) the interest of the company in the dwelling-house is a freehold interest or an interest under a long lease at a low rent;

(e) the consideration given by the company for the acquisition of its interest in the dwelling-house did not exceed—

(i) £125,000, in the case of a dwelling-house in Greater London, or

(ii) £85,000, in any other case;

(f) the dwelling-house is let by the company under an assured tenancy and is neither—

(i) let by the company in consideration of a premium within the meaning of Schedule 8 to the 1992 Act, nor

(ii) a dwelling-house in respect of which the person to whom it is let or any associate of his has been granted any option to purchase.

(2) For the purposes of paragraph (b) of subsection (1) above, no account shall be taken of any shorthold tenancy or statutory shorthold tenancy to which the interest became subject before the time when it was acquired.

(3) For the purposes of paragraph (c) of subsection (1) above, no account shall be taken of any arrangements made by a person connected with the company in question before the time when the interest was acquired by the company if—

(a) that person had an interest in the dwelling-house when he made those arrangements;

(b) that person did not dispose of his interest at any time after the arrangements were entered into and before the company acquired its interest; and

(c) the arrangements were such as to confer a relevant entitlement on a person who, at the time when the company acquired its interest, was a tenant under any shorthold tenancy of the dwelling-house (or any part of it).

(4) For the purposes of subsection (3)(c) above a relevant entitlement is an entitlement of a tenant under a shorthold tenancy of any premises, on the coming to an end of that tenancy, to such a further tenancy of the same or substantially the same premises as will itself be a shorthold tenancy.

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(5) For the purposes of this section the consideration given by a company for the acquisition of an interest in a dwelling-house shall be taken (subject to subsection (6) below) to include—

(a) any amount expended by the company on the construction or renovation of the dwelling-house or on any conversion by virtue of which that dwelling-house came to be usable as such;

(b) any amount so expended by a person connected with the company; and

(c) any consideration given by a person connected with the company for the acquisition of any such interest in the dwelling-house as—

(i) is subsequently acquired by the company, or

(ii) is held by such a person at the same time as the company holds its interest in the premises.

(6) Where a company has acquired any interest in a dwelling house from a person connected with that company—

(a) amounts expended by that person as mentioned in paragraph (a) of subsection (5) above, and

(b) the amount of any consideration given by that person for an interest in the dwelling-house,

shall be treated by virtue of that subsection as included in the consideration given by the company to the extent only that the aggregate of those amounts exceeds the consideration given by that company to that person for the interest acquired from that person by the company.

(7) In section 508A and this section—

"associate" has the meaning given by subsections (3) and (4) of section 417;

"assured tenancy" means—

(a) any letting which is an assured tenancy for the purposes of the [M632]Housing Act 1988 or the [M633]Housing (Scotland) Act 1988, or

(b) any tenancy in Northern Ireland which complies with such requirements or conditions as may be prescribed by regulations made by the Department of the Environment for Northern Ireland;

"letting" includes a letting by virtue of an agreement for a lease or under a licence, and "let" shall be construed accordingly;

"long lease", in relation to the interest of a company in any dwelling-house, means a lease for a term of years certain of which at least 21 years remains unexpired at the time when that interest was acquired by the company;

"low rent" means a rent at an annual rate not exceeding—

(a) £1,000, in the case of a dwelling-house in Greater London; and

(b) £250, in any other case;

"rent" has the same meaning as it has for the purposes of Schedule A in its application to companies within the charge to corporation tax;

"shorthold tenancy" means any letting which is an assured shorthold tenancy for the purposes of the [M634]Housing Act 1988 or a short assured tenancy for the purposes of the [M635]Housing (Scotland) Act 1988;

"statutory shorthold tenancy" means—

(a) a statutory periodic tenancy within the meaning of the Housing Act 1988 which arose on the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, or

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(b) a statutory assured tenancy within the meaning of the Housing (Scotland) Act 1988 which arose on the coming to an end of a short assured tenancy;

"statutory tenancy"—

(a) in relation to England and Wales, has the same meaning as in the [M636]Rent Act 1977;

(b) in relation to Scotland, has the same meaning as in the [M637]Rent (Scotland) Act 1984; and

(c) in relation to Northern Ireland, has the same meaning as in the [M638]Rent (Northern Ireland) Order 1978.

(8) Section 839 shall apply for the purposes of this section.

(9) Section 508A shall have effect where—

(a) a company acquires an interest in any dwelling-house, and

(b) a person connected with the company has previously acquired an interest in the dwelling-house, being an interest subsequently acquired by the company or one held by that person at the same time as the company holds its interest,

as if references in this section (except in subsection (3) above) to the time when the company first acquired an interest in the premises included references to the time when the person connected with the company first acquired his interest.

(10) The Treasury may, if they think fit, by order vary the figures for the time being specified in paragraph (e) of subsection (1) above; and an order under this subsection may make different provision for different localities in Greater London or elsewhere.

(11) In the application of this section to Scotland—

(a) references to acquiring an interest shall be construed, if there is a contract to acquire the interest, as references to entering into that contract;

(b) references to the freehold interest shall be construed as references to the estate or interest of the proprietor of the*dominium utile* or, in the case of property other than feudal property, of the owner;

(c) in the definition of "long lease" in subsection (7) above, the word "certain" shall be omitted.

(12) Regulations made for the purposes of paragraph (b) of the definition of "assured tenancy" in subsection (7) above shall be made by statutory rule for the purposes of the [M639]Statutory Rules (Northern Ireland) Order 1979, and shall be subject to negative resolution within the meaning of section 41(6) of the [M640]Interpretation Act (Northern Ireland) 1954.**]**

Textual Amendments

F3372 Ss. 508A, 508B inserted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 1**

Marginal Citations

M632 1988 c. 50.
M633 1988 c. 43.
M634 1988 c. 50.
M635 1988 c. 43.
M636 1977 c. 42.

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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M637 1984 c. 58.
M638 S.I. 1978/1050 (N.I. 20).
M639 S.I. 1979/1573 (N.I. 12).
M640 1954 c. 33 (N.I.).

509 Reserves of marketing boards and certain other statutory bodies.

(1) [M641]Where a body established by or under any enactment and having as its object, or one of its objects, the marketing of an agricultural product or the stabilising of the price of an agricultural product is required, by or under any scheme or arrangements approved by or made with a Minister of the Crown or government department, to pay the whole or part of any surplus derived from its trading operations or other trade receipts into a reserve fund satisfying the conditions specified in subsection (2) below, then, in computing for the purposes of tax the **[**[F3373]profits**]** or losses of the body's trade—

(a) there shall be allowed as deductions any sums so required to be paid by the body into the reserve fund out of the **[**[F3373]profits**]** of the trade, and

(b) there shall be taken into account as trading receipts any sums withdrawn by the body from the fund, except so far as they are so required to be paid to a Minister or government department, or are distributed to producers of the product in question or refunded to persons paying any levy or duty.

(2) The conditions to be satisfied by the reserve fund are as follows—

(a) that no sum may be withdrawn from the fund without the authority or consent of a Minister of the Crown or government department; and

(b) that where money has been paid to the body by a Minister of the Crown or government department in connection with arrangements for maintaining guaranteed prices, or in connection with the body's trading operations, and is repayable to that Minister or department, sums afterwards standing to the credit of the fund are required as mentioned in subsection (1) above to be applied in whole or in part in repaying the money; and

(c) that the fund is reviewed by a Minister of the Crown at intervals fixed by or under the scheme or arrangements in question, and any amount by which it appears to the Minister to exceed the reasonable requirements of the body is withdrawn therefrom.

(3) In this section references to a Minister of the Crown or government department include references to a Head of a Department or a Department in Northern Ireland, and references to producers of a product include references to producers of one type or quality of a product from another.

Textual Amendments
F3373 Words in s. 509(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

Modifications etc. (not altering text)
C556 S. 509(1) extended (with modifications) (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 23**

Marginal Citations
M641 Source—1970 s.348; 1971 s.28(1)

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510 Agricultural societies.

(1) [M642]Profits or gains arising to an agricultural society from any exhibition or show held for the purposes of the society shall be exempt from tax if applied solely to the purposes of the society.

(2) In this section "agricultural society" means any society or institution established for the purpose of promoting the interests of agriculture, horticulture, livestock breeding or forestry.

Marginal Citations
M642 Source—1970 s.361

[F3374510A European economic interest groupings.

(1) [M643]In this section "grouping" means a European Economic Interest Grouping formed in pursuance of Council Regulation (EEC) No. 2137/85 of 25th July 1985, whether registered in Great Britain, in Northern Ireland, or elsewhere.

(2) Subject to the following provisions of this section, for the purposes of charging tax in respect of income and gains a grouping shall be regarded as acting as the agent of its members.

(3) In accordance with subsection (2) above—

(a) for the purposes mentioned in that subsection the activities of the grouping shall be regarded as those of its members acting jointly and each member shall be regarded as having a share of its property, rights and liabilities; and

(b) for the purposes of charging tax in respect of **[**[F3375]chargeable gains**]** a person shall be regarded as acquiring or disposing of a share of the assets of the grouping not only where there is an acquisition or disposal of assets by the grouping while he is a member of it, but also where he becomes or ceases to be a member of a grouping or there is a change in his share of the property of the grouping **[**[F3376];

but paragraph (a) above is subject to subsection (6A) below.**]**

(4) Subject to subsection (5) below, for the purposes of this section a member's share of any property, rights or liabilities of a grouping shall be determined in accordance with the contract under which the grouping is established.

(5) Where the contract does not make provision as to the shares of members in the property, rights or liabilities in question a member's share shall be determined by reference to the share of the profits of the grouping to which he is entitled under the contract (and if the contract makes no provision as to that, the members shall be regarded as having equal shares).

(6) [F3377]. . . Where any trade or profession is carried on by a grouping it shall be regarded for the purposes of charging tax in respect of income and gains as carried on in partnership by the members of the grouping.

[[F3378](6A) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) shall have effect in relation to a grouping as it has effect in relation to a partnership (see in particular section 87A of, and paragraphs 19 and 20 of Schedule 9 to, that Act).**]**

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(7) F3379. . . . . .

(8) F3379. . . . . .]

Textual Amendments

F3374 S. 510A inserted (retrospective to 1.7.1989) by Finance Act 1990 (c. 29), Sch. 11 paras. 1, **5**

F3375 Words in s. 510A(3)(b) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 49(2)**

F3376 Words in s. 510A(3) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 49(3)**

F3377 Words in s. 510A(6) repealed (with effect in accordance with Sch. 29 Pt. 8(16) Note 3 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(16)**

F3378 S. 510A(6A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 49(4)**

F3379 S. 510A(7)(8) repealed (with effect in accordance with Sch. 29 Pt. 8(16) Note 3 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(16)**

Marginal Citations

M643 Source—O.J. No. L199/1.

511 The Electricity Council and Boards, the Northern Ireland Electricity Service and the Gas Council.

(1) F3380. . . . . .

(2) F3380. . . . . .

(3) F3380. . . . . .

F3381(4). . . . . .

F3381(5). . . . . .

(6) F3380. . . . . .

(7) M644The Corporation Tax Acts shall apply in relation to the trade of the Gas Council as if before the beginning of April 1962 it had consisted of the trades of the Area Boards (within the meaning of the M645Gas Act 1948), and (without prejudice to the generality of the foregoing) allowances and balancing charges shall be made to or on the Gas Council accordingly by reference to the capital expenditure of Area Boards and to the allowances made to Area Boards in respect of that expenditure.

Textual Amendments

F3380 S. 511(1)-(3)(6) repealed (9.11.2001) by Electricity Act 1989 (c. 29), s. 113(2), **Sch. 18**; S.I. 2001/3419, **art. 2**

F3381 S. 511(4)(5) repealed (1.4.1992) by S.I. 1992/231 (N.I. 1), art. 95(4), **Sch.14**; S.R. 1992/117, **art. 3(1)**

Modifications etc. (not altering text)

C557 *See* ss.89*and* 90*and* Sch.11 Electricity Act 1989*in connection with electricity industry privatisation; and see* s.112*and* Sch.18 Electricity Act 1989*for changes to* s.511*from a day to be appointed.*

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Marginal Citations

M644 Source—1970 s.350(3)

M645 1948 c. 67.

512 Atomic Energy Authority and National Radiological Protection Board.

F3382 . . . . . .

Textual Amendments

F3382 S. 512 repealed (with effect in accordance with s. 46(4)(c)-(e) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), s. 46(2)(c)(d), **Sch. 11 Pt. 2(12)**, Note (with s. 46(7)); and s. 512(2) repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

513 British Airways Board and National Freight Corporation.

(1) M646Subject to subsection (2) below, the successor company in which the property, rights, liabilities and obligations of the British Airways Board are vested by the M647Civil Aviation Act 1980 shall be treated for all purposes of corporation tax as if it were the same person as the British Airways Board; and the successor company to which the undertaking of the National Freight Corporation is transferred by the M648Transport Act 1980 shall be treated for those purposes as if it were the same person as the National Freight Corporation.

(2) M649The transfer by the Civil Aviation Act 1980 from the British Airways Board to the successor company of liability for any loan made to the Board shall not affect any direction in respect of the loan which has been given by the Treasury under section 581.

(3) A successor company shall not by virtue of subsection (1) above be regarded as a body falling within section **[**F3383170(12) of the 1992 Act**]**.

Textual Amendments

F3383 Words in s. 513(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(32)** (with ss. 60, 101(1), 171(1), 201(3))

Marginal Citations

M646 Source—1973 s.36(1)

M647 1980 c.60.

M648 1980 c.34.

M649 Source—1980 s.119(1)-(3)

514 Funds for reducing the National Debt.

F3384 . . . . . .

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Textual Amendments

F3384 S. 514 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 200, **Sch. 3** (with Sch. 2)

515 Signatories to Operating Agreement for INMARSAT.

(1) M650 An overseas signatory to the Operating Agreement made pursuant to the Convention on the International Maritime Satellite Organisation which came into force on 16th July 1979 shall be exempt from income tax and corporation tax in respect of any payment received by that signatory from the Organisation in accordance with that Agreement.

(2) In this section "an overseas signatory" means a signatory other than one designated for the purposes of the Agreement by the United Kingdom in accordance with the Convention.

Marginal Citations

M650 Source—1980 s.63

516 Government securities held by non-resident central banks.

(1) M651 Tax shall not be chargeable on **[**F3385 income from securities which is payable out of the public revenue of the United Kingdom and which is**]** income of any bank or issue department of a bank to which this subsection for the time being applies.

(2) Subsection (1) above shall not prevent any **[**F3386 such income**]** being taken into account in computing profits or gains or losses of a business carried on in the United Kingdom.

(3) A bank or issue department of a bank to which this subsection for the time being applies shall be exempt from tax in respect of chargeable gains accruing to it.

(4) Her Majesty may by Order in Council direct that subsection (1) or (3), or both, shall apply to any bank, or to its issue department, if it appears to Her Majesty that the bank is not resident in the United Kingdom and is entrusted by the government of a territory outside the United Kingdom with the custody of the principal foreign exchange reserves of that territory.

(5) No recommendation shall be made to Her Majesty in Council to make an order under this section unless a draft of the order has been laid before the House of Commons and has been approved by resolution of that House.

Textual Amendments

F3385 Words in s. 516(1) substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 21(1)**

F3386 Words in s. 516(2) substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 21(2)**

Modifications etc. (not altering text)

C558 *For Orders in Council see* Part III Vol.5.

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Marginal Citations
M651 Source—1970 s.370

517 Issue departments of the Reserve Bank of India and the State Bank of Pakistan.

M652There shall be exempt from tax any profits or income arising or accruing to the issue department of the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or to the issue department of the State Bank of Pakistan constituted under certain orders made under section 9 of the M653Indian Independence Act 1947.

Marginal Citations
M652 Source—1970 s.371
M653 1947 c. 30.

518 Harbour reorganisation schemes.

(1) M654This section has effect where the trade of any body corporate other than a limited liability company is transferred to a harbour authority by or under a certified harbour reorganisation scheme which provides also for the dissolution of the transferor.

(2) For the purposes of the Corporation Tax Acts, the trade shall not be treated as permanently discontinued, nor shall a new trade be treated as set up and commenced.

(3) The transferee shall be entitled to relief from corporation tax under section 393(1), as for a loss sustained by it in carrying on the transferred trade or any trade of which it comes to form part, for any amount which, if the transferor had continued to carry it on, would have been available to the transferor for carry-forward against chargeable profits of succeeding accounting periods, but subject to any claim made by the transferor under section **[**F3387393A(1)**]**.

(4) There shall be made to or on the transferee in accordance with **[**F3388the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]** all such allowances and charges as would, if the transferor had continued to carry on the trade, have fallen to be made to or on it under those Acts and the amount of any such allowance or charge shall be computed as if the transferee had been carrying on the trade since the transferor had begun to do so and as if everything done to or by the transferor had been done to or by the transferee.

(5) No sale or transfer which on the transfer of the trade is made by the transferor to the transferee of any assets in use for the purposes of the trade shall be treated as giving rise to any such allowance or charge as is mentioned in subsection (4) above.

F3389(6) . . . . . .

(7) The transferee shall be entitled to relief from corporation tax in respect of chargeable gains for any amount for which the transferor would have been entitled to claim relief in respect of allowable losses if it had continued to carry on the trade.

(8) M655Where part only of such trade is transferred to a harbour authority by or under a certified harbour organisation scheme, and the transferor continues to carry on the remainder of the trade, or any such trade is, by or under a certified harbour

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reorganisation scheme which provides also for the dissolution of the transferor, transferred in parts to two or more harbour authorities, this section shall apply as if the transferred part, or each of the transferred parts, had at all times been a separate trade.

(9) Where a part of any trade is to be treated by virtue of subsection (8) above as having been a separate trade over any period there shall be made any necessary adjustments of accounting periods, and such apportionments as may be just of receipts, expenses, allowances or charges.

Subsection (10) of section 343 shall apply to any apportionment under this subsection as it applies to an apportionment under subsection (9) of that section.

(10) [M656]In this section—

"harbour authority" has the same meaning as in the [M657]Harbours Act 1964;

"harbour reorganisation scheme" means any statutory provision providing for the management by a harbour authority of any harbour or group of harbours in the United Kingdom, and "certified", in relation to any harbour reorganisation scheme, means certified by a Minister of the Crown or government department as so providing with a view to securing, in the public interest, the efficient and economical development of the harbour or harbours in question;

"limited liability company" means a company having a limit on the liability of its members;

"statutory provision" means any enactment, or any scheme, order or other instrument having effect under an enactment, and includes an enactment confirming a provisional order; and

"transferor", in relation to a trade, means the body from whom the trade is transferred, whether or not the transfer is effected by that body.

Textual Amendments

F3387 Words in s. 518(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 19(1)**

F3388 Words in s. 518(4) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 43**

F3389 S. 518(6) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 19(2), **Sch. 19 Pt. V**, Note 4

Marginal Citations

M654 Source—1970 s.352(1)-(6); 1971 Sch.8 16; 1986 s.56(7)(a), Sch.13 2(5)(a)

M655 Source—1970 s.352(8), (9)

M656 Source—1970 s.352(11)

M657 1964 c. 40.

519 Local authorities.

(1) [M658]A local authority in the United Kingdom—

(a) shall be exempt from all charge to income tax in respect of its income;

(b) shall be exempt from corporation tax;

and so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.

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(2) Subsection (1) above shall apply to a local authority association as it applies to a local authority.

(3) In this Act "local authority association" means any incorporated or unincorporated association—

(a) of which all the constituent members are local authorities, groups of local authorities or local authority associations, and

(b) which has for its object or primary object the protection and furtherance of the interests in general of local authorities or any description of local authorities;

and for this purpose, if a member of an association is a representative of or appointed by any authority, group of authorities or association, that authority, group or association (and not he) shall be treated as a constituent member of the association.

F3390(4) . . . . . .

Textual Amendments

F3390 Subs.(4) *repealed by* 1990 s.127 *and* Sch.18 para.5(2) *and* 132 *and* Sch.19 Part IV *on and after* 1 *April* 1990.

Modifications etc. (not altering text)

C559 S. 519 extended (12.1.2000) by Greater London Authority Act 1999 (c. 29), **ss. 419(1)(2)(a)**, 425(2) (with s. 157(4)); S.I. 1999/3434, **art. 2**

C560 Definition applied for purposes of—1979(C) s.149B(3)—*miscellaneous exemptions.*1988 s.832(1) —*interpretation of Tax Acts.*

Marginal Citations

M658 Source—1970 s.353(1), (4)

[F3391519A Health service bodies.

(1) A health service body—

(a) shall be exempt from income tax in respect of its income, and

(b) shall be exempt from corporation tax,

and, so far as the exemption from income tax conferred by this subsection calls for repayment of tax, effect shall be given thereto by means of a claim.

(2) In this section "health service body" means—

[F3392(a) a **[**F3393Strategic Health Authority or a**]** Health Authority established under section 8 of the National Health Service Act 1977;

(aa) a Special Health Authority established under section 11 of that Act;**]**

[F3394(ab) a Primary Care Trust;**]**

[F3395(aba) a Local Health Board;**]**

(b) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990;

[F3396(bb) an NHS foundation trust**]**

(c) F3397 . . . . . .

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(d) a Health Board or Special Health Board, the Common Services Agency for the Scottish Health Service and a National Health Service trust respectively constituted under sections 2, 10 and 12A of the National Health Service (Scotland) Act 1978;

(e) F3398 . . . . . .

(f) the Dental Practice Board;

(g) the Scottish Dental Practice Board; F3399 . . .

(h) F3400 . . . . . .

[F3401(i) a Health and Social Services Board and the Northern Ireland Central Services Agency for the Health and Social Services established under Articles 16 and 26 respectively of the Health and Personal Social Services (Northern Ireland) Order 1972;

(j) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990; and

(k) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991.**]**

[F3402(3) The Treasury may by order disapply subsection (1)(b) in relation to a specified activity, or class of activity, of an NHS foundation trust.

(4) An order under subsection (3) shall make provision for determining the amount of the profits relating to an activity that are to be charged to corporation tax as a result of the disapplication of subsection (1)(b).

(5) An order under subsection (3) may, in particular—

(a) make provision for disregarding profits of less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period;

(b) make provision for disregarding a specified part of profits in respect of a financial year or accounting period or a specified part of a financial year or accounting period;

(c) make provision for disregarding all or part of profits relating to activity in respect of which receipts or turnover (as defined by the order) are less than a specified amount in respect of a financial year or accounting period or a specified part of a financial year or accounting period.

(6) An order under subsection (3)—

(a) may apply, with or without modification, a provision of the Tax Acts,

(b) may disapply a provision of the Tax Acts,

(c) may make provision similar to a provision of the Tax Acts, and

(d) may make provision generally or in relation to a specified body or class of bodies.

(7) The Treasury may make an order under subsection (3) only—

(a) in relation to an activity or class of activity that appears to the Treasury to be of a commercial nature,

(b) where it appears to the Treasury to be expedient for the purpose of avoiding, removing or reducing differences between—

(i) the fiscal treatment of the body undertaking the activity, and

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(ii) the fiscal treatment of another body or class of body which is of a commercial nature and which undertakes or might undertake the same or a similar activity, and

(c) if a draft has been laid before, and approved by resolution of, the House of Commons.

(8) An activity authorised under section 14(1) of the Health and Social Care (Community Health and Standards) Act 2003 shall not be treated as an activity of a commercial nature for the purposes of subsection (7)(a).**]]**

Textual Amendments

F3391 S. 519A inserted (17.9.1990) by National Health Service and Community Care Act 1990 (c. 19), **ss. 61(1)**, 67(2); S.I. 1990/1329, art. 2(5)(a), **Sch. 2**

F3392 S. 519A(2)(a)(aa) substituted for s. 519A(2)(a) (1.4.1996) by Health Authorities Act 1995 (c. 17), s. 2(3), **Sch. 1 para. 114(a)** (with Sch. 2)

F3393 Words in s. 519A(2)(a) inserted (1.10.2002) by The National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002 (S.I. 2002/2469), reg. 1, **Sch. 1 para. 14**

F3394 S. 519A(2)(ab) inserted (1.4.2000 for E.W. and 11.5.2001 otherwise) by Health Act 1999 (c. 8), s. 67(1), **Sch. 4 para. 73**; S.I. 1999/2342, **art. 2(4)(b)(i)**; S.I. 2001/1985, **art. 2(4)**

F3395 S. 519A(2)(aba) inserted (10.10.2002 for W., otherwise prosp.) by National Health Service Reform and Health Care Professions Act 2002 (c. 17), s. 42(3), **Sch. 5 para. 27**; S.I. 2005/2352, art. 2, **Sch.**

F3396 S. 519A(2)(bb) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), **ss. 33(1)**, 199(1); S.I. 2004/759, **art. 2**

F3397 S. 519A(2)(c) repealed (1.4.1996) by Health Authorities Act 1995 (c. 17), s. 2(3), Sch. 1 para. 114(b), **Sch. 3** (with Sch. 2)

F3398 S. 519A(2)(e) repealed (S.) (27.9.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), art. 1, **Sch. 2**; and s. 519A(2)(e) repealed (E.W.N.I.) (5.10.2005) by The Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078), art. 1(1), **Sch. 3**

F3399 Word in s. 519A(2)(g) repealed by S.I. 1991/195, **art. 6**

F3400 S. 519A(2)(h) repealed (1.4.2005) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 190(2), 199(1), Sch. 13 para. 5, **Sch. 14 Pt. 7**; S.I. 2005/457, **art. 2(1)(a)(b)**

F3401 S. 519A(2)(i) (j) (k) added by S.I. 1991/195, **art. 6**

F3402 S. 519A(3)-(8) added (22.7.2004) by Finance Act 2004 (c. 12), **s. 148**

PART XIII

MISCELLANEOUS SPECIAL PROVISIONS

CHAPTER I

INTELLECTUAL PROPERTY

Modifications etc. (not altering text)

C561 Pt. 13 Ch. 1 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 20**

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Patents and know-how

520 Allowances for expenditure on purchase of patent rights: post-31st March 1986 expenditure.

F3403 . . . . . .

Textual Amendments

F3403 Ss. 520-523 repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 44, **Sch. 4**

521 Provisions supplementary to section 520.

F3404 . . . . . .

Textual Amendments

F3404 Ss. 520-523 repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 44, **Sch. 4**

522 Allowances for expenditure on purchase of patent rights: pre-1st April 1986 expenditure.

F3405 . . . . . .

Textual Amendments

F3405 Ss. 520-523 repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 44, **Sch. 4**

523 Lapses of patent rights, sales etc.

F3406 . . . . . .

Textual Amendments

F3406 Ss. 520-523 repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 44, **Sch. 4**

524 Taxation of receipts from sale of patent rights.

(1) M659 Subject to subsection (2) below, where a **[**F3407 company**]** resident in the United Kingdom sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, **[**F3407 the company**]** shall, subject to the provisions of this Chapter, be charged to **[**F3408 corporation tax**]** under Case VI of Schedule D, for the **[**F3409 accounting**]** period in which the sum is received by **[**F3407 it**]** and successive **[**F3409 accounting**]** periods, being charged in each period on the same

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fraction of the sum as the period is of six years (or such less fraction as has not already been charged).

(2) If the **[**F3410company**]** by notice served on **[**F3411an officer of the Board within the period specified in subsection (2A) below**]**, elects that the whole of the sum shall be charged to **[**F3412corporation**]** tax for **[**F3413the **[**F3414accounting**]** period in which it was received**]**, it shall be charged to **[**F3412corporation**]** tax accordingly.

[F3415(2A) The period mentioned in subsection (2) above is—

(a) F3416. . . . . .

(b) F3417. . . the period of two years beginning at the end of the accounting period in which the sum was received.**]**

(3) **[**F3418M660Where a relevant non-resident company**]** sells all or any part of any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a United Kingdom patent, then, subject to the provisions of this Chapter—

(a) **[**F3419the company shall be chargeable to corporation tax**]** in respect of that sum under Case VI of Schedule D; and

(b) section 349(1) shall apply to that sum as if it was an annual sum payable otherwise than out of profits or gains charged to income tax; and

(c) all other provisions of the Tax Acts shall, save as therein otherwise provided, have effect accordingly.

(4) F3420. . . . . .

[F3421(5) In subsection (3) above "relevant non-resident company" means a company not resident in the United Kingdom which would be within the charge to corporation tax in respect of any proceeds of the sale of the patent rights not consisting of a capital sum.**]**

(6) Where subsection (3) applies to charge a company to corporation tax in respect of a sum paid to it, F3422. . . the company may, by notice given to the Board not later than two years after the end of the accounting period in which the sum is paid, elect that the sum shall be treated as arising rateably in the accounting periods ending not later than six years from the beginning of that in which the sum is paid (being accounting periods during which the company remains within the charge to corporation tax in respect of any proceeds of the sale not consisting of a capital sum), and there shall be made all such repayments of tax and assessments to tax as are necessary to give effect to any such election.

(7) M661Subject to subsections (8) and (9) below, where the **[**F3423company**]** selling all or any part of any patent rights ("the seller") acquired the rights sold, or the rights out of which they were granted, by purchase and the price paid by **[**F3424it**]** consisted wholly or partly of a capital sum, the preceding provisions of this section shall apply as if any capital sum received by **[**F3424it**]** when **[**F3425it**]** sells the rights were reduced by the amount of that sum.

(8) Where between the purchase and the sale the seller has sold part of the rights acquired by **[**F3426it**]** and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under subsection (7) above in respect of the subsequent sale shall be itself reduced by the amount of that sum.

(9) Nothing in subsections (7) and (8) above shall affect the amount of income tax which is to be deducted and assessed under section 349(1) and (3) by virtue of subsection (3) above, and, where any sum is deducted under section 349(1), any adjustment necessary

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to give effect to the provisions of this subsection shall be made by way of repayment of tax.

(10) [M662]A claim for relief under this section shall be made to the Board.

Textual Amendments

F3407 Words in s. 524(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(2)(a)** (with Sch. 2)

F3408 Words in s. 524(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(2)(b)** (with Sch. 2)

F3409 Words in s. 524(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(2)(c)** (with Sch. 2)

F3410 Word in s. 524(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(3)(a)** (with Sch. 2)

F3411 Words in s. 524(2) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 15(2)(a)**

F3412 Words in s. 524(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(3)(b)** (with Sch. 2)

F3413 Words in s. 524(2) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 15(2)(b)**

F3414 Word in s. 524(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(3)(c)** (with Sch. 2)

F3415 S. 524(2A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 15(3)**

F3416 S. 524(2A)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 201(4)(a), **Sch. 3** (with Sch. 2)

F3417 Words in s. 524(2A)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 201(4)(b), **Sch. 3** (with Sch. 2)

F3418 Words in s. 524(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(5)(a)** (with Sch. 2)

F3419 Words in s. 524(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(5)(b)** (with Sch. 2)

F3420 S. 524(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 201(6), **Sch. 3** (with Sch. 2)

F3421 S. 524(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(7)** (with Sch. 2)

F3422 Words in s. 524(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 201(8), **Sch. 3** (with Sch. 2)

F3423 Word in s. 524(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(9)(a)** (with Sch. 2)

F3424 Words in s. 524(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(9)(b)** (with Sch. 2)

F3425 Word in s. 524(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(9)(c)** (with Sch. 2)

F3426 Word in s. 524(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 201(10)** (with Sch. 2)

Modifications etc. (not altering text)

C562 *See* S.I. 1970 No.488 (*under* "Double taxation relief: general" *in* Part III Vol.5) regns. 2-10—*payments exempt under double taxation agreements.*

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Marginal Citations

M659 Source - 1970 s.380(1)
M660 Source - 1970 s.380(2)
M661 Source - 1970 s.380(4)
M662 Source - 1970 s.380(5)

525 Capital sums: F3427. . . winding up or partnership change.

[F3428(1) Where a body corporate on which, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under section 524 commences to be wound up—

(a) no sums shall be charged under that section on that body for any accounting period subsequent to that in which the winding up commences; and

(b) the amount falling to be charged for the accounting period in which the winding up commences shall be increased by the total amounts which, but for the winding up, would have fallen to be charged for subsequent accounting periods.**]**

(2) F3429. . . . . .

(3) M663Where, under **[**F3430section 559 of the Capital Allowances Act (effect of successions)**]** as applied by section 532, a charge under section 524 falls to be made on two or more persons jointly as being the persons for the time being carrying on a trade, and that trade is discontinued, subsection (1) above shall have effect in relation to the discontinuance as it has effect where a body corporate commences to be wound up.

(4) Where subsection (3) above applies—

(a) the additional sum which, under subsection (1) above, falls to be charged for the **[**F3431accounting period**]** in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner F3432. . . shall be charged separately for **[**F3433its**]** proportion; F3434. . .

(b) F3434. . . . . .

(5) F3435. . . . . .

Textual Amendments

F3427 Word in s. 525 sidenote omitted (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 202(5)** (with Sch. 2)

F3428 S. 525(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 202(2)** (with Sch. 2)

F3429 S. 525(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 202(3), **Sch. 3** (with Sch. 2)

F3430 Words in s. 525(3) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 45**

F3431 Words in s. 525(4)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 202(4)(a)(i)** (with Sch. 2)

F3432 Words in s. 525(4)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 202(4)(a)(ii), **Sch. 3** (with Sch. 2)

F3433 Word in s. 525(4)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 202(4)(a)(iii)** (with Sch. 2)

F3434 S. 525(4)(b) and preceding word repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 202(4)(b), **Sch. 3** (with Sch. 2)

F3435 S. 525(5) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 4 of the repealing Act) by Finance Act 1988 c. 39, **Sch. 14 Pt. 8**

Marginal Citations

M663 Source - 1970 s.381(2)

526 Relief for expenses.

M664(1) Where—

(a) a **[**F3436company**]**, otherwise than for the purposes of a trade carried on by **[**F3437it**]**, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent, or the obtaining of an extension of a term of a patent, or a rejected or abandoned application for a patent, and

(b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the **[**F3438profits**]** of that trade,

there shall be made to **[**F3439the company for the purposes of corporation tax**]**, for the **[**F3440accounting**]** period in which those expenses were paid or incurred, an allowance equal to the amount thereof.

(2) F3441. . . . . .

Textual Amendments

F3436 Word in s. 526(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 203(2)(a)** (with Sch. 2)

F3437 Word in s. 526(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 203(2)(b)** (with Sch. 2)

F3438 Word in s. 526(1)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3439 Words in s. 526(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 203(2)(c)** (with Sch. 2)

F3440 Word in s. 526(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 203(2)(d)** (with Sch. 2)

F3441 S. 526(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 203(3), **Sch. 3** (with Sch. 2)

Marginal Citations

M664 Source - 1970 s.382

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527 Spreading of royalties over several years.

M665(1) Where a royalty or other sum to which section 348 or 349(1) applies is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may on the making of a claim require that the income tax or corporation tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax or corporation tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

(2) Subsection (1) above shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to the royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

(3) F3442. . . . . .

(4) Nothing in this section shall apply to any sum to which section 349(1) applies by virtue of section 524(3)(b) **[**F3443of this Act or by virtue of section 595 of ITTOIA 2005**]**.

Textual Amendments

F3442 S. 527(3) repealed (with effect in accordance with Sch. 14 Pt. 8 Note 5 of the repealing Act) by Finance Act 1988 (c. 39), **Sch. 14 Pt. 8**

F3443 Words in s. 527(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 204** (with Sch. 2)

Marginal Citations

M665 Source - 1970 s.384

528 Manner of making allowances and charges.

M666(1) F3444. . . . . .

(2) F3445. . . . . .

(3) Where an allowance falls to be made to a company for any accounting period under **[**F3446section 526**]**F3447. . . , and is not to be made in taxing a trade—

(a) the allowance shall, as far as may be, be given effect by deducting the amount of the allowance from the company's income from patents of the accounting period;

(b) where the allowance cannot be given full effect under paragraph (a) above in that period by reason of a want or deficiency of income from patents, then (so long as the company remains within the charge to corporation tax) the amount unallowed shall be carried forward to the succeeding accounting period, and shall be treated for the purposes of that paragraph, and of any further application of this paragraph, as the amount of a corresponding allowance for that period.

[F3448(3A) In this section references to F3449. . . a company's income from patents are references to that income after any allowance has been deducted from or set off against it under section F3449. . . 480 of the Capital Allowances Act.**]**

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(4) F3444 . . . . . .

Textual Amendments

F3444 S. 528(1)(4) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 46(1)(4), **Sch. 4**

F3445 S. 528(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 205(2), **Sch. 3** (with Sch. 2)

F3446 Words in s. 528(2)(3) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 46(2)**

F3447 Words in s. 528(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 205(3), **Sch. 3** (with Sch. 2)

F3448 S. 528(3A) inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 46(3)**

F3449 Words in s. 528(3A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 205(4), **Sch. 3** (with Sch. 2)

Marginal Citations

M666 Source-1970 s.385; 1985 s.64(2)(d)-(f)

529 Patent income to be earned income in certain cases.

F3450 . . . . . .

Textual Amendments

F3450 S. 529 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 206, **Sch. 3** (with Sch. 2)

530 Disposal of know-how.

F3451 . . . . . .

Textual Amendments

F3451 S. 530 repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 47, **Sch. 4**

531 Provisions supplementary to section 530.

(1) M667 Subject to subsection (7) below, where, after 19th March 1968, **[**F3452 a company**]** disposes of know-how which has been used in a trade carried on by **[**F3453 the company**]**, and continues to carry on the trade after the disposal, the amount or value of any consideration received by **[**F3453 the company**]** for the disposal shall—

(a) if it is received in respect of the disposal of know-how after 31st March 1986, so far as it is not brought into account **[**F3454 as a disposal value under section 462 of the Capital Allowances Act**]**, nor is chargeable to **[**F3455 corporation tax**]** as a revenue or income receipt;

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(b) in any other case, so far as it is not chargeable to **[**F3455corporation tax**]** as a revenue or income receipt,

be treated for **[**F3456the purposes of corporation tax**]** as a trading receipt.

[F3457(2) Subject to subsection (3) below, where—

(a) a person carrying on a trade receives consideration for the disposal of know-how which has been used in the trade, and

(b) the know-how is disposed of as part of the disposal of all or part of the trade,

the consideration shall for the purposes of corporation tax be treated as a payment for goodwill in relation both to the person making the disposal and to the person acquiring the know-how (if that person provided the consideration).**]**

(3) Subsection (2) above shall not apply—

(a) **[**F3458if, in the case of the person disposing of the know-how being within the charge to corporation tax, that person and the person acquiring the know-how (whether or not within the charge to corporation tax) elect for that subsection not to apply**]** by notice given jointly to the inspector within two years of the disposal, or

(b) to the person acquiring the know-how if the trade in question was, before the acquisition, carried on wholly outside the United Kingdom;

F3459 . . . . . .

[F3460(3A) If—

(a) an election is made under section 194 of ITTOIA 2005 (provision corresponding to subsections (2) and (3) of this section for the purposes of income tax), and

(b) the person making the acquisition mentioned in that section is within the charge to corporation tax,

the persons making the election under that section are treated as also making an election under subsection (3) of this section (even though the person disposing of the know-how is not within the charge to corporation tax).**]**

(4) M668Subject to subsections (5) and (7) below, any consideration received by a **[**F3461company**]** for the disposal of know-how shall—

(a) if it is received in respect of the disposal of know-how after 31st March 1986 and is not brought into account **[**F3462as a disposal value under section 462 of the Capital Allowances Act**]**, or

(b) if it is neither chargeable to **[**F3463corporation tax**]** under subsection (1) above or otherwise as a revenue or income receipt, nor dealt with in relation to **[**F3464the company**]** as a payment for goodwill as mentioned in subsection (2) above, (whether the disposal took place before or after 31st March 1986),

be treated as a profit or gain chargeable to **[**F3463corporation tax**]** under Case VI of Schedule D.

(5) M669Where the **[**F3465company**]** concerned has incurred expenditure wholly and exclusively in the acquisition or disposal of the know-how, the amount which would apart from this subsection be treated as a profit or gain chargeable to **[**F3466corporation tax**]** under Case VI of Schedule D shall be reduced by the amount of that expenditure; but a deduction shall not be twice made in respect of the same expenditure, whether under this subsection or otherwise.

(6) F3467 . . . . . .

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(7) Subsections (1) and (3) to **[**F3468(5)**]** above F3469. . . shall not apply on any sale of know-how where the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; and subsection (2) above shall apply in any such case with the omission of the words "Subject to subsection (3) below".

In this subsection references to a body of persons include references to a partnership.

(8) M670Where in connection with any disposal of know-how a person gives an undertaking (whether absolute or qualified, and whether legally valid or not) the tenor or effect of which is to restrict his or another's activities in any way, any consideration received in respect of the giving of the undertaking or its total or partial fulfilment shall be treated for the purposes of this section as consideration received for the disposal of the know-how.

Textual Amendments

F3452 Words in s. 531(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(2)(a)** (with Sch. 2)

F3453 Words in s. 531(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(2)(b)** (with Sch. 2)

F3454 Words in s. 531(1) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 48(1)**

F3455 Words in s. 531(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(2)(c)** (with Sch. 2)

F3456 Words in s. 531(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(2)(d)** (with Sch. 2)

F3457 S. 531(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(3)** (with Sch. 2)

F3458 Words in s. 531(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(4)** (with Sch. 2)

F3459 Words in s. 531(3) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 48(2), **Sch. 4**

F3460 S. 531(3A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(5)** (with Sch. 2)

F3461 Word in s. 531(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(6)(a)** (with Sch. 2)

F3462 Words in s. 531(4)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 48(3)**

F3463 Words in s. 531(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(6)(c)** (with Sch. 2)

F3464 Words in s. 531(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(6)(b)** (with Sch. 2)

F3465 Word in s. 531(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(7)(a)** (with Sch. 2)

F3466 Words in s. 531(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(7)(b)** (with Sch. 2)

F3467 S. 531(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 207(8), **Sch. 3** (with Sch. 2)

F3468 Word in s. 531(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 207(9)** (with Sch. 2)

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F3469 Words in s. 531(7) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 48(4), **Sch. 4**

Modifications etc. (not altering text)

C563 S. 531(2)(7) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 19(2)**

Marginal Citations

M667 Source-1970 s.386(2); 1985 s.65(3)(a)
M668 Source-1970 s.386(4); 1985 s.65(3)(b)
M669 Source-1970 s.386(4)-(6)
M670 Source-1970 s.386(8); 1985 Sch.18 Part II 8

[F3470 532 Application of Capital Allowances Act

The Tax Acts have effect as if sections 524 to **[**F3471 528**]** and 531, this section and section 533 were contained in the Capital Allowances Act.**]**

Textual Amendments

F3470 S. 532 substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 49**

F3471 Words in s. 532 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 208** (with Sch. 2)

533 Interpretation of sections 520 to 532.

(1) M671 In **[**F3472 sections 524 to **[**F3473 528**]]**—

[F3474 "income from patents" means—

(a) any royalty or other sum paid in respect of the use of a patent; and

(b) any amount on which tax is payable for any accounting period by virtue of section 524 or 525 above or section 472(5) of, or paragraph 100 of Schedule 3 to, the Capital Allowances Act,

but does not include any amount chargeable to income tax.**]**

F3475 . . . . . .

"patent rights" means the right to do or authorise the doing of anything which would, but for that right, be an infringement of a patent;

"United Kingdom patent" means a patent granted under the laws of the United Kingdom.

(2) Subject to subsection (3) below, in **[**F3472 sections 524 to **[**F3476 528**]]** any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent.

(3) If a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the right subsists, the grantor shall be treated for the purposes of **[**F3472 sections 524 to **[**F3476 528**]]** as thereby selling the whole of the rights.

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(4) Where, under sections 46 to 49 of the Patents Act 1949 **[**F3477, sections 55 to 59 of the Patents Act 1977**]** or any corresponding provisions of the law of any country outside the United Kingdom, an invention which is the subject of a patent is made, used, or exercised or vended by or for the service of the Crown or the government of the country concerned, **[**F3472sections 524 to **[**F3476528**]]** shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.

(5) Expenditure incurred in obtaining a right to acquire in the future patent rights as respects any invention in respect of which the patent has not yet been granted shall be deemed for all the purposes of **[**F3472sections 524 to **[**F3476528**]]** to be expenditure on the purchase of patent rights, and if the patent rights are subsequently acquired the expenditure shall be deemed for those purposes to have been expenditure on the purchase of those rights.

(6) Any sum received from a person which by virtue of subsection (5) above is deemed to be expenditure incurred by him on the purchase of patent rights shall be deemed to be proceeds of a sale of patent rights.

(7) M672In **[**F3478section 531**]**"know-how" means any industrial information and techniques likely to assist in the manufacture or processing of goods or materials, or in the working of a mine, oil-well or other source of mineral deposits (including the searching for, discovery or testing of deposits or the winning of access thereto), or in the carrying out of any agricultural, forestry or fishing operations.

Textual Amendments

F3472 Words in ss. 533(1)-(5) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 50(1)**

F3473 Words in s. 533(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 209(2)(a)** (with Sch. 2)

F3474 S. 533(1): definition of "income from patents" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 209(2)(b)** (with Sch. 2)

F3475 Words in s. 533(1) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 4), Sch. 2 para. 50(2)(b), **Sch. 4**

F3476 Words in s. 533(2)-(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 209(3)** (with Sch. 2)

F3477 Words in s. 533(4) inserted (with retrospective effect) by Finance Act 1988, Sch. 13 Pt. 1 paras. 5, 1

F3478 Words in s. 533(7) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 50(3)**

Marginal Citations

M671 Source-1970 s.388; 1985 s.64(2)(g)

M672 Source-1970 s.386(8); 1985 Sch.18 Part II 8

Copyright and public lending right

534 Relief for copyright payments etc.

F3479 . . . . . .

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Textual Amendments

F3479 S. 534 repealed (with effect in accordance with s. 71(3) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(6)**

535 Relief where copyright sold after ten years or more.

F3480 . . . . . .

Textual Amendments

F3480 S. 535 repealed (with effect in accordance with s. 71(3) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(6)**

536 Taxation of royalties where owner abroad.

M673 (1) Subject to the provisions of this section, where the usual place of abode of the owner of a copyright is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that copyright as it applies to annual payments not payable out of profits or gains brought into charge to income tax.

(2) In subsection (1) above—

[F3481 "copyright" does not include copyright in—

(i) a cinematograph film or video recording, or

(ii) the sound-track of such a film or recording, so far as it is not separately exploited; and**]**

"owner of a copyright" includes a person who, notwithstanding that he has assigned a copyright to some other person, is entitled to receive periodical payments in respect of that copyright;

and the reference to royalties or sums paid periodically for or in respect of a copyright does not include royalties or sums paid in respect of copies of works which F3482 . . . have been exported from the United Kingdom for distribution outside the United Kingdom.

(3) Subject to subsection (4) below, where any payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the copyright to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is so entitled to deduct.

(4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof F3483 . . . .

(5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

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(6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.

Textual Amendments

F3481 Words in s. 536(2) substituted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), **Sch. 7 para. 36(5)**; S.I. 1989/816, **art. 2**

F3482 Words in s. 536(2) repealed (with effect in accordance with s. 103(7) of the repealing Act) by Finance Act 1995 (c. 4), s. 115(10)(a), **Sch. 29 Pt. 8(14)**, Note 2

F3483 Words in s. 536(4) repealed (with effect in accordance with s. 103(7) of the repealing Act) by Finance Act 1995 (c. 4), s. 115(10)(b), **Sch. 29 Pt. 8(14)**, Note 2

Modifications etc. (not altering text)

C564 See—1988 s.387—*sums assessed under* s.350*by virtue of* s.536*not to be carried forward under* s.387*as trading losses.*1988 s.821—*under-deductions of tax from payments made before passing of annual Act.*S.I. 1970 No.488 (*under* "*Double Taxation relief: general*" *in* Part III Vol.5) regns.2-10—*payments exempt under double taxation agreements.*

Marginal Citations

M673 Source-1970 s.391

537 Public lending right.

[[F3484]M674Section 536**]** shall have effect in relation to public lending right as **[**[F3485]it has**]** effect in relation to copyright.

Textual Amendments

F3484 Words in s. 537 substituted (with application in accordance with Sch. 24 para. 4(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 24 para. 4(1)(a)**

F3485 Words in s. 537 substituted (with application in accordance with Sch. 24 para. 4(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 24 para. 4(1)(b)**

Marginal Citations

M674 Source-1983 s.27(b)

I[F3486] *Designs*

Textual Amendments

F3486 Ss. 537A, 537B and preceding cross-heading inserted (1.8.1989) by Intellectual Property Act 1988 (c. 48), **Sch. 7 para. 36(6)**; S.I. 1989/816, **art. 2**

537A Relief for payments in respect of designs.

[F3487 . . . . . .**]**

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Textual Amendments

F3487 S. 537A repealed (with effect in accordance with s. 71(3) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(6)**

537B Taxation of design royalties where owner abroad.

(1) Where the usual place of abode of the owner of a right in a design is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that right as it applies to annual payments not payable out of profits or gains brought into charge to income tax.

(2) In subsection (1) above—

(a) "right in a design" means design right or the right in a registered design,

(b) the reference to the owner of a right includes a person who, notwithstanding that he has assigned the right to some other person, is entitled to receive periodical payments in respect of the right, and

(c) the reference to royalties or other sums paid periodically for or in respect of a right does not include royalties or sums paid in respect of articles which F3488 . . . have been exported from the United Kingdom for distribution outside the United Kingdom.

(3) Where a payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the right to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purpose of section 349(1) be taken to be diminished by the sum which the agent is entitled to deduct.

(4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof F3489 . . . .

(5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

(6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.

Textual Amendments

F3488 Words in s. 537B(2) repealed (with effect in accordance with s. 103(7) of the repealing Act) by Finance Act 1995 (c. 4), s. 115(10)(a), **Sch. 29 Pt. 8(14)**, Note 2

F3489 Words in s. 537B(4) repealed (with effect in accordance with s. 103(7) of the repealing Act) by Finance Act 1995 (c. 4), s. 115(10)(b), **Sch. 29 Pt. 8(14)**, Note 2

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Artists' receipts

538 Relief for painters, sculptors and other artists.

F3490 . . . . . .

Textual Amendments

F3490 S. 538 repealed (with effect in accordance with s. 71(3) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(6)**

CHAPTER II

LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

Modifications etc. (not altering text)

C565 Pt. 13 Ch. 2 restricted (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 3(2)** (with Sch. 13 para. 16)

C566 Pt. 13 Ch. 2 applied (with modifications) (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), **regs. 35(7)**, 36(3)-(7) (as amended by The Individual Savings Account (Amendment) Regulations 1998 (S.I. 1998/3174), **reg. 12**)

C567 Pt. 13 Ch. 2 applied (with modifications) (6.4.1999 with effect in accordance with reg. 1 of the affecting S.I.) by The Personal Portfolio Bonds (Tax) Regulations 1999 (S.I. 1999/1029), **reg. 6(2)-(8)** (as amended (6.4.2002) by The Personal Portfolio Bonds (Tax) (Amendment) Regulations 2002 (S.I. 2002/455), **regs. 1**, 2)

C568 Pt. 13 Ch. 2 modified (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 3**

C569 Pt. 13 Ch. 2 modified (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 15**

C570 Pt. 13 Ch. 2 modified (6.4.2005) by The Child Trust Funds Regulations 2004 (S.I. 2004/1450), **regs. 1**, 2(1), 38(3)-(8); S.I. 2004/3369, **art. 2(1)**

C571 Pt. 13 Ch. 2 modified (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 14(5)-(7)**

539 Introductory.

(1) M675 This Chapter shall have effect for the purposes of imposing, in the manner and to the extent therein provided, charges to **[**F3491 corporation tax **]**F3492 . . . in respect of gains to be treated in accordance with this Chapter as arising in connection with policies of life insurance, contracts for life annuities and capital redemption policies.

(2) M676 Nothing in this Chapter shall apply—

(a) to any policy of life insurance having as its sole object the provision on an individual's death or disability of a sum substantially the same as any amount then outstanding under a mortgage of his residence, or of any premises occupied by him for the purposes of a business, being a mortgage the principal amount secured by which is repayable by instalments payable annually or at shorter regular intervals; or

(b) to any policy of life insurance issued in connection with an approved scheme, as defined in Chapter I of Part XIV; or

(c) M677 to a policy of insurance which constitutes, or is evidence of, a contract for the time being approved under section 621 **[**F3493; or

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(d) to any policy of life insurance held in connection with a personal pension scheme, within the meaning of Chapter IV of Part XIV, for the time being approved under that Chapter**]**[F3494]; or

(e) to any group life policy having as its sole object the provision, on the death or disability of any of the individuals insured under the policy, of a sum substantially the same as any amount then outstanding under a loan made by a credit union to that individual; or

(f) to any group life policy with respect to which the conditions in section 539A are satisfied ("an excepted group life policy").**]**

In the application of this subsection to Scotland, for the reference to a mortgage there shall be substituted a reference to a heritable security within the meaning of the [M678]Conveyancing (Scotland) Act 1924 (but including a security constituted by ex facie absolute disposition or assignation).

(3) [M679]In this Chapter—

"assignment", in relation to Scotland, means an assignation;

"capital redemption policy" means any **[**[F3495]contract**]** effected in the course of a capital redemption business as defined in section 458(3);

[[F3496]"charitable trust" means any trust established for charitable purposes only;**]**

[[F3497]"credit union" means a society registered as a credit union under the Industrial and Provident Societies Act 1965 or the Credit Unions (Northern Ireland) Order 1985;**]**

[[F3498]"excepted group life policy" shall be construed in accordance with subsection (2)(f) above;**]**

[[F3499][F3500] "friendly society" means the same as in the Friendly Societies Act 1992 (and includes any society that by virtue of section 96(2) of that Act is to be treated as a registered friendly society within the meaning of that Act);**]**

[[F3499]"group life policy" means a policy of life insurance whose terms provide—

(a) for the payment of benefits on the death of more than one individual; and

(b) for those benefits to be paid on the death of each of those individuals;**]**

[[F3501]"life annuity" means—

(a) any annuity to which section 656 (as read with section 657) applies, or

(b) any annuity that—

(i) is a purchased life annuity for the purposes of Chapter 7 of Part 4 of ITTOIA 2005 (see section 423 of that Act), and

(ii) is not specified in section 718 of that Act (annuities the payments under which are not within section 717 of that Act (exemption for part of purchased life annuity payments));**]** and

[[F3502]"non-charitable trust" means any trust other than a charitable trust.**]**

[[F3503](3A) References in this Chapter to assignment of the whole of, or assignment of part of or a share in, the rights conferred by a policy or contract shall, in any case where section 546A applies, be construed in accordance with that section.**]**

(4) [M680]For the purposes of this Chapter the falling due of a sum payable in pursuance of a right conferred by a policy or contract to participate in profits shall be treated as the surrender of rights conferred by the policy or contract.

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(5) [M681]This Chapter shall have effect only as respects policies of life insurance issued in respect of insurances made after 19th March 1968, contracts for life annuities entered into after that date, and capital redemption policies effected after that date.

(6) A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of subsection (5) above and the following provisions of this Chapter as issued in respect of one made after that date if it is varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(7) A variation effected before the end of the year 1968 shall be disregarded for the purposes of subsection (6) above if its only effect was to bring into conformity with paragraph 2 of Schedule 9 to the Finance Act 1968 (which is re-enacted, as amended, by paragraph 2 of Schedule 15 to this Act) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

(8) [F3504] . . . . . .

[[F3505](9) A policy of life insurance issued in respect of an insurance made before 14th March 1989 shall be treated for the purposes of sections 540(5A), 547(8) and 548(3A) as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any exercise of rights conferred by the policy shall be regarded for this purpose as a variation.**]**

Textual Amendments

F3491 Words in s. 539(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 210(2)** (with Sch. 2)

F3492 Words in s. 539(1) repealed (with effect in accordance with Sch. 17 Pt. 5 Note 6 of the repealing Act) by Finance Act 1989 (c. 26), **Sch. 17 Pt. 5**

F3493 S. 539(2)(d) and preceding word inserted (with effect in accordance with Sch. 13 para. 2(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 2(2)** (with Sch. 13 Pt. 2)

F3494 S. 539(2)(e)(f) and preceding word added (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 1(2)**

F3495 S. 539(3): word in definition of "capital redemption policy" substituted (with effect in accordance with s. 168(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 168(4)**

F3496 S. 539(3): definition of "charitable trust" inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 6**

F3497 S. 539(3): definition of "credit union" inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 1(3)**

F3498 S. 539(3): definition of "excepted group life policy" inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 1(3)**

F3499 S. 539(3): definition of "group life policy" inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 1(3)**

F3500 S. 539(3): definition of "friendly society" inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para.15**; S.I. 1993/236, **art. 2**

F3501 S. 539(3): definition of "life annuity" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 210(3)** (with Sch. 2)

F3502 S. 539(3): definition of "non-charitable trust" inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 6**

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F3503 S. 539(3A) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 2**

F3504 S. 539(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 210(4), **Sch. 3** (with Sch. 2)

F3505 S. 539(9) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 2**

Marginal Citations

M675 Source-1970 s.393(1); 1971 Sch.6 41; 1972 Sch.24 23
M676 Source-1970 s.393(2)(a), (c); 1971 Sch.3 11
M677 Source-1970 s.393(2A); 1971 Sch.2 6
M678 1924 c. 27.
M679 Source-1970 s.393(3); 1985 s.41(8) 56, Sch. 9 para. 15
M680 Source-1975 Sch.2 15
M681 Source-1970 s.393(4), (5)

[F3506 539ZA Application of this Chapter etc. to policies and contracts in which persons other than companies are interested

(1) This section applies where, for the purposes of determining the application of this Chapter in relation to a policy or contract at any time, it is necessary to have regard to its application at another time.

(2) It makes no difference to the application of this Chapter at that other time whether liability in respect of a gain arising at that time would have arisen or (as the case may be) would arise because of the application of this Chapter or Chapter 9 of Part 4 of ITTOIA 2005 (which makes provision for income tax purposes corresponding to that made by this Chapter).

(3) References in this section to this Chapter include references to paragraph 20 of Schedule 15 to this Act and section 79 of the Finance Act 1997 (payments under certain life insurance policies).**]**

Textual Amendments

F3506 S. 539ZA inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 211** (with Sch. 2)

[F3507 539A The conditions for being an excepted group life policy

(1) The conditions mentioned in section 539(2)(f) (excepted group life policies) are those set out in the following provisions of this section.

(2) Condition 1 is that under the terms of the policy a sum or other benefit of a capital nature is payable or arises on the death of each of the individuals insured under the policy who dies without attaining an age which is specified in the policy and is not greater than 75 years.

In determining whether this condition is satisfied, disregard any terms of the policy which exclude from benefit the death of a person in specified circumstances, if the exclusion applies in relation to death in those circumstances in the case of each of the individuals insured under the policy.

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(3) Condition 2 is that under the terms of the policy—

(a) the same method is to be used for calculating the sums or other benefits of a capital nature payable or arising on each death, and

(b) if there is any limitation on those sums or other benefits, the limitation is the same in the case of any death.

(4) Condition 3 is that the policy does not have, and is not capable of having, on any day—

(a) a surrender value that exceeds the proportion of the premiums paid which, on a time apportionment, is referable to the unexpired paid-up period beginning with that day, or

(b) if there is no such period, any surrender value.

For the purposes of this subsection the unexpired paid-up period beginning with any day is the period (if any) which—

(i) begins with that day, and

(ii) ends with the earliest subsequent day on which—

(a) a payment of premium falls due under the policy, or

(b) the term of the policy ends.

(5) Condition 4 is that no sums or other benefits may be paid or conferred under the policy, except as mentioned in condition 1 or condition 3.

(6) Condition 5 is that any sums payable or other benefits arising under the policy must (whether directly or indirectly) be paid to or for, or conferred on, or applied at the direction of—

(a) an individual or charity beneficially entitled to them, or

(b) a trustee or other person acting in a fiduciary capacity who will secure that the sums or other benefits are paid to or for, or conferred on, or applied in favour of, an individual or charity beneficially.

In this subsection "charity" means any body of persons or trust established for charitable purposes only.

(7) Condition 6 is that no person—

(a) who is an individual whose life is insured under the policy, or

(b) who is, within the meaning of section 839, connected with an individual whose life is so insured,

may, by virtue of a group membership right relating to that individual, receive (directly or indirectly) any death benefit in respect of another group member.

In this subsection—

(i) "group membership right", in relation to an individual, means any right (including the right of any person to be considered by trustees in their exercise of a discretion) that is referable to that individual's being one of the individuals whose lives are insured by the policy; and

(ii) "death benefit in respect of another group member" means—

(a) any sums or other benefits payable or arising under the policy on the death of any other of those individuals, or

(b) anything representing any such sums or benefits.

(8) Condition 7 is that a tax avoidance purpose is not the main purpose, or one of the main purposes, for which a person is at any time—

(a) the holder, or one of the holders, of the policy, or

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(b) the person, or one of the persons, beneficially entitled under the policy.

In this subsection—

(i) "tax avoidance purpose" means any purpose that consists in securing a tax advantage (whether for the holder of the policy or any other person); and

(ii) "tax advantage" has the same meaning as in Chapter 1 of Part 17 (tax avoidance).**]**

Textual Amendments

F3507 S. 539A inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 2**

540 Life policies: chargeable events.

(1) [M682]Subject to the provisions of this section, in this Chapter "chargeable event" means, in relation to a policy of life insurance—

(a) if it is not a qualifying policy, any of the following—

(i) any death giving rise to benefits under the policy;

(ii) the maturity of the policy;

(iii) the surrender in whole of the rights conferred by the policy;

(iv) the assignment for money or money's worth of those rights; and

(v) **[**[F3508]subject to section 546B(3)(a),**]** an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section) except, if it ends with another chargeable event, the final year; and

(b) if it is a qualifying policy (whether or not the premiums thereunder are eligible for relief under section 266), any of the above events, but—

(i) in the case of death or maturity, only if the policy is converted into a paid-up policy before the expiry of ten years from the making of the insurance, or, if sooner, of three-quarters of the term for which the policy is to run if not ended by death or disability;

(ii) in the case of a surrender or assignment or **[**[F3509](subject to section 546B(3)(a))**]** such an excess as is mentioned in paragraph (a)(v) above, only if it is effected or occurs within that time, or the policy has been converted into a paid-up policy within that time.

(2) [F3510]. . . . . .

(3) [M683]Except as provided by section 544, no event is a chargeable event in relation to a policy issued in respect of an insurance made before 26th June 1982 if the rights conferred by the policy have at any time before that date and before the event been assigned for money or money's worth and are not at the time of the event held by the original beneficial owner.

(4) [M684]No account shall be taken for the purposes of **[**[F3511]subsections (1) and (3) above**]** of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights or share concerned, or of any assignment between spouses living together **[**[F3512]or between civil partners living together**]**.

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(5) Where subsection (1)(b) applies to a policy which has been varied so as to increase the premiums payable thereunder, it shall so apply as if the references in subsection (1)(b)(i) to the making of the insurance and the term of the policy were references respectively to the taking effect of the variation and the term of the policy as from the variation.

[F3513(5A) Sub-paragraphs (i) and (ii) of subsection (1)(b) above shall not apply inrelation to a policy issued in respect of an insurance made on or after 14th March 1989 if, immediately before the happening of the event, the rights conferred by the policy were in the beneficial ownership of a company, or were held on trusts created, or as security for a debt owed, by a company.**]**

(6) M685This section has effect subject to paragraph 20 of Schedule 15.

Textual Amendments

F3508 Words in s. 540(1)(a)(v) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 3(2)**

F3509 Words in s. 540(1)(b)(ii) inserted (with effect in accordance with s, 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 3(3)**

F3510 S. 540(2) repealed (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), Sch. 34 para. 14(1), **Sch. 43 Pt. 3(13)**, Note 2 (with Sch. 34 para. 15)

F3511 Words in s. 540(4) substituted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 3(2)**

F3512 Words in s. 540(4) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 75

F3513 S. 540(5A) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 3(3)**

Marginal Citations

M682 Source-1970 s.394(1), (2); 1975 Sch.2 9(1), (2)

M683 Source-1970 s.394(4); 1983 s.18(1) 1975 Sch.2 10

M684 Source-1970 s.394(5), (6); 1975 Sch.2 10

M685 Source-1982 s.34

541 Life policies: computation of gain.

(1) M686On the happening of a chargeable event in relation to any policy of life insurance, there shall be treated as a gain arising in connection with the policy—

(a) if the event is a death, the excess (if any) of the surrender value of the policy immediately before the death, plus the amount or value of any relevant capital payments, over the sum of the following—

(i) the total amount previously paid under the policy by way of premiums; and

(ii) the total amount treated as a gain by virtue of paragraph (d) below **[**F3514or section 546C(7)(b)**]** on the previous happening of chargeable events;

(b) if the event is the maturity of the policy, or the surrender in whole of the rights thereby conferred, the excess (if any) of the amount or value of the sum payable or other benefits arising by reason of the event, plus the amount or value of any relevant capital payments, over the sum of the following—

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(i) the total amount previously paid under the policy by way of premiums; and

(ii) the total amount treated as a gain by virtue of paragraph (d) below **[**F3514or section 546C(7)(b)**]** on the previous happening of chargeable events;

(c) if the event is an assignment, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments or **[**F3515, subject to subsection (3A) below,**]** of any previously assigned share in the rights conferred by the policy, over the sum of the following—

(i) the total amount previously paid under the policy by way of premiums; and

(ii) the total amount treated as a gain by virtue of paragraph (d) below **[**F3514or section 546C(7)(b)**]** on the previous happening of chargeable events;

(d) if the event is the occurrence of such an excess as is mentioned in section 540(1)(a)(v), the amount of the excess **[**F3516(subject to section 546B(3)(a))**]** .

(2) M687Where, in a case falling within subsection (1)(b) above, a right to periodical payments arises by reason of the event, there shall be treated as payable by reason thereof an amount equal to the capital value of those payments at the time the right arises.

(3) Where, in a case falling within subsection (1)(c) above, the assignment is between persons who are connected with each other within the meaning of section 839, the assignment shall be deemed to have been made for a consideration equal to the market value of the rights or share assigned.

[F3517(3A) he amount or value of such a previously assigned share as is mentioned in paragraph (c) of subsection (1) above falls to be brought into account for the purposes of that paragraph only where that share was so assigned—

(a) in a year (as defined in section 546(4)) beginning on or before 5th April 2001; or

(b) for money or money's worth in a year (as so defined) beginning on or after 6th April 2001.**]**

(4) F3518. . . . . .

[F3519(4A) Where, immediately before the happening of the chargeable event, the rights conferred by a qualifying endowment policy are held as security for a debt owed by a company, then, if—

(a) the conditions in subsection (4B) below are satisfied,

(b) the amount of the debt exceeds the total amount previously paid under the policy by way of premiums, and

(c) the company makes a claim for the purpose within two years after the end of the accounting period in which the chargeable event happens,

this section shall have effect as if the references in subsection (1)(a) and (b) to that total amount were references to the amount of the debt.

(4B) The conditions referred to in subsection (4A) above are—

(a) that, throughout the period beginning with the making of the insurance and ending immediately before the happening of the chargeable event, the rights

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conferred by the policy have been held as security for a debt owed by the company;

(b) that the capital sum payable under the policy in the event of death during the term of the policy is not less than the amount of the debt when the insurance was made;

(c) that any sum payable under the policy by reason of the chargeable event is applied in repayment of the debt (except to the extent that its amount exceeds the amount of debt);

(d) that the debt was incurred to defray money applied—

(i) in purchasing an estate or interest in land to be occupied by the company for the purposes of a trade carried on by it, or

(ii) for the purpose of the construction, extension or improvement (but not the repair or maintenance) of buildings which are or are to be so occupied.

(4C) If the amount of the debt is higher immediately before the happening of the chargeable event than it was at some earlier time during the period mentioned in subsection (4B)(a) above, the amount to be taken into account for the purposes of subsection (1) above shall be the lowest amount at which it stood during that period.

(4D) If during the period mentioned in subsection (4B)(a) above the company incurs a debt by borrowing in order to repay another debt, subsections (4B) and (4C) above shall have effect as if, where appropriate, references to either debt included references to the other.**]**

(5) [M688]In this section—

(a) "relevant capital payments" means, in relation to any policy, any sum or other benefit of a capital nature, other than one attributable to a person's disability, paid or conferred under the policy before the happening of the chargeable event; and

(b) references in this subsection and (in relation to premiums) in subsection (1) above to "the policy" include references to any related policy, that is to say, to any policy in relation to which the policy is a new policy within the meaning of paragraph 17 of Schedule 15, and any policy in relation to which that policy is such a policy, and so on; **[**[F3520]and

(c) "qualifying endowment policy" means a policy which is a qualifying policy by virtue of paragraph 2 of Schedule 15;**]**

and the provisions of this section are subject to paragraph 20 of Schedule 15.

(6) There shall be disregarded for the purposes of this section any amount which was treated under section 72(9) of the [M689]Finance Act 1984 as an additional premium.

Textual Amendments

F3514 Words in s. 541(1)(a)(ii)(b)(ii)(c)(ii) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 4(2)**

F3515 Words in s. 541(1)(c) inserted (with effect in accordance with s. 87(11) of the amending Act) by Finance Act 2002 (c. 23), **s. 87(3)**

F3516 Words in s. 541(1)(d) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 4(3)**

F3517 S. 541(3A) inserted (with effect in accordance with s. 87(11) of the amending Act) by Finance Act 2002 (c. 23), **s. 87(4)**

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F3518 S. 541(4) repealed (with effect in accordance with s. 83(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 28 para. 4(4), **Sch. 33 Pt. 2(9)**, Note

F3519 S. 541(4A)-(4D) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 4(2)**

F3520 S. 541(5)(c) and word inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 4(3)**

Modifications etc. (not altering text)

C572 S. 541 extended (retrospectively and with effect in accordance with s. 79(7)(8) of the extending Act) by Finance Act 1997 (c. 16), **s. 79(3)(b)**

Marginal Citations

M686 Source-1970 s.395(1); 1975 Sch.2 11(1)

M687 Source-1970 s.395 (2), (3)

M688 Source-1970 s.395(4); 1982 s.34; 1975 Sch.2 10

M689 1984 c. 43

542 Life annuity contracts: chargeable events.

(1) [M690]Subject to subsections (2) and (3) below, in this Chapter "chargeable event" means, in relation to any contract for a life annuity—

(a) the surrender in whole of the rights conferred by the contract, or

(b) the assignment for money or money's worth of those rights, or

(c) **[**[F3521]subject to section 546B(3)(a),**]** an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section) except, if it ends with another chargeable event, the final year.

(2) Where the terms of a contract provide for the payment of a capital sum as an alternative, in whole or in part, to payments by way of annuity, the taking of the capital sum shall be treated for the purposes of this section and section 543 as a surrender in whole or in part of the rights conferred by the contract, and where the terms of the contract provide for the payment of a capital sum on death and the contract was made on or after 10th December 1974, the death shall be treated for those purposes as a surrender in whole of the rights conferred by the contract.

(3) [M691] Except as provided by section 544, an event referred to in subsection (1) above **[**[F3522]or section 546C(7)(a)**]** is not a chargeable event in relation to any contract made before 26th June 1982 if the rights conferred by the contract have at any time before that date and before the event been assigned for money or money's worth and are not at the time of the event held by the original beneficial owner.

(4) Subsection (4) of section 540 shall, with any necessary modifications, apply for the purposes of this section as it applies for the purposes of that section.

Textual Amendments

F3521 Words in s. 542(1)(c) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 5(2)**

F3522 Words in s. 542(3) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 5(3)**

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Marginal Citations

M690 Source-1970 s.396(1); 396(1); 1975 Sch.2 9(3), 12

M691 Source-1970 s.396(2), (3); 1983 s.18(2); 1975 Sch.2 12

543 Life annuity contracts: computation of gain.

M692(1) On the happening of a chargeable event in relation to any contract for a life annuity, there shall be treated as a gain arising in connection with the contract—

(a) if the event is the surrender in whole of the rights conferred by the contract, the excess (if any) of the amount payable by reason of the event plus the amount or value of any relevant capital payments over the sum of the following—

(i) the total amount previously paid under the contract, whether by way of premiums or as lump sum consideration, reduced, if before the happening of the event **[**F3523any payments have been made on account of the annuity, by so much of those payments as is determined to be the capital element in them under section 656 of this Act or is exempt under section 717 of ITTOIA 2005; and**]**

(ii) the total amount treated as a gain by virtue of paragraph (c) below **[**F3524or section 546C(7)(b)**]** on the previous happening of chargeable events;

(b) if the event is an assignment, the excess (if any) of the amount or value of the consideration, plus the amount or value of any relevant capital payments or **[**F3525, subject to subsection (2A) below,**]** of any previously assigned share in the rights conferred by the contract, over the sum of the following—

(i) the amount specified paragraph (a)(i) above; and

(ii) any amount treated as a gain by virtue of paragraph (c) below **[**F3524or section 546C(7)(b)**]** on the previous happenings of chargeable events;

(c) if the event is the occurrence of such an excess as is mentioned in section 542(1), the amount of the excess **[**F3526(subject to section 546B(3)(a))**]**.

(2) Subsection (3) of section 541 shall apply for the purposes of subsection (1) above as it applies for the purposes of subsection (1)(c) of that section, and subsection (4) of that section shall apply for the purposes of this section with the substitution of references to the contract for references to the policy.

[F3527(2A) The amount or value of such a previously assigned share as is mentioned in paragraph (b) of subsection (1) above falls to be brought into account for the purposes of that paragraph only where that share was so assigned—

(a) in a year (as defined in section 546(4)) beginning on or before 5th April 2001; or

(b) for money or money's worth in a year (as so defined) beginning on or after 6th April 2001.**]**

(3) In this section "relevant capital payments" means, in relation to any contract, any sum or other benefit of a capital nature paid or conferred under the contract before the happening of the chargeable event.

Textual Amendments

F3523 Words in s. 543(1)(a)(i) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 212** (with Sch. 2)

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F3524 Words in s. 543(1)(a)(ii)(b)(ii) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 6(2)**

F3525 Words in s. 543(1)(b) inserted (with effect in accordance with s. 87(11) of the amending Act) by Finance Act 2002 (c. 23), **s. 87(6)**

F3526 Words in s. 543(1)(c) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 6(3)**

F3527 S. 543(2A) inserted (with effect in accordance with s. 87(11) of the amending Act) by Finance Act 2002 (c. 23), **s. 87(7)**

Marginal Citations

M692 Source-1970 s.397; 1975 Sch.2 13

544 Second and subsequent assignment of life policies and contracts.

(1) [M693]In this section "assigned policy" means a policy of life assurance—

(a) which was issued in respect of an insurance made before 26th June 1982; and

(b) the rights conferred by which have been assigned for money or money's worth before that date; and

(c) in relation to which an event occurring on or after that date would not, apart from this section, be a chargeable event.

(2) In this section "assigned contract" means a contract for a life annuity—

(a) which was made before 26th June 1982; and

(b) the rights conferred by which have been assigned for money or money's worth before that date; and

(c) in relation to which an event occurring on or after that date would not, apart from this section, be a chargeable event.

(3) [M694]In any case where after 23rd August 1982—

(a) the rights conferred by an assigned policy or, as the case may be, an assigned contract are again assigned for money or money's worth; or

(b) a payment is made by way of premium or as lump sum consideration under the policy or contract; or

(c) subject to subsections (5) and (7) below, a sum is lent by or by arrangement with the body issuing the policy or, as the case may be, the body with which the contract was made;

section 540(3) shall cease to apply to the policy or section 542(3) shall cease to apply to the contract, as the case may be.

(4) [M695]No account shall be taken for the purposes of subsection (3)(a) above of any assignment effected by way of security for a debt, or on the discharge of a debt secured by the rights concerned, or of an assignment between spouses living together **[**[F3528]or between civil partners living together**]**.

(5) [M696]Subsection (3)(c) above does not apply unless—

(a) the policy was issued in respect of an insurance made after 26th March 1974 or, as the case may be, the contract was entered into after that date; and

(b) the sum concerned is lent to or at the direction of the individual who, in accordance with subsection (6) below, is at the time of the loan the chargeable individual.

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(6) The individual who is at any time the chargeable individual for the purposes of subsection (5)(b) above shall be determined as follows—

(a) if at the time the rights conferred by the policy or contract are vested in an individual as beneficial owner or are held on trusts created by an individual (including such trusts as are referred to in **[**F3529section 547A(17)**]**), that individual is the chargeable individual; and

(b) if at that time those rights are held as security for a debt owed by an individual, that individual is the chargeable individual.

(7) Subsection (3)(c) above does not apply in relation to a policy if—

(a) it is a qualifying policy; and

(b) either interest at a commercial rate is payable on the sum lent or the sum is lent to a full-time employee of the body issuing the policy for the purpose of assisting him in the purchase or improvement of a dwelling-house to be used as his only or main residence.

(8) M697Where section 540(3) or 542(3) ceases to apply to an assigned policy or assigned contract by virtue of paragraph (c) of subsection (3) above, the lending of the sum concerned shall be regarded for the purposes of the Income Tax Acts (other than that paragraph) as taking place immediately after the time at which section 540(3) or, as the case may be, 542(3) ceases so to apply.

Textual Amendments

F3528 Words in s. 544(4) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 76

F3529 Words in s. 544(6)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 213** (with Sch. 2)

Marginal Citations

M693 Source-1983 Sch.4 1

M694 Source-1983 s.18(3), Sch.4 2(1)

M695 Source-1983 Sch.4 2(2)

M696 Source-1983 Sch.4 2(3)

M697 Source-1983 Sch.4 2(4)

545 Capital redemption policies.

M698(1) Subject to subsection (2) below, in this Chapter "chargeable event" means, in relation to a capital redemption policy, any of the following—

(a) the maturity of the policy, except where the sums payable on maturity are annual payments chargeable **[**F3530—

(i) to corporation tax under Schedule D,

(ii) to income tax under Part 9 of ITEPA 2003 (pension income) because section 609, 610 or 611 of that Act applies to them (certain employment related annuities), or

(iii) to income tax under Chapter 7 of Part 4 (purchased life annuity payments) or Chapter 7 of Part 5 (annual payments not otherwise charged) of ITTOIA 2005;**]**

(b) the surrender in whole of the rights conferred by the policy;

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(c) the assignment for money or money's worth of those rights; and

(d) **[**F3531subject to section 546B(3)(a),**]** an excess of the reckonable aggregate value mentioned in subsection (2) of section 546 over the allowable aggregate amount mentioned in subsection (3) of that section, being an excess occurring at the end of any year (as defined in subsection (4) of that section), except, if it ends with another chargeable event, the final year.

(2) Subsection (4) of section 540 shall apply for the purposes of this section as it applies for purposes of that section.

(3) The provisions of section 541, except subsection (3), shall, so far as appropriate and subject to subsection (4) below, apply to capital redemption policies as they apply to policies of life assurance.

(4) Where a chargeable event happens in relation to a capital redemption policy which has previously been assigned for money or money's worth, section 541 shall have effect in relation thereto as if, for the references to the total amount previously paid under the policy by way of premiums, there were substituted references to the amount or value of the consideration given for the last such assignment, plus the total amount of the premiums paid under the policy since that assignment.

Textual Amendments

F3530 S. 545(1)(a)(i)-(iii) substituted for words in s. 545(1)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 214** (with Sch. 2)

F3531 Words in s. 545(1)(d) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 7**

Marginal Citations

M698 Source-1970 s.398; 1975 Sch.2 14, 9(4)

546 Calculation of certain amounts for purposes of sections 540, 542 and 545.

(1) **M699**For the purposes of sections 540, 542 and 545, there shall be calculated as at the end of each year—

(a) the value, as at the time of surrender or assignment, of any part of or share in the rights conferred by the policy or contract which—

[F3532(i)**]** has been **[**F3533assigned for money or money's worth, or surrendered,**]** during the period ending with the end of that year and beginning with the commencement of the first year which falls wholly after 13th March 1975;**[**F3534 or

(ii) has been assigned otherwise than for money or money's worth during that period but in a year beginning on or before 5th April 2001;**]** and

(b) the appropriate portion of any payment made up to the end of that period by way of premium or as a lump sum consideration;

and the appropriate portion of any payment shall be one-twentieth for the year in which it is made, increased by a further one-twentieth for each of the subsequent years, up to a maximum of nineteen, but excluding therefrom any such one-twentieth for any year before that first year.

(2) **M700**The reckonable aggregate value referred to in those sections shall be—

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(a) the sum of the values calculated under subsection (1) above; less

(b) the sum of the values so calculated for a previous year and brought into account on the previous happening of a chargeable event.

(3) The allowable aggregate amount referred to in those sections shall be—

(a) the aggregate of the appropriate portions calculated under subsection (1) above; less

(b) the aggregate of the appropriate portions so calculated for a previous year and brought into account on the previous happening of a chargeable event.

(4) [M701]In this section "year" means the 12 months beginning with the making of the insurance or contract and any subsequent period of 12 months; except that—

(a) death, the maturity of the policy or the surrender of the rights conferred by the policy or contract shall be treated as ending the final year; and

(b) if the final year would by virtue of paragraph (a) above begin and end in the same year of assessment, the final year and the year preceding it shall together be one year.

(5) There shall be disregarded for the purposes of this section any amount which was treated under section 72(9) of the [M702]Finance Act 1984 as an additional premium.

[[F3535](6) Where any part of or share in the rights conferred by a policy or contract is assigned, the value of the part or share, as at the time of the assignment, shall be taken for the purposes of this section to be its surrender value at that time.**]**

Textual Amendments

F3532 Words in s. 546(1)(a) renumbered as s. 546(1)(a)(i) (with effect in accordance with s. 83(2) of the amending Act) by virtue of Finance Act 2001 (c. 9), **Sch. 28 para 8(2)(a)**

F3533 Words in s. 546(1)(a) substituted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 8(2)(b)**

F3534 S. 546(1)(a)(ii) and preceding word inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 8(2)(c)**

F3535 S. 546(6) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 8(3)**

Marginal Citations

M699 Source-1975 Sch.2 9(5), (8)

M700 Source-1975 Sch.2 9(6), (7)

M701 Source-1975 Sch.2 9(9)

M702 1984 c. 43

[F3536546A Treatment of certain assignments etc involving co-ownership

(1) This section applies in any case where—

(a) as a result of any transaction (the "material transaction") the whole or part of or a share in the rights conferred by a policy or contract ("the material interest") becomes beneficially owned by one person or by two or more persons jointly or in common ("the new ownership");

(b) immediately before the material transaction, the material interest was in the beneficial ownership of one person or of two or more persons jointly ("the old ownership"); and

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(c) at least one person who is a member of the old ownership is also a member of the new ownership.

(2) In any such case, the material transaction shall, in accordance with the following provisions of this section, be taken for the purposes of this Chapter (other than this section) to be one or more assignments, of part only of the rights conferred by the policy or contract.

(3) For the purposes of this Chapter (other than this section), the members of the old ownership shall be treated—

(a) where the old ownership consists of two or more persons beneficially entitled jointly, as if the material interest had been in their beneficial ownership in equal shares instead of jointly;

(b) where the new ownership consists of two or more persons beneficially entitled jointly, as if the result of the material transaction had been that the material interest was in the beneficial ownership of those persons in equal shares instead of jointly; and

(c) as if the material transaction had been the assignment by each member of the old ownership of so much (if any) of his old share as exceeds his new share (or, if he does not have a new share, the whole of his old share).

(4) In this section—

"new share", in relation to the material interest and a person who is a member of the new ownership, means—

(a) if there is only one member of the new ownership, the material interest;

(b) if there are two or more members of the new ownership beneficially entitled to the material interest in common, the member's share in the material interest; or

(c) if there are two or more members of the new ownership beneficially entitled to the material interest jointly, the share attributed to the member by subsection (3)(b) above;

"old share", in relation to the material interest and a person who is a member of the old ownership, means—

(a) if there is only one member of the old ownership, the material interest; or

(b) if there are two or more members of the old ownership, the share attributed to the member by subsection (3)(a) above.**]**

Textual Amendments

F3536 S. 546A inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 9**

[F3537 546B Special provision in respect of certain section 546 excesses

(1) This section applies in relation to a policy or contract in any case where—

(a) a section 546 excess occurs at the end of any year (including the final year, whether or not ending with a terminal chargeable event); and

(b) the condition in subsection (2) below is satisfied in relation to that year.

[F3538 This subsection is subject to subsection (1A) below.**]**

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[In the case of a policy which is a qualifying policy (whether or not the premiums under [F3539](1A) the policy are eligible for relief under section 266) this section applies only if—

(a) the section 546 excess occurs within the time described in section 540(1)(b)(i); or

(b) the policy has been converted into a paid-up policy within that time.**]**

(2) The condition is that—

(a) during the year there has been an assignment for money or money's worth of part of or a share in the rights conferred by the policy or contract; or

(b) during the year there has been both—

(i) an assignment, otherwise than for money or money's worth, of the whole or part of or a share in the rights conferred by the policy or contract; and

(ii) an earlier surrender of part of or a share in the rights conferred by the policy or contract.

(3) Where this section applies—

(a) the occurrence of the section 546 excess shall be treated for the purposes of this Chapter as not being a chargeable event; but

(b) the amount of the section 546 excess shall be charged to tax in accordance with the provisions of section 546C.

(4) In this section—

"final year" has the meaning given by section 546(4);

"section 546 excess", in relation to any year, means an excess, occurring at the end of the year, of—

(a) the reckonable aggregate value mentioned in subsection (2) of section 546, over

(b) the allowable aggregate amount mentoned in subsection (3) of that section;

"terminal chargeable event" means any chargeable event other than—

(a) an assignment for money or money's worth of the whole of the rights conferred by the policy or contract;

(b) the occurrence of a section 546 excess; or

(c) a chargeable event by virtue of section 546C(7)(a);

"year" has the meaning given by section 546(4).**]**

Textual Amendments

F3537 Ss. 546B-546D inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 10**

F3538 Words in s. 546B(1) inserted (with effect in accordance with s. 87(12) of the amending Act) by Finance Act 2002 (c. 23), **s. 87(9)**

F3539 S. 546B(1A) inserted (with effect in accordance with s. 87(12) of the amending Act) by Finance Act 2002 (c. 23), **s. 87(10)**

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[F3537 546C Charging the section 546 excess to tax where section 546B applies

(1) This section applies where, in relation to any policy or contract, the amount of a section 546 excess occurring at the end of any year falls to be charged to tax in accordance with this section by virtue of section 546B(3)(b).

(2) The following amounts shall be calculated as at the end of that year—

(a) the aggregate of the values calculated under section 546(1)(a) in respect of any part of or share in the rights conferred by the policy or contract which has been assigned for money or money's worth, or surrendered, during the year;

(b) the amount by which—

(i) the reckonable aggregate value mentioned in section 546(2), as at the end of the year, exceeds

(ii) the aggregate calculated under paragraph (a) above;

and

(c) the amount by which—

(i) the allowable aggregate amount mentioned in section 546(3), as at the end of the year, exceeds

(ii) the amount calculated under paragraph (b) above.

(3) In this section—

(a) "relevant transaction" means any assignment for money or money's worth, or any surrender, of a part of or share in the rights conferred by the policy or contract which has happened during the year;

(b) "transaction value", in relation to any relevant transaction, means the value calculated in accordance with section 546(1)(a) in the case of that transaction;

(c) "the amount of available premium" means—

(i) in relation to the earliest relevant transaction, the amount calculated under subsection (2)(c) above (that amount being taken to be nil if there is no such excess as is there mentioned); and

(ii) in relation to each successive relevant transaction, that amount as successively reduced under subsections (5) to (7) below.

(4) Subsection (5) below shall apply successively to each of the relevant transactions that happened in the year, in the order in which they happened.

If the year is the final year and ends with a terminal chargeable event, this subsection is subject to section 546D.

(5) Where this subsection applies in relation to a relevant transaction—

(a) the transaction value shall be compared to the amount of available premium; and

(b) if the amount of available premium exceeds or is equal to the transaction value, subsection (6) below shall apply in relation to the transaction; but

(c) if the transaction value exceeds the amount of available premium, subsection (7) below shall apply in relation to the transaction.

(6) Where this subsection applies in relation to a relevant transaction—

(a) the amount of available premium shall be reduced (or further reduced) by the transaction value; and

(b) that reduction shall have effect in relation to the next subsequent relevant transaction.

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(7) Where this subsection applies in relation to a relevant transaction—

(a) the relevant transaction shall for the purposes of this Chapter be a chargeable event in relation to the policy or contract, except as provided by sections 540(3) and 542(3);

(b) a gain of an amount equal to that by which the transaction value exceeds the amount of available premium shall be treated for the purposes of this Chapter as arising in connection with the policy or contract on the happening of that chargeable event; and

(c) in relation to any subsequent relevant transaction, the amount of available premium shall be reduced to nil.

(8) Where the whole or any part of the amount of any gain treated as arising by subsection (7)(b) above falls to be treated under **[**[F3540]section 547(1)(b)**]** as forming part of the income of any **[**[F3541]company**]** for—

(a) [F3542] . . . . . .

(b) the accounting period in which **[**[F3543]the chargeable event in question**]** happened,

that [F3544]. . . accounting period shall be taken to be the one which includes the end of the year as at which the section 546 excess in question occurs, instead of the one (if different) in which the relevant transaction happened.

(9) Where this section applies in relation to the final year and that year ends with a terminal chargeable event—

(a) effect shall be given to this section before applying the provisions of this Chapter in relation to the terminal chargeable event; and

(b) in applying this Chapter in relation to the terminal chargeable event, any chargeable event by virtue of subsection (7)(a) above accordingly falls to be regarded as having occurred before the terminal chargeable event.

(10) This section shall be construed as one with section 546B.**]**

Textual Amendments

F3537 Ss. 546B-546D inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 10**

F3540 Words in s. 546C(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 215(a)** (with Sch. 2)

F3541 Word in s. 546C(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 215(b)** (with Sch. 2)

F3542 S. 546C(8)(a) and word repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 215(c), **Sch. 3** (with Sch. 2)

F3543 Words in s. 546C(8)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 215(d)** (with Sch. 2)

F3544 Words in s. 546C(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 215(e), **Sch. 3** (with Sch. 2)

[[F3537]546D Modifications of s.546C for final year ending with terminal chargeable event

(1) This section applies in any case where the year mentioned in section 546C(4) is the final year and that year ends with a terminal chargeable event.

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(2) In any such case there shall be calculated, as at the end of the year, the amount of the gain ("the gains limit") that would have been treated as arising on the happening of the terminal chargeable event, apart from the application of sections 546B and 546C in relation to that year.

(3) Subsection (5) of section 546C shall apply successively to each of the relevant transactions that happened in the year, in the order in which they happened, unless and until the transaction in question (the "final transaction") is such that the aggregate of—

(a) its transaction value apart from subsection (4) below, and

(b) the sum of the transaction values of any relevant transactions to which subsection (5) of that section has previously applied,

exceeds the gains limit.

(4) If, in the case of the final transaction,—

(a) the aggregate mentioned in subsection (3) above exceeds the gains limit, but

(b) the sum mentioned in paragraph (b) of that subsection is less than that limit,

subsection (5) of section 546C shall apply in relation to that transaction, but for the purposes of subsections (5) to (7) of that section its transaction value shall be reduced to an amount equal to the difference between the gains limit and the sum mentioned in paragraph (b) above.

(5) Except as provided by subsection (4) above, subsection (5) of section 546C shall not apply in relation to the final transaction or any subsequent relevant transaction.

(6) This section shall be construed as one with sections 546B and 546C.**]**

Textual Amendments

F3537 Ss. 546B-546D inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 10**

547 Method of charging gain to tax.

(1) [M703] Where under section 541, 543 **[**[F3545], 545 or 546C**]** a gain is to be treated as arising in connection with any policy or contract—

(a) [F3546] . . . . . .

[[F3547](b) if, immediately before the happening of **[**[F3548] the chargeable event in question, the rights conferred by the policy or contract**]** were in the beneficial ownership of a company, or were held on **[**[F3549] non-charitable**]** trusts created, or as security for a debt owed, by a company, the amount of the gain shall be deemed to form part of the company's income (chargeable under Case VI of Schedule D) for the accounting period in which the event happened;**]**

(c) [F3546] . . . . . .

[[F3550](cc) [F3546] . . . . . .**]**

[[F3551](d) [F3546] . . . . . .

(e) [F3546] . . . . . .**]**

[[F3552](1A) In **[**[F3553] its**]** application in relation to a gain which is treated as arising by virtue of section 546C(7)(b), subsection (1) above **[**[F3554] is**]** subject to section 546C(8).**]**

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(2) Nothing in subsection (1) above shall apply to any amount which is chargeable to tax apart from that subsection.

(3) F3555 . . . . . .

[F3556(4) References in subsection (1) above to the rights conferred by a policy or contract are, in the case of an assignment or surrender of only a part of or share in any rights, references to that part or share.**]**

[F3557(4A) F3558 . . . . . .**]**

(5) F3558 . . . . . .

[F3559(5AA) F3558 . . . . . .**]**

[F3560(5A) F3558 . . . . . .**]**

(6) F3558 . . . . . .

[F3561(6A) F3558 . . . . . .**]**

(7) F3558 . . . . . .

[F3562(7A) F3558 . . . . . .**]**

[F3563(8) Subsection (1)(b) above shall not have effect as respects—

(a) a policy of life insurance issued in respect of an insurance made before 14th March 1989,

(b) a contract for a life annuity made before that date, or

(c) a capital redemption policy issued in respect of an insurance made before that date, or issued by a company resident in the United Kingdom in respect of an insurance made on or after that date.**]**

[F3564(9) F3558 . . . . . .

[F3558 . . . . . .**]**
F3565(9A)

(10) F3558 . . . . . .

(11) F3558 . . . . . .

(12) F3558 . . . . . .**]**

[F3566(13)**]** F3558 . . . . . .

[F3567(14) F3558 . . . . . .**]**

Textual Amendments

F3545 Words in s. 547(1) substituted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 11(2)**

F3546 S. 547(1)(a)(c)-(e) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 216(2), **Sch. 3** (with Sch. 2)

F3547 S. 547(1)(b) substituted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), Sch. 9 para. 5(3)

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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F3548 Words in s. 547(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 216(3)** (with Sch. 2)
F3549 Word in s. 547(1)(b) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(3)**
F3550 S. 547(1)(cc) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(4)**
F3551 S. 547(1)(d)(e) inserted (with effect in accordance with Sch. 14 para. 7(1)(2)(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 1(3)**
F3552 S. 547(1A) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 11(3)**
F3553 Word in s. 547(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 216(4)(a)** (with Sch. 2)
F3554 Word in s. 547(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 216(4)(b)** (with Sch. 2)
F3555 S. 547(3) repealed (with effect in accordance with Sch. 14 para. 7(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 14 para. 1(4), **Sch. 27 Pt. 3(19)**, Note
F3556 S. 547(4) substituted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 11(4)**
F3557 S. 547(4A) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(8)**
F3558 S. 547(4A)-(7A)(9)-(14) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 216(5), **Sch. 3** (with Sch. 2)
F3559 S. 547(5AA) inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 1(7)**
F3560 S. 547(5A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(1)**
F3561 S. 547(6A) inserted (with effect in accordance with s. 56(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 56(1)**
F3562 S. 547(7A) inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), **s. 76(2)(b)**
F3563 S. 547(8) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 5(3)**
F3564 S. 547(9)-(12) inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 1(8)**
F3565 S. 547(9A) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(11)**
F3566 S. 547(9) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(3)**
F3567 S. 547(14) inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 1(10)**

Modifications etc. (not altering text)
C573 S. 547: power to modify conferred (with effect in accordance with s. 56(4) of the affecting Act) by Finance Act 1995 (c. 4), **s. 56(3)**

Marginal Citations
M703 Source-1970 s.399(1); 1972 Sch.24 24

[F3568 547A Method of charging gain to tax: multiple interests.

[F3569 (1) If—

(a) immediately before the happening of a chargeable event, two or more persons have relevant interests in the rights conferred by the policy or contract in question, and

(b) any of those persons is a company,

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section 547 shall have effect in relation to each such company as if it had been the only person with a relevant interest in those rights, but with references to the amount of the gain construed as references to the company's proportionate share of the amount of the gain.**]**

[F3570(2) References in this section to the rights conferred by a policy or contract are, in the case of an assignment or surrender of only a part of or share in any rights, references to that part or share.**]**

(3) For the purposes of this section, a person has a "relevant interest" in the rights conferred by a policy or contract—

(a) in the case of an individual, if a share in the rights is vested in him as beneficial owner, or is held on **[**F3571non-charitable**]** trusts created, or as security for a debt owed, by him;

(b) in the case of a company, if a share in the rights is in the beneficial ownership of the company, or is held on **[**F3572non-charitable**]** trusts created, or as security for a debt owed, by the company;

(c) in the case of personal representatives, if a share in the rights is vested in them;

[F3573(cc) in the case of trustees of a charitable trust, if a share in the rights is held by them or as security for a debt owed by them;**]**

(d) in the case of trustees **[**F3574of a non-charitable trust**]**—

(i) if a share in the rights is held by them, and the person who created the trusts is not resident in the United Kingdom or has died or (in the case of a company or foreign institution) has been dissolved or wound up or has otherwise come to an end;

[F3575(ia) if a share in the rights is held by them which does not also fall within paragraph (a), (b) or (c) above or sub-paragraph (i) above; or**]**

(ii) if a share in the rights is held as security for a debt owed by them;

(e) in the case of a foreign institution, if a share in the rights is in the beneficial ownership of the foreign institution, or is held as security for a debt owed by the foreign institution.

(4) For the purposes of subsection (1) above, a person's "proportionate share" of the amount of a gain is that share of it which is proportionate to the share of the rights by reference to which he has the relevant interest in question.

(5) Where, immediately before the happening of a chargeable event, the rights conferred by the policy or contract in question are, or a share in those rights is, held as security for one or more debts owed by two or more persons, this section shall effect in relation to the chargeable event as if—

(a) each of those persons were instead the sole debtor in respect of a separate debt; and

(b) the security for that separate debt were the appropriate share of the security for the actual debt or debts (so far as consisting of the rights, or a share in the rights, conferred by the policy or contract);

and for the purposes of paragraph (b) above the appropriate share, in the case of any person, is a share which is proportionate to that share of the actual debt or, as the case may be, the aggregate of the two or more actual debts, for which he is liable as between the debtors.

(6) Where, immediately before the happening of a chargeable event, the rights conferred by the policy or contract in question are, or a share in those rights is, held on **[**F3576non-

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charitable**]** trusts created by two or more persons, this section shall have effect in relation to that chargeable event as if—

(a) each of those persons had instead been the sole settlor in relation to a separate share of the rights or share so held; and

(b) that separate share were proportionate to the share which originates from him of the whole of the property subject to the trusts immediately before the happening of the chargeable event.

(7) The reference in subsection (6)(b) above to the share of the property which originates from a person is a reference to the share of the property which consists of—

(a) property which that person has provided directly or indirectly for the purposes of the trusts;

(b) property representing property which that person has so provided; and

(c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.

(8) References in subsection (7) above to property which a person has provided directly or indirectly—

(a) include references to property which has been provided directly or indirectly by another in pursuance of reciprocal arrangements with the person, but

(b) do not include references to property which the person has provided directly or indirectly in pursuance of reciprocal arrangements with another.

(9) References in subsection (7) above to property which represents other property include references to property which represents accumulated income from that other property.

(10) Where immediately before the happening of a chargeable event—

(a) the rights conferred by the policy or contract in question are, or a share in those rights is, held subject to any **[**F3577non-charitable**]** trusts, and

(b) different shares of the whole of the property subject to those trusts originate (within the meaning of subsection (6)(b) above) from different persons,

the rights or share shall, in relation to that chargeable event, be taken for the purposes of this section to be held on **[**F3578non-charitable**]** trusts created by those persons.

(11) Where the rights conferred by a policy or contract are, or an interest in any such rights is, in the beneficial ownership of two or more persons jointly, the rights or interest shall be treated for the purposes of this section as if they were in the beneficial ownership of those persons in equal shares.

(12) A non-fractional interest in the rights conferred by a policy or contract shall be treated for the purposes of this section as if it were instead such a share in those rights as may justly and reasonably be regarded for those purposes as representing the non-fractional interest.

(13) For the purposes of subsection (12) above, a “non-fractional interest" in the rights conferred by a policy or contract is an interest in some or all of those rights which is not a share in all of those rights (otherwise than by virtue only of subsection (2) above).

(14) This section applies in a case where the same person has two or more relevant interests in the rights conferred by a policy or contract as it applies in a case where two or more persons have separate relevant interests, unless—

(a) that person is the only person with a relevant interest in those rights, and

(b) he has all the relevant interests in the same capacity,

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in which case section 547 applies.

(15) In this section—

[[F3579]"foreign institution" means a person which is a company or other institution resident or domiciled outside the United Kingdom;**]**

"personal representatives" has the same meaning as in Part XVI.

[[F3580](16) For the purposes of this section, property held for the purposes of a foreign institution shall be regarded as in the beneficial ownership of the foreign institution.

(17) Any reference in this section to trusts created by an individual includes a reference to trusts arising under—

(a) section 11 of the Married Women's Property Act 1882;

(b) section 2 of the Married Women's Policies of Assurance (Scotland) Act 1880; or

(c) section 4 of the Law Reform (Husband and Wife) Act (Northern Ireland) 1964;

and references to the settlor or to the person creating the trusts shall be construed accordingly.**]]**

Textual Amendments

F3568 S. 547A inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 2**

F3569 S. 547A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 217(2)** (with Sch. 2)

F3570 S. 547A(2) substituted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para 12**

F3571 Word in s. 547A(3)(a) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(2)**

F3572 Word in s. 547A(3)(b) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(3)**

F3573 S. 547A(3)(cc) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(4)**

F3574 Words in s. 547A(3)(d) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(5)**

F3575 S. 547A(3)(d)(ia) substituted for word at the end of s. 547A(3)(d)(i) (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(6)**

F3576 Word in s. 547A(6) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(7)**

F3577 Word in s. 547A(10)(a) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(8)(a)**

F3578 Word in s. 547A(10) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(8)(b)**

F3579 S. 547A(15): definition of "foreign institution" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 217(3)** (with Sch. 2)

F3580 S. 547A(16)(17) substituted for s. 547A(16) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 217(4)** (with Sch. 2)

548 Deemed surrender of certain loans.

(1) Where— [M704]

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[F3581(a) a gain arising in connection with a policy or contract would be—

(i) treated as forming part of the income of a company under section 547(1)(b), or

(ii) a gain for which an individual is, or any trustees are, liable to tax under Chapter 9 of Part 4 of ITTOIA 2005; and**]**

(b) the policy was issued in respect of an insurance made after 26th March 1974 or the contract was made after that date; and

(c) any sum is at any time after the making of the insurance or contract lent to or at the direction of that individual **[**F3582or company**][**F3583or those trustees**]** by or by arrangement with the body issuing the policy or, as the case may be, the body with which the contract was made;

then, subject to **[**F3584subsections (3) and (3A)**]** below, the same results shall follow under this Chapter as if at the time the sum was lent there had been a surrender of part of the rights conferred by the policy or contract and the sum had been paid as consideration for the surrender.

(2) If the whole or any part of the sum is repaid the repayment shall be treated, for the purpose of computing any gain arising on the happening, at the end of the final year, of a chargeable event, as a payment of a premium or lump sum consideration.

(3) Subsections (1) and (2) above do not apply in relation—

[F3585(a) to a policy if it is a qualifying policy and interest at a commercial rate is payable on the sum lent;**]**

(b) to a contract if and to the extent that interest on the sum lent is eligible for relief under section 353 by virtue of section 365.

[F3586(3A) Subsections (1) and (2) do not apply where the rights conferred by thepolicy or contract are in the beneficial ownership of a company, or are heldon trusts created, or as security for a debt owed, by a company, if the policywas issued in respect of an insurance made before 14th March 1989 or thecontract was made before that date.**]**

(4) In this section "final year" has the same meaning as in section 546.

Textual Amendments

F3581 S. 548(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 218** (with Sch. 2)

F3582 Words in s. 548(1)(c) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(2)(b)**

F3583 Words in s. 548(1)(c) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 9(3)**

F3584 Words in s. 548(1) substituted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(2)(c)**

F3585 S. 548(3)(a) substituted (with effect in accordance with Sch. 4 para. 18(3) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 16**

F3586 S. 548(3A) inserted (with effect in accordance with Sch. 9 para. 8 of the amending Act) by Finance Act 1989 (c. 26), **Sch. 9 para. 6(3)**

Marginal Citations

M704 Source-1975 Sch.2 16; 1976 s.35

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VALID FROM 19/07/2007

[F3587 548A Effect of rebated or reinvested commission in certain cases

(1) This section applies if—

(a) a relevant chargeable event occurs in respect of a policy or contract,

(b) commission in respect of the policy or contract has at any time been rebated or reinvested, and

(c) condition A or B is met.

(2) For the purposes of performing the calculation under section 541(1)(b) or (c) or 543(1)(a) or (b) for the chargeable event, the total amount paid under the policy or contract by way of premiums in any period is to be reduced by the total amount of commission attributable to those premiums that has been rebated or reinvested.

(3) Condition A is that the total amount paid under the policy or contract by way of premiums in a relevant period exceeds £100,000.

(4) Condition B is that—

(a) at a time when the policy or contract was the taxable person's, the taxable person's policies and contracts exceeded the relevant threshold as respects a relevant period, and

(b) payments under the policy or contract by way of premiums were made in that relevant period.

(5) In subsection (4)(a) "taxable person" means the person whose policy or contract the policy or contract is, immediately before the chargeable event.

(6) For the purposes of subsection (4)(a) a person's policies and contracts "exceed the relevant threshold" as respects a relevant period if the total amount of payments under them by way of premiums in that relevant period exceeds the sum specified in subsection (3).

(7) In this section "relevant chargeable event" means a chargeable event within—

(a) any of sub-paragraphs (ii) to (iv) of section 540(1)(a) (including those sub-paragraphs as they apply in relation to a qualifying policy),

(b) section 542(1)(a) or (b), or

(c) section 545(1)(a) to (c).

(8) In this section "relevant period" means—

(a) the period beginning with the beginning of the year of assessment in which the chargeable event occurs and ending with the chargeable event, or

(b) any of the 3 preceding years of assessment.

(9) References in this section to a premium include, in relation to a contract for a life annuity, lump sum consideration.

(10) The Treasury may by order—

(a) substitute another sum for the sum for the time being specified in subsection (3);

(b) amend the definition of "relevant period".]

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Textual Amendments

F3587 Ss. 548A, 548B inserted (with effect in accordance with s. 29(4) of the amending Act) by Finance Act 2007 (c. 11), **s. 29(1)**

VALID FROM 19/07/2007

[F3587 548B Section 548A: further definitions

(1) This section supplements section 548A.

(2) "Commission", in relation to a policy or contract, includes any passing of value to or for the benefit of an intermediary, or a person connected with an intermediary, that can reasonably be taken to represent a reward in respect of the policy or contract.

(3) Commission in respect of a policy or contract is "reinvested" if, as a result of a waiver of an entitlement to it, there is an increase in the total value of a relevant person's policies and contracts.

(4) The amount of commission reinvested is the amount of the increase.

(5) Commission in respect of a policy or contract is "rebated" if—

(a) value passes (directly or indirectly) from an intermediary, or a person connected with an intermediary, to or for the benefit of a relevant person (and the passing of value does not amount to the reinvestment of the commission), and

(b) the passing of value can reasonably be taken to be in respect of the commission.

(6) The amount of commission rebated is the amount of value passed.

(7) A policy or contract is a person's policy or contract if a gain arising in connection with it would be—

(a) a gain for which the person, or (if the person is an individual) the person's spouse or civil partner, would be liable to tax under Chapter 9 of Part 4 of ITTOIA 2005, or

(b) treated by virtue of section 547(1) above as forming part of the person's income.

(8) Any necessary apportionment is to be made (on a just and reasonable basis) as regards—

(a) commission which is attributable to two or more premiums, and

(b) any part of such commission that has been rebated or reinvested.

(9) Commission which is in respect of one or more policies or contracts (but is not attributable to particular premiums) is to be attributed to such premiums as is just and reasonable.

(10) In subsections (3) and (5), "relevant person" means—

(a) any of the policyholders (including any of the persons who hold the contract),

(b) a person who beneficially owns the rights under the policy or contract,

(c) if those rights are held on trust, any of the trustees, or

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(d) a person connected (within the meaning of section 839) with a person within any of paragraphs (a) to (c).

(11) In subsections (8) and (9), references to a premium include, in relation to a contract for a life annuity, lump sum consideration.**]**

Textual Amendments

F3587 Ss. 548A, 548B inserted (with effect in accordance with s. 29(4) of the amending Act) by Finance Act 2007 (c. 11), **s. 29(1)**

549 Certain deficiencies allowable as deductions.

F3588 . . . . . .

Textual Amendments

F3588 S. 549 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 219, **Sch. 3** (with Sch. 2)

550 Relief where gain charged at a higher rate.

F3589 . . . . . .

Textual Amendments

F3589 S. 550 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 220, **Sch. 3** (with Sch. 2)

551 Right of individual to recover tax from trustees.

F3590 . . . . . .

Textual Amendments

F3590 S. 551 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 221, **Sch. 3** (with Sch. 2)

[F3591**551A** Right of company to recover tax from trustees.

(1) Where—

(a) an amount is included in a company's income by virtue of section 547(1)(b), and

(b) the **[**F3592rights, or the part or share,**]** in question were held immediately before the happening of the chargeable event on **[**F3593non-charitable trusts**]**,

the company shall be entitled to recover from the trustees, to the extent of any sums, or to the value of any benefits, received by them by reason of the event, the amount (if any) by which T1 exceeds T2.

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(2) For the purposes of subsection (1) above—

T1 is the tax with which the company is chargeable for the accounting period in question; and

T2 is the tax with which the company would have been chargeable for the accounting period if the amount mentioned in subsection (1)(a) above had not been included as there mentioned.

(3) A company may require the Board to certify any amount recoverable by the company by virtue of this section, and the certificate shall be conclusive evidence of the amount.**]**

Textual Amendments

F3591 Ss. 551A inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 3**

F3592 Words in s. 551A(1)(b) substituted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 16**

F3593 Words in s. 551A(1)(b) substituted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 11**

[F3594 552 Information: duty of insurers.

(1) Where a chargeable event F3595. . . has happened in relation to any policy or contract, the body by or with whom the policy or contract was issued, entered into or effected shall—

(a) unless satisfied that no gain is to be treated as arising by reason of the event, deliver to the appropriate policy holder before the end of the relevant three month period a certificate specifying the information described in subsection (5) below; and

(b) if the condition in paragraph (a) or (b) of subsection (2) below is satisfied, deliver to the inspector before the end of the relevant three month period a certificate specifying the information described in subsection (5) below together with the name and address of the appropriate policy holder.

(2) For the purposes of this section—

(a) the condition in this paragraph is that the event is an assignment for money or money's worth of the whole of the rights conferred by the policy or contract; or

(b) the condition in this paragraph is that the amount of the gain, or the aggregate amount of the gain and any gains connected with it, exceeds one half of the basic rate limit for the relevant year of assessment.

(3) If, in the case of every certificate which a body delivers under subsection (1)(a) above which relates to a gain attributable to a year of assessment (or, where the appropriate policy holder is a company, the corresponding financial year), the body also delivers to the inspector—

(a) before the end of the relevant three month period for the purposes of subsection (1)(b) above,

(b) by a means prescribed by the Board for the purposes of this subsection under section 552ZA(5), and

(c) in a form so prescribed in the case of that means,

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a certificate specifying the same information as the certificate under subsection (1)(a) together with the name and address of the appropriate policy holder, the body shall be taken to have complied with the requirements of subsection (1)(b) above in relation to that year of assessment, and the corresponding financial year, so far as relating to the chargeable events to which the certificates relate.

(4) Where a certificate is not required to be delivered under subsection (1)(b) above in the case of any chargeable event—

(a) the inspector may by notice require the body to deliver to him a copy of any certificate that the body was required to deliver under subsection (1)(a) above which relates to the chargeable event; and

(b) it shall be the duty of the body to deliver such a copy within 30 days of receipt of the notice.

(5) The information to be given to the appropriate policy holder pursuant to subsection (1)(a) above or the inspector pursuant to subsection (1)(b) above is—

(a) any unique identifying designation given to the policy or contract;

(b) the nature of the chargeable event and—

(i) the date on which it happened; and

(ii) if it is a chargeable event by virtue of section 546C(7)(a) **[**F3596of this Act and section 514(1) of ITTOIA 2005 (chargeable events where transaction-related calculations show gains), the date on which the year and the insurance year end;**]**

(c) if the event is the assignment of all the rights conferred by the policy or contract, such of the following as may be required for computing the amount of the gain to be treated as arising by virtue of this Chapter **[**F3597and Chapter 9 of Part 4 of ITTOIA 2005**]**—

(i) the amount or value of any relevant capital payments **[**F3598and the amount or value of any capital sums of a kind referred to in section 492(1)(b) to (e) of ITTOIA 2005**]**;

(ii) the amounts previously paid under the policy or contract by way of premiums or otherwise by way of consideration for an annuity;

(iii) the capital element in any payment previously made on account of an annuity **[**F3599determined in accordance with section 656 and the amount of so much of any payment previously made on account of an annuity as is exempt under section 717 of ITTOIA 2005**]**;

(iv) the value of any previously assigned parts of or shares in the rights conferred by the policy or contract;

(v) the total of the amounts of gains treated as arising on previous chargeable events by reason, or in consequence, of the occurrence of a section 546 excess at the end of a year **[**F3600and the total of the amounts of gains treated as arising on previous chargeable events within section 509(1) or 514(1) of ITTOIA 2005**]**;

(d) except where paragraph (c) above applies, the amount of the gain treated as arising by reason of the event;

[F3601(e) the number of years relevant for computing the annual equivalent of the amount of the gain for the purposes of subsection (1) of section 536 of ITTOIA 2005 (top slicing relieved liability: one chargeable event), apart from subsections (6) and (8) of that section;**]**

[F3602(f) on the assumption that section 465 of ITTOIA 2005 (person liable: individuals) has effect in relation to the gain —

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(i) whether an individual would fall to be treated as having paid income tax at the lower rate on the amount of the gain in accordance with section 530 of that Act; and

(ii) if so, except in a case where paragraph (c) above applies, the amount of such tax that would fall to be so treated as paid.**]**

(6) For the purposes of subsection (1)(a) above, the relevant three month period is whichever of the following periods ends the latest—

(a) the period of three months following the happening of the chargeable event;

(b) if the event is a surrender or assignment which is a chargeable event by virtue of section 546C(7)(a) **[**F3603of this Act (and section 514(1) of ITTOIA 2005)**]**, the period of three months following the end of the year **[**F3604(and the insurance year)**]** in which the event happens;

(c) if the event is a death or an assignment of the whole of the rights or a surrender or assignment which is a chargeable event by virtue of section 546C(7)(a) **[**F3605of this Act (and section 514(1) of ITTOIA 2005)**]**, the period of three months beginning with receipt of written notification of the event.

(7) For the purposes of subsection (1)(b) above, the relevant three month period is whichever of the following periods ends the latest—

(a) the period of three months following the end of the year of assessment, or, where the policy holder is a company, the financial year, in which the event happened;

(b) if the event is a surrender or assignment which is a chargeable event by virtue of section 546C(7)(a) **[**F3606of this Act (and section 514(1) of ITTOIA 2005)**]**, the period of three months following the end of the year **[**F3607(and the insurance year)**]** in which the event happens;

(c) if the event is a death or an assignment, the period of three months beginning with receipt of written notification of the event;

(d) if a certificate under subsection (1)(b) above would not be required in respect of the event apart from the happening of another event, and that other event is one of those mentioned in paragraph (c) above, the period of three months beginning with receipt of written notification of that other event.

(8) For the purposes of this section the cases where a gain is connected with another gain are those cases where—

(a) both gains arise in connection with policies or contracts containing obligations which, immediately before the chargeable event, were obligations of the same body;

(b) the policy holder of those policies or contracts is the same;

(c) both gains are attributable to the same year of assessment or, where the policy holder is a company, to the same financial year;

(d) the terms of the policies or contracts are the same, apart from any difference in their maturity dates; and

(e) the policies or contracts were issued in respect of insurances made, or were entered into or effected, on the same date.

(9) For the purposes of this section, the year of assessment or financial year to which a gain is attributable is—

(a) in the case of a gain treated as arising by virtue of section 546C(7)(b) **[**F3608of this Act (and section 514(1) of ITTOIA 2005)**]**, the year of assessment or financial year which includes the end of the year as at which the section 546

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excess in question occurs **[**F3609(and the end of the insurance year mentioned in section 514(3) and (4) of ITTOIA 2005)**]**; or

(b) in any other case, the year of assessment or financial year in which happens the chargeable event by reason of which the gain is treated as arising.

(10) In this section—

"amount", in relation to any gain, means the amount of the gain apart from section 553(3) **[**F3610of this Act and section 528 of ITTOIA 2005**]**;

"appropriate policy holder" means—

(a) in relation to an assignment of part of or a share in the rights conferred by a policy or contract, any person who is both—

(i) the policy holder, or one of the policy holders, immediately before the assignment; and

(ii) the assignor or one of the assignors; and

(b) in relation to any other chargeable event, the person who is the policy holder immediately before the happening of the event;

[F3611"chargeable event" means an event which is a chargeable event within the meaning of this Chapter and Chapter 9 of Part 4 of ITTOIA 2005;**]**

"financial year" means a period of 12 months beginning with 1st April;

"the relevant year of assessment", in the case of any gain, means—

(a) the year of assessment to which the gain is attributable, or

(b) if the gain arises to a company, the year of assessment which corresponds to the financial year to which the gain is attributable;

"section 546 excess" has the meaning given in section 546B(4);

"year", in relation to any policy or contract, has the meaning given by section 546(4).

(11) For the purposes of this section a year of assessment and a financial year correspond to each other if the financial year ends with 31st March in the year of assessment.

(12) This section is supplemented by section 552ZA.**]**

Textual Amendments

F3594 Ss. 552, 552ZA substituted for s. 552 (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 18**

F3595 Words in s. 552(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 222(2), **Sch. 3** (with Sch. 2)

F3596 Words in s. 552(5)(b)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(a)** (with Sch. 2)

F3597 Words in s. 552(5)(c) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(b)(i)** (with Sch. 2)

F3598 Words in s. 552(5)(c)(i) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(b)(ii)** (with Sch. 2)

F3599 Words in s. 552(5)(c)(iii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(b)(iii)** (with Sch. 2)

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F3600 Words in s. 552(5)(c)(v) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(b)(iv)** (with Sch. 2)

F3601 S. 552(5)(e) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(c)** (with Sch. 2)

F3602 S. 552(5)(f) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(3)(d)** (with Sch. 2)

F3603 Words in s. 552(6)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(4)(a)(i)** (with Sch. 2)

F3604 Words in s. 552(6)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(4)(a)(ii)** (with Sch. 2)

F3605 Words in s. 552(6)(c) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(4)(b)** (with Sch. 2)

F3606 Words in s. 552(7)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(5)(a)** (with Sch. 2)

F3607 Words in s. 552(7)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(5)(b)** (with Sch. 2)

F3608 Words in s. 552(9)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(6)(a)** (with Sch. 2)

F3609 Words in s. 552(9)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(6)(b)** (with Sch. 2)

F3610 S. 552(10): words in definition of "amount" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(7)(a)** (with Sch. 2)

F3611 S. 552(10): definition of "chargeable event" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 222(7)(b)** (with Sch. 2)

Modifications etc. (not altering text)

C574 S. 552(6) modified (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 5**

[F3612 552ZA Information: supplementary provisions

(1) This section supplements section 552 and shall be construed as one with it.

(2) Where the obligations under any policy or contract of the body that issued, entered into or effected it ("the original insurer") are at any time the obligations of another body ("the transferee") to whom there has been a transfer of the whole or any part of a business previously carried on by the original insurer, section 552 shall have effect in relation to that time, except where the chargeable event—

(a) happened before the transfer, and

(b) in the case of a death or an assignment, is an event of which the notification mentioned in subsection (6) or (7) of that section was given before the transfer,

as if the policy or contract had been issued, entered into or effected by the transferee.

(3) Where, in consequence of section 546C(7)(a) [F3613 of this Act and section 514(1) of ITTOIA 2005], paragraph (a) or (b) of section 552(1) requires certificates to be delivered in respect of two or more surrenders, happening in the same year, of part of or a share in the rights conferred by the policy or contract, a single certificate may be delivered under the paragraph in question in respect of all those surrenders (and may treat them as if they together constituted a single surrender) unless between the happening of the first and the happening of the last of them there has been—

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(a) an assignment of part of or a share in the rights conferred by the policy or contract; or

(b) an assignment, otherwise than for money or money's worth, of the whole of the rights conferred by the policy or contract.

(4) Where the appropriate policy holder is two or more persons—

(a) section 552(1)(a) requires a certificate to be delivered to each of them; but

(b) nothing in section 552 or this section requires a body to deliver a certificate under subsection (1)(a) of that section to any person whose address has not been provided to the body (or to another body, at a time when the obligations under the policy or contract were obligations of that other body).

(5) A certificate under section 552(1)(b) or (3)—

(a) shall be in a form prescribed for the purpose by the Board; and

(b) shall be delivered by any means prescribed for the purpose by the Board;

and different forms, or different means of delivery, may be prescribed for different cases or different purposes.

(6) The Board may by regulations make such provision as they think fit for securing that they are able—

(a) to ascertain whether there has been or is likely to be any contravention of the requirements of section 552 or this section; and

(b) to verify any certificate under that section.

(7) Regulations under subsection (6) above may include, in particular, provisions requiring persons to whom premiums under any policy are or have at any time been payable—

(a) to supply information to the Board; and

(b) to make available books, documents and other records for inspection on behalf of the Board.

(8) Regulations under subsection (6) above may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate.**]**

Textual Amendments

F3612 Ss. 552, 552ZA substituted for s. 552 (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 18**

F3613 Words in s. 552ZA(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 223** (with Sch. 2)

VALID FROM 17/07/2013

[F3614 552ZB Regulations in relation to qualifying policies

(1) The Commissioners for Her Majesty's Revenue and Customs may make regulations—

(a) requiring relevant persons—

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(i) to provide prescribed information to persons who apply for the issue of qualifying policies or who are, or may be, required to make statements under paragraph B3(2) of Schedule 15;

(ii) to provide to an officer of Revenue and Customs prescribed information about qualifying policies which have been issued by them or in relation to which they are or have been a relevant transferee;

(b) making such provision (not falling within paragraph (a)) as the Commissioners think fit for securing that an officer of Revenue and Customs is able—

(i) to ascertain whether there has been or is likely to be any contravention of the requirements of the regulations or of paragraph B3(2) of Schedule 15;

(ii) to verify any information provided to an officer of Revenue and Customs as required by the regulations.

(2) The provision that may be made by virtue of subsection (1)(b) includes, in particular, provision requiring relevant persons to make available books, documents and other records for inspection by or on behalf of an officer of Revenue and Customs.

(3) The regulations may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) In this section—

"prescribed" means prescribed by the regulations,

"qualifying policy" includes a policy which would be a qualifying policy apart from—

(a) paragraph A1(2), B1(2), B2(2) or B3(3) of Schedule 15, or

(b) paragraph 17(2)(za) of that Schedule (including as applied by paragraph 18), and

"relevant person" means a person—

(a) who issues, or has issued, qualifying policies, or

(b) who is, or has been, a relevant transferee in relation to qualifying policies.

(5) For the purposes of this section a person ("X") is at any time a "relevant transferee" in relation to a qualifying policy if the obligations under the policy of its issuer are at that time the obligations of X as a result of there having been a transfer to X of the whole or any part of a business previously carried on by the issuer.**]**

Textual Amendments

F3614 S. 552ZB inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 9 para. 10**

[F3615 552A Tax representatives.

(1) This section has effect for the purpose of securing that, where it applies to an overseas insurer, another person is the overseas insurer's tax representative.

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(2) In this section "overseas insurer" means a person who is not resident in the United Kingdom who carries on a business which consists of or includes the effecting and carrying out of—

(a) policies of life insurance;

(b) contracts for life annuities; or

(c) capital redemption policies.

(3) This section applies to an overseas insurer—

(a) if the condition in subsection (4) below is satisfied on the designated day; or

(b) where that condition is not satisfied on that day, if it has subsequently become satisfied.

(4) The condition mentioned in subsection (3) above is that—

(a) there are in force relevant insurances the obligations under which are obligations of the overseas insurer in question or of an overseas insurer connected with him; and

(b) the total amount or value of the gross premiums paid under those relevant insurances is £1 million or more.

(5) In this section "relevant insurance" means any policy of life insurance, contract for a life annuity or capital redemption policy [F3616]. . . in the case of which—

(a) the holder is resident in the United Kingdom;

(b) the obligations of the insurer are obligations of a person not resident in the United Kingdom; and

(c) those obligations are not attributable to a branch or agency of that person's in the United Kingdom.

(6) Before the expiration of the period of three months following the day on which this section first applies to an overseas insurer, the overseas insurer must nominate to the Board a person to be his tax representative.

(7) A person shall not be a tax representative unless—

(a) if he is an individual, he is resident in the United Kingdom and has a fixed place of residence there, or

(b) if he is not an individual, he has a business establishment in the United Kingdom,

and, in either case, he satisfies such other requirements (if any) as are prescribed in regulations made for the purpose by the Board.

(8) A person shall not be an overseas insurer's tax representative unless—

(a) his nomination by the overseas insurer has been approved by the Board; or

(b) he has been appointed by the Board.

(9) The Board may by regulations make provision supplementing this section; and the provision that may be made by any such regulations includes provision with respect to—

(a) the making of a nomination by an overseas insurer of a person to be his tax representative;

(b) the information which is to be provided in connection with such a nomination;

(c) the form in which such a nomination is to be made;

(d) the powers and duties of the Board in relation to such a nomination;

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(e) the procedure for approving, or refusing to approve, such a nomination, and any time limits applicable to doing so;

(f) the termination, by the overseas insurer or the Board, of a person's appointment as a tax representative;

(g) the appointment by the Board of a person as the tax representative of an overseas insurer (including the circumstances in which such an appointment may be made);

(h) the nomination by the overseas insurer, or the appointment by the Board, of a person to be the tax representative of an overseas insurer in place of a person ceasing to be his tax representative;

(j) circumstances in which an overseas insurer to whom this section applies may, with the Board's agreement, be released (subject to any conditions imposed by the Board) from the requirement that there must be a tax representative;

(k) appeals to the Special Commissioners against decisions of the Board under this section or regulations under it.

(10) The provision that may be made by regulations under subsection (9) above also includes provision for or in connection with the making of other arrangements between the Board and an overseas insurer for the purpose of securing the discharge by or on behalf of the overseas insurer of the relevant duties, within the meaning of section 552B.

(11) Section 839 (connected persons) applies for the purposes of this section.

(12) In this section—

[[F3617]"capital redemption policy" means a capital redemption policy in relation to which this Chapter and Chapter 9 of Part 4 of ITTOIA 2005 have effect;**]**

[[F3618]"contract for a life annuity" means a contract for a life annuity in relation to which this Chapter and Chapter 9 of Part 4 of ITTOIA 2005 have effect;**]**

"the designated day" means such day as the Board may specify for the purpose in regulations;

[[F3619]"policy of life insurance" means a policy of life insurance in relation to which this Chapter and Chapter 9 of Part 4 of ITTOIA 2005 have effect;**]**

"tax representative" means a tax representative under this section.**]**

Subordinate Legislation Made

P3 S. 552A(12) power exercised: 6.4.1999 appointed by S.I. 1999/881, **reg. 3**

Textual Amendments

F3615 Ss. 552A, 552B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 87**

F3616 Words in s. 552A(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 224(2), **Sch. 3** (with Sch. 2)

F3617 S. 552A(12): definition of "capital redemption policy" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 224(3)** (with Sch. 2)

F3618 S. 552A(12): definition of "contract for a life annuity" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 224(3)** (with Sch. 2)

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F3619 S. 552A(12): definition of "policy of life insurance" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 224(3)** (with Sch. 2)

Modifications etc. (not altering text)

C575 S. 522A restricted (6.4.1999) by The Overseas Insurers (Tax Representatives) Regulations 1999 (S.I. 1999/881), **reg. 11(2)**

[F3615 552B Duties of overseas insurers' tax representatives.

(1) It shall be the duty of an overseas insurer's tax representative to secure (where appropriate by acting on the overseas insurer's behalf) that the relevant duties are discharged by or on behalf of the overseas insurer.

[F3620(2) For the purposes of this section "the relevant duties" are—

(a) the duties imposed by section 552,

(b) the duties imposed by section 552ZA(2), (4) or (5), and

(c) any duties imposed by regulations made under subsection (6) of section 552ZA by virtue of subsection (7) of that section,

so far as relating to relevant insurances under which the overseas insurer in question has any obligations.**]**

(3) An overseas insurer's tax representative shall be personally liable—

(a) in respect of any failure to secure the discharge of the relevant duties, and

(b) in respect of anything done for purposes connected with acting on the overseas insurer's behalf,

as if the relevant duties were imposed jointly and severally on the tax representative and the overseas insurer.

(4) In the application of this section in relation to any particular tax representative, it is immaterial whether any particular relevant duty arose before or after his appointment.

(5) This section has effect in relation to relevant duties relating to chargeable events happening on or after the day by which section 552A(6) requires the nomination of the overseas insurer's first tax representative to be made.

[In subsection (5) "chargeable event" has the same meaning as in section 552 (see F3621(5A) subsection (10) of that section).**]**

(6) Expressions used in this section and in section 552A have the same meaning in this section as they have in that section.**]**

Textual Amendments

F3615 Ss. 552A, 552B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 87**

F3620 S. 552B(2) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 19**

F3621 S. 552B(5A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 225** (with Sch. 2)

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553 Non-resident policies and off-shore capital redemption policies.

M705(1) If, in the case of a substitution of policies falling within paragraph 25(1) or (3) of Schedule 15, the new policy is a qualifying policy, section 540 shall have effect with the following modifications—

(a) the surrender of the rights conferred by the old policy shall not be a chargeable event (within the meaning of that section); and

(b) the new policy shall be treated as having been issued in respect of an insurance made on the day referred to in paragraph 26 of that Schedule.

(2) If at any time **[**F3622the conditions in paragraph 24(3) of Schedule 15 to this Act are not fulfilled**]** with respect to a new non-resident policy which has previously become a qualifying policy, then, from that time onwards, this Chapter shall apply in relation to the policy as if it were not a qualifying policy.

(3) Subject to **[**F3623subsections (5) and (5A)**]** below, on the happening of a chargeable event in relation to a new non-resident policy or a new offshore capital redemption policy, the amount which, apart from this subsection, would by virtue of section 541 **[**F3624or 546C(7)(b)**]** be treated as a gain arising in connection with the policy shall be reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the number of days on which the policy holder was resident in the United Kingdom in the period for which the policy has run before the happening of the chargeable event; and

B is the number of days in that period.

[F3625(4) The number of days in the period referred to in subsection (3) shall be calculated, where appropriate, from the issue of the earliest related policy, that is, any policy in relation to which the policy is a new policy within the meaning of paragraph 17 of Schedule 15, any policy in relation to which that policy is such a policy, and so on.**]**

(5) If, on the happening of the chargeable event referred to in subsection (3) above or at any time during the period referred to in that subsection, the policy is or was held by a trustee resident outside the United Kingdom or by two or more trustees any of whom is or was so resident, no reduction shall be made under that subsection unless—

(a) the policy was issued in respect of an insurance made on or before 19th March 1985; and

(b) on that date the policy was held by a trustee who was so resident or, as the case may be, by two or more trustees any of whom was so resident.

[F3626(5A) If, on the happening of the chargeable event referred to in subsection (3) above or at any time during the period referred to in that subsection, the policy is or was held by a foreign institution, no reduction shall be made under that subsection unless—

(a) the policy was issued in respect of an insurance made on or before 16th March 1998; and

(b) on that date the policy was held by a foreign institution.**]**

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(6) F3627. . . . . .

[F3628(6A) F3627. . . . . .**]**

(7) F3627. . . . . .

[F3629(7A) F3627. . . . . .**]**

(8) F3627. . . . . .

(9) F3627. . . . . .

(10) In this section—

"chargeable event" has, subject to subsection (1) above, the meaning given by section 540 or, as the case may be, 545 **[**F3630or 546C(7)(a)**]**;

[F3631"foreign institution" has the same meaning as in **[**F3632section 547A**]**;**]**

"new non-resident policy" has the meaning given by paragraph 24 of Schedule 15; and

"new offshore capital redemption policy" means a capital redemption policy, as defined in section 539(3), which—

(a) is issued in respect of **[**F3633a contract**]** made after 22nd February 1984; and

(b) is so issued by a company resident outside the United Kingdom.

Textual Amendments

F3622 Words in s. 553(2) substituted (1.5.1995) by Finance Act 1995 (c. 4), **s. 55(8)(a)** (with saving)

F3623 Words in s. 553(3) substituted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 4(2)**

F3624 Words in s. 553(3) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001, (c. 9), Sch. 28 para. 17(2)

F3625 S. 553(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 226(2)** (with Sch. 2)

F3626 S. 553(5A) inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 4(3)**

F3627 S. 553(6)-(9) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 226(3), **Sch. 3** (with Sch. 2)

F3628 S. 553(6A) inserted (with effect in accordance with s. 56(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 56(2)**

F3629 S. 553(7A) inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), **s. 76(3)**

F3630 Words in s. 553(10) inserted (with effect in accordance with s. 83(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 28 para. 17(4)**

F3631 S. 553(10): definition of "foreign institution" inserted (with effect in accordance with Sch. 14 para. 7(5) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 14 para. 4(4)**

F3632 S. 553(10): words in definition of "foreign institution" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 226(4)** (with Sch. 2)

F3633 Words in s. 553(10) substituted (with effect in accordance with s. 168(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 168(5)**

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Modifications etc. (not altering text)

C576 S. 553: power to modify conferred (with effect in accordance with s. 56(4) of the affecting Act) by Finance Act 1995 (c. 4), **s. 56(3)**

Marginal Citations

M705 Source-1984 Sch.15 Part III; 1984 s.76(5); 1985 s.51

[F3634 553A Overseas life assurance business: life policies.

(1) A policy of life insurance which, immediately before the happening of a chargeable event or a relevant event—

(a) is an overseas policy, but

(b) is not a new non-resident policy,

shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new non-resident policy.

(2) A policy of life insurance which, immediately before the happening of a relevant event—

(a) is an overseas policy, and

(b) is a new non-resident policy,

shall, in relation to that event, be taken for the purposes of this Chapter not to be a qualifying policy.

(3) F3635 . . . . . .

(4) In this section—

"new non-resident policy" means a new non-resident policy as defined in paragraph 24 of Schedule 15 (and in **[**F3636subsection (2)**]** above includes a policy treated as such by virtue of subsection (1) above);

"overseas policy" means a policy of life insurance which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company or friendly society;

"relevant event", in relation to a policy of life insurance, means an event which would be a chargeable event in relation to that policy if the policy were assumed not to be a qualifying policy.

(5) This section applies in relation to chargeable events and relevant events happening on or after 17th March 1998 in relation to policies of life insurance issued in respect of insurances made on or after that date.

(6) A policy of life insurance issued in respect of an insurance made before 17th March 1998 shall be treated for the purposes of this section as issued in respect of one made on or after that date if it is varied on or after that date so as to increase the benefits secured or to extend the term of the insurance; and any exercise of rights conferred by the policy shall be regarded for this purpose as a variation.**]**

Textual Amendments

F3634 S. 553A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 88(1)**

F3635 S. 553A(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 227(2), **Sch. 3** (with Sch. 2)

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F3636 S. 553A(4): words in definition of "new non-resident policy" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 227(3)** (with Sch. 2)

[F3637 553B Overseas life assurance business: capital redemption policies.

(1) A capital redemption policy which immediately before the happening of a chargeable event—

(a) is an overseas policy, but

(b) is not a new offshore capital redemption policy,

shall, in relation to that event, be treated for the purposes of this Chapter as if it were a new offshore capital redemption policy.

(2) In this section—

"new offshore capital redemption policy" has the same meaning as in section 553;

"overseas policy" means a capital redemption policy which, by virtue of section 431D(1)(a), forms part of the overseas life assurance business of an insurance company.

(3) This section applies in relation to capital redemption policies where the contract is made after the coming into force of the first regulations under section 458A in consequence of which capital redemption business forms part of the overseas life assurance business of an insurance company.]

Textual Amendments

F3637 S. 553B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 88(2)**

[F3638 553C Personal portfolio bonds.

(1) The Treasury may by regulations make provision imposing a yearly charge to [F3639 corporation tax] in relation to personal portfolio bonds ("yearly" being construed for this purpose by reference to years as defined in section 546(4)).

(2) Subject to any provision to the contrary made by the regulations, any charge to [F3640 corporation tax] under this section is in addition to any other charge to [F3640 corporation tax] under this Chapter.

(3) The regulations may make provision with respect to or in connection with all or any of the following—

(a) the method by which the charge to [F3641 corporation tax], or any relief, allowance or deduction against or in respect of the tax, is to be imposed or given effect;

(b) the person who is to be liable for the tax;

(c) the periods for or in respect of which the tax is to be charged;

(d) the amounts in respect of which, or by reference to which, the tax is to be charged;

(e) the period or periods by reference to which those amounts are to be determined;

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(f) the rate or rates at which the tax is to be charged;

(g) any reliefs, allowances or deductions which are to be given or made against or in respect of the tax;

(h) the administration of the tax.

(4) The provision that may be made by the regulations includes provision for imposing the charge to **[**F3642corporation tax**]** by a method which involves—

(a) treating an event described in the regulations as if it were a chargeable event;

(b) treating an amount determined in accordance with the regulations as if it were a gain treated as arising on the happening of a chargeable event; **[**F3643or**]**

(c) deeming an amount determined in accordance with the regulations to be income of a **[**F3644company**]**; F3645. . .

(d) F3645. . . . . .

(5) The provision that may be made in the regulations includes provision for the amount or amounts in respect of which, or by reference to which, the tax is to be charged for periods beginning after the coming into force of the regulations to be determined in whole or in part by reference to periods beginning or ending, premiums paid, or events happening, before, on or after the day on which the Finance Act 1998 is passed.

(6) The regulations may make provision excluding, or applying (with or without modification), other provisions of this Chapter in relation to policies or contracts which are also personal portfolio bonds.

(7) In this section, "personal portfolio bond" means a policy of life insurance, contract for a life annuity or capital redemption policy under whose terms—

(a) some or all of the benefits are determined by reference to the value of, or the income from, property of any description (whether or not specified in the policy or contract) or fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and

(b) some or all of the property, or such an index, may be selected by, or by a person acting on behalf of, the holder of the policy or contract or a person connected with him (or the holder of the policy or contract and a person connected with him);

but a policy or contract is not a personal portfolio bond if the only property or index which may be so selected is of a description prescribed for this purpose in the regulations.

(8) The regulations may prescribe additional conditions which must be satisfied if a policy or contract is to be a personal portfolio bond.

(9) The regulations—

(a) may make different provision for different cases, different circumstances or different periods; and

(b) may make incidental, consequential, supplemental or transitional provision.

F3646**[** (9A) The Treasury may by regulations make provision, in relation to any policy or contract to which this subsection applies, for—

(a) treating an event described in the regulations as if it were a chargeable event, and

(b) treating an amount determined in accordance with the regulations as if it were a gain treated as arising on the happening of a chargeable event.

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(9B) Regulations under subsection (9A) may make such provision for the purposes only of enabling the gain to be taken into account in the application of this Chapter to the policy or contract on the later happening of a chargeable event.

(9C) Regulations under subsection (9A) may make any provision for the calculation of the amount of the gain which regulations under subsection (1) may make for the calculation of the amount charged to corporation tax by virtue of regulations under that subsection.

(9D) Subsections (6), (8) and (9) apply to regulations under subsection (9A).

(9E) Subsection (9A) applies to a policy or contract if—

(a) it is a personal portfolio bond, and

(b) liability in respect of a gain arising in relation to it would arise by virtue of any of sections 464 to 468 of ITTOIA 2005 (persons liable for tax under Chapter 9 of Part 4 of that Act).**]**

(10) In this section, "holder", in the case of a policy or contract held by two or more persons, includes a reference to any of those persons.

(11) Section 839 (connected persons) applies for the purposes of this section.**]**

Textual Amendments

F3638 S. 553C inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 89**

F3639 Words in s. 553C(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(2)** (with Sch. 2)

F3640 Words in s. 553C(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(3)** (with Sch. 2)

F3641 Words in s. 553C(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(4)** (with Sch. 2)

F3642 Words in s. 553C(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(5)(a)** (with Sch. 2)

F3643 Word at the end of s. 553C(4)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(5)(b)** (with Sch. 2)

F3644 Word in s. 553C(4)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(5)(c)** (with Sch. 2)

F3645 S. 553C(4)(d) and preceding word repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 228(5)(d), **Sch. 3** (with Sch. 2)

F3646 S. 553C(9A)-(9E) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 228(6)** (with Sch. 2)

554 Borrowings on life policies to be treated as income in certain cases.

F3647 . . . . . .

Textual Amendments

F3647 S. 554 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 229, **Sch. 3** (with Sch. 2)

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CHAPTER III

ENTERTAINERS AND SPORTSMEN

555 Payment of tax.

(1) [M706]Where a person who is an entertainer or sportsman of a prescribed description performs an activity of a prescribed description in the United Kingdom ("a relevant activity"), this Chapter shall apply if he is not resident in the United Kingdom in the year of assessment in which the relevant activity is performed.

(2) [M707]Where a payment is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall on making it deduct out of it a sum representing income tax and shall account to the Board for the sum.

(3) [M708]Where a transfer is made (to whatever person) and it has a connection of a prescribed kind with the relevant activity, the person by whom it is made shall account to the Board for a sum representing income tax.

(4) [M709]The sums mentioned in subsections (2) and (3) above shall be such as are calculated in accordance with prescribed rules but shall in no case exceed the relevant proportion of the payment concerned or of the value of what is transferred, as the case may be; and "relevant proportion" here means a proportion equal to the basic rate of income tax for the year of assessment in which the payment or, as the case may be, the transfer is made.

(5) [M710]In this Chapter—

(a) references to a payment include references to a payment by way of loan of money; and

(b) references to a transfer do not include references to a transfer of money but, subject to that, include references to a temporary transfer (as by way of loan) and to a transfer of a right (whether or not a right to receive money).

(6) [M711]This section shall not apply to payments or transfers of such a kind as may be prescribed.

(7) [M712]Regulations may—

(a) make provision enabling the Board to serve notices requiring persons who make payments or transfers to which subsection (2) or (3) above applies to furnish to the Board particulars of a prescribed kind in respect of payments or transfers;

(b) make provision requiring persons who make payments or transfers to which subsection (2) or (3) above applies to make, at prescribed times and for prescribed periods, returns to the Board containing prescribed information about payments or transfers and the income tax for which those persons are accountable in respect of them;

(c) make provision for the collection and recovery of such income tax, provision for assessments and claims to be made in respect of it, and provision for the payment of interest on it;

(d) adapt, or modify the effect of, any enactment relating to income tax for the purpose of making any such provision as is mentioned in paragraphs (a) to (c) above.

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(8) [M713]Where in accordance with subsections (2) to (7) above a person pays a sum to the Board, they shall treat it as having been paid on account of a liability of another person to income tax or corporation tax; and the liability and the other person shall be such as are found in accordance with prescribed rules.

(9) Where the sum exceeds the liability concerned, the Board shall pay such of the sum as is appropriate to the other person mentioned in subsection (8) above.

(10) Where no liability is found as mentioned in subsection (8) above, the Board shall pay the sum to the person to whom the payment or transfer to which subsection (2) or (3) above applies, and which gave rise to the payment of the sum concerned to the Board, was made.

(11) In construing references to a sum in subsections (8) to (10) above, anything representing interest shall be ignored.

Modifications etc. (not altering text)
C577 *See* 1988(F) s.130(7)—*payment of outstanding tax by migrating companies.*
C578 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations
M706 Source-1986 Sch.11 1
M707 Source-1986 Sch.11 2(1)
M708 Source-1986 Sch.11 2(3)
M709 Source-1986 Sch.11 2(2), (4)
M710 Source-1986 Sch.11 2(5), (6)
M711 Source-1986 Sch.11 2(7)
M712 Source-1986 Sch.11 3(1)
M713 Source-1986 Sch.11 4

556 Activity treated as trade etc. and attribution of income.

(1) [F3648]. . . . . .

[[F3649](2) If—

(a) under section 13(5) of ITTOIA 2005 a payment made to a person is treated as made instead to the performer, and

(b) the person to whom the payment is actually made is a company within the charge to corporation tax,

the company is treated for corporation tax purposes as if the payment had not been made to it.**]**

(3) Regulations may provide—

(a) [F3650]. . . . . .

(b) that any liability to **[**[F3651]corporation tax**]** which would, apart from subsection (2) above, arise in relation to the payment shall not arise or shall arise only to a prescribed extent.

(4) [M714]References in this section to a payment include references to a transfer.

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(5) [M715]This section shall not apply unless the payment or transfer is one to which section 555(2) or (3) applies, and subsections (2) and (3) above shall not apply in such circumstances as may be prescribed.

Textual Amendments

F3648 S. 556(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 230(2), **Sch. 3** (with Sch. 2)

F3649 S. 556(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 230(3)** (with Sch. 2)

F3650 S. 556(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 230(4)(a), **Sch. 3** (with Sch. 2)

F3651 Words in s. 556(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 230(4)(b)** (with Sch. 2)

Modifications etc. (not altering text)

C579 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations

M714 Source-1986 Sch.11 6(4) 7(6)

M715 Source-1986 Sch.11 6(2), 7(5)

557 Charge on [F3652profits].

F3653 . . . . . .

Textual Amendments

F3652 Word in s. 557 sidenote substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3653 S. 557 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 231, **Sch. 3** (with Sch. 2)

558 Supplementary provisions.

(1) [M716]A payment to which subsection (2) of section 555 applies shall be treated for the purposes of the Tax Acts as not diminished by the sum mentioned in that subsection.

(2) Regulations may provide that for the purposes of the Tax Acts the value of what is transferred by a transfer to which section 555(3) applies shall be calculated in accordance with prescribed rules.

(3) In particular, rules may include provision for the calculation of an amount representing the actual worth of what is transferred, for that amount to be treated as a net amount corresponding to a gross amount from which income tax at the basic rate has been deducted, and for the gross amount to be taken to be the value of what is transferred.

(4) [M717]No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an authorised officer of the Board from disclosing to any person who appears

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to the Board to have an interest in the matter information which may be relevant to determining whether section 555(2) or (3) applies to a payment or transfer.

(5) [M718]Regulations may make provision generally for giving effect to this Chapter, and may make different provision for different cases or descriptions of case.

(6) [M719]In this Chapter—

"regulations" means regulations made by the Treasury; and

"prescribed" means prescribed by regulations.

Modifications etc. (not altering text)

C580 *For regulations see* Part III Vol.5 (*under* "*Entertainers and sportsmen*").

Marginal Citations

M716 Source-1986 Sch.11 9

M717 Source-1986 Sch.11 5

M718 Source-1986 Sch.11 10, 11(2)

M719 Source-1986 Sch.11 11(1), (3)

CHAPTER IV

SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY

559 Deductions on account of tax etc. from payments to certain sub-contractors.

(1) [M720]Subject to **[**[F3654]the following provisions of this section**]**, where a contract relating to construction operations is not a contract of employment but—

(a) one party to the contract is a sub-contractor; and

(b) another party to the contract ("the contractor") either is a sub-contractor under another such contract relating to all or any of the construction operations or is a person to whom section 560(2) applies,

this section shall apply to any payments which are made under the contract and are so made by the contractor to—

(i) the sub-contractor;

(ii) a person nominated by the sub-contractor or the contractor; or

(iii) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.

[[F3655](1A) Subsection (1) above shall not apply to any payment made under the contract in question that is **[**[F3656]treated as earnings from an employment by virtue of Chapter 7 of Part 2 of ITEPA 2003 (agency workers)**].]**

(2) Subsection (1) above shall not apply to any payment made under the contract in question if the person to whom it is made or, if it is made to a nominee, each of the following persons, that is to say, the nominee, the person who nominated him and the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made, is excepted from this section in relation to those payments by virtue of section 561.

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(3) F3657. . . . . .

[F3658(3A) Subsection (1) above shall not apply to a payment made under any contract if such conditions as may be prescribed in regulations made by the Board are satisfied in relation to the payment and the person making it.**]**

(4) M721On making a payment to which this section applies the contractor shall deduct from it a sum equal to **[**F3659the relevant percentage**]** of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates; F3660. . .

[F3661(4A) In subsection (4) above "the relevant percentage", in relation to a payment, means such percentage (not exceeding the percentage which is the basic rate for the year of assessment in which the payment is made) as the Treasury may by order determine.**]**

(5) F3662. . . . . .

[F3663(5A) F3662. . . . . .**]**

[F3664(6) M722References in section 1(1) of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964 to sums due on account of tax deductions for any period shall be construed as including references to any amounts due from any person in respect of deductions required to be made by him under this section**]**.

(7) M723For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations shall be taken to be made under the contract; and if—

(a) the obligation is to make a payment to a person within subsection (1)(i) to (iii) above, but

(b) the payment discharging that obligation is made to a person not within those paragraphs,

the payment shall for those purposes be taken to be made to the first-mentioned person.

(8) F3665. . . . . .

Textual Amendments

F3654 Words in s. 559(1) substituted (with effect in accordance with s. 55(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 55(2)**

F3655 S. 559(1A) inserted (with effect in accordance with s. 55(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 55(2)**

F3656 Words in s. 559(1A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 58** (with Sch. 7)

F3657 S. 559(3) repealed (with effect in accordance with Sch. 29 Pt. 8(21) Notes 1, 5 of the repealing Act) by Finance Act 1995 (c. 4), Sch. 27 para. 1(2), **Sch. 29 Pt. 8(21)**; S.I. 1998/2620, **art. 3**

F3658 S. 559(3A) inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 1(3)**; S.I. 1998/2620, **art. 3**

F3659 Words in s. 559(4) substituted (with effect in accordance with the amending provision) by Finance Act 1995 (c. 4), **s. 139(1)**; S.I. 2000/922, **art. 2**

F3660 Words in s. 559(4) repealed (with effect in accordance with s. 40(4) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(1)**, Note

F3661 S. 559(4A) inserted (with effect in accordance with the amending provision) by Finance Act 1995 (c. 4), **s. 139(1)**; S.I. 2000/922, **art. 2**

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F3662 S. 559(5)(5A) repealed (with effect in accordance with s. 40(4) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(1)**, Note
F3663 S. 559(5A) inserted (with effect in accordance with Sch. 8 para. 2(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 2(1)**
F3664 S. 559(6) repealed (N.I.) (1.10.1991) by S.I. 1989/2404, art. 382, **Sch. 10**; S.R. 1991/411, **art. 2**
F3665 S. 559(8) repealed (with effect in accordance with s. 40(4) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(1)**, Note

Modifications etc. (not altering text)
C581 *See*—1970(M) s.62(1A)—*priority of claim for tax.*1970(M) s.63(3)—*recovery of tax in Scotland.*1970(M) s.64(1A)—*priority in cases of poinding in Scotland.*
C582 *See* 1988(F) s.130(7)(d)—*payment of outstanding tax by migrating companies.*
C583 S. 559(4) modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 72(3)**
C584 S. 559(4) modified (19.3.1997) by Finance Act 1997 (c. 16), **s. 54(5)**
C585 *See* Insolvency (Northern Ireland) Order 1989, Art.381(2)*and* Sch.9 para.61*and* Art.382*and* Sch.10 (S.I. 1989 No.2405—*not reproduced*)

Marginal Citations
M720 Source-1975 (No.2) s.69(1), 70A(2); 1982 Sch.8 5
M721 Source-1975 (No.2) s.69(4), (5); 1987 s.23
M722 Source-1975 (No.2) Sch.12 Pt.I 2(2); 1980 Sch.8 4(3); 1982 Sch.8 8
M723 Source-1972 s.71(5); 1982 Sch.8 6

[F3666 559A Treatment of sums deducted under s.559

(1) A sum deducted under section 559 from a payment made by a contractor—
(a) shall be paid to the Board, and
(b) shall be treated for the purposes of income tax or, as the case may be, corporation tax as not diminishing the amount of the payment.

(2) If the sub-contractor is not a company a sum deducted under section 559 and paid to the Board shall be treated as being income tax paid in respect of the sub-contractor's relevant profits.

If the sum is more than sufficient to discharge his liability to income tax in respect of those profits, so much of the excess as is required to discharge any liability of his for Class 4 contributions shall be treated as being Class 4 contributions paid in respect of those profits.

(3) If the sub-contractor is a company—
(a) a sum deducted under section 559 and paid to the Board shall be treated, in accordance with regulations, as paid on account of any relevant liabilities of the sub-contractor;
(b) regulations shall provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;
(c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and
(d) regulations shall provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraphs (b) and (c).

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(4) For the purposes of subsection (3) the "relevant liabilities" of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to a collector of inland revenue in pursuance of an obligation as an employer or contractor.

(5) In this section—

(a) "the sub-contractor" means the person for whose labour (or for whose employees' or officers' labour) the payment is made;

(b) references to the sub-contractor's "relevant profits" are to the profits from the trade, profession or vocation carried on by him in the course of which the payment was received;

(c) "Class 4 contributions" means Class 4 contributions within the meaning of the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(6) References in this section to regulations are to regulations made by the Board.

(7) Regulations under this section—

(a) may contain such supplementary, incidental or consequential provision as appears to the Board to be appropriate, and

(b) may make different provision for different cases.**]**

Textual Amendments

F3666 S. 559A inserted (with effect in accordance with s. 40(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 40(1)**

560 Persons who are sub-contractors or contractors for purposes of Chapter IV.

(1) M724For the purposes of this Chapter a party to a contract relating to construction operations is a sub-contractor if, under the contract—

(a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (that is to say, in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations; or

(b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.

(2) M725This subsection applies **[**F3667(subject to subsection (2A) below)**]** to the following persons, that is to say—

(a) any person carrying on a business which includes construction operations;

[F3668(aa) any public office or department of the Crown (including any Northern Ireland department **[**F3669and any part of the Scottish Administration**]**);**]**

(b) any local authority;

(c) any development corporation or new town commission;

(d) the Commission for the New Towns;

[F3670(da) the Secretary of State if the contract is made by him under section 89 of the M726Housing Associations Act 1985;**]**

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(e) the Housing Corporation,[F3671]. . . a housing association, a housing trust, the Scottish Special Housing Association, and the Northern Ireland Housing Executive;

[[F3672](ea) any such body, being a body (in addition to those falling within paragraphs (aa) to (e) above) which has been established for the purpose of carrying out functions conferred on it by or under any enactment, as may be designated as a body to which this subsection applies in regulations made by the Board;**]**

(f) [M727]a person carrying on a business at any time if—

(i) his average annual expenditure on construction operations in the period of three years ending with the end of the last period of account before that time exceeds **[**[F3673]£1,000,000**]**, or

(ii) where he was not carrying on the business at the beginning of that period of three years, one-third of his total expenditure on construction operations for the part of that period during which he has been carrying on the business exceeds **[**[F3673]£1,000,000**]**;

[F3674]. . . . . .

[[F3675](2A) Subject to subsection (2B) below, subsection (2) above does not apply at any time to an office, department or body falling within paragraph (aa), (b), (c), (d), (e) or (ea) of that subsection unless that office, department or body has, in the period of three years ending with the 31st March next before that time, had an average annual expenditure on construction operations of more than £1,000,000.

(2B) Where the condition provided for in subsection (2A) above has been satisfied in the case of any office, department or body in relation to any period of three years, that subsection shall not prevent subsection (2) above from applying to that office, department or body until there have been three successive years after the end of that period in each of which the office, department or body has had expenditure on construction operations of less than £1,000,000.**]**

(3) [M728]Where section 559(1)(b) begins to apply to any person in any period of account by virtue of his falling within subsection (2)(f) above, it shall continue to apply to him until he satisfies the Board that his expenditure on construction operations has been less than **[**[F3673]£1,000,000**]** in each of three successive years beginning in or after that period of account.

(4) Where the whole or part of a trade is transferred by a company ("the transferor") to another company ("the transferee") and section 343 has effect in relation to the transfer, then in determining for the purposes of this section the amount of expenditure incurred by the transferee—

(a) the whole or, as the case may be, a proportionate part of any expenditure incurred by the transferor at a time before the transfer shall be treated as if it had been incurred at that time by the transferee; and

(b) where only a part of the trade is transferred the expenditure shall be apportioned in such manner as appears to the Board, or on appeal to the Commissioners, to be just and reasonable.

(5) [M729]In this section—

"development corporation" has the same meaning as in the [M730]New Towns Act 1981 or the [M731]New Towns (Scotland) Act 1968;

"housing association" has the same meaning as in the [M732]Housing Associations Act 1985 or the [M733]Housing (Northern Ireland) Order 1981;

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"housing trust" has the same meaning as in the [M734]Housing Associations Act 1985; and

"new town commission" has the same meaning as in the [M735]New Towns Act (Northern Ireland) 1965.

Textual Amendments

F3667 Words in s. 560(2) inserted (with effect in accordance with Sch. 8 para. 2(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 2(2)**

F3668 S. 560(2)(aa) inserted (with application in accordance with Sch. 27 para. 2(3) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 2(1)(a)**

F3669 Words in s. 560(2)(aa) inserted (1.7.1999) by The Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999 (S.I. 1999/1820), art. 1(2), **Sch. 2 para. 87(3)**

F3670 S. 560(2)(da) inserted (1.11.1998) by Government of Wales Act 1998 (c. 38), **Sch. 16 para. 58(a)**; S.I. 1998/2244, **art. 5**

F3671 Words in s. 560(2)(e) repealed (1.11.1998) by Government of Wales Act 1998 (c. 38), Sch. 16 para. 58(b), **Sch. 18 Pt. 6**; S.I. 1998/2244, **art. 5**

F3672 S. 560(2)(ea) inserted (with application in accordance with Sch. 27, para. 2(3) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27**, para. 2(1)(b)

F3673 Words in s. 560(2)(f)(3) substituted (with application in accordance with Sch. 27 para. 2(3) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27**, para. 2(2)

F3674 Words in s. 560(2) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

F3675 S. 560(2A)(2B) inserted (with effect in accordance with Sch. 8 para. 2(3)(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 2(2)**

Marginal Citations

M724 Source-1975 (No.2) s.69(2)
M725 Source-1975 (No.2) s.69(3)
M726 1985 c. 69.
M727 Source-1975 (No.2) s.69(3A); 1980 Sch.8 1
M728 Source-1975 (No.2) s.69(3B), (3C); 1980 Sch.8 1
M729 Source-1975 (No.2) s.71(3)
M730 1981 c. 64.
M731 1968 c. 16.
M732 1985 c. 69.
M733 S.I. 1981/156 (N.I. 3).
M734 1985 c. 69.
M735 1965 c. 13 (N.I.).

561 Exceptions from section 559.

[M736](1) Subject to the provisions of regulations under [F3676]. . . section 566(2), a person is excepted from section 559 in relation to payments made under a contract if a certificate under this section has been issued to that person and is in force when the payment is made, but—

(a) where the certificate has been issued to a person who becomes a partner in a firm, that person is not excepted in relation to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor; and

(b) where a certificate has been issued to a person as a partner in a firm, that person is excepted in relation only to payments made under contracts under

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which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm, is a sub-contractor.

(2) If the Board are satisfied, on the application of an individual or a company, that—

(a) where the application is for the issue of a certificate to an individual (otherwise than as a partner in a firm), he satisfies the conditions set out in section 562;

(b) where the application is for the issue of a certificate to a person as a partner in a firm, that person satisfies the conditions set out in section **[**F3677562**]** if he is an individual or, if a company, the conditions set out in section 565 and, in either case, the firm itself satisfies the conditions set out in section 564;

(c) where the application is for the issue of a certificate to a company, the company satisfies the conditions set out in section 565 and, if the Board have given a direction under **[**F3678subsection (6)**]** below, each of the persons to whom any of the conditions set out in section 562 applies in accordance with the direction satisfies the conditions which so apply to him,

the Board shall issue to that individual or company a certificate excepting that individual or company (or, in a case falling within paragraph (b) above, that individual or company as a partner in the firm specified in the certificate) from section 559.

(3) References in subsection (2) above to an individual, a company or a firm satisfying conditions set out in section 562, F3679. . . 564 or 565 include, in relation to a condition which may, by virtue of a provision of that section, be treated as being satisfied, references to that individual, company or firm being treated as satisfying that condition.

(4) F3680. . . . . .

(5) F3680. . . . . .

(6) Where it appears to the Board, on an application made under subsection (2) above by a company, that the company—

(a) was incorporated on a date within the period of three years ending with the date of the application; or

(b) has not carried on business continuously throughout that period; or

(c) has carried on business continuously throughout that period but the business has not at all times in that period consisted of or included the carrying out of construction operations; or

(d) does not at the date of the application hold a certificate which is then in force under this section;

the Board may direct that the conditions set out in section 562 or such of them as are specified in the direction shall apply to the directors of the company and, if the company is a close company, to the persons who are the beneficial owners of shares in the company or to such of those directors or persons as are so specified as if each of them were an applicant for a certificate under this sectionF3681. . . .

In this subsection "director" has **[**F3682the meaning given by section 67 of ITEPA 2003**]**.

(7) Where it appears to the Board that there has been a change in the control of a company holding or applying for a certificate, the Board may make any such direction as is referred to in subsection (6) above.

(8) The Board may at any time cancel a certificate which has been issued to a person and is in force under this section if it appears to them that—

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(a) it was issued on information which was false;

(b) if an application for the issue of a certificate under this section to that person were made at that time, the Board would refuse to issue a certificate;

(c) that person has permitted the certificate to be misused; or

(d) in the case of a certificate issued to a company, there has been a change in the control of the company and information with respect to that change has not been furnished in accordance with regulations under section 566(2);

and may by notice require that person to deliver the certificate to the Board within the time specified in the notice.

Section 840 shall apply for the purposes of paragraph (d) above.

(9) A person aggrieved by the refusal of an application for a certificate under this section or the cancellation of such a certificate may, by notice given to the Board within 30 days after the refusal or, as the case may be, cancellation, appeal to the General Commissioners or, if he so elects in the notice, to the Special Commissioners; and the jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under this section.

(10) If any person, for the purpose of obtaining a certificate under this section—

(a) makes any statement, or furnishes any document, which he knows to be false in a material particular; or

(b) recklessly makes any statement, or furnishes any document, which is false in a material particular,

he shall be liable **[**F3683to a penalty not exceeding £3,000**]**.

(11) A person to whom a certificate is issued under this section or a voucher is given as required by regulations under section 566(2)(j) **[**F3684or who is in possession of any form or other document supplied to him by the Board for use in connection with any regulations under this Chapter**]** shall take all reasonable steps to ensure its safety; and any person who, without lawful authority or lawful excuse—

(a) disposes of any such certificate or voucher or any form supplied by the Board in connection with regulations made by virtue of section 566(2)(e); or

(b) possesses such a certificate, voucher or form or any document purporting to be such a certificate, voucher or form,

shall be liable **[**F3685to a penalty not exceeding £3,000**]**.

(12) F3686. . . . . .

(13) Without prejudice to section 843(3), this section shall come into force on 6th April 1988 to the exclusion of the provisions of section 70 of the Finance (No.2) Act 1975 which are re-enacted in this section, but any offence committed before that date shall not be punishable under this section and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

Textual Amendments

F3676 Words in s. 561(1) repealed (with effect in accordance with Sch. 29 Pt. 8(21) Notes 1, 5 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(21)**; S.I. 1999/2156, **art. 2(a)**

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F3677 Words in s. 561(2)(b) substituted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 3(1)**; S.I. 1998/2620, **art. 3**
F3678 Words in s. 561(2)(c) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 5**
F3679 Words in s. 561(3) repealed (with effect in accordance with Sch. 29 Pt. 8(21) Notes 3, 5 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(21)**; S.I. 1999/2156, **art. 2(a)**
F3680 S. 561(4)(5) repealed (with effect in accordance with Sch. 29 Pt. 8(21) Notes 1, 5 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(21)**; S.I. 1999/2156, **art. 2(a)**
F3681 Words in s. 561(6) repealed (with effect in accordance with Sch. 29 Pt. 8(21) Notes 3, 5 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(21)**; S.I. 1999/2156, **art. 2(a)**
F3682 Words in s. 561(6) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 59** (with Sch. 7)
F3683 Words in s. 561(10) substituted (with effect in accordance with Sch, 27 para. 8(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 3(2)**; S.I. 1998/2620, **art. 2**
F3684 Words in s. 561(11) inserted (with effect in accordance with Sch. 27 para. 8(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 3(3)(a)**
F3685 Words in s. 561(11) substituted (with effect in accordance with Sch, 27 para. 8(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 3(3)(b)**; S.I. 1998/2620, **art. 2**
F3686 S. 561(12) repealed (with effect in accordance with Sch. 27 para. 8(2) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(21)**, Note 2; S.I. 1998/2620, **art. 2**

Marginal Citations
M736 Source-1975 (No.2) s.70(1)-(6), (9)-(11), 70A(1), (2), 71(4); 1982 Sch.8 3, 5; 1987 (No.2) s.93

562 Conditions to be satisfied by individuals.

(1) In the case of an application for the issue of a certificate under section 561 to an individual [F3687]. . . the following conditions are required to be satisfied by that individual **[**[F3688]except that, where the application is for the issue of that certificate to that individual as a partner in a firm, this section shall have effect with the omission of subsections (2) to (2B).**]**

(2) [M737]The applicant must be carrying on a business in the United Kingdom which satisfies the following conditions, that is to say—

(a) the business consists of or includes the carrying out of construction operations or the furnishing or arranging for the furnishing of labour in carrying out construction operations;

(b) the business is, to a substantial extent, carried on by means of an account with a bank;

(c) the business is carried on with proper records and in particular with records which are proper having regard to the obligations referred to in subsections (8) to (12) below; and

(d) the business is carried on from proper premises and with proper equipment, stock and other facilities.

[[F3689](2A) The applicant must satisfy the Board, by such evidence as may be prescribed in regulations made by the Board, that the carrying on of the business mentioned in subsection (2) above is likely to involve the receipt, annually in the period to which the certificate would relate, of an aggregate amount by way of relevant payments which is not less than the amount specified in regulations made by the Board as the minimum turnover for the purposes of this subsection.

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(2B) In subsection (2A) above "relevant payments" means the following payments, other than so much of them as would fall, as representing the direct cost to any person of any materials, to be disregarded in calculating the amount of any deductions under subsection (4) of section 559, that is to say—

(a) payments from which such deductions would fall to be made if the certificate is not granted; and

(b) payments which would be such payments but for any regulations under subsection (3A) of that section.**]**

(3) [F3690] . . . . . .

(4) [F3690] . . . . . .

(5) [F3690] . . . . . .

(6) [F3690] . . . . . .

(7) [F3690] . . . . . .

(8) [M738]The applicant must, subject to subsection (10) below, have complied with all obligations imposed on him by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, any business of his in respect of periods so ending.

(9) [M739]An applicant who at any time in the qualifying period had control of a company shall be taken not to satisfy the condition in subsection (8) above unless the company has satisfied that condition in relation to periods ending at a time within that period when he had control of it; and for this purpose "control"**[**[F3691]shall be construed in accordance with section 416(2) to (6)**]**.

(10) [M740]An applicant or company that has failed to comply with such an obligation or request as is referred to in subsection (8) above shall nevertheless be treated as satisfying that condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (13) below will be satisfied.

[[F3692](11) Where the applicant states, for the purpose of showing that he has complied with all obligations imposed on him as mentioned in subsection (8) above, that he was not subject to any of one or more obligations in respect of any period ending within the qualifying period—

(a) he must satisfy the Board of that fact by such evidence as may be prescribed in regulations made by the Board; and

(b) if for that purpose he states that he has been outside the United Kingdom for the whole or any part of the qualifying period, he must also satisfy them, by such evidence as may be so prescribed,**]** that he has complied with any obligations imposed under the tax laws of any country in which he was living during that period which are comparable to the obligations mentioned in subsection (8) above.

(12) [M741]The applicant must, if any contribution has at any time during the qualifying period become due from him under Part I of the [M742]Social Security Act 1975 or Part I of the [M743]Social Security (Northern Ireland) Act 1975, have paid the contribution when it became due.

(13) [M744]There must be reason to expect that the applicant will, in respect of periods ending after the end of the qualifying period, comply with such obligations as are referred to in subsections (8) to (12) above and with such requests as are referred to in subsection (8) above.

[[F3693](13A) Subject to subsection (10) above, a person shall not be taken for the purposes of this section to have complied with any such obligation or request as is referred to in subsections (8) to (11) above if there has been a contravention of a requirement as to the time at which, or the period within which, the obligation or request was to be complied with.

(14) In this section "the qualifying period", in relation to an application for the issue of a certificate under section 561, means the period of three years ending with the date of the application.**]**

Textual Amendments

F3687 Words in s. 562(1) repealed (with effect in accordance with Sch. 27 para. 8(1), Sch. 29 Pt. 8(21) Note 3 of the repealing Act) by Finance Act 1995 (c. 4), Sch. 27 para. 4(2)(a), **Sch. 29 Pt. 8(21)**; S.I. 1998/2620, **art. 3**

F3688 Words in s. 562(1) inserted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 4(2)(b)**; S.I. 1998/2620, **art. 3**

F3689 S. 562(2A)(2B) inserted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 4(3)**; S.I. 1998/2620, **art. 3**

F3690 S. 562(3)-(7) repealed (with effect in accordance with Sch. 27 para. 8(1), Sch. 29 Pt. 8(21) Note 3 of the repealing Act) by Finance Act 1995 (c. 4), Sch. 27 para. 4(4), **Sch. 29 Pt. 8(21)**; S.I. 1998/2620, **art. 3**

F3691 Words in s. 562(9) substituted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 4(5)**; S.I. 1998/2620, **art. 3**

F3692 Words in s. 562(11) substituted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 4(6)**; S.I. 1998/2620, **art. 3**

F3693 S. 562(13A)(14) substituted for s. 562(14) (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 4(7)**; S.I. 1998/2620, **art. 3**

Modifications etc. (not altering text)

C586 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the modifying Act) by Finance Act 1999 (c. 16), **s. 53(1)(2)**

Marginal Citations

M737 Source-1975 (No.2) Sch.12 Pt. I 1

M738 Source-1975 (No.2) Sch.12 Pt.I 3(1); 1982 Sch.8 11

M739 Source-1975 (No.2) Sch.12 Pt.I 3(1A); 1982 Sch.8 12

M740 Source-1975 (No.2) Sch.12 Pt.I 3(2); 1980 Sch.8 7; 1982 Sch.8 13

M741 Source-1975 (No.2) Sch.12 Pt.I 4.

M742 1975 c. 14.

M743 1975 c. 15.

M744 Source-1975 (No.2) Sch.12 Pt.I 7

563 Conditions to be satisfied by partners who are individuals.

F3694 . . . . . .

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to Income and Corporation Taxes Act 1988. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F3694 S. 563 repealed (with effect in accordance with Sch. 27 para. 8(1), Sch. 29 Pt. 8(21) Note 3 of the repealing Act) by Finance Act 1995 (c. 4), Sch. 27 para. 5, **Sch. 29 Pt. 8(21)**; S.I. 1998/2620, **art. 3**

564 Conditions to be satisfied by firms.

(1) In the case of an application for the issue of a certificate under section 561 to an individual or a company as a partner in a firm the following conditions are required to be satisfied by the firm.

(2) [M745]The firm's business must be carried on in the United Kingdom and must satisfy the conditions mentioned in section 562(2)(a) to (d).

[[F3695](2A) The partners must satisfy the Board, by such evidence as may be prescribed in regulations made by the Board, **[**[F3696] that the carrying on of the firm's business is likely to involve—

(a) the receipt, annually in the period to which the certificate would relate, of an aggregate amount by way of relevant payments which is not less than the sum specified in subsection (2B) below; or

(b) the receipt, annually in the period to which the certificate would relate, of an aggregate amount by way of construction contract payments which is not less than the amount specified for the purposes of this paragraph in regulations made by the Board.**]**

[[F3697](2AA) In subsection (2A)(a) above "relevant payments" has the meaning given by section 562(2B).**]**

(2B) The sum referred to in subsection (2A)(a) above is the sum of the following amounts, that is to say—

(a) the amount obtained by multiplying the number of partners in the firm who are individuals by the amount specified in regulations as the minimum turnover for the purposes of section 562(2A); and

(b) in respect of each partner in the firm who is a company (other than one to which section 565(2A)(b) would apply), the amount equal to what would have been the minimum turnover for the purposes of section 565(2A) if the application had been for the issue of a certificate to that company.

[[F3698](2C) In subsection (2A)(b) above "construction contract payments" means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—

(a) are of a description specified in subsection (2) of section 567; but

(b) are not of a description specified in subsection (3) of that section,

other than so much of the payments as represents the direct cost to the firm of materials used or to be used in carrying out the operations in question.**]**

(3) Subject to subsection (4) below, each of the persons who are partners at the time of the application must have complied, so far as any such charge to income tax or corporation tax is concerned as falls to be computed by reference to the profits or gains of the firm's business—

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(a) with all obligations imposed on him by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period; and

(b) with all requests to him as such a partner to supply to an inspector accounts of, or other information about, the firm's business or his share of the profits or gains of that business.

(4) Where a person has failed to comply with such an obligation or request as is referred to in subsection (3) above the firm shall nevertheless be treated, in relation to that partner, as satisfying that condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the condition mentioned in subsection (5) below will be satisfied.

(5) There must be reason to expect that each of the persons who are from time to time partners in the firm will, in respect of periods ending after the end of the qualifying period, comply with such obligations and requests as are referred to in subsection (3) above.

(6) Subject to subsection (4) above, a person shall not be taken for the purposes of this section to have complied with any such obligation or request as is referred to in subsection (3) above if there has been a contravention of a requirement as to the time at which, or the period within which, the obligation or request was to be complied with.

(7) In this section "the qualifying period", in relation to an application for the issue of a certificate under section 561, means the period of three years ending with the date of the application.**]**

Textual Amendments

F3695 S. 564(2A)-(7) substituted for s. 564(3)-(5) (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 6**; S.I. 1998/2620, **art. 3**

F3696 Words in s. 564(2A) substituted (with effect in accordance with Sch. 8 para. 5 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 3(1)**

F3697 S. 564(2AA) inserted (with effect in accordance with Sch. 8 para. 5 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 3(2)**

F3698 S. 564(2C) inserted (with effect in accordance with Sch. 8 para. 5 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 3(3)**

Modifications etc. (not altering text)

C587 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the modifying Act) by Finance Act 1999 (c. 16), **s. 53(1)(2)**

Marginal Citations

M745 Source-1975 (No.2) Sch.12 Pt.III 1, 2; 1980 Sch.8 7

565 Conditions to be satisfied by companies.

(1) In the case of an application for the issue of a certificate under section 561 to a company (whether as a partner in a firm or otherwise), the following conditions are required to be satisfied by the company.

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(2) [M746]The company must be carrying on (whether or not in partnership) a business in the United Kingdom and that business must satisfy the conditions mentioned in section 562(2)(a) to (d).

[[F3699]**[**[F3700](2A) The company must either—

(a) satisfy the Board, by such evidence as may be prescribed in regulations made by them, that the annual receipts test is satisfied; or

(b) satisfy the Board that the only persons with shares in the company are companies which are limited by shares and themselves excepted from section 559 by virtue of a certificate which is in force under section 561.

(2B) The annual receipts test is satisfied in relation to a company if the carrying on of its business is likely to involve the receipt, annually in the period to which the certificate would relate—

(a) of an aggregate amount by way of relevant payments which is not less than the amount obtained by multiplying the amount specified in regulations as the minimum turnover for the purposes of section 562(2A) by the number of persons who are relevant persons in relation to the company; or

(b) of an aggregate amount by way of construction contract payments which is not less than the amount specified for the purposes of this paragraph in regulations made by the Board.

(2BB) In subsection (2B) above "relevant payments" has the meaning given by section 562(2B).**]**

(2C) For the purposes of subsection (2B) above a person is a relevant person in relation to the company—

(a) where the company is a close company, if he is a director of the company (within **[**[F3701]the meaning given by section 67 of ITEPA 2003**]**) or a beneficial owner of shares in the company; and

(b) in any other case, if he is such a director of the company.**]**

[[F3702](2D) In subsection (2B) above "construction contract payments" means payments under contracts relating to, or to the work of individuals participating in the carrying out of, any operations which—

(a) are of a description specified in subsection (2) of section 567; but

(b) are not of a description specified in subsection (3) of that section,

other than so much of the payments as represents the direct cost to the company of materials used or to be used in carrying out the operations in question.**]**

(3) The company must, subject to subsection (4) below, have complied with all obligations imposed on it by or under the Tax Acts or the Management Act in respect of periods ending within the qualifying period and with all requests to supply to an inspector accounts of, or other information about, the business of the company in respect of periods so ending.

(4) A company which has failed to comply with such an obligation or request as is referred to in subsection (3) above shall nevertheless be treated as satisfying this condition as regards that obligation or request if the Board are of the opinion that the failure is minor and technical and does not give reason to doubt that the conditions mentioned in subsection (8) below will be satisfied.

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(5) [M747]The company must, if any contribution has at any time during the qualifying period become due from the company under Part I of the [M748]Social Security Act 1975 or Part I of the [M749]Social Security (Northern Ireland) Act 1975 have paid the contribution when it became due.

(6) [M750]The company must have complied with any obligations imposed on it by the following provisions of the [M751]Companies Act 1985, in so far as those obligations fell to be complied with within the qualifying period, that is to say—

(a) **[**[F3703]sections 226, 241 and 242**]** (contents, laying and delivery of annual accounts);

(b [F3704] . . . . . .

(c) section 288(2) (return of directors and secretary and notification of changes therein);

(d) **[**[F3705]sections 363 to 365**]** (annual returns);

(e) section 691 (registration of constitutional documents and list of directors and secretary of oversea company);

(f) section 692 (notification of changes in constitution or directors or secretary of oversea company);

(g) section 693 (oversea company to state its name and country of incorporation);

(h) section 699 (obligations of companies incorporated in Channel Islands or Isle of Man);

(j) Chapter II of Part XXIII (accounts of oversea company).

(7) The company must have complied with any obligations imposed on it by the following provisions of the [M752]Companies (Northern Ireland) Order 1986, in so far as those obligations fell to be complied with within the qualifying period, that is to say—

(a) Articles 235, 247 and 249 (annual accounts, documents included in annual accounts and laying and delivery of accounts);

(b) Article 295 (registered office and notification of changes therein);

(c) Article 296(2) (return of directors and secretary and notification of changes therein);

(d) **[**[F3706]Articles 371 to 373**]** (annual returns);

(e) Article 641 (registration of constitutional documents and list of directors and secretary of oversea company);

(f) Article 642 (notification of changes in constitution or directors or secretary of oversea company);

(g) Article 643 (oversea company to state its name and country of incorporation);

(h) Article 649 (accounts of oversea company).

(8) [M753]There must be reason to expect that the company will, in respect of periods ending after the end of the qualifying period, comply with all such obligations as are referred to in subsections (2) to (7) above and with such requests as are referred to in subsection (3) above.

[[F3707](8A) Subject to subsection (4) above, a company shall not be taken for the purposes of this section to have complied with any such obligation or request as is referred to in subsections (3) to (7) above if there has been a contravention of a requirement as to the time at which, or the period within which, the obligation or request was to be complied with.**]**

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(9) [M754]In this section "qualifying period" means the period of three years ending with the date of the company's application for a certificate under section 561.

Textual Amendments

F3699 S. 565(2A)-(2C) inserted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 7(1)**; S.I. 1998/2620, **art. 3**

F3700 S. 565(2A)(2B)(2BB) substituted for s. 565(2A)(2B) (with effect in accordance with Sch. 8 para. 5 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 4(1)**

F3701 Words in s. 565(2C)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 60** (with Sch. 7)

F3702 S. 565(2D) inserted (with effect in accordance with Sch. 8 para. 5 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 8 para. 4(2)**

F3703 Words in s. 565(6)(a) substituted (E.W.S.) (1.4.1990 with effect in accordance with S.I. 1990/355, arts. 6-9, **Sch. 1**) by Companies Act 1989 (c. 40), **Sch. 10 para. 38(3)**; S.I. 1990/355, arts. 3, 8, **Sch. 1**

F3704 S. 565(6)(b) repealed (1.10.1991) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 213, **Sch. 24**; S.I. 1991/1996, **art. 2(c)(iv)**

F3705 Words in s. 565(6)(d) substituted (E.W.S) (1.10.1990 with saving and transitional provisions in S.I. 1990/1707, **arts. 4**, 5) by Companies Act 1989 (c. 40), **s. 139(5)**

F3706 Words in s. 565(7)(d) substituted (1.10.1991) by S.I. 1990/1504, **art. 74(5)**; S.R. 1991/398, **art. 2(a)** (subject to the provisions set out in S.R. 1991/398, **arts. 3**, 4)

F3707 S. 565(8A) inserted (with effect in accordance with Sch. 27 para. 8(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 27 para. 7(2)**; S.I. 1998/2620, **art. 3**

Modifications etc. (not altering text)

C588 Ss. 562-565 modified (retrospectively, with application in accordance with s. 53(3) of the modifying Act) by Finance Act 1999 (c. 16), **s. 53(1)(2)**

Marginal Citations

M746 Source-1975 (No.2) Sch.12 Pt.IV 1, 2(1), (2); 1980 Sch.8 7; 1982 Sch.8 15
M747 Source-1975 (No.2) Sch.12 Pt.IV 3
M748 1975 c. 14.
M749 1975 c. 15.
M750 Source-1975 (No.2) Sch.12 Pt.IV 6; 1987 Sch.15 8
M751 1985 c. 6
M752 S.I. 1986/1032 (N.I. 6).
M753 Source-1975 (No.2) Sch.12 Pt.IV 7
M754 Source-1975 (No.2) Sch.12 Pt.IV 2(3)

566 General powers to make regulations under Chapter IV.

(1) [M755]The Board shall make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under section 559 and for the giving of receipts by persons receiving the payments to persons making them; and those regulations may include any matters with respect to which **[**[F3708]PAYE regulations may be made**]**.

[[F3709](1A) Interest required to be paid by regulations under subsection (1) above shall be paid without any deduction of income tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.**]**

(2) [M756]The Board may make regulations—

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(a) prescribing the period for which certificates under section 561 are to be issued and the form of such certificates;

(b) providing for the renewal of such certificates;

(c) providing for the issue, renewal or cancellation of such certificates or the giving of directions under section 561(6) [F3710]. . . on behalf of the Board;

(d) requiring the furnishing of information with respect to changes in the control of a company holding or applying for such a certificate;

(e) requiring the production of such certificates to such persons and in such circumstances as may be specified in the regulations and providing for the completion and return to the Board of forms certifying such production;

(f) requiring the surrender to the Board of such certificates in such circumstances as may be specified in the regulations;

(g) requiring persons who make payments under contracts relating to construction operations to keep such records and to make to the Board such returns relating to payments so made by them as may be specified in the regulations, and requiring persons who hold such certificates to keep such records relating to payments so made to them as may be so specified;

(h) with respect to the production, copying and removal of, and the making of extracts from, any records kept by virtue of any such requirement as is referred to in paragraph (g) above and with respect to rights of access to or copies of any such records which are removed;

(j) requiring vouchers for payments made under contracts relating to construction operations to persons who hold such certificates to be obtained by the person making, and given by the person receiving, the payment, prescribing the form of the vouchers, and requiring their production or surrender to the Board in such circumstances as may be specified in the regulations; and

(k) excluding payments from the operation of section 561 where, in such circumstances as may be specified in the regulations, the requirements of regulations relating to the production of certificates or the obtaining, production or surrender of vouchers have not been complied with.

[F3711
. . . . . .

Section 840 shall apply for the purposes of paragraph (d) above.

[F3712](2A) The Board may by regulations make provision—

(a) for the issue of documents (to be known as "registration cards") to persons who are parties, as sub-contractors, to any contract relating to construction operations or who are likely to become such parties;

(b) for a registration card to contain all such information about the person to whom it is issued as may be required, for the purposes of any regulations under this section, by a person making payments under any such contract;

(c) for a registration card to take such form and to be valid for such period as may be prescribed by the regulations;

(d) for the renewal, replacement or cancellation of a registration card;

(e) for requiring the surrender of a registration card in such circumstances as may be specified in the regulations;

(f) for requiring the production of a registration card to such persons and in such circumstances as may be so specified;

(g) for requiring any person who—

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(i) makes or is proposing to make payments to which section 559 applies, and

(ii) is a person to whom a registration card has to be produced under the regulations,

to take steps that ensure that it is produced to him and that he has an opportunity of inspecting it for the purpose of checking that it is a valid registration card issued to the person required to produce it.

(2B) A person who fails to comply with an obligation imposed on him by virtue of subsection (2A)(g) above shall be liable to a penalty not exceeding £3,000.

(2C) Subject to subsection (2D) below, where—

(a) a person who is a party to a contract relating to any construction operations ("the contractor") makes or is proposing to make payments to which section 559 applies,

(b) the contractor is required by regulations under this section to make statements about another party to the contract ("the sub-contractor") in any return, certificate or other document,

(c) a registration card containing the information to be stated should have been produced, in accordance with any such regulations, to the contractor, and

(d) the statements made in the return, certificate or other document, so far as relating to matters the information about which should have been obtainable from the card, are inaccurate or incomplete in any material respect,

the contractor shall be liable to a penalty not exceeding £3,000.

(2D) A person shall not be liable to a penalty under subsection (2C) above if—

(a) a valid registration card issued to the sub-contractor, or a document which the contractor had reasonable grounds for believing to be such a card, was produced to the contractor and inspected by him before the statements in question were made; and

(b) the contractor took all such steps as were reasonable, in addition to the inspection of that card, for ensuring that the statements were accurate and complete.

(2E) A person liable to a penalty under subsection (2C) above shall not, by reason only of the matters in respect of which he is liable to a penalty under that subsection, be liable to any further penalty under section 98 of the Management Act.

(2F) Regulations under this section may make different provision for different cases.**]**

[F3713(3) Any power under this Chapter to make regulations prescribing the evidence required for establishing what is likely to happen at any time shall include power to provide for such matters to be presumed (whether conclusively or unless the contrary is shown in the manner provided for in the regulations) from evidence of what has previously happened.**]**

[F3714(4) Any power under this Chapter to make regulations authorising or requiring a document (whether or not of a particular description), or any records or information, to be issued, given or requested or to be sent, produced, returned or surrendered to the Board shall include power—

(a) to authorise the Board to nominate a person who is not an officer of the Board to be the person who on behalf of the Board—

(i) issues, gives or requests the document, records or information; or

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(ii) is the recipient of the document, records or information;

and

(b) to require the document, records or information, in cases prescribed by or determined under the regulations, to be sent, produced, returned or surrendered to the address (determined in accordance with the regulations) of the person nominated by the Board to receive it on their behalf.

F3715 **[** (5) Any power under this Chapter to make regulations imposing requirements with respect to any description of document, with respect to documents generally or with respect to any records or information shall include power to make provision, subject to such conditions as may be prescribed by or determined in accordance with the regulations—

(a) for the documents, records or information to be allowed to take an electronic form so prescribed or determined;

(b) for the issue, completion, furnishing, production, keeping, cancellation, return, surrender or giving of the documents, records or information to be something that has to be or may be done by the electronic means so prescribed or determined; and

(c) for the manner of proving in any proceedings the contents or transmission of anything that, by virtue of any regulations under this Chapter, takes an electronic form or is transmitted to any person by electronic means.**]]**

Textual Amendments

F3708 Words in s. 566(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 61** (with Sch. 7)

F3709 S. 566(1A) inserted (with effect in accordance with s. 147(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 147(1)**

F3710 Words in s. 566(2)(c) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(8)**

F3711 Words in s. 566(2) repealed (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(32)**

F3712 S. 566(2A)-(2F) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 178(1)**

F3713 S. 566(3) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 7 para. 9**

F3714 S. 566(4)(5) inserted (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 8 para. 6**

F3715 S. 566(5) repealed (prosp.) by Finance Act 1999 (c. 16), s. 133(4), **Sch. 20 Pt. 7**, Notes 1 and 2

Modifications etc. (not altering text)

C589 *For regulations see* Part III Vol.5.*And see* 1970(M) s.98A—*special penalties in the case of certain returns.*

Marginal Citations

M755 Source-1975 (No.2) s.69(6)

M756 Source-1975 (No.2) s.70(7); 1982 Sch.8 4; 1987 (No.2) s.93 (5), (6)

567 Meaning of "construction operations".

(1) M757 In this Chapter "construction operations" means operations of any description specified in subsection (2) below, not being operations of any description specified in subsection (3) below; and references to construction operations shall be taken—

(a) except where the context otherwise requires, as including references to the work of individuals participating in the carrying out of such operations; and

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(b) except in the case of offshore installations, as not including references to operations carried out or to be carried out otherwise than in the United Kingdom.

(2) [M758]The following operations are, subject to subsection (3) below, construction operations for the purposes of this Chapter—

(a) construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;

(b) construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, **[**[F3716]electronic communications apparatus**]**, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

(c) installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;

(d) internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;

(e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works;

(f) painting or decorating the internal or external surfaces of any building or structure.

(3) [M759]The following operations are not construction operations for the purposes of this Chapter—

(a) drilling for, or extraction of, oil or natural gas;

(b) extraction (whether by underground or surface working) of minerals; tunnelling or boring, or construction of underground works, for this purpose;

(c) manufacture of building or engineering components or equipment, materials, plant or machinery, or delivery of any of these things to site;

(d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or delivery of any of these things to site;

(e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or in the laying-out of landscape;

(f) the making, installation and repair of artistic works, being sculptures, murals and other works which are wholly artistic in nature;

(g) signwriting and erecting, installing and repairing signboards and advertisements;

(h) the installation of seating, blinds and shutters;

(j) the installation of security systems, including burglar alarms, closed circuit television and public address systems.

(4) [M760]In this section "offshore installations" means installations which are maintained, or are intended to be established, for underwater exploitation or exploration to which the [M761]Mineral Workings (Offshore Installations) Act 1971 applies.

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(5) [M762]The Treasury may by order—

(a) include in subsection (2) above any description of operations as to which they are satisfied that it is a normal activity of the construction industry and that its inclusion in that subsection is necessary for achieving the object of section 559;

(b) include in subsection (3) above any description of operations as to which they are satisfied that it cannot properly be considered a normal activity of the construction industry and ought to be excluded from subsection (2) above.

(6) An order under subsection (5) above shall not have effect unless a draft of the instrument containing it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F3716 Words in s. 567(2)(b) substituted (25.7.2003 for specified purposes and 29.12.2003 otherwise) by Communications Act 2003 (c. 21), s. 411(2), **Sch. 17 para. 88**; S.I. 2003/1900, arts. 1(2), 2(1), 3, **Sch. 1**; S.I. 2003/3142, **arts. 1(3)**, 3(2) (with art. 11)

Modifications etc. (not altering text)

C590 *For regulations see* Part III Vol.5.

Marginal Citations

M757 Source-1975 (No.2) s.71(8)
M758 Source-1975 (No.2) Sch.13 Pt.I
M759 Source-1975 (No.2) Sch.13 Pt.II; 1980/1171
M760 Source-1975 (No.2) s.71(8), Sch.13, Pt.I
M761 1971 c. 61.
M762 Source-1975 (No.2) s.71 (9) (10)

CHAPTER V

SCHEMES FOR RATIONALIZING INDUSTRY

568 Deductions from profits of contributions paid under certified schemes.

[M763](1) Notwithstanding anything contained in section 74 **[**[F3717]of this Act or section 33 of ITTOIA 2005**]** but subject to the following provisions of this Chapter, where a person pays, wholly and exclusively for the purposes of a trade in respect of which he is chargeable under Case I of Schedule D, **[**[F3718]or under Part 2 of ITTOIA 2005,**]** a contribution in furtherance of a scheme which is for the time being certified by the Secretary of State under this section, the contribution shall, in so far as it is paid in furtherance of the primary object of the scheme, be allowed to be deducted as an expense in computing the **[**[F3719]profits**]** of that trade.

(2) The Secretary of State shall certify a scheme under this section if he is satisfied—

(a) that the primary object of the scheme is the elimination of redundant works or machinery or plant from use in an industry in the United Kingdom; and

(b) that the scheme is in the national interest and in the interests of that industry as a whole; and

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(c) that such number of persons engaged in that industry as are substantially representative of the industry are liable to pay contributions in furtherance of the primary object of the scheme by agreement between them and the body of persons carrying out the scheme.

References in this subsection to an industry in the United Kingdom shall include references to the business carried on by owners of ships or of a particular class of ships, wherever that business is carried on, and, in relation to that business, references in this subsection to works or machinery or plant shall include references to ships.

(3) The Secretary of State shall cancel any certificate granted under this section if he ceases to be satisfied as to any of the matters referred to in subsection (2) above.

(4) The Secretary of State may at any time require the body of persons carrying out a scheme certified under this section to produce any books or documents of whatever nature relating to the scheme and, if the requirement is not complied with, he may cancel the certificate.

(5) In this section and in section 569 "contribution", in relation to a scheme, does not include a sum paid by a person by way of loan or subscription of share capital, or in consideration of the transfer of assets to him, or by way of a penalty for contravening or failing to comply with the scheme.

Textual Amendments

F3717 Words in s. 568(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 232(a)** (with Sch. 2)

F3718 Words in s. 568(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 232(b)** (with Sch. 2)

F3719 Words in s. 568(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

Marginal Citations

M763 Source-1970 s.406

569 Repayment of contributions.

M764(1) In the event of the repayment, whether directly or by way of distribution of assets on a winding up or otherwise, of a contribution or any part of a contribution which has been allowed to be deducted under section 568, the deduction of the contribution, or so much of it as has been repaid, shall be deemed to be an unauthorised deduction in respect of which an assessment shall be made, and, notwithstanding the provisions of the Tax Acts requiring assessments to be made within six years after the end of the chargeable period to which they relate, any such assessment and any consequential assessment may be made at any time within three years after the end of the chargeable period in which the repayment was made.

(2) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

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Marginal Citations

M764 Source-1970 s.407; 1971 Sch.6 45

570 Payments under certified schemes which are not repayments of contributions.

M765(1) Subject to the provisions of this section, where, under any scheme which is for the time being certified or has at any time been certified by the Secretary of State under section 568, any payment (not being a payment made by way of repayment of contributions) is made to a person carrying on a trade to which the scheme relates, that payment shall be treated for the purposes of the Tax Acts as a trading receipt of the trade, and shall accordingly be taken into account in computing the **[**F3720profits**]** of the trade for those purposes.

(2) Where F3721. . . the payments which have been made under such a scheme in respect of a trade (not being payments made by way of repayment of contributions) have been made wholly or partly in respect of damage in respect of which no relief may be given under the Tax Acts, **[**F3722and a claim is made to that effect,**]** then, subject to and in accordance with the provisions of **[**F3723Schedule 21**]**—

(a) relief shall be given in respect of those payments by reducing the amounts which are to be treated as trading receipts of the trade under subsection (1) above; but

(b) where such relief is given, section 568 shall, in relation to contributions subsequently paid under the scheme in respect of the trade, have effect subject to the modifications specified in Part III of that Schedule,

[F3724and paragraph 6 of that Schedule applies for the purposes of this subsection as it applies for the purposes of that Schedule.**]**

(3) The provisions of this section and Schedule 21 shall apply in relation to any payment made to a person who has ceased to carry on a trade to which any such scheme as is mentioned in subsection (1) above relates as they apply in relation to payments made to a person carrying on such a trade, subject to the modification that so much of that payment as falls to be treated as a trading receipt by virtue of those provisions shall be deemed for the purposes of those provisions to have been made to him on the last day on which he was engaged in carrying on the trade.

(4) In determining for the purposes of this section and of Schedule 21—

(a) whether any trade has ceased to be carried on; or

(b) whether any contribution is paid in respect of a trade in respect of which a payment has been made; or

(c) whether any payment is made in respect of a trade in respect of which a contribution has been paid,

no regard shall be had to any event which, by virtue of **[**F3725section 337(1) above or section 18 of ITTOIA 2005 (companies beginning or ceasing to carry on trade)**]**, is to be treated as effecting a discontinuance of a trade.

Textual Amendments

F3720 Words in s. 570(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3721 Words in s. 570(2) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 31(a), **Sch. 41 Pt. 5(10)**, Note

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F3722 Words in s. 570(2) inserted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 31(b)**

F3723 Words in s. 570(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 31(c)**

F3724 Words in s. 570(2) added (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 31(d)**

F3725 Words in s. 570(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 233** (with Sch. 2)

Marginal Citations

M765 Source-1970 s.408

571 Cancellation of certificates.

M766(1) Where any certificate granted with respect to a scheme under section 568 is cancelled by the Secretary of State, and any deductible contributions paid in furtherance of the scheme have not been repaid at the expiration of one year from the cancellation, the body of persons carrying out the scheme shall, for the chargeable period in which that year expires, be charged to tax **[**F3726(in the case of corporation tax, under Case VI of Schedule D)**]** upon the aggregate amount of the deductible contributions which have not been repaid at that time.

(2) The charge to tax under subsection (1) above shall not be made if the total amount of any contributions, other than deductible contributions, which have been paid under the scheme and have not been repaid before that time is greater than the available resources of the scheme, and shall not in any case be made upon an amount greater than the excess, if any, of those resources over that total amount.

(3) In subsection (2) above "the available resources", in relation to any scheme, means a sum representing the total funds held for the purposes of the scheme at the expiration of one year from the cancellation of the certificate plus a sum representing any funds held for the purposes of the scheme which, during that year, have been applied otherwise than in accordance with the provisions of the scheme as in force when the certificate was granted.

(4) Where the body of persons carrying out a scheme are charged to tax by virtue of subsection (1) above, and, after the expiration of one year from the cancellation of the certificate, any deductible contribution paid in furtherance of the scheme is repaid, the amount upon which the charge is made shall on the making of a claim be reduced by the amount repaid, and all such repayments of tax shall be made as are necessary to give effect to the provisions of this subsection.

(5) In this section "contribution" includes a part of a contribution, and "deductible contribution" means a contribution allowed to be deducted under section 568, any reduction under Part III of Schedule 21 being left out of account.

(6) For the purposes of this section, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

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Textual Amendments

F3726 Words in s. 571(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 234** (with Sch. 2)

Marginal Citations

M766 Source-1970 s.409

572 Application to statutory redundancy schemes.

M767(1) Sections 569 to 571 and Schedule 21 shall, subject to the adaptations specified in subsection (2) below, apply in relation to a statutory redundancy scheme as they apply in relation to a scheme certified under section 568.

(2) The adaptations referred to above are as follows, that is to say—

(a) for any reference to a contribution allowed to be deducted under section 568 there shall be substituted a reference to a contribution allowed to be deducted under any provision of the Tax Acts other than that section;

(b) any provision that section 568 shall, in relation to contributions, have effect subject to modifications, shall be construed as a provision that so much of any provision of the Tax Acts other than that section as authorises the deduction of contributions shall, in relation to the contributions in question, have effect subject to the modifications in question;

(c) for any reference to the cancellation of a certificate with respect to a scheme there shall be substituted a reference to the scheme ceasing to have effect; and

(d) for any reference to the provisions of the scheme as in force when the certificate was granted there shall be substituted a reference to the provisions of the scheme as in force when the contributions were first paid thereunder.

(3) In this section "statutory redundancy scheme" means a scheme for the elimination or reduction of redundant works, machinery or plant, or for other similar purposes, to which effect is given by or under any Act, whether passed before or after this Act.

Marginal Citations

M767 Source-1970 s.410

VALID FROM 06/04/2007

[F3727 CHAPTER 5A

SHARE LOSS RELIEF

Textual Amendments

F3727 Pt. 13 Ch. 5A created (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by virtue of Income Tax Act 2007 (c. 3), **Sch. 1 para. 117(3)** (with Sch. 2)

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Relief for losses on unquoted shares in trading companies

573 Relief for companies.

(1) [M768]Subsection (2) below has effect where a company which has subscribed for shares in a qualifying trading company incurs an allowable loss (for the purpose of corporation tax on chargeable gains) on the disposal of the shares in any accounting period and the company disposing of the shares—

(a) is an investment company on the date of the disposal and either—

(i) has been an investment company for a continuous period of six years ending on that date; or

(ii) has been an investment company for a shorter continuous period ending on that date and has not before the beginning of that period been a trading company or an excluded company; and

(b) was not associated with, or a member of the same group as, the qualifying trading company at any time in the period beginning with the date when it subscribed for the shares and ending with the date of the disposal.

(2) The company disposing of the shares may, within two years after the end of the accounting period in which the loss was incurred, make a claim requiring that the loss be set off for the purposes of corporation tax against income—

(a) of that accounting period; and

(b) if the company was then an investment company and the claim so requires, of preceding accounting periods ending within the time specified in subsection (3) below;

and, subject to any relief for an earlier loss, the income of any of those periods shall then be treated as reduced by the amount of the loss or by so much of it as cannot be relieved under this subsection against income of a later accounting period.

(3) The time referred to in subsection (2) above is the period of 12 months ending immediately before the accounting period in which the loss is incurred; but the amount of the reduction which may be made under that subsection in the income of an accounting period falling partly before that time shall not exceed a part of that income proportionate to the part of the accounting period falling within that time.

(4) **[**[F3728]Where relief is claimed under subsection (2) above, it must be claimed before any deduction is made for**]** charges on income, expenses of management or other amounts which can be deducted from or set against or treated as reducing profits of any description; and where relief **[**[F3729]is obtained**]** under that subsection **[**[F3730]for an amount**]** of a loss no deduction shall be made in respect of that amount for the purposes of corporation tax on chargeable gains.

[[F3731]This subsection is subject to subsection (4A) below.**]**

[[F3732](4A) Paragraph 70 of Schedule 15 to the Finance Act 2000 (priority of loss relief) provides that where relief under Part VII of that Schedule (relief for losses on disposals of shares to which investment relief is attributable) is claimed it must be claimed in priority to relief under subsection (2) above.**]**

(5) For the purposes of subsection (1)(b) above companies are associated with each other if one controls the other or both are under the control of the same person or persons; and section 416(2) to (6) shall apply for the purposes of this subsection.

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(6) [M769]For the purposes of this section a company subscribes for shares in another company if they are issued to it by that other company in consideration of money or money's worth.

Textual Amendments

F3728 Words in s. 573(4) substituted (with effect in accordance with s. 63(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(2)(a)(i)**

F3729 Words in s. 573(4) substituted (with effect in accordance with s. 63(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(2)(a)(ii)**

F3730 Words in s. 573(4) substituted (with effect in accordance with s. 63(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(2)(a)(iii)**

F3731 Words in s. 573(4) inserted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(2)(a)(iv)**

F3732 S. 573(4A) inserted (with effect in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(2)(b)**

Modifications etc. (not altering text)

C591 S. 573(2) restricted (with effect in accordance with s. 63(4) of the affecting Act) by Finance Act 2000, Sch. 15 para. 70(2)

Marginal Citations

M768 Source-1981 s.36(1)-(5)

M769 Source-1981 s.36(6); 1980 s.37(3)

575 Exclusion of relief under section 573 or 574 in certain cases.

[M770](1) Sections 573 and 574 do not apply unless the disposal is—

(a) by way of a bargain made at arm's length for full consideration; or

(b) by way of a distribution in the course of dissolving or winding up the company; or

[[F3733](ba) a disposal within section 24(1) of the 1992 Act (entire loss, destruction, dissipation or extinction of asset); or**]**

(c) a deemed disposal under section **[**[F3734]24(2) of the 1992 Act**]** (claim that value of asset has become negligible).

(2) Where a person disposes of shares ("the new shares") which by virtue of section **[**[F3735]127 of the 1992 Act**]** (reorganisation etc. treated as not involving disposal) are identified with other shares ("the old shares") previously held by him, relief shall not be given under section 573 or 574 on the disposal of the new shares unless—

(a) relief under section 573 or 574 could (or if this section had been in force could) have been given on a disposal of the old shares if he had incurred an allowable loss in disposing of them as mentioned in subsection (1)(a) above on the occasion of the disposal that would have occurred but for section **[**[F3735]127 of the 1992 Act**]**; or

(b) he gave new consideration for the new shares;

but in a case within paragraph (b) above the amount of relief under section 573 or 574 on the disposal of the new shares shall not exceed the amount or value of the new consideration taken into account as a deduction in computing the loss incurred on their disposal.

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(3) Where the shares are the subject of an exchange or arrangement of the kind mentioned in section **[**F3736135 or 136 of the 1992 Act**]** (company reconstructions etc.) which by reason of section **[**F3736137**]** of that Act involves a disposal of the shares, section 573 or 574 shall not apply to any allowable loss incurred on the disposal.

Textual Amendments

F3733 S. 575(1)(ba) inserted (with effect in accordance with s. 63(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(3)**

F3734 Words in s. 575(1)(c) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(34)(a)** (with ss. 60, 101(1), 171, 201(3))

F3735 Words in s. 575(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(34)(b)** (with ss. 60, 101(1), 171, 201(3))

F3736 Words in s. 575(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(34)(c)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C592 Ss. 574-576 applied (with effect in accordance with s. 93(11) of the affecting Act) by Finance Act 1994 (c. 9), **Sch. 12 para. 3(3)**

Marginal Citations

M770 Source-1980 s.37(6)-(8); 1981 s.36(6)

576 Provisions supplementary to sections 573 to 575.

(1) **[**F3737Subject to subsections (1A) **[**F3738to (1C)**]** below,**]** where a person holds shares in a company which constitute a holding and comprise—

(a) shares for which he has subscribed ("qualifying shares"); and

(b) shares which he has acquired otherwise than by subscription,

any question whether a disposal by him of shares forming part of the holding is of qualifying shares shall be determined by treating that and any previous disposal by him out of the holding as relating to shares acquired later rather than earlier; and if a disposal by him is of qualifying shares forming part of a holding and he makes a claim under section 573 or 574 in respect of a loss incurred on their disposal, the amount of relief under that section on the disposal shall not exceed the sums that would be allowed as deductions in computing the loss if the shares had not been part of the holding.

[F3739(1A) Subsection (1B) below applies where the holding mentioned in subsection (1) above comprises any of the following, namely—

(a) shares issued before 1st January 1994 in respect of which relief has been given under Chapter III of Part VII and has not been withdrawn;

(b) shares issued on or after that date to which relief under that Chapter is attributable; and

(c) shares to which deferral relief (within the meaning of Schedule 5B to the 1992 Act) is attributable.

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(1B) Any such question as is mentioned in subsection (1) above shall not be determined as provided by that subsection, but shall be determined instead—

(a) in the case of shares issued before 1st January 1994, as provided by subsections (3) to (4C) of section 299 as it has effect in relation to such shares; and

(b) in the case of shares issued on or after that date, as provided by subsections (6) to (6D) of that section as it has effect in relation to such shares.**]**

[F3740(1C) Where the holding mentioned in subsection (1) above comprises any shares—

(a) to which investment relief is attributable under Schedule 15 to the Finance Act 2000 (corporate venturing scheme), and

(b) which have been held continuously (within the meaning of paragraph 97 of that Schedule) from the time they were issued until the disposal,

any such question as is mentioned in that subsection shall not be determined as provided by that subsection, but shall be determined instead as provided by paragraph 93 of that Schedule (identification of shares on a disposal of part of a holding where investment relief is attributable to any shares in the holding held continuously by the disposing company).

For this purpose paragraph 93 of that Schedule shall have effect as if the references in it to a disposal had the same meaning as in subsection (1) above.**]**

(2) Where a claim is made under section 573 or 574 in respect of a loss accruing on the disposal of shares, section **[**F3741130 of the 1992 Act**]** (value-shifting) shall have effect in relation to the disposal as if for the references in subsections (1)(b) and **[**F3741(5)**]** to a tax-free benefit there were substituted references to any benefit whether tax-free or not.

(3) There shall be made all such adjustments of corporation tax on chargeable gains or capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of relief being given under section 573 or 574 in respect of an allowable loss or in consequence of the whole or part of such a loss in respect of which a claim is made not being relieved under that section.

[F3742(4) For the purposes of sections 573 to 575 and this section a qualifying trading company is a company which F3743. . . —

(a) either—

(i) is an eligible trading company on the date of the disposal; or

(ii) has ceased to be an eligible trading company at a time which is not more than three years before that date and has not since that time been an excluded company, an investment company or a trading company that is not an eligible trading company; and

(b) either—

(i) has been an eligible trading company for a continuous period of six years ending on that date or at that time; or

(ii) has been an eligible trading company for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company that is not an eligible trading company; and

(c) has carried on its business wholly or mainly in the United Kingdom throughout the relevant period.

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(4A) A company is an eligible trading company for the purposes of subsection (4) above at any time when, or in any period throughout which, it would comply with the requirements of section 293 if—

(a) the provisions mentioned in subsection (4B) below were omitted;

[F3744(ab) the reference in subsection (1A) of section 293 to the beginning of the relevant period were a reference to the time at which the shares in respect of which relief is claimed under section 573 or 574 were issued;**]**

(b) the references in subsection (6) of section 293 to dissolution were omitted **[**F3745and after paragraph (a) of that subsection there were inserted— and

(b) the company continues, during the winding up, to be a trading company within the meaning of section 576(5).**]**;

(c) the reference in section 293(6A) to the eligible shares were a reference to the shares in respect of which relief is claimed under section 573 or 574;

(d) any reference in section 293 **[**F3746(except subsection (1A))**]**, 297 or 308 to the relevant period were a reference to the time that is relevant for the purposes of subsection (4)(a) above or, as the case may require, the continuous period that is relevant for the purposes of subsection (4)(b) above;

(e) the reference in section 304A(1)(e)(i) to eligible shares were a reference to shares in respect of which relief is claimed under section 573 or 574;

(f) references in section 304A(3) to an individual were references to a person;

(g) the reference in section 304A(4) to section 304 were a reference to section 574(3)(b); and

(h) the reference in section 304A(6) to the expressions “eligible shares" and “subscriber shares" were a reference to the expression “subscriber shares".

(4B) The provisions are—

(a) in section 293, the words “Subject to section 294,” in subsection (1)F3747. . . and subsections (8A) and (8B);

(b) sections 294 to 296;

(c) in section 298(5), the words “and section 312(1A)(b) shall apply to determine the relevant period for the purposes of that section";

(d) in section 304A, subsections (1)(e)(ii) and (2)(b), in subsection (3), the words “to which relief becomes so attributable" and paragraphs (c) and (d), in subsection (4), the words “to which relief becomes so attributable" and paragraphs (c) and (d), and subsection (5); and

(e) section 308(5A).**]**

(5) M771In sections 573 to 575 and this section—

[F3748“civil partner” refers to one of two civil partners who are living together (construed in accordance with section 282);**]**

“excluded company” means a company—

(a) which has a trade which consists wholly or mainly of **[**F3749dealing in land, in commodities or futures or in shares, securities or other financial instruments,**]** or is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised; or

(b) which is the holding company of a group other than a trading group; or

(c) which is a building society or a registered industrial and provident society as defined in section 486(12);

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"group" means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries;

[F3750"holding" means any number of shares of the same class held by one person in one capacity, growing or diminishing as shares of that class are acquired or disposed of, but shares shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange, and subsection (4) of section 104 of the 1992 Act shall apply for the purposes of this definition as it applies for the purposes of subsection (1) of that section;**]**

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of one or more companies which are its 51 per cent. subsidiaries;

"investment company" has the meaning given by section 130 except that it does not include the holding company of a trading group;

"new consideration" means consideration in money or money's worth other than consideration of the kind excluded by **[**F3751paragraph (a) or (b) of section 128(2)**][**F3752of the 1992 Act**]**;

"relevant period" means the period ending with the date on which the shares in question are disposed of and beginning with the incorporation of the company, or, if later, one year before the date on which the shares were **[**F3753issued**]**;

[F3754"shares"—

(a) except in subsections (1A) and (1B) above, includes stock; but

(b) except in the definition of "excluded company", does not include shares or stock not forming part of a company's ordinary share capital;**]**

"spouse" refers to one of two spouses who are living together (construed in accordance with section **[**F3755282**]**);

"trading company" means a company other than an excluded company which is—

(a) **[**F3756a company whose business consists wholly or mainly of the carrying on of a trade or trades**]**; or

(b) the holding company of a trading group;

"trading group" means a group the business of whose members, taken together, consists wholly or mainly in the carrying on of a trade or trades, but for the purposes of this definition any trade carried on by a subsidiary which is an excluded company F3757. . . shall be treated as not constituting a trade.

Textual Amendments

F3737 Words in s. 576(1) inserted (with effect in accordance with s. 80(5)(a) of the amending Act) by Finance Act 1998 (c. 36), **s. 80(1)**

F3738 Words in s. 576(1) substituted (with application in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(4)(a)**

F3739 S. 576(1A)(1B) inserted (with effect in accordance with s. 80(5)(a) of the amending Act) by Finance Act 1998 (c. 36), **s. 80(2)**

F3740 S. 576(1C) inserted (with application in accordance with s. 63(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 16 para. 3(4)(b)**

F3741 Words in s. 576(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation and Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(a)** (with ss. 60, 101(1), 171, 201(3))

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F3742 S. 576(4)-(4B) substituted for s. 576(4) (with effect in accordance with s. 80(5)(b) of the amending Act) by Finance Act 1998 (c. 36), **s. 80(3)**
F3743 Words in s. 576(4) repealed (with effect in accordance with Sch. 15 para. 38(5)(6) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 15 para. 38(2), **Sch. 33 Pt. 2(3)**, Note 3
F3744 S. 576(4A)(ab) inserted (with effect in accordance with Sch. 15 para. 38(5)(6) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 38(3)(a)**
F3745 Words in s. 576(4A)(b) substituted (with effect in accordance with Sch. 15 para. 38(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 38(3)(b)**
F3746 Words in s. 576(4A)(d) inserted (with effect in accordance with Sch. 15 para. 38(5)(6) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 15 para. 38(3)(c)**
F3747 Words in s. 576(4B)(a) repealed (with effect in accordance with Sch. 15 para. 38(5)(6) of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(3)**, Note 3
F3748 S. 576(5): definition of "civil partner" inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 78(b)
F3749 Words in s. 576(5) substituted (with effect in accordance with s. 80(5)(b) of the amending Act) by Finance Act 1998 (c. 36), **s. 80(4)(a)**
F3750 Definition in s. 576(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(b)(i)** (with ss. 60, 101(1), 171, 201(3))
F3751 Words in s. 576(5) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290(1), **Sch. 10 para. 14(35)(b)(ii)** (with ss. 60, 101(1), 171, 201(3))
F3752 Words in s. 576(5) inserted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 6**
F3753 Word in s. 576(5) substituted (with effect in accordance with s. 80(5)(b) of the amending Act) by Finance Act 1998 (c. 36), **s. 80(4)(b)**
F3754 S. 576(5): definition of "shares" substituted (with effect in accordance with s. 80(5)(b) of the amending Act) by Finance Act 1998 (c. 36), **s. 80(4)(c)**
F3755 S. 576(5): words in definition of "spouse" substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 78(a)
F3756 1989 s.107*and* Sch.12 para.14*in relation to disposals made after* 31*March* 1989.*Previously* "(a) a trading company within the meaning of paragraph 7 of Schedule 19".
F3757 Words in s. 576(5) repealed (with effect in accordance with s. 80(5)(b), Sch. 27 Pt. 3(16) Note of the repealing Act) by Finance Act 1998 (c. 36), s. 80(4)(d), **Sch. 27 Pt. 3(16)**

Modifications etc. (not altering text)
C593 Ss. 574-576 applied (with effect in accordance with s. 93(11) of the affecting Act) by Finance Act 1994 (c. 9), **Sch. 12 para. 3(3)**

Marginal Citations
M771 Source-1980 s.37(12); 1981 s.36(6), (7); 1987 (No.2) s.71

[F3758 576A Qualifying trading companies

(1) For the purposes of this Chapter a qualifying trading company is a company which meets each of conditions A to D.

(2) Condition A is that the company either—

(a) meets each of the following requirements on the date of the disposal—

(i) the trading requirement (see section 576B),

(ii) the control and independence requirement (see section 576D),

(iii) the qualifying subsidiaries requirement (see section 576E), and

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(iv) the property managing subsidiaries requirement (see section 576F), or

(b) has ceased to meet any of those requirements at a time which is not more than 3 years before that date and has not since that time been an excluded company, an investment company or a trading company.

(3) Condition B is that the company either—

(a) has met each of the requirements mentioned in condition A for a continuous period of 6 years ending on that date or at that time, or

(b) has met each of those requirements for a shorter continuous period ending on that date or at that time and has not before the beginning of that period been an excluded company, an investment company or a trading company.

(4) Condition C is that the company—

(a) met the gross assets requirement (see section 576G) both immediately before and immediately after the issue of the shares in respect of which the relief is claimed under this Chapter, and

(b) met the unquoted status requirement (see section 576H) at the relevant time within the meaning of that section.

(5) Condition D is that the company has carried on its business wholly or mainly in the United Kingdom throughout the period—

(a) beginning with the incorporation of the company or, if later, 12 months before the shares in question were issued, and

(b) ending with the date of the disposal.**]**

Textual Amendments

F3758 S. 576A inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 121** (with Sch. 2)

***[F3759** Qualifying trading companies: the requirements*

Textual Amendments

F3759 S. 576B and preceding cross-heading inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 122** (with Sch. 2)

576B The trading requirement

(1) The trading requirement is that—

(a) the company, disregarding any incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, or

(b) the company is a parent company and the business of the group does not consist wholly or as to a substantial part in the carrying on of non-qualifying activities.

(2) If the company intends that one or more other companies should become its qualifying subsidiaries with a view to their carrying on one or more qualifying trades—

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(a) the company is treated as a parent company for the purposes of subsection (1)(b), and

(b) the reference in subsection (1)(b) to the group includes the company and any existing or future company that will be its qualifying subsidiary after the intention in question is carried into effect.

This subsection does not apply at any time after the abandonment of that intention.

(3) For the purpose of subsection (1)(b) the business of the group means what would be the business of the group if the activities of the group companies taken together were regarded as one business.

(4) For the purpose of determining the business of a group, activities are disregarded to the extent that they are activities carried on by a mainly trading subsidiary otherwise than for its main purpose.

(5) For the purposes of determining the business of a group, activities of a group company are disregarded to the extent that they consist in—

(a) the holding of shares in or securities of a qualifying subsidiary of the parent company,

(b) the making of loans to another group company,

(c) the holding and managing of property used by a group company for the purpose of one or more qualifying trades carried on by a group company, or

(d) the holding and managing of property used by a group company for the purpose of research and development from which it is intended—

(i) that a qualifying trade to be carried on by a group company will be derived, or

(ii) that a qualifying trade carried on or to be carried on by a group company will benefit.

(6) Any reference in subsection (5)(d)(i) or (ii) to a group company includes a reference to any existing or future company which will be a group company at any future time.

(7) In this section—

"excluded activities" has the meaning given by section 192 of ITA 2007 read with sections 193 to 199 of that Act,

"group" means a parent company and all its qualifying subsidiaries,

"group company", in relation to a group, means the parent company or any of its qualifying subsidiaries,

"incidental purposes" means purposes having no significant effect (other than in relation to incidental matters) on the extent of the activities of the company in question,

"mainly trading subsidiary" means a subsidiary which, apart from incidental purposes, exists wholly for the purpose of carrying on one or more qualifying trades, and any reference to the main purpose of such a subsidiary is to be read accordingly,

"non-qualifying activities" means—

(a) excluded activities, and

(b) activities (other than research and development) carried on otherwise than in the course of a trade,

"parent company" means a company that has one or more qualifying subsidiaries,

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"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007,

"qualifying trade" has the meaning given by section 189 of that Act,

"research and development" has the meaning given by section 837A.

(8) In sections 189(1)(b) and 194(4)(c) of ITA 2007 (as applied by subsection (7) for the purposes of the definitions of "excluded activities" and "qualifying trade") "period B" means the continuous period that is relevant for the purposes of section 576A(3).

[F3760(9) In section 195 of ITA 2007 as applied by subsection (7) for the purposes mentioned in subsection (8), references to the issuing company are to be read as references to the company mentioned in subsection (1).**]**

Textual Amendments

F3760 S. 576B(9) inserted (6.4.2007) by Finance Act 2007 (c. 11), Sch. 16 paras. 11(3), **13**

[F3761576C Ceasing to meet the trading requirement because of administration or receivership

(1) A company is not regarded as ceasing to meet the trading requirement by reason only of anything done in consequence of the company or any of its subsidiaries being in administration or receivership.

This has effect subject to subsections (2) and (3).

(2) Subsection (1) applies only if—

(a) the entry into administration or receivership, and

(b) everything done as a result of the company concerned being in administration or receivership,

is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

(3) A company ceases to meet the trading requirement if before the time that is relevant for the purposes of section 576A(2)—

(a) a resolution is passed, or an order is made, for the winding up of the company or any of its subsidiaries (or, in the case of a winding up otherwise than under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989, any other act is done for the like purpose), or

(b) the company or any of its subsidiaries is dissolved without winding up.

This is subject to subsection (4).

(4) Subsection (3) does not apply if —

(a) the winding up is for genuine commercial reasons, and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax, and

(b) the company continues, during the winding up, to be a trading company.

(5) References in this section to a company being "in administration" or "in receivership" are to be read in accordance with section 252 of ITA 2007.**]**

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Textual Amendments

F3761 S. 576C inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 123** (with Sch. 2)

[F3762 576D The control and independence requirement

(1) The control element of the requirement is that—

(a) the company must not control (whether on its own or together with any person connected with it) any company which is not a qualifying subsidiary of the company, and

(b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 576A(3) or otherwise).

(2) The independence element of the requirement is that—

(a) the company must not—

(i) be a 51% subsidiary of another company, or

(ii) be under the control of another company (or of another company and any other person connected with that other company), without being a 51% subsidiary of that other company, and

(b) no arrangements must be in existence by virtue of which the company could fail to meet paragraph (a) (whether at a time during the continuous period that is relevant for the purposes of section 576A(3) or otherwise).

(3) This section is subject to section 576J(3).

[Section 839 (connected persons) applies for the purposes of this section.**]**

F3763(3A)

(4) In this section—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable,

"control" is to be read as follows—

(a) in subsection (1)(a), in accordance with section 416(2) to (6),

(b) in subsection (2)(a), in accordance with section 840,

"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007.**]**

Textual Amendments

F3762 S. 576D inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 124** (with Sch. 2)

F3763 S. 576D(3A) inserted (retrospective to 6.4.2007 and with effect in accordance with art. 1(2) of the amending S.I.) by The Income Tax Act 2007 (Amendment) (No. 2) Order 2009 (S.I. 2009/2859), **art. 2(2)**

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[F3764 576E The qualifying subsidiaries requirement

(1) The qualifying subsidiaries requirement is that any subsidiary that the company has must be a qualifying subsidiary of the company.

(2) In this section "qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007.]

Textual Amendments

F3764 S. 576E inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 125** (with Sch. 2)

[F3765 576F The property managing subsidiaries requirement

(1) The property managing subsidiaries requirement is that any property managing subsidiary that the company has must be a qualifying 90% subsidiary of the company.

(2) In this section—

"property managing subsidiary" has the meaning given by section 188(2) of ITA 2007,

"qualifying 90% subsidiary" has the meaning given by section 190 of that Act.]

Textual Amendments

F3765 S. 576F inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 126** (with Sch. 2)

[F3766 576G The gross assets requirement

(1) The gross assets requirement in the case of a single company is that the value of the company's gross assets—

(a) must not exceed £7 million immediately before the shares in respect of which the relief is claimed under this Chapter are issued, and

(b) must not exceed £8 million immediately afterwards.

(2) The gross assets requirement in the case of a parent company is that the value of the group assets—

(a) must not exceed £7 million immediately before the shares in respect of which the relief is claimed under this Chapter are issued, and

(b) must not exceed £8 million immediately afterwards.

(3) The value of the group assets means the aggregate of the values of the gross assets of each of the members of the group, disregarding any that consist in rights against, or shares in or securities of, another member of the group.

(4) In this section—

"group" means a parent company and its qualifying subsidiaries,

"parent company" means a company that has one or more qualifying subsidiaries,

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"qualifying subsidiary" is to be read in accordance with section 191 of ITA 2007, and

"single company" means a company that does not have one or more qualifying subsidiaries.**]**

Textual Amendments

F3766 S. 576G inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 127** (with Sch. 2)

[F3767 576H The unquoted status requirement

(1) The unquoted status requirement is that, at the time ("the relevant time") at which the shares in respect of which the relief is claimed under this Chapter are issued—

(a) the company must be an unquoted company,

(b) there must be no arrangements in existence for the company to cease to be an unquoted company, and

(c) there must be no arrangements in existence for the company to become a subsidiary of another company ("the new company") by virtue of an exchange of shares, or shares and securities, if—

(i) section 576J applies in relation to the exchange, and

(ii) arrangements have been made with a view to the new company ceasing to be an unquoted company.

(2) The arrangements referred to in subsection (1)(b) and (c)(ii) do not include arrangements in consequence of which any shares, stocks, debentures or other securities of the company or the new company are at any subsequent time—

(a) listed on a stock exchange that is a recognised stock exchange by virtue of an order made under section 1005 of ITA 2007, or

(b) listed on an exchange, or dealt in by any means, designated by an order made for the purposes of section 184(3)(b) or (c) of that Act,

if the order was made after the relevant time.

(3) In this section—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable,

"debenture" has the meaning given by section 744 of the Companies Act 1985,

"unquoted company" has the meaning given by section 184(2) of ITA 2007.**]**

Textual Amendments

F3767 S. 576H inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 128** (with Sch. 2)

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[F3768 576I Power to amend requirements by Treasury order]

The Treasury may by order make such amendments of sections 576B to 576H as they consider appropriate.**]**

Textual Amendments

F3768 S. 576I inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 129** (with Sch. 2)

I F3769 Qualifying trading companies: supplementary provisions

Textual Amendments

F3769 S. 576J and preceding cross-heading inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 130** (with Sch. 2)

576J Relief after an exchange of shares for shares in another company

(1) This section and section 576K apply in relation to shares if—

(a) a company ("the new company") in which the only issued shares are subscriber shares acquires all the shares ("old shares") in another company ("the old company"),

(b) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company,

(c) the consideration for the new shares of each description consists wholly of old shares of the corresponding description,

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings, and

(e) by virtue of section 127 of the 1992 Act as applied by section 135(3) of that Act (company reconstructions etc), the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.

In this subsection references to shares, except the first and that in the expression "subscriber shares", include securities.

(2) For the purposes of this Chapter the exchange of shares is not regarded as involving any disposal of the old shares or any acquisition of the new shares.

(3) Nothing in section 576D (the control and independence requirement) applies in relation to such an exchange of shares, or shares and securities, as is mentioned in subsection (1), or arrangements with a view to such an exchange.

(4) For the purposes of this section old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights.

(5) References in section 576K to "old shares", "new shares", "the old company" and "the new company" are to be read in accordance with this section.

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[F3770 576K Substitution of new shares for old shares]

(1) Subsection (2) applies if, in the case of any new shares held by a company or by a nominee for a company, the old shares for which they were exchanged were shares that had been subscribed for by the company ("the investor").

(2) This Chapter has effect as if—

(a) the new shares had been subscribed for by the investor at the time when, and for the amount for which, the old shares were subscribed for by the investor,

(b) the new shares had been issued by the new company at the time when the old shares were issued to the investor by the old company, and

(c) any requirements of this Chapter which were met at any time before the exchange by the old company had been met at that time by the new company.

(3) Section 573(6) applies for the purposes of this section.

F3771 **[** (4) Nothing in subsection (2) applies in relation to section 195(7) of ITA 2007 as applied by section 576B(7) above for the purposes mentioned in section 576B(8).**]]**

Textual Amendments

F3770 S. 576K inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 131** (with Sch. 2)

F3771 S. 576K(4) inserted (6.4.2007) by Finance Act 2008 (c. 9), Sch. 16 paras. 11(4), **13**

[F3772 Supplemental]

Textual Amendments

F3772 S. 576L and preceding cross-heading inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 132** (with Sch. 2)

576L Interpretation of Chapter

(1) In this Chapter (subject to subsections (2) to (5))—

"excluded company" means a company which—

(a) has a trade which consists wholly or mainly of dealing in land, in commodities or futures or in shares, securities or other financial instruments,

(b) has a trade which is not carried on on a commercial basis and in such a way that profits in the trade can reasonably be expected to be realised,

(c) is a holding company of a group other than a trading group, or

(d) is a building society or a registered industrial and provident society,

"group" (except in sections 576B and 576G) means a company which has one or more 51% subsidiaries together with that or those subsidiaries,

"holding company" means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 51% subsidiaries,

"investment company" has the meaning given by section 130 except that it does not include the holding company of a trading group,

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"registered industrial and provident society" means a society registered or treated as registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) Act 1969,

"shares"—

(a) includes stock, but

(b) does not include shares or stock not forming part of a company's ordinary share capital,

"trading company" means a company other than an excluded company which is—

(a) a company whose business consists wholly or mainly of the carrying on of a trade or trades, or

(b) the holding company of a trading group, and

"trading group" means a group the business of whose members, when taken together, consists wholly or mainly in the carrying on of a trade or trades.

(2) Except as provided by subsection (3), paragraph (b) of the definition of "shares" in subsection (1) does not apply in the definition of "excluded company" in subsection (1) or in section 576J(1) to (4).

(3) Paragraph (b) of that definition applies in relation to the first reference to "shares" in section 576J(1).

(4) The definition of "shares" in subsection (1) does not apply in sections 576B(5)(a), 576G(3) and 576H(1)(c) and (2).

(5) For the purposes of the definition of "trading group" in subsection (1), any trade carried on by a subsidiary which is an excluded company is treated as not constituting a trade.**]**

CHAPTER VI

OTHER PROVISIONS

Modifications etc. (not altering text)

C594 Pt 13 Ch. 6: ss. 573, 575 and 576 transposed to Pt. 13 Ch. 5A (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by Income Tax Act 2007 (c. 3), Sch. 1 paras. 117(3), 119(7), **120(7)** (with Sch. 2)

Relief for losses on unquoted shares in trading companies

574 Relief for individuals.

[F3773(1) Where an individual who has subscribed for shares in a qualifying trading company incurs an allowable loss (for capital gains tax purposes) on the disposal of the shares in any year of assessment, he may, by notice given within twelve months from the 31st January next following that year, make a claim for relief from income tax on—

(a) so much of his income for that year as is equal to the amount of the loss or, where it is less than that amount, the whole of that income; or

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(b) so much of his income for the last preceding year as is equal to that amount or, where it is less than that amount, the whole of that income;

but relief shall not be given for the loss or the same part of the loss both under paragraph (a) and under paragraph (b) above.

Where such relief is given in respect of the loss or any part of it, no deduction shall be made in respect of the loss or (as the case may be) that part under the 1992 Act.

(2) Any relief claimed under paragraph (a) of subsection (1) above in respect of any income shall be given in priority to any relief claimed in respect of that income under paragraph (b) of that subsection; and any relief claimed under either paragraph in respect of any income shall be given in priority to any relief claimed in respect of that income under section 380 or 381.**]**

(3) For the purposes of this section—

(a) an individual subscribes for shares if they are issued to him by the company in consideration of money or money's worth; and

(b) an individual shall be treated as having subscribed for shares if his spouse **[**F3774or civil partner**]** did so and transferred them to him by a transaction inter vivos.

Textual Amendments

F3773 S. 574(1)(2) substituted (with effect in accordance with s. 210(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 210** (as amended (retrospectively) by Finance Act 1995 (c. 4), **s. 119**) (with Sch. 20)

F3774 Words in s. 574(3)(b) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 77

Modifications etc. (not altering text)

C595 Ss. 574-576 applied (with effect in accordance with s. 93(11) of the affecting Act) by Finance Act 1994 (c. 9), **Sch. 12 para. 3(3)**

C596 S. 574(1) modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 20 para. 8**

C597 S. 574(1) modified (1991-92) by The Lloyd's Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), regs. 1, 9, **Sch. 2**

C598 S. 574(1) modified (1992-93, 1993-94 and 1994-5) by The Lloyd's Underwriters (Tax) (1992-93 to 1996-97) Regulations 1995 (S.I. 1995/352), regs. 1, 14, 15, **Sch.**

Miscellaneous

577 Business entertaining expenses.

(1) **M772**Subject to the provisions of this section—

(a) no deduction shall be made in computing **[**F3775profits**]** chargeable to **[**F3776corporation tax**]** under F3777. . . Schedule D for any expenses incurred in providing business entertainment, and such expenses—

[F3778(i)**]** shall not be included in computing any expenses of management in respect of which relief may be given under **[**F3779the Corporation Tax Acts**]**; **[**F3780and

(ii) shall not be brought into account under section 76 as expenses payable**]**.**[**F3781F3782. . . **]**

(b) F3782. . . . . .

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(c) F3783. . . . . .

(2) F3784. . . . . .

(3) The expenses to which paragraph (a) of subsection (1) above applies include, in the case of **[**F3785any company**]**, any sums paid **[**F3786by the company**]** to, or on behalf of, or placed **[**F3786by the company**]** at the disposal of **[**F3787an employee of the company**]** exclusively for the purpose of defraying expenses incurred or to be incurred by him in providing business entertainment F3788. . . .

(4) F3784. . . . . .

(5) For the purposes of this section "business entertainment" means entertainment (including hospitality of any kind) provided by **[**F3789a company**]**, or by **[**F3790an employee of the company**]**, in connection with a trade carried on by **[**F3791the company**]**, but does not include anything provided by **[**F3792the company**]** for bona fide **[**F3793employees of the company**]** unless its provision for them is incidental to its provision also for others.

(6) F3784. . . . . .

(7) In this section—

(a) any reference to expenses incurred in F3794. . . providing entertainment includes a reference to expenses incurred in F3794. . . providing anything incidental thereto;

(b) references to a trade include references to any business **[**F3795or profession**]**; and

(c) references to **[**F3796a company's employees**]** are references to persons employed by **[**F3797the company**]**, directors of **[**F3798the company**]** or persons engaged in the management of **[**F3798the company**]** being for this purpose deemed to be persons employed by it.

(8) This section shall apply in relation to the provision of a gift as it applies in relation to the provision of entertainment, except that it shall not by virtue of this subsection apply in relation to the provision for any person of a gift consisting of an article incorporating a conspicuous advertisement for the donor, being an article—

(a) which is not food, drink, tobacco or a token or voucher exchangeable for goods; and

(b) the cost of which to the donor, taken together with the cost to **[**F3799the donor**]** of any other such articles given by **[**F3799the donor**]** to that person in the same **[**F3800accounting period**]**, does not exceed **[**F3801£50**]**.

[F3802(8A) F3803. . . . . .**]**

(9) M773Subsection (8) above shall not preclude the deduction, in computing **[**F3775profits**]** under F3777. . . Case I or II of Schedule D, of expenditure incurred in making a gift to a body of persons or trust established for charitable purposes only; and for the purposes of this subsection the Historic Buildings and Monuments Commission for England and the Trustees of the National Heritage Memorial Fund shall each be treated as such a body of persons.

(10) M774Nothing in this section shall be taken as precluding the deduction of expenses incurred in F3804. . . the provision by **[**F3805any company**]** of anything which it is **[**F3806its trade**]** to provide, and which is provided **[**F3807by the company**]** in the ordinary course

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of that trade for payment or, with the object of advertising to the public generally, gratuitously.

Textual Amendments

F3775 Words in s. 577(1)(a)(9) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3776 Words in s. 577(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(2)(a)** (with Sch. 2)

F3777 Words in s. 577(1)(9) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note

F3778 Words in s. 577(1)(a) re-numbered as s. 577(1)(a)(i) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 23(2)(a)

F3779 Words in s. 577(1)(a)(i) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(2)(b)** (with Sch. 2)

F3780 S. 577(1)(a)(ii) and preceding word inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 23(2)(b)

F3781 Word at the end of s. 577(1)(a) inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 51(1)(a)**

F3782 S. 577(1)(b) and preceding word repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 62(2), **Sch. 8 Pt. 1** (with Sch. 7)

F3783 S. 577(1)(c) and preceding word repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 51(1)(b), **Sch. 4**

F3784 S. 577(2)(4)(6) repealed (with effect in accordance with s. 72(1) of the repealing Act) by Finance Act 1988 (c. 39), **Sch 14 Pt. 4**

F3785 Words in s. 577(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(3)(a)** (with Sch. 2)

F3786 Words in s. 577(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(3)(b)** (with Sch. 2)

F3787 Words in s. 577(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(3)(c)** (with Sch. 2)

F3788 Words in s. 577(3) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 62(3), **Sch. 8 Pt. 1** (with Sch. 7)

F3789 Words in s. 577(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(4)(a)** (with Sch. 2)

F3790 Words in s. 577(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(4)(b)** (with Sch. 2)

F3791 Words in s. 577(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(4)(c)** (with Sch. 2)

F3792 Words in s. 577(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(4)(d)** (with Sch. 2)

F3793 Words in s. 577(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(4)(e)** (with Sch. 2)

F3794 Words in s. 577(7)(a) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 51(2), **Sch. 4**

F3795 Words in s. 577(7)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(5)(a)** (with Sch. 2)

F3796 Words in s. 577(7)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(5)(b)(i)** (with Sch. 2)

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F3797 Words in s. 577(7)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(5)(b)(ii)** (with Sch. 2)

F3798 Words in s. 577(7)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(5)(b)(iii)** (with Sch. 2)

F3799 Words in s. 577(8)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(6)(a)** (with Sch. 2)

F3800 Words in s. 577(8)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(6)(b)** (with Sch. 2)

F3801 Words in s. 577(8)(b) substituted (with application in accordance with s. 73(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 73(2)(b)**

F3802 S. 577(8A) inserted (with application in accordance with s. 73(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 73(3)**

F3803 S. 577(8A) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 235(7), **Sch. 3** (with Sch. 2)

F3804 Words in s. 577(10) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 51(3), **Sch. 4**

F3805 Words in s. 577(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(8)(a)** (with Sch. 2)

F3806 Words in s. 577(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(8)(b)** (with Sch. 2)

F3807 Words in s. 577(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 235(8)(c)** (with Sch. 2)

Marginal Citations

M772 Source-1970 s.411(1)-(8); 1985 s.43; 1971 s.50(8)

M773 Source-1980 s.54, 118(3); 1983 s.46(3)(b)

M774 Source-1970 s.411(9)

[F3808 577A Expenditure involving crime.

(1) In computing [F3809 profits] chargeable to [F3810 corporation tax] under F3811 . . . Schedule D, no deduction shall be made for any expenditure incurred —

[F3812 (a)] in making a payment the making of which constitutes the commission of a criminal offence [F3813, or

(b) in making a payment outside the United Kingdom where the making of a corresponding payment in any part of the United Kingdom would constitute a criminal offence there.]

[F3814 (1A) In computing [F3809 profits] chargeable to [F3810 corporation tax] under F3811 . . . Schedule D, no deduction shall be made for any expenditure incurred in making a payment induced by a demand constituting—

(a) the commission in England or Wales of the offence of blackmail under section 21 of the Theft Act 1968,

(b) the commission in Northern Ireland of the offence of blackmail under section 20 of the Theft Act (Northern Ireland) 1969, or

(c) the commission in Scotland of the offence of extortion.]

(2) [F3815 Any expenditure mentioned in subsection (1) or (1A) above]—

[F3816 (a)] shall not be included in computing any expenses of management in respect of which relief may be given under [F3817 the Corporation Tax Acts] [F3818; and

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(b) shall not be brought into account under section 76 as expenses payable**].]**

Textual Amendments

F3808 S. 577A inserted (with application in accordance with s. 123(2) of the amending Act) by Finance Act 1993 (c. 34), **s. 123(1)(2)**

F3809 Words in s. 577A(1)(1A) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3810 Words in s. 577A(1)(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 236(2)** (with Sch. 2)

F3811 Words in s. 577A(1)(1A) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note

F3812 Words in s. 577A(1) renumbered as s. 577A(1)(a) (with effect in accordance with s. 68(2) of the amending Act) by virtue of Finance Act 2002 (c. 23), **s. 68(1)(a)**

F3813 S. 577A(1)(b) and preceding word inserted (with effect in accordance with s. 68(2) of the amending Act) by Finance Act 2002 (c. 23), **s. 68(1)(b)**

F3814 S. 577A(1A) inserted (with application in accordance with s. 141(4) of the amending Act) by Finance Act 1994 (c. 9), **s. 141(2)**

F3815 Words in s. 577A(2) substituted (with application in accordance with s. 141(4)) of the amending Act) by Finance Act 1994 (c. 9), **s. 141(3)**

F3816 Words in s. 577A(2) re-numbered as s. 577A(2)(a) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 24(2)(a)

F3817 Words in s. 577A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 236(3)** (with Sch. 2)

F3818 S. 577A(2)(b) and preceding word inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 24(2)(b)

578 Housing grants.

M775(1) Where, under any enactment relating to the giving of financial assistance for the provision, maintenance or improvement of housing accommodation or other residential accommodation, a payment is made to a person by way of grant or other contribution towards expenses incurred, or to be incurred, by that or any other person, the payment shall not be treated as a receipt in computing income for **[**F3819corporation tax purposes**]**.

(2) Subsection (1) above shall not apply to a payment in so far as it is made in respect of an expense giving rise to a deduction in computing income for any tax purpose.

Textual Amendments

F3819 Words in s. 578(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 237** (with Sch. 2)

Marginal Citations

M775 Source-1970 s.376

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[F3820 578A Expenditure on car hire

(1) This section provides for a reduction in the amounts—

(a) allowable as deductions in computing profits chargeable to [F3821 corporation tax] under Case I or II of Schedule D,[F3822 or]

(b) which can be included as expenses of management of [F3823 a company with investment business] (as defined by section 130),F3824 . . . [F3825 or

(bb) which can be brought into account under section 76 as expenses payable,]

(c) F3824 . . . . . .

for expenditure on the hiring of a car to which this section applies.

(2) This section applies to the hiring of a car—

(a) which is not a qualifying hire car, and

(b) the retail price of which when new exceeds £12,000.

"Car" and "qualifying hire car" are defined by section 578B.

F3826 (2A) [This section does not apply to the hiring of a car, other than a motorcycle, if—

(a) it is an electrically-propelled car, or

(b) it is a car with low CO_2 emissions.

(2B) In subsection (2A) above—

"car" has the meaning given by section 578B;

"car with low CO_2 emissions" has the meaning given by section 45D of the Capital Allowances Act 2001 (expenditure on cars with low CO_2 emissions to be first-year qualifying expenditure);

"electrically-propelled car" has the meaning given by that section.]

(3) The amount which would, apart from this section, be allowable or capable of being included must be reduced by multiplying it by the fraction—

$$\frac{£12{,}000 + P}{2P}$$

where P is the retail price of the car when new.

(4) If an amount has been reduced under subsection (3) and subsequently—

(a) there is a rebate (however described) of the rentals, or

(b) there occurs in connection with the rentals a transaction that falls within section 94 (debts deducted and subsequently released),

the amount otherwise taxable in respect of the rebate or transaction must be reduced by multiplying it by the fraction in subsection (3) above.]

Textual Amendments

F3820 Ss. 578A, 578B inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 52** (with Sch. 3 para. 113)

F3821 Words in s. 578A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 238** (with Sch. 2)

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F3822 Word at the end of s. 578A(1)(a) inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 12 Pt. 2 para. 11(a)**

F3823 Words in s. 578A(1) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 25(2)

F3824 S. 578A(1)(c) and preceding word repealed (with effect in accordance with s. 57(4), Sch. 33 Pt. 2(1) Note of the repealing Act) by Finance Act 2001 (c. 9), Sch. 12 Pt. 2 para. 11(b), **Sch. 33 Pt. 2(1)**

F3825 S. 578A(2)(bb) and preceding word inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 25(3)

F3826 S. 578A(2A)(2B) inserted (with effect in accordance with s. 60(2) of the amending Act) by Finance Act 2002 (c. 23), **s. 60(1)**

Modifications etc. (not altering text)

C599 S. 578A(2)(3) modified (with effect in accordance with s. 80(2) of the 2002 amending Act) by Finance Act 1993 (c. 34), **s. 93A(4)(a)(6)(a)** (as inserted by Finance Act 2002 (c. 23), **Sch. 24 para. 4**)

[F3820 578B Expenditure on car hire: supplementary

(1) In section 578A "car" means a mechanically propelled road vehicle other than one—

(a) of a construction primarily suited for the conveyance of goods or burden of any description, or

(b) of a type not commonly used as a private vehicle and unsuitable for such use.

References to a car accordingly include a motor cycle.

(2) For the purposes of section 578A, a car is a qualifying hire car if—

(a) it is hired under a hire-purchase agreement (within the meaning of section 784(6)) under which there is an option to purchase exercisable on the payment of a sum equal to not more than 1 per cent. of the retail price of the car when new, or

(b) it is a qualifying hire car for the purposes of Part 2 of the Capital Allowances Act (under section 82 of that Act).

(3) In section 578A and this section "new" means unused and not second-hand.

(4) The power under section 74(4) of the Capital Allowances Act to increase or further increase the sums of money specified in Chapter 8 of Part 2 of that Act includes the power to increase or further increase the sum of money specified in section 578A(2)(b) or (3).]

Textual Amendments

F3820 Ss. 578A, 578B inserted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 52** (with Sch. 3 para. 113)

579 Statutory redundancy payments.

M776 (1) F3827 . . . . . .

(2) Where a redundancy payment or other employer's payment is made [F3828 by a company] in respect of employment wholly in a [F3829 trade or profession] carried on

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by **[**F3830the company**]**, and within the charge to tax, the amount of the redundancy payment or the corresponding amount of the other employer's payment shall (if not otherwise so allowable) be allowable as a deduction in computing for the purposes of Schedule D the **[**F3831profits**]** or losses of the **[**F3829trade or profession**]**, but—

(a) F3832. . . . . .

(b) if the employer's payment was made after the discontinuance of the **[**F3829trade or profession**]** the F3833. . . amount so deductible shall be treated as if it were a payment made on the last day on which the **[**F3829trade or profession**]** was carried on.

[F3834(3) Where a redundancy payment or other employer's payment is made **[**F3835by a company**]** in respect of employment wholly in a business carried on by **[**F3836the company**]** and—

(a) expenses of management of the business are deductible under section 75, or

(b) a deduction for expenses payable falls to be allowed in accordance with section 76 in computing profits of the business,

the amount of the redundancy payment, or the corresponding amount of the other employer's payment, shall (to the extent that it would not otherwise fall to be so treated) be deductible under section 75 as expenses of management or as the case may be, be included at Step 1 in section 76(7).

(3A) If in a case where subsection (3) above applies, the payment in question is for the purposes of section 75 or 76 referable to an accounting period beginning after discontinuance, it shall be treated as referable to the accounting period ending on the last day on which the business was carried on.**]**

(4) F3837. . . . . .

(5) Relief shall not be given under **[**F3838subsections (2) and (3)**]** above, or otherwise, more than once in respect of any employer's payment, and if the employee was being employed in such a way that different parts of his remuneration fell for **[**F3839corporation tax purposes**]** to be treated in different ways—

(a) the amount **[**F3840of the redundancy payment or the corresponding amount of the other employer's payment**]** shall be apportioned to the different capacities in which the employee was employed; and

(b) **[**F3838subsections (2) and (3)**]** above shall apply separately to the employment in those capacities, and by reference to the apportioned part of that amount, instead of by reference to the full amount of the employer's payment F3841. . . .

(6) Where the Minister pays a sum under **[**F3842section 166 of the Employment Rights Act 1996**]** or **[**F3843Article 201 of the Employment Rights (Northern Ireland) Order 1996**]** in respect of an employer's payment this section shall apply as if—

(a) that sum had been paid on account of that redundancy or other employer's payment, and

(b) so far as **[**F3844the company**]** has reimbursed the Minister, it had been so paid by **[**F3844the company**]**.

Textual Amendments

F3827 S. 579(1) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 63, **Sch. 8 Pt. 1** (with Sch. 7)

F3828 Words in s. 579(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(2)(a)** (with Sch. 2)

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F3829 Words in s. 579(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(2)(b)** (with Sch. 2)
F3830 Words in s. 579(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(2)(c)** (with Sch. 2)
F3831 Words in s. 579(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**
F3832 S. 579(2)(a) repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 3 Pt. 1**
F3833 Word in s. 579(2)(b) repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 3 Pt. 1**
F3834 S. 579(3)(3A) substituted for s. 579(3) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 26(2)
F3835 Words in s. 579(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(3)(a)** (with Sch. 2)
F3836 Words in s. 579(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(3)(b)** (with Sch. 2)
F3837 S. 579(4) repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 5 para. 43, **Sch. 27 Pt. 3(4)**, Note (with Sch. 5 para. 73)
F3838 Words in s. 579(5) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 43** (with Sch. 5 para. 73)
F3839 Words in s. 579(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(4)** (with Sch. 2)
F3840 Words in s. 579(5)(a) substituted (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 1 para. 35(2)(a)**
F3841 Words in s. 579(5)(b) repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 3 Pt. 1**
F3842 Words in s. 579(6) substituted (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 1 para. 35(2)(b)**
F3843 Words in s. 579(6) substituted (24.9.1996) by The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), arts. 1(2), 255, **Sch. 1** (with Sch. 2 para. 1)
F3844 Words in s. 579(6)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 239(5)** (with Sch. 2)

Modifications etc. (not altering text)
C600 S. 579 modified (with effect in accordance with s. 39(3)-(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 23**

Marginal Citations
M776 Source-1970 s.412(1)-(6)

580 Provisions supplementary to section 579.

M777(1) In section 579—

(a) "redundancy payment"**[**F3845 and "employer's payment" have the same meaning as in Part XI of the Employment Rights Act 1996**]** or **[**F3846Part XII of the Employment Rights (Northern Ireland) Order 1996**]**;

(b) references to the corresponding amount of an employer's payment (other than a redundancy payment) are references to the amount of that employer's payment so far as not in excess of the amount **[**F3847which would have been payable as a redundancy payment had one been payable;**]**

(c) "the Minister" in relation to **[**F3848the Employment Rights Act 1996**]** means the Secretary of State and in relation to **[**F3849the Employment Rights (Northern Ireland) Order 1996**]** means the Department of Health and Social Services.

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(2) F3850 . . . . . .

(3) F3851 . . . . . .

Textual Amendments

F3845 Words in s. 580(1)(a) substituted (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 1 para. 35(3)(a)**

F3846 Words in s. 580(1)(a) substituted (24.9.1996) by The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), arts. 1(2), 255, **Sch. 1** (with Sch. 2 para. 1)

F3847 Words in s. 580(1)(b) substituted (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 1 para. 35(3)(b)**

F3848 Words in s. 580(1)(c) substituted (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 1 para. 35(3)(c)**

F3849 Words in s. 580(1)(c) substituted (24.9.1996) by The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), arts. 1(2), 255, **Sch. 1** (with Sch. 2 para. 1)

F3850 S. 580(2) repealed (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 3 Pt. 1**

F3851 S. 580(3) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 64, **Sch. 8 Pt. 1** (with Sch. 7)

Marginal Citations

M777 Source-1970 s.412(7), (8)

[F3852 580A Relief from tax on annual payments under certain insurance policies.

F3853 . . . . . .

Textual Amendments

F3852 Ss. 580A, 580B inserted (with effect in accordance with s. 143(2)-(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 143(1)**

F3853 Ss. 580A-580C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 240, **Sch. 3** (with Sch. 2)

580B Meaning of "self-contained" for the purposes of s.580A.

F3854 . . . . . .]

Textual Amendments

F3852 Ss. 580A, 580B inserted (with effect in accordance with s. 143(2)-(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 143(1)**

F3854 Ss. 580A-580C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 240, **Sch. 3** (with Sch. 2)

[F3855 580C Relief from tax on annual payments under immediate needs annuities

F3856 . . . . . .]

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Textual Amendments

F3855 S. 580C inserted (with effect in accordance with s. 147(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 147(3)**

F3856 Ss. 580A-580C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 240, **Sch. 3** (with Sch. 2)

581 Borrowing in foreign currency by local authorities and statutory corporations.

F3857 . . . . . .

Textual Amendments

F3857 S. 581 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 241, **Sch. 3** (with Sch. 2)

[F3858 581A Interest on foreign currency securities etc.

Interest within section 755(1) of ITTOIA 2005 (interest on foreign currency securities etc.) shall be paid without deduction of income tax.]

Textual Amendments

F3858 S. 581A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 242** (with Sch. 2)

582 Funding bonds issued in respect of interest on certain debts.

M778 (1) Where any funding bonds are issued to a creditor in respect of any liability to pay interest on any debt to which this section applies—

(a) the issue of the bonds shall be treated for [F3859 all the purposes of the Corporation Tax Acts] as if it were the payment of an amount of that interest equal to the value of the bonds at the time of their issue, and

(b) [F3860 where paragraph (a) above or section 380 of ITTOIA 2005 (which makes provision similar to that paragraph for income tax purposes) applies] the redemption of the bonds shall not be treated for those purposes as the payment of any amount of that interest.

(2) Where an issue of bonds is treated by virtue of subsection (1) above [F3861 or section 380 of ITTOIA 2005] as if it were the payment of an amount of interest, and any person by or through whom the bonds are issued would be required by virtue of any provision of the Tax Acts to deduct income tax from that amount of interest if it had been actually paid by or through him, the following provisions shall have effect—

(a) subject to paragraph (b) below, any such person—

(i) shall retain bonds the value of which at the time of their issue is equal to income tax on that amount of interest at the [F3862 applicable] rate for the year of assessment in which the bonds are issued, and

(ii) shall be acquitted in respect of any such retention in the same way as if he had deducted such tax from the interest, and

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(iii) shall be chargeable with that tax accordingly, but may tender the bonds retained in satisfaction thereof;

(b) where [F3863]. . . it is impracticable to retain bonds on account of income tax under paragraph (a) above—

[[F3864](i) any such person shall be relieved from the obligation to retain bonds and account for income tax under that paragraph, on his furnishing to the Board**]** a statement of the names and addresses of the persons to whom the bonds have been issued and the amount of the bonds issued to each such person; and

(ii) tax in respect of the amount of interest treated by virtue of this section **[**[F3865]or section 380 of ITTOIA 2005**]** as having been paid by the issue of the bonds shall be charged under Case VI of Schedule D **[**[F3866](corporation tax) or under Chapter 2 of Part 4 of ITTOIA 2005 (income tax)**]** for the chargeable period in which the bonds are issued on the persons receiving or entitled to the bonds.

[[F3867](2A) In subsection (2) above "the applicable rate", in relation to a year of assessment, means whichever of the basic rate and the lower rate for that year is the rate at which the person by or through whom the bonds are issued would have had to deduct income tax from the amount of interest in question if that amount had been actually paid by or through him.**]**

(3) This section applies to any debt incurred, whether in respect of any money borrowed or otherwise, by any government, public authority or public institution whatsoever, or by any body corporate whatsoever.

[[F3868](3A) Chapter 2 of Part 4 of the Finance Act 1996 has effect subject to and in accordance with this section, notwithstanding anything in section 80(5) of that Act (matters to be brought into account in the case of loan relationships only under Chapter 2 of Part 4 of that Act).**]**

(4) For the purposes of this section "funding bonds" includes any bonds, stocks, shares, securities or certificates of indebtedness.

Textual Amendments

F3859 Words in s. 582(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 243(2)(a)** (with Sch. 2)

F3860 Words in s. 582(1)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 243(2)(b)** (with Sch. 2)

F3861 Words in s. 582(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 243(3)(a)** (with Sch. 2)

F3862 Word in s. 582(a)(i) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 14(1)**

F3863 Words in s. 582(2)(b) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para 32(a), **Sch. 41 Pt. 5(10)**, Note

F3864 Words in s. 582(b)(i) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 32(b)**

F3865 Words in s. 582(2)(b)(ii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 243(3)(b)(i)** (with Sch. 2)

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F3866 Words in s. 582(2)(b)(ii) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 243(3)(b)(ii)** (with Sch. 2)

F3867 S. 582(2A) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 14(2)**

F3868 S. 582(3A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 50**

Modifications etc. (not altering text)

C601 S. 582 modified (with effect in accordance with s. 56 of the modifying Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 7**

Marginal Citations

M778 Source-1970 s.417; 1971 Sch.6 47

[F3869 582A Designated international organisations: miscellaneous exemptions.

(1) The Treasury may by order designate for the purposes of any one or more of subsections **[**F3870(2) and (4) to (6) below F3871. . . **]** any international organisation of which the United Kingdom is a member; and in those subsections "designated" means designated under this subsection.

(2) Section 43 shall not apply in the case of payment made by an organisation designated for the purposes of this subsection.

(3) F3872. . . . . .

(4) Section 349(1) shall not apply in the case of a payment of an amount payable by an organisation designated for the purposes of this subsection.

(5) Section 349(2) shall not apply in the case of interest payable by—

(a) an organisation designated for the purposes of this subsection, or

(b) a partnership of which such an organisation is a member.

(6) An organisation designated for the purposes of this subsection shall not be a person to whom **[**F3873section 59 of the Finance Act 2004**]** applies.**]**

Textual Amendments

F3869 S. 582A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 118(1)**

F3870 Words in s. 582A(1) substituted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 29 para. 6**

F3871 Words in s. 582(1) repealed (with effect in accordance with s. 111(6)(a) of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**, Note 1

F3872 S. 582A(3) repealed (with effect in accordance with Sch. 7 para. 32, Sch. 41 Pt. 5(2) Note of the repealing Act) by Finance Act 1996 (c. 8), Sch. 7 para. 22, **Sch. 41 Pt. 5(2)**

F3873 Words in s. 582A(6) substituted (with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 12 para. 10(2)**

583 Inter-American Development Bank.

F3874. . . . . .

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Textual Amendments

F3874 S. 583 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 244, **Sch. 3** (with Sch. 2)

584 Relief for unremittable overseas income

(1) M779 Where **[**F3875 a company is chargeable to corporation tax**]** by reference to the amount of any income arising in a territory outside the United Kingdom ("overseas income"), then **[**F3876 for the purposes of corporation tax**]** this section shall apply to the overseas income in so far as—

(a) **[**F3877 the company**]** is prevented from transferring the amount of the overseas income to the United Kingdom, either by the laws of that territory or any executive action of its government or by the impossibility of obtaining foreign currency in that territory; and

(b) **[**F3877 the company**]** has not realised the overseas income outside that territory for a consideration in sterling or a consideration in some other currency which **[**F3877 the company**]** is not prevented from transferring to the United Kingdom.

Overseas income to which this section applies is referred to below as unremittable.

[F3878 (2) Subject to subsection (2A) below, where **[**F3879 a company**]** so chargeable makes a claim under this subsection in relation to any overseas income—

(a) which is unremittable; and

(b) to which subsection (1)(a) above will continue to apply notwithstanding any reasonable endeavours on **[**F3880 its**]** part,

then, in the first instance, account shall not be taken of that income, **[**F3881 and corporation tax shall be assessable**]** and shall be charged on all persons concerned and for all periods accordingly.

(2A) If on any date paragraph (a) or (b) of subsection (2) above ceases to apply to any part of any overseas income in relation to which a claim has been made under that subsection—

(a) that part of the income shall be treated as income arising on that date, and

(b) account shall be taken of it, and of any tax payable in respect of it under the law of the territory where it arises, according to their value at that date.**]**

(4) Where **[**F3882 **[**F3883 a company becomes chargeable to**]** corporation tax in respect of income from any source by virtue of subsection (2) or (2A)**]** above after it has ceased to possess that source of income, the income shall be chargeable under Case VI of Schedule D.

(5) M780 Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the M781 Export Guarantees and Overseas Investment Act 1978 any payment is made by the Export Credit Guarantee Department in respect of any income which cannot be transferred to the United Kingdom, then, to the extent of the payment, the income shall be treated as income **[**F3884 to which paragraphs (a) and (b) of subsection (2) above do not apply (and accordingly cannot cease to apply)**]**.

[F3885 (6) A claim under subsection (2) above—

(a) F3886 . . . . . .

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(b) for the purposes of corporation tax, shall be made no later than two years after the end of the accounting period in which the income arises.**]**

(7) [F3886] . . . . . .

(8) Subject to subsections (2) and **[**[F3887](2A)**]** above, the amount of any unremittable overseas income shall be determined by reference to the generally recognised market value in the United Kingdom (if any), or, in the absence of any such value, according to the official rate of exchange of the territory where the income arises.

(9) Any appeal against an assessment which involves a question as to the operation of this section shall be made to the Special Commissioners and not to the General Commissioners.

(10) [M782]This section shall have effect as respects any accounting period in which the conditions in subsection (2) above cease to be satisfied in relation to any income, being an accounting period ending on or before such day, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this section, with the omission of subsections (3) and (4).

Subordinate Legislation Made

P4 S. 584(10) power exercised: 30.9.1993 appointed by S.I. 1992/3066, **art. 2(2)(b)**

Textual Amendments

F3875 Words in s. 584(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(2)(a)** (with Sch. 2)

F3876 Words in s. 584(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(2)(b)** (with Sch. 2)

F3877 Words in s. 584(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(2)(c)** (with Sch. 2)

F3878 S. 584(2)(2A) substituted for s. 584(2)(3) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 33(2)**

F3879 Words in s. 584(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(3)(a)** (with Sch. 2)

F3880 Word in s. 584(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(3)(b)** (with Sch. 2)

F3881 Words in s. 584(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(3)(c)** (with Sch. 2)

F3882 Words in s. 584(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 33(3)**

F3883 Words in s. 584(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 245(4)** (with Sch. 2)

F3884 Words in s. 584(5) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 33(4)**

F3885 S. 584(6) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 33(5)**

F3886 S. 584(6)(a)(7) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 245(5), **Sch. 3** (with Sch. 2)

F3887 Words in s. 584(8) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 33(7)**

Modifications etc. (not altering text)

C602 *See* 1979(C) s.13—*delayed remittances of capital gains.*

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M779 Source-1970 s.418(1), (2), (2A), (2B); 1987 (No.2) Sch.6 6
M780 Source-1972 s.124(2)(a)
M781 1978 c. 18.
M782 Source-1987 (No.2) Sch.6 6(5)

585 Relief from tax on delayed remittances.

F3888 . . . . . .

Textual Amendments

F3888 S. 585 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 246, **Sch. 3** (with Sch. 2)

586 Disallowance of deductions for war risk premiums.

M783(1) In computing the amount of the profits or gains of any person for any **[**F3889corporation tax purpose**]**, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing the expenses of management in respect of which relief may be given under section 75 or 76.

(3) Subject to subsections (4) and (5) below, this section applies to any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or eligible, either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payment or not, in respect of that war damage.

(4) Where the payment is made in respect of the right or eligibility mentioned in subsection (3) above and also in respect of other matters, the deduction or inclusion of so much of the payment as is properly attributable to the other matters shall not be disallowed by virtue only of subsection (1) or (2) above.

(5) This section shall not apply to any payment made under any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit.

(6) In this section "war damage" means loss or damage arising from action taken by an enemy of Her Majesty, or action taken in combating such an enemy or in repelling an imagined attack by such an enemy, or action taken in anticipation of or in consequence of an attack by such an enemy.

Textual Amendments

F3889 Words in s. 586(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 247** (with Sch. 2)

Marginal Citations

M783 Source-1970 s.420

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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587 Disallowance of certain payments in respect of war injuries to employees.

M784(1) In computing the amount of the profits or gains F3890. . . of any person for any **[**F3891corporation tax purpose**]**, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing—

(a) the expenses of management in respect of which relief may be given under section 75 or 76; or

(b) the expenses of management or supervision in respect of which relief may be given under **[**F3892section 121(3).**]**

(3) Subject to subsections (4) and (5) below, this section applies—

(a) to any payments by way of benefit made by any person to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to war injuries, whether sustained in the United Kingdom or elsewhere; and

(b) to any payments made by any person by way of premium or contribution under any policy, agreement, scheme or arrangement providing for the payment of benefits to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death owing to such war injuries.

(4) This section shall not apply to any payment (whether by way of benefit or by way of premium or contribution) which is payable under any policy, agreement, scheme or arrangement made before 3rd September 1939, except to the extent that the amount of the payment is increased by any variation of the terms of that policy, agreement, scheme or arrangement made on or after that date.

(5) This section shall not apply to any payment by way of benefit if, in the opinion of the Board, that payment was made under an established practice which was such that the same or a greater payment would have been made if the incapacity, retirement or death had not been due to war injuries.

(6) Where a person makes a payment by way of benefit to which this section applies and, in the opinion of the Board, there is an established practice under which a smaller payment would have been made if the incapacity, retirement or death had not been due to war injuries, the deduction or inclusion of an amount equal to that smaller payment shall not be disallowed by virtue only of subsection (1) or (2) above.

(7) Where a person makes a payment to which this section applies by way of premium or contribution, and the policy, agreement, scheme or arrangement provides for the payment of any benefit in the event of incapacity, retirement or death not due to war injuries, the deduction or inclusion of so much of the payment of premium or contribution as, in the opinion of the Board, is properly attributable to benefit payable in the event of incapacity, retirement or death not due to war injuries shall not be disallowed by virtue only of subsection (1) or (2) above.

(8) In this section "war injuries" means physical injuries—

(a) caused by—

(i) the discharge of any missile (including liquids and gas);

(ii) the use of any weapon, explosive or other noxious thing; or

(iii) the doing of any other injurious act,

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either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or

(b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of, or for the benefit of, Her Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

Textual Amendments

F3890 Words in s. 587(1) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 248(2), **Sch. 3** (with Sch. 2)

F3891 Words in s. 587(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 248(2)** (with Sch. 2)

F3892 Words in s. 587(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 248(3)** (with Sch. 2)

Marginal Citations

M784 Source-1970 s.421

[F3893 587A New issues of securities: extra return.

(1) This section applies where—

(a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,

(b) on a later occasion securities (new securities) of the same kind are issued,

(c) a sum (the extra return) is payable in respect of the new securities, by the person issuing them, to reflect the fact that interest is accruing on the old securities,

(d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and

(e) the extra return is equal to the amount of interest payable for the relevant period on so many old securities as there are new (or, if there are more new securities than old, the amount of interest which would be so payable if there were as many old securities as new),

[F3894 but this section shall not apply for the purposes of corporation tax, except where the issue of the new securities was before 1st April 1996.**]**

(2) Anything payable or paid by way of the extra return shall be treated for the purposes of the Tax Acts as payable or paid by way of interest (to the extent that it would not be so treated apart from this subsection).

(3) But as regards any payment by way of the extra return, relief shall not be given under any provision of the Tax Acts to the person by whom the new securities are issued; and "relief" here means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

(4) For the purposes of this section securities are of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

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(5) For the purposes of this section the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are issued.

(6) For the purposes of this section the relevant day is—

(a) the last (or only) interest payment day to fall in respect of the old securities before the day on which the new securities are issued, or

(b) the day on which the old securities were issued, in a case where no interest payment day fell in respect of them before the day on which the new securities are issued;

and an interest payment day, in relation to the old securities, is a day on which interest is payable under them.**]**

Textual Amendments

F3893 S. 587A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, **Sch. 12 para. 1** (with application as referred to in Sch. 12 para. 5 of that Act)

F3894 Words in s. 587A(1) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 33** (with Sch. 15)

[F3896587B F3895Gifts of shares, securities and real property to charities etc]

(1) Subsections (2) and (3) below apply where, otherwise than by way of a bargain made at arm's length, an individual, or a company which is not itself a charity, disposes of the whole of the beneficial interest in a qualifying investment to a charity.

(2) On a claim made in that behalf to an officer of the Board—

(a) the relevant amount shall be allowed—

(i) in the case of a disposal by an individual, as a deduction in calculating his total income for the purposes of income tax for the year of assessment in which the disposal is made;

(ii) in the case of a disposal by a company, as a charge on income for the purposes of corporation tax for the accounting period in which the disposal is made; and

(b) no relief in respect of the disposal shall be given under section 83A **[**F3897of this Act, section 108 of ITTOIA 2005**]** or any other provision of the Income Tax Acts;

but paragraph (a)(i) above shall not apply for the purposes of any computation under **[**F3898sections 535 to 537 of ITTOIA 2005**]**.

(3) The consideration for which the charity's acquisition of the qualifying investment is treated by virtue of section 257(2) of the 1992 Act as having been made—

(a) shall be reduced by the relevant amount; or

(b) where that consideration is less than that amount, shall be reduced to nil.

[F3899(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—

(a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);

(b) where the disposal is at an undervalue, the amount by which—

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(i) the value described in paragraph (a) above, exceeds

(ii) the amount or value of the consideration for the disposal,

or, if there is no such excess, nil.**]**

(5) Where there are one or more benefits received in consequence of making the disposal which are received by the person making the disposal or a person connected with him, the relevant amount shall be reduced by the value of that benefit or, as the case may be, the aggregate value of those benefits; and section 839 applies for the purposes of this subsection.

(6) Where the disposal is a gift, the relevant amount shall be increased by the amount of the incidental costs of making the disposal to the person making it.

(7) Where the disposal is at an undervalue—

(a) to the extent that the consideration for the disposal is less than that for which the disposal is treated as made by virtue of section 257(2)(a) of the 1992 Act, the relevant amount shall be increased by the amount of the incidental costs of making the disposal to the person making it; and

(b) section 48 of that Act (consideration due after time of disposal) shall apply in relation to the computation of the relevant amount as it applies in relation to the computation of a gain.

(8) In the case of a disposal by a company which is carrying on life assurance business—

(a) if the company is charged to tax under Case I of Schedule D in respect of such business, subsections (2) and (3) above shall not apply;

(b) if the company is not so charged to tax in respect of such business—

(i) subsection (2)(a)(ii) above shall have effect as if for "a charge on income" there were substituted **[**F3900"expenses payable falling to be brought into account at Step 3 in section 76(7)"**]**; and

(ii) the relevant amount given by subsection (4) above shall be reduced by so much (if any) of that amount as is not referable to basic life assurance and general annuity business;

and for the purpose of determining how much (if any) of that amount is not so referable, section 432A shall have effect as if that amount were a gain accruing on the disposal of the qualifying investment to the company.

[The value of the net benefit to the charity is—

F3901(8A)

(a) the market value of the qualifying investment, unless subsection (8B) below applies;

(b) where that subsection applies, that market value reduced by the aggregate amount of the related liabilities of the charity (see subsections (8E) to (8G)).

(8B) This subsection applies in any case where—

(a) the charity is, or becomes, subject to an obligation to any person (whether or not the person making the disposal or a person connected with him), and

(b) one or more of the conditions in subsection (8C) below is satisfied.

(8C) For the purposes of subsection (8B) above—

(a) condition 1 is that, taking into account all the circumstances (including, in particular, the difference in the value of the net benefit to the charity if subsection (8B) applies and if it does not), it is reasonable to suppose that the

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disposal of the qualifying investment to the charity would not have been made in the absence of the obligation;

(b) condition 2 is that the obligation (whether in whole or in part) relates to, is framed by reference to, or is conditional on the charity receiving, the qualifying investment or a related investment (see subsection (8D)).

(8D) In subsection (8C) above "related investment" means any of the following—

(a) any asset of the same class or description as the qualifying investment (irrespective of size, quantity or amount);

(b) any asset derived from, or representing, the qualifying investment whether in whole or in part and whether directly or indirectly;

(c) any asset from which the qualifying investment is derived, or which the qualifying investment represents, whether in whole or in part and whether directly or indirectly.

(8E) For the purposes of this section, the liabilities which are related liabilities in the case of any qualifying investment are the liabilities of the charity under each of the obligations that fall within subsection (8B) above (as read with subsection (8C) above) in relation to that investment.

(8F) Where an obligation is contingent and the contingency occurs, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, under the obligation is the amount or value of the liability actually incurred in consequence of the occurrence of the contingency.

(8G) Where an obligation is contingent and the contingency does not occur, the amount to be brought into account for the purposes of this section at any time in respect of the liability, so far as contingent, is nil.**]**

(9) In this section—

"authorised unit trust" and "open-ended investment company" have the meanings given by section 468;

"charity" has the same meaning as in section 506 and includes each of the bodies mentioned in section 507(1);

"the incidental costs of making the disposal to the person making it" shall be construed in accordance with section 38(2) of the 1992 Act;

"life assurance business" and related expressions have the same meaning as in Chapter I of Part XII;

[F3902"obligation" includes a reference to each of the following—

(a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;

(b) a series of obligations (whether or not between the same parties);**]**

[F3903"offshore fund" has the same meaning as in Chapter 5 of Part 17;**]**

"qualifying investment" means any of the following—

(a) shares or securities which are listed or dealt in on a recognised stock exchange;

(b) units in an authorised unit trust;

(c) shares in an open-ended investment company;F3904. . .

(d) an interest in an offshore fund**[**F3905; and

(e) a qualifying interest in land**]**;

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[F3906"related liabilities" shall be construed in accordance with subsection (8E) above;**]**

[F3907"value of the net benefit to the charity" shall be construed in accordance with subsection (8A) above.**]**

[In this section a "qualifying interest in land" means—

F3908(9A) (a) a freehold interest in land, or

(b) a leasehold interest in land which is a term of years absolute,

where the land in question is in the United Kingdom.

This subsection is subject to subsections (9B) to (9D) below.

(9B) Where a person makes a disposal to a charity of—

(a) the whole of his beneficial interest in such freehold or leasehold interest in land as is described in subsection (9A)(a) or (b) above, and

(b) any easement, servitude, right or privilege so far as benefiting that land,

the disposal falling within paragraph (b) above is to be regarded for the purposes of this section as a disposal by the person of the whole of his beneficial interest in a qualifying interest in land.

(9C) Where a person who has a freehold or leasehold interest in land in the United Kingdom grants a lease for a term of years absolute (or, in the case of land in Scotland, grants a lease) to a charity of the whole or part of that land, the grant of that lease is to be regarded for the purposes of this section as a disposal by the person of the whole of the beneficial interest in the leasehold interest so granted.

(9D) For the purposes of subsection (9A) above, an agreement to acquire a freehold interest and an agreement for a lease are not qualifying interests in land.

(9E) In the application of this section to Scotland—

(a) references to a freehold interest in land are references to the interest of the owner,

(b) references to a leasehold interest in land which is a term of years absolute are references to a tenant's right over or interest in a property subject to a lease, and

(c) references to an agreement for a lease do not include references to missives of let that constitute an actual lease.**]**

(10) Subject to subsection (11) below, the market value of any qualifying investment shall be determined for the purposes of this section as for the purposes of the 1992 Act.

F3909(10A) **[** Section 839 (connected persons) applies for the purposes of this section.**]**

(11) In the case of an interest in an offshore fund for which there are separate published buying and selling prices, section 272(5) of the 1992 Act (meaning of "market value" in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this section.

F3910(12) **[** This section is supplemented by section 587C below.**]]**

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Textual Amendments

F3895 S. 587B sidenote substituted (with effect in accordance with s. 97(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 97(4)**

F3896 S. 587B inserted (with effect in accordance with s. 43(3) of the amending Act) by Finance Act 2000 (c. 17), **s. 43(1)**

F3897 Words in s. 587B(2)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 249(a)** (with Sch. 2)

F3898 Words in s. 587B(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 249(b)** (with Sch. 2)

F3899 S. 587B(4) substituted (with effect in accordance with s. 139(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 139(2)**

F3900 Words in s. 587B(8)(b)(i) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 27(2)

F3901 S. 587B(8A)-(8G) inserted (with effect in accordance with s. 139(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 139(3)**

F3902 S. 587B(9): definition of "obligation" inserted (with effect in accordance with s. 139(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 139(4)**

F3903 S. 587B(9): definition of "offshore fund" substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 10** (with Sch. 26 para. 17)

F3904 S. 587B(9): word in definition of "qualifying investment" repealed (with effect in accordance with s. 97(6) of the repealing Act) by Finance Act 2002 (c. 23), s. 97(1), **Sch. 40 Pt. 3(15)**, Note

F3905 S. 587B(9): in definition of "qualifying investment", para. (e) and preceding word inserted (with effect in accordance with s. 97(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 97(1)**

F3906 S. 587B(9): definition of "related liabilities" inserted (with effect in accordance with s. 139(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 139(4)**

F3907 S. 587B(9): definition of "value of the net benefit to the charity" inserted (with effect in accordance with s. 139(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 139(4)**

F3908 S. 587B(9A)-(9E) inserted (with effect in accordance with s. 97(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 97(2)**

F3909 S. 587B(10A) inserted (with effect in accordance with s. 139(6) of the amending Act) by Finance Act 2004 (c. 12), **s. 139(5)**

F3910 S. 587B(12) inserted (with effect in accordance with s. 97(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 97(3)**

Modifications etc. (not altering text)

C603 S. 587B modified (with effect in accordance with reg. 30AA(3) of the modifying reg.) by the Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30AA(1)(2)** (as inserted (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 5)

C604 S. 587B modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 21; and that modifying reg. 21 is omitted (14.8.2007 with effect in accordance with reg. 1(2) of the revoking S.I.) by virtue of S.I. 2007/2134, **regs. 1(1)**, 20

C605 S. 587B(9E)(a) modified (temp.) (with effect in accordance with s. 97(6) of the modifying Act) by Finance Act 2002 (c. 23), **s. 97(7)(8)**

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VALID FROM 06/04/2007

[F3911 587BA Qualifying interests in land held jointly

(1) This section applies for the purposes of section 587B where a qualifying investment is a qualifying interest in land.

(2) Where two or more persons ("the owners")—

(a) are jointly beneficially entitled to the qualifying interest in land, or

(b) are, taken together, beneficially entitled in common to the qualifying interest in land,

relief under section 587B is available if at least one of the owners is a qualifying company and all the owners dispose of the whole of their beneficial interests in the qualifying interest in land to the charity.

(3) Subsection (4) applies if one or more of the owners is not a company.

(4) For the purpose of determining whether the owners' beneficial interests are disposed of as mentioned in subsection (2), section 587B(9B) and (9C) applies as if references to a company included a reference to a person who is not a company.

(5) Relief under section 587B is available to each of the owners which is a qualifying company.

(6) If one or more of the owners is an individual—

(a) the relevant amount is taken to be the relievable amount calculated for the purposes of Chapter 3 of Part 8 of ITA 2007, and

(b) the amount of relief under section 587B to be given to a qualifying company is such share of the relievable amount as is allocated to the company by the agreement mentioned in section 442(5) of ITA 2007.

(7) Subsections (8) to (12) apply if none of the owners is an individual.

(8) The amount of relief under section 587B to be given to a qualifying company is such share of the relevant amount as is allocated to the company by an agreement made between those owners which are qualifying companies.

(9) Calculate the relevant amount as if—

(a) the owners were a single qualifying company, and

(b) the disposals of the owners' beneficial interests were a single disposal by that single company of the whole of the beneficial interest in the qualifying interest in land.

(10) In particular, for the purposes of section 587B(7) calculate the consideration for which the disposal is made by virtue of section 257(2)(a) of the 1992 Act by—

(a) calculating, for each owner, the consideration for which the disposal of the owner's beneficial interest is so made, and

(b) adding together all the consideration calculated under paragraph (a).

(11) If one or more of the owners is not a qualifying company, in calculating the relevant amount make just and reasonable adjustments to reduce the relevant amount to reflect the fact that relief under section 587B is not available to that owner or to those owners.

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(12) If one or more of the owners is within paragraph (b) of section 587B(8), in calculating the relevant amount make just and reasonable adjustments to reduce the relevant amount to reflect the requirements of sub-paragraph (ii) of that paragraph.

(13) A company is a qualifying company if—

(a) it is not itself a charity, and

(b) it is not within section 587B(8)(a).**]**

Textual Amendments

F3911 S. 587BA inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 138** (with Sch. 2)

[F3912 587C Supplementary provision for gifts of real property

(1) This section applies for the purposes of section 587B where a qualifying investment is a qualifying interest in land.

(2) Where two or more persons—

(a) are jointly beneficially entitled to the qualifying interest in land, or

(b) are, taken together, beneficially entitled in common to the qualifying interest in land,

section 587B applies only if each of those persons disposes of the whole of his beneficial interest in the qualifying interest in land to the charity.

(3) Relief under section 587B shall be available to each of the persons referred to in subsection (2) above, but the amount that may be allowed as respects any of them shall be only such share of the relevant amount as they may agree in the case of that person.

(4) No person may make a claim for a relief under subsection (2) of section 587B unless he has received a certificate given by or on behalf of the charity.

(5) The certificate must—

(a) specify the description of the qualifying interest in land which is the subject of the disposal,

(b) specify the date of the disposal, and

(c) contain a statement that the charity has acquired the qualifying interest in land.

(6) If, in the case of a disposal of a qualifying interest in land, a disqualifying event occurs at any time in the relevant period, the person (or each of the persons) who made the disposal to the charity shall be treated as never having been entitled to relief under section 587B in respect of the disposal.

(7) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (6) above.

(8) For the purposes of subsection (6) above a disqualifying event occurs if the person (or any one of the persons) who made the disposal or any person connected with him (or any one of them)—

(a) becomes entitled to an interest or right in relation to all or part of the land to which the disposal relates, or

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(b) becomes party to an arrangement under which he enjoys some right in relation to all or part of that land,

otherwise than for full consideration in money or money's worth.

(9) A disqualifying event does not occur, for the purposes of subsection (6) above, if a person becomes entitled to an interest or right as mentioned in subsection (8)(a) above as a result of a disposition of property on death, whether the disposition is effected by will, under the law relating to intestacy or otherwise.

(10) For the purposes of subsection (6) above the relevant period is the period beginning with the date of the disposal of the qualifying interest in land and ending with—

(a) in the case of an individual, the fifth anniversary of the 31st January next following the end of the year of assessment in which the disposal was made, and

(b) in the case of a company, the sixth anniversary of the end of the accounting period in which the disposal was made.

(11) Section 839 (connected persons) applies for the purposes of this section.

(12) This section shall be construed as one with section 587B.**]**

Textual Amendments

F3912 S. 587C inserted (with effect in accordance with s. 97(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 97(5)**

588 Training courses for employees.

[F3913M785(1) This section applies where a **[**F3914company**]** ("the employer") incurs retraining course expenses within the meaning of section 311 of ITEPA 2003 (exemptions: retraining courses).**]**

(3) Subject to subsection (4) below, where—

[F3915(a) an employer incurs expenditure in paying or reimbursing retraining course expenses as mentioned in subsection (1) above; and

(b) by virtue of section 311 of ITEPA 2003, no liability to income tax arises in respect of the payment or reimbursement,**]**

then, if and so far as that expenditure would not, apart from this subsection, be so deductible, it shall be deductible in computing for the purposes of Schedule D the **[**F3916profits**]** of the **[**F3917trade or profession**]** of the employer for the purposes of which the employee is or was employed.

[F3918(4) Where the employer is a company with investment business or a company carrying on life assurance business, subsection (3) above shall have effect with the substitution for the words following paragraph (b) of—

"then, if and so far as that expenditure would not, apart from this subsection, fall to be so deductible or brought into account, it shall—

(i) in a case where the employer is a company with investment business, be deductible as expenses of management under section 75, or

(ii) in a case where the employer is a company carrying on life assurances business, be brought into account under section 76 as expenses payable."

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.**]**

(5) In any case where—

(a) [F3919] . . . . . .

(b) an employer's liability to **[**[F3920]corporation tax**]** for any **[**[F3921]accounting period**]** is determined (by assessment or otherwise) on the assumption that, by virtue only of subsection (3) above (or subsections (3) and (4) above), **[**[F3922]it**]** is entitled to a deduction on account of any expenditure and, subsequently, there is **[**[F3923]a failure to meet a condition of the kind mentioned in section 312(1)(b)(i) or (ii) of ITEPA 2003**]**;

an assessment under [F3924]. . . **[**[F3925]paragraph 41 of Schedule 18 to the Finance Act 1998,**]** of an amount due in consequence of the failure referred to above may be made at any time not later than six years after the end of the **[**[F3926]accounting period**]** in which the failure occurred.

[[F3927](5A) The reference in subsection (5)(b) above to a deduction on account of any expenditure includes a reference to bringing an amount into account in determining the amount of the deduction to be made under section 76.**]**

(6) Where an event occurs by reason of which there is a failure to **[**[F3928]meet a condition in section 312(1)(b)(i) or (ii) of ITEPA 2003**]**, the employer of the employee concerned shall within 60 days of coming to know of the event give a notice to the inspector containing particulars of the event.

(7) If the inspector has reason to believe that an employer has not given a notice which **[**[F3929]it**]** is required to give under subsection (6) above in respect of any event, the inspector may by notice require the employer to furnish him within such time (not less that 60 days) as may be specified in the notice with such information relating to the event as the inspector may reasonably require for the purposes of this section.

Textual Amendments

F3913 S. 588(1) substituted for s. 588(1)(2) (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 67(2)** (with Sch. 7)

F3914 Word in s. 588(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(2)** (with Sch. 2)

F3915 S. 588(3)(a)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 67(3)** (with Sch. 7)

F3916 Word in s. 588(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3917 Words in s. 588(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(3)** (with Sch. 2)

F3918 S. 588(4) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 28(2)

F3919 S. 588(5)(a) and word repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 67(4), **Sch. 8 Pt. 1** (with Sch. 7)

F3920 Words in s. 588(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(4)(a)** (with Sch. 2)

F3921 Words in s. 588(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(4)(b)** (with Sch. 2)

F3922 Word in s. 588(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(4)(c)** (with Sch. 2)

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F3923 Words in s. 588(5)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 67(5)** (with Sch. 7)
F3924 Words in s. 588(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 250(4)(d), **Sch. 3** (with Sch. 2)
F3925 Words in s. 588(5) inserted (with effect in accordance with s. 93(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 11 para. 2**
F3926 Words in s. 588(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(4)(e)** (with Sch. 2)
F3927 S. 588(5A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 28(3)
F3928 Words in s. 588(6) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 67(6)** (with Sch. 7)
F3929 Word in s. 588(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 250(5)** (with Sch. 2)

Modifications etc. (not altering text)
C606 S. 588 modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para 24** (the modification consisting of the insertion of a s. 588(4A) for limited purposes, and that s. 588(4A) was repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note)

Marginal Citations
M785 Source-1987 s.35(1)-(7)

589 Qualifying courses of training etc.

F3930 . . . . . .

Textual Amendments
F3930 S. 589 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 68, **Sch. 8 Pt. 1** (with Sch. 7)

[F3931 589A Counselling services for employees.

[F3932 (1) This section applies where expenditure ("relevant expenditure")—

(a) is incurred in the provision of services to a person ("the employee") in connection with the cessation of the person's office or employment, or

(b) is incurred in the payment or reimbursement of—

(i) fees for such provision, or

(ii) travelling expenses incurred in connection with such provision,

and (in either case) the relevant conditions are met.

(1A) In subsection (1) above "the relevant conditions" means—

(a) conditions A to D for the purposes of section 310 of ITEPA 2003 (exemptions: counselling and other outplacement services), and

(b) in the case of travel expenses, condition E for those purposes.]

(2) F3933 . . . . . .

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(3) F3933. . . . . .

(4) F3933. . . . . .

(5) F3933. . . . . .

(6) F3933. . . . . .

(7) Subsections **[**F3934(8) and (9)**]** below apply where any relevant expenditure is incurred by the **[**F3935company under which**]** the employee holds or held the office or employment mentioned in subsection (1) above (the employer).

(8) If and so far as the expenditure would not, apart from this subsection, be so deductible, it shall be deductible in computing for the purposes of Schedule D the **[**F3936profits**]** of the **[**F3937trade or profession**]** of the employer for the purposes of which the employee is or was employed.

[F3938(9) Where the employer is a company with investment business or a company carrying on life assurance business, subsection (8) above shall have effect as if for the words from "so deductible" onwards there were substituted—

"so deductible or brought into account, it shall—

(a) in a case where the employer is a company with investment business, be deductible as expenses of management under section 75, or

(b) in case where the employer is a company carrying on life assurance business, be brought into account under section 76 as expenses payable.".**]**

(10) F3939. . . . . .**]**

Textual Amendments

F3931 Ss. 589A, 589B inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 108**

F3932 S. 589A(1)(1A) substituted for s. 589A(1) (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 69(2)** (with Sch. 7)

F3933 S. 589A(2)-(6) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 69(3)(a), **Sch. 8 Pt. 1** (with Sch. 7)

F3934 Words in s. 589A(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 251(2)(a)** (with Sch. 2)

F3935 Words in s. 589A(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 251(2)(b)** (with Sch. 2)

F3936 Word in s. 589A(8) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F3937 Words in s. 589A(8) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 251(3)** (with Sch. 2)

F3938 S. 589A(9) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 29(2)

F3939 S. 589A(10) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 69(3)(b), **Sch. 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C607 S. 589A modified (with effect in accordance with s. 39(4)(5) of the modifying Act) by Finance Act 1995 (c. 4), **Sch. 6 para 25** (the modification consisting of the insertion of a s. 589A(9A) for

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limited purposes, and that s. 589A(9A) was repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(4)**, Note)

589B F3940 Qualifying counselling services etc.

(1) F3941 . . . . . .

(2) F3941 . . . . . .

(3) F3941 . . . . . .

[F3942 (4) F3941 . . . . . .

(4A) F3941 . . . . . .]

(5) Any reference in F3943 . . . section 589A to an employee being employed by an employer is a reference to the employee holding office or employment under the employer.

Textual Amendments

F3940 Ss. 589A, 589B inserted (27.7.1993) by Finance Act 1993 (c. 34), **s. 108**

F3941 S. 589B(1)-(4A) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 70(2), **Sch. 8 Pt. 1** (with Sch. 7)

F3942 S. 589B(4)(4A) substituted for s. 589B(4) (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 12 Pt. 2 para. 13**

F3943 Words in s. 589B(5) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 70(3), **Sch. 8 Pt. 1** (with Sch. 7)

PART XIV

PENSION SCHEMES, SOCIAL SECURITY BENEFITS, LIFE ANNUITIES ETC.

CHAPTER I

RETIREMENT BENEFIT SCHEMES

Modifications etc. (not altering text)

C608 Pt. 14 Ch. 1 (ss. 590-612) modified (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), **ss. 18**, 19(4), 31(2); S.I. 1995/631, **art. 2**

Approval of schemes

590 Conditions for approval of retirement benefit schemes.

(1) M786 Subject to section 591, the Board shall not approve any retirement benefits scheme for the purposes of this Chapter unless the scheme satisfies all of the conditions set out in subsection (2) below.

(2) M787 The conditions are—

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[F3944(a) that the scheme is bona fide established for the sole purpose (subject to any enactment or Northern Ireland legislation requiring or allowing provision for the value of any rights to be transferred between schemes or between members of the same scheme) of providing relevant benefits in respect of service as an employee;**]**

[F3945(aa) that those benefits do not include any benefits payable to a person other than—

(i) the employee or a scheme member's ex-spouse **[**F3946or former civil partner**]**,

(ii) a widow, widower, **[**F3947surviving civil partner,**]** child, or dependant of the employee or of a scheme member's ex-spouse **[**F3946or former civil partner**]**, or

(iii) the personal representatives of the employee or of a scheme member's ex-spouse **[**F3946or former civil partner**]**;**]**

(b) that the scheme is recognised by the employer and employees to whom it relates, and that every employee who is, or has a right to be, a member of the scheme has been given written particulars of all essential features of the scheme which concern him;

(c) that there is a person resident in the United Kingdom who will be responsible for the discharge of all duties imposed on the administrator of the scheme under this Chapter;

(d) that the employer is a contributor to the scheme;

(e) that the scheme is established in connection with some trade or undertaking carried on in the United Kingdom by a person resident in the United Kingdom;

(f) that in no circumstances, whether during the subsistence of the scheme or later, can any amount be paid by way of repayment of an employee's contributions under the scheme.

(3) M788Subject to subsection (1) above, the Board shall approve a retirement benefits scheme for the purposes of this Chapter if the scheme satisfies all the conditions of this subsection, that is to say—

(a) that any benefit for an employee is a pension on retirement at a specified age not earlier than 60 **[**F3948and not later than 75**]**, which does not exceed one-sixtieth of the employee's final remuneration for each year of service up to a maximum of 40;

(b) that any benefit for any widow **[**F3949or widower**][**F3950or surviving civil partner**]** of an employee is a pension payable on his death after retirement such that the amount payable to the widow **[**F3949or widower**][**F3950or surviving civil partner**]** by way of pension does not exceed two-thirds of any pension or pensions payable to the employee;

[F3951(ba) that any benefit for an ex-spouse, or for the widow or widower **[**F3950or surviving civil partner**]** of an ex-spouse **[**F3946or former civil partner**]**, is a benefit in relation to which the scheme satisfies the conditions set out in subsection (3A) below;

(bb) that the scheme does not allow any rights debited to a scheme member as a consequence of a pension sharing order or provision to be replaced with any rights which that scheme member would not have been able to acquire (in addition to the debited rights) had the order or provision not been made;

(c) that no benefits are payable under the scheme other than those mentioned in paragraphs (a), (b) and (ba) above;**]**

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(d) that no pension is capable in whole or in part of surrender, commutation or assignment, **[**F3952 except—

(i) for the purpose of giving effect to a pension sharing order or provision, or

(ii) in so far as the commutation of a benefit for an ex-spouse **[**F3946or former civil partner**]** is allowed by virtue of subsection (3A) below, or

(iii)**]** in so far as the scheme allows an employee on retirement to obtain, by commutation of **[**F3953a pension provided for him**]**, a lump sum or sums not exceeding in all three-eightieths of his final remuneration (*disregarding any excess of that remuneration over the permitted maximum*) F3954 for each year of service up to a maximum of 40;

[F3955(da) that, in a case in which—

(i) a lump sum may be obtained by the commutation of a part of a pension provided for an employee, and

(ii) the amount of that pension is affected by the making of a pension sharing order or provision,

the lump sum does not exceed the sum produced by multiplying by 2.25 the amount which (after effect has been given to the pension sharing order or provision) is the amount of that pension for the first year in which it is payable;**]**

[F3956(e) that, in the case of any employee who is a member of the scheme by virtue of two or more relevant associated employments, the amount payable by way of pension in respect of service in any one of them may not, when aggregated with any amount payable by way of pension in respect of service in the other or others, exceed the relevant amount;

(f) that, in the case of any employee who is a member of the scheme by virtue of two or more relevant associated employments, the amount payable by way of commuted pension in respect of service in any one of them may not, when aggregated with any amount payable by way of commuted pension in respect of service in the other or others, exceed the relevant amount;

(g) that, in the case of any employee in relation to whom the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the amount payable by way of pension under the scheme may not, when aggregated with any amount payable by way of pension under the other scheme or schemes, exceed the relevant amount;

(h) that, in the case of any employee in relation to whom the scheme is connected with another scheme which is (or other schemes each of which is) an approved scheme, the amount payable by way of commuted pension may not, when aggregated with any amount payable by way of commuted pension under the other scheme or schemes, exceed the relevant amount.**]**

[F3957(3A) The conditions mentioned in subsection (3)(ba) above are—

(a) that any benefit for an ex-spouse **[**F3946or former civil partner**]** takes the form of a pension (with or without an entitlement to commute a part of that pension);

(b) that any benefit for an ex-spouse **[**F3946or former civil partner**]** is a pension payable only on the attainment by the ex-spouse **[**F3946or former civil partner**]** of a specified age of not less than 60 and not more than 75;

(c) that any entitlement to commute a part of the pension is exercisable only on its becoming payable;

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(d) that any benefit for the widow or widower **[**F3950or surviving civil partner**]** of an ex-spouse **[**F3946or former civil partner**]** is confined to a non-commutable pension payable on the death of the ex-spouse **[**F3946or former civil partner**]** at a time when the ex-spouse **[**F3946or former civil partner**]** is already entitled to receive a pension under the scheme;

(e) that any pension provided for the widow or widower **[**F3950or surviving civil partner**]** of an ex-spouse **[**F3946or former civil partner**]** is of an amount not exceeding two-thirds of the pension payable to the ex-spouse **[**F3946or former civil partner**]**;

(f) that, in a case in which a lump sum may be obtained by the commutation of a part of a pension provided for an ex-spouse **[**F3946or former civil partner**]**, the lump sum does not exceed the sum produced by multiplying the amount of the pension for the first year in which it is payable by 2.25.**]**

(4) The conditions set out in **[**F3958subsections (2) to (3A)**]** above are in this Chapter referred to as "the prescribed conditions".

[F3959(4A) In subsection (3)(c) above "benefits" does not include any benefits for whose payment the scheme makes provision in pursuance of any obligation imposed by legislation relating to social security.**]**

[F3960(4B) For the purposes of this section a benefit provided under any scheme is provided for an ex-spouse **[**F3946or former civil partner**]** or the widow or widower **[**F3950or surviving civil partner**]** of an ex-spouse **[**F3946or former civil partner**]**, and shall be treated as not provided for an employee or the widow or widower **[**F3950or surviving civil partner**]** of an employee, to the extent (and to the extent only) that—

(a) it is provided for a person who is, or is the widow or widower **[**F3950or surviving civil partner**]** of, either—

(i) an employee who is an ex-spouse **[**F3946or former civil partner**]**; or

(ii) a scheme member's ex-spouse **[**F3946or former civil partner**]**;

and

(b) it is as an ex-spouse **[**F3946or former civil partner**]**, or as the widow or widower **[**F3950or surviving civil partner**]** of an ex-spouse **[**F3946or former civil partner**]**, that that person is the person for whom the benefit is provided.

(4C) For the purposes of this section a benefit provided for any person under any scheme is provided for that person as an ex-spouse **[**F3946or former civil partner**]**, or as the widow or widower **[**F3950or surviving civil partner**]** of an ex-spouse **[**F3946or former civil partner**]**, to the extent (and to the extent only) that—

(a) the benefit is provided in respect of rights of an ex-spouse **[**F3946or former civil partner**]** that are or represent rights conferred on the ex-spouse **[**F3946or former civil partner**]** as a consequence of a pension sharing order or provision; and

(b) the scheme makes provision for the benefit to be treated as provided separately from any benefits which are provided under the scheme for the same person as an employee or as the widow or widower **[**F3950or surviving civil partner**]** of an employee.

(4D) In this section "scheme member", in relation to a scheme, means—

(a) an employee; or

(b) a person entitled to any relevant benefits under the scheme as a consequence of a pension sharing order or provision.

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(4E) The following rules shall apply in calculating for the purposes of subsection (3)(da) or (3A)(f) above the amount of a person's pension for the first year in which it is payable—

(a) if the pension payable for the year changes, the initial pension payable shall be taken;

(b) it shall be assumed that that person will survive for the year; and

(c) the effect of commutation shall be ignored.

(4F) A pension provided for an ex-spouse **[**F3946or former civil partner**]** who is an employee, or for the widow or widower **[**F3950or surviving civil partner**]** of such an ex-spouse **[**F3946or former civil partner**]**, shall be disregarded in any determination of whether the conditions set out in subsection (3)(e) to (h) above are satisfied or continue to be satisfied in the case of that employee.**]**

F3961(5) . . . . . .

F3961(6) . . . . . .

[F3962(7) Subsections (8) to (10) below apply where the Board are considering whether a retirement benefits scheme satisfies or continues to satisfy the prescribed conditions.

(8) For the purpose of determining whether the scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions, that scheme shall be considered in conjunction with—

(a) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) approved for the purposes of this Chapter,

(b) any other retirement benefits scheme (or schemes) which relates (or relate) to employees of that class or description and which is (or are) at the same time before the Board in order for them to decide whether to give approval for the purposes of this Chapter,

(c) any section 608 scheme or schemes relating to employees of that class or description, and

(d) any relevant statutory scheme or schemes relating to employees of that class or description.

(9) If those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of the scheme mentioned in subsection (7) above (as well as the other or others).

(10) If those conditions are not satisfied in the case of both or all of those schemes taken together, they shall not be taken to be satisfied in the case of the scheme mentioned in subsection (7) above.

(11) The reference in subsection (8)(c) above to a section 608 scheme is a reference to a fund to which section 608 applies.**]**

Textual Amendments

F3944 S. 590(2)(a) substituted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(1)**; S.I. 2000/1093, **art. 2**

F3945 S. 590(2)(aa) inserted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(2)**; S.I. 2000/1093, **art. 2**

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F3946 Words in s. 590(2)(aa)(3)(ba)(d)(3A)(4B)(4C)(4F) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 79(a)

F3947 Words in s. 590(2)(aa)(ii) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 79(b)

F3948 Words in s. 590(3)(a) substituted by Finance Act 1991 (c. 31, SIF 63:1), 34(2)(4)

F3949 1988(F) s.35*and* Sch.3 para.18*on and after* 6*April* 1990.

F3950 Words in s. 590(3)(b)(ba)(3A)(4B)(4C)(4F) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 79(c)

F3951 S. 590(3)(ba)(bb)(c) substituted for s. 590(3)(c) (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10** para, 2(3) (with Sch. 10 para. 18(4)); S.I. 2000/1093, **art. 2**

F3952 Words in s. 590(3)(d) substituted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(4)(a)**; S.I. 2000/1093, **art. 2**

F3953 Words in s. 590(3)(d) substituted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(4)(b)**; S.I. 2000/1093, **art. 2**

F3954 S. 590(3)(e)-(h) substituted for words in s. 590(3) by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 3(3), **18(2)** in respect of schemes not approved before 27 July 1989 (not applicable to certain employees of pre 14 March 1989 schemes). Previously: " In paragraph (d) above " the permitted maximum" means £100,000 or such other sum as may for the time being be specified in an order made by the Treasury."; and those words in s. 590(3) (as originally enacted) amended (6.4.2005) by The Retirement Benefits Schemes (Increase in Permitted Maximum in Transitional Cases) Order 2005 (S.I. 2005/723), **art. 2**

F3955 S. 590(3)(da) inserted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(5)** (with Sch. 10 para. 18(5)); S.I. 2000/1093, **art. 2**

F3956 S. 590(3)(e)-(h) substituted for words in s. 590(3) by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 3(3), **18(2)** in respect of schemes not approved before 27 July 1989 (not applicable to certain employees of pre 14 March 1989 schemes). Previously: "In paragraph (d) above "the permitted maximum" means £100,000 or such other sum as may for the time being be specified in an order made by the Treasury."; and those words in s. 590(3) (as originally enacted) amended (6.4.2005) by The Retirement Benefits Schemes (Increase in Permitted Maximum in Transitional Cases) Order 2005 (S.I. 2005/723), **art. 2**

F3957 S. 590(3A) inserted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(6)**; S.I. 2000/1093, **art. 2**

F3958 Words in s. 590(4) substituted (with application in accordance with Sch 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(7)**; S.I. 2000/1093, **art. 2**

F3959 S. 590(4A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 34(3)(4)**

F3960 S. 590(4B)-(4F) inserted (with application in accordance with Sch. 10 para. 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 2(8)**; S.I. 2000/1093, **art. 2**

F3961 S. 590(5)(6) repealed (*retrospectively)* by Finance Act 1991 (c. 31, SIF 63:1), ss. 36(2)(3), 123, **Sch. 19**, Pt. V, Note 8

F3962 1989 s.75*and* Sch.6 paras.3(4)*and* 18(3)*—to have effect where a determination is made on or after* 27*July* 1989.*Previously*

"(7) For the purpose of determining whether a retirement benefits scheme, so far as it relates to a particular class or description of employees, satisfies or continues to satisfy the prescribed conditions —(a) that scheme shall be considered in conjunction with any other retirement benefits scheme or schemes relating to employees of that class or description, and (b) if those conditions are satisfied in the case of both or all of those schemes taken together, they shall be taken to be satisfied in the case of each of them, but otherwise those conditions shall be taken to be satisfied in the case of none of them.".

Marginal Citations

M786 Source-1970(F) s.19(1); 1971 s.21(2)

M787 Source-1970(F) s.19(2)

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M788 Source-1970(F) s.19(2A), (2B); 1971 s.21(3); 1987 (No.2) Sch.3 1

[F3963 590A Section 590: supplementary provisions.

(1) For the purposes of section 590(3)(e) and (f) two or more employments are relevant associated employments if they are employments in the case of which—

(a) there is a period during which the employee has held both or all of them,

(b) the period counts under the scheme in the case of both or all of them as a period in respect of which benefits are payable, and

(c) the period is one during which both or all of the employers in question are associated.

(2) For the purposes of section 590(3)(g) and (h) the scheme is connected with another scheme in relation to an employee if—

(a) there is a period during which he has been the employee of two persons who are associated employers,

(b) the period counts under both schemes as a period in respect of which benefits are payable, and

(c) the period counts under one scheme by virtue of service with one employer and under the other scheme by virtue of service with the other employer.

(3) For the purposes of subsections (1) and (2) above, employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.

(4) In subsection (3) above the reference to control, in relation to a body corporate, shall be construed—

(a) where the body corporate is a close company, in accordance with section 416, and

(b) where it is not, in accordance with section 840.**]**

Textual Amendments

F3963 Ss. 590A-590C inserted by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 4, **18(4)**

590B Section 590: further supplementary provisions.

(1) For the purposes of section 590(3)(e) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{AyC}{60}$$

(2) For the purposes of section 590(3)(f) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{3yAyC}{80}$$

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(3) For the purposes of section 590(3)(g) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{\text{By}C}{60}$$

(4) For the purposes of section 590(3)(h) the relevant amount, in relation to an employee, shall be found by applying the following formula—

$$\frac{3\text{yBy}C}{80}$$

(5) For the purposes of this section A is the aggregate number of years service (expressing parts of a year as a fraction), subject to a maximum of 40, which, in the case of the employee, count for the purposes of the scheme at the time the benefits in respect of service in the employment become payable.

(6) But where the same year (or part of a year) counts for the purposes of the scheme by virtue of more than one of the relevant associated employments it shall be counted only once in calculating the aggregate number of years service for the purposes of subsection (5) above.

(7) For the purposes of this section B is the aggregate number of years service (expressing parts of a year as a fraction), subject to a maximum of 40, which, in the case of the employee, count for the purposes of any of the following—

(a) the scheme, and

(b) the other scheme or schemes with which the scheme is connected in relation to him,

at the time the benefits become payable.

(8) But where the same year (or part of a year) counts for the purposes of more than one scheme it shall be counted only once in calculating the aggregate number of years service for the purpose of subsection (7) above.

(9) For the purposes of this section C is the permitted maximum in relation to the year of assessment in which the benefits in question become payable, that is, the figure found for that year by virtue of subsections (10) and (11) below.

(10) For the years 1988-89 and 1989-90 the figure is £60,000.

(11) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**[F3964]to (5A)**]**.

Textual Amendments

F3964 Words in s. 590B(11) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

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590C Earnings cap.

(1) In arriving at an employee's final remuneration for the purposes of section 590(3)(a) or (d), any excess of what would be his final remuneration (apart from this section) over the permitted maximum for the year of assessment in which his participation in the scheme ceases shall be disregarded.

(2) In subsection (1) above "the permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (3) and (4) below.

(3) For the years 1988-89 and 1989-90 the figure is £60,000.

(4) For any subsequent year of assessment the figure is also £60,000, subject to **[**F3965subsections (5) and (5A)**]** below.

(5) If the retail prices index for the month of **[**F3966September**]** preceding a year of assessment falling within subsection (4) above is higher than it was for the previous **[**F3966September**]**, the figure for that year shall be an amount arrived at by—

(a) increasing the figure for the previous year of assessment by the same percentage as the percentage increase in the retail prices index, and

(b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

[F3967(5A) If the retail prices index for the month of September preceding a year of assessment falling within subsection (4) above is not higher than it was for the previous September, the figure for that year shall be the same as the figure for the previous year of assessment.**]**

(6) The Treasury shall in the year of assessment 1989-90, and in each subsequent year of assessment, make an order specifying the figure which is by virtue of this section the figure for the following year of assessment.

Textual Amendments

F3965 Words in s. 590C(4) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(5)(8)**

F3966 Word in s. 590C(5) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(4)(8)**

F3967 S. 590C(5A) inserted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(5)(8)**

Modifications etc. (not altering text)

C609 S. 590C amended (1990-91) by S.I. 1990/679, **art. 2**
S. 590C amended (1991-92) by S.I. 1991/734, **art. 2**
S. 590C amended (1992-93) by S.I. 1992/624, **art. 2**
S. 590C amended (1993-94) by 1993 c. 34, **s.106** (in place of S.I. 1993/757, **art. 2**)
S. 590C amended (1994-95) by S.I. 1993/2950, **art. 2**
S. 590C amended (1995-96) by S.I. 1994/3009, **art. 2**
S. 590C amended (1996-97) by S.I. 1995/3034, **art. 2**
S. 590C amended (1997-98) by S.I. 1996/2951, **art. 2**
S. 590C amended (1998-99) by S.I. 1998/758, **art. 2**
S. 590C amended (1999-2000) by S.I. 1999/592, **art. 2**
S. 590C amended (2000-01) by S.I. 2000/807, **art. 2**
S. 590C amended (2001-02) by S.I. 2001/637, **art. 2**

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S. 590C amended (2002-03) by S.I. 2002/700, **art. 2**
S. 590C amended (2003-04) by S.I. 2003/843, **art. 2**
S. 590C amended (2004-05) by S.I. 2004/773, **art. 2**
S. 590C amended (2005-06) by S.I. 2005/720, **art. 2**

C610 S. 590C(1) applied (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), **ss. 3(3)(a)(b)**, 31(2); S.I. 1995/631, **art. 2**

591 Discretionary approval.

(1) [M789]The Board may, if they think fit having regard to the facts of a particular case, and subject to such conditions, if any, as they think proper to attach to the approval, approve a retirement benefits scheme for the purposes of this Chapter notwithstanding that it does not satisfy one or more of the prescribed conditions; but this subsection has effect subject to subsection (5) below.

(2) [M790]The Board may in particular approve by virtue of this section a scheme—

(a) which exceeds the limits imposed by the prescribed conditions as respects benefits for less than 40 years; or

(b) which provides pensions for the widows **[**[F3968]and widowers**]****[**[F3969]and surviving civil partners**]** of employees on death in service, or for the children or dependants of employees; or

[[F3970](ba) which provides pensions for the widows and widowers **[**[F3971]and surviving civil partners**]** of ex-spouses **[**[F3972]or former civil partners**]** dying before the age at which their pensions become payable and for the children or dependants of ex-spouses **[**[F3972]or former civil partners**]**; or**]**

(c) which provides on death in service a lump sum of up to four times the employee's final remuneration (exclusive of any refunds of contributions); or

(d) which allows benefits to be payable on retirement within ten years of the specified age, or on earlier incapacity; or

(e) which provides for the return in certain contingencies of employees' contributions; or

(f) which relates to a trade or undertaking carried on only partly in the United Kingdom and by a person not resident in the United Kingdom; or

(g) which provides in certain contingencies for securing relevant benefits **[**[F3973] falling within subsection (2A) below**]** (but no other benefits) by means of an annuity contract [F3974]. . . made with an insurance company of the employee's choice; or

(h) to which the employer is not a contributor and which provides benefits additional to those provided by a scheme to which he is a contributor.

[[F3975](2A) Relevant benefits fall within this subsection if they correspond with benefits that could be provided by an approved scheme, and for this purpose—

(a) a hypothetical scheme (rather than any particular scheme) is to be taken, and

(b) benefits provided by a scheme directly (rather than by means of an annuity contract) are to be taken.**]**

[[F3976](3) In subsection (2)(g) above "insurance company" has the meaning given by section 659B.**]**

(4) [M791]In applying this section to a scheme which was in existence on 6th April 1980, the Board shall exercise their discretion, in such cases as appear to them to be appropriate, so as to preserve—

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(a) benefits earned or rights arising out of service before 6th April 1980; and

(b) any rights to death-in-service benefits conferred by rules of the scheme in force on 26th February 1970.

(5) [M792]The Board shall not approve a scheme by virtue of this section if to do so would be inconsistent with regulations made **[**[F3977]by the Board**]** for the purposes of this section.

(6) Regulations made **[**[F3977]by the Board**]** for the purposes of this section may restrict the Board's discretion to approve a scheme by reference to the benefits provided by the scheme, the investments held for the purposes of the scheme, the manner in which the scheme is administered or any other circumstances whatever.

Textual Amendments

F3968 Words in s. 591(2)(b) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 3(a)**

F3969 Words in s. 591(2)(b) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 80(a)

F3970 S. 591(2)(ba) inserted (with application in accordance with Sch. 10 para 18(3)(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 3(b)**; S.I. 2000/1093, **art. 2**

F3971 Words in s. 591(2)(ba) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 80(b)(i)

F3972 Words in s. 591(2)(ba) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 80(b)(ii)

F3973 Words in s. 591(2)(g) inserted (with application in accordance with s. 107(4) of the amending Act) by Finance Act 1994 (c. 9), **s. 107(2)(a)**

F3974 Words in s. 591(2)(g) repealed (with application in accordance with s. 107(4) of the repealing Act) by Finance Act 1994 (c. 9), s. 107(2)(b), **Sch. 26 Pt. 5(12)**, Note 2

F3975 S. 591A(2A) inserted (with application in accordance with s. 107(4) of the amending Act) by Finance Act 1994 (c. 9), **s. 107(3)**

F3976 S. 591(3) substituted (with application in accordance with s. 60(1) of the amending Act) by Finance Act 1995 (c. 4), **s. 59(2)**

F3977 1988(F) s.146*and* Sch.13 para.6 (*deemed always to have had effect*).*And see* S.I. 1987 No.412 (*in* Part III Vol.5)*regn.*2— "*The Pension Scheme Surpluses* (*Valuation*)*Regulations* 1989".

Modifications etc. (not altering text)

C611 S. 591 restricted (5.8.1991) by S.I. 1991/1614, **reg. 3**

Marginal Citations

M789 Source-1970(F) s.20(1); 1987 (No.2) Sch.3 3(2)

M790 Source-1970(F) s.20(2); 1971 s.21(4); 1981 s.32; 1987 (No.2) Sch.3 3(3), (4)

M791 Source-1970(F) s.20(3); 1987 Sch.15 3

M792 Source-1970(F) s.20(4), (5); 1987 (No.2) Sch.3 3(5)

[591A [F3978]Effect on approved schemes of regulations under section 591.

(1) Subsection (2) below applies where on or after 17th April 1991 regulations are made for the purposes of section 591 ("section 591 regulations") which contain provisions restricting the Board's discretion to approve a retirement benefits scheme by reference to any circumstances other than the benefits provided by the scheme ("relevant provisions").

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(2) Any retirement benefits scheme approved by the Board by virtue of section 591 before the day on which the section 591 regulations come into force shall cease to be approved by virtue of that section at the end of the period of 36 months beginning with that day if at the end of that period the scheme—

(a) contains a provision of a prohibited description, or

(b) does not contain a provision of a required description,

unless the description of provision is specified in regulations made by the Board for the purposes of this subsection.

(3) For the purposes of this section, a provision contained in a scheme shall not be treated as being of a prohibited description by reason only of the fact that it authorises the retention of an investment held immediately before the day on which the section 591 regulations are made.

(4) In determining for the purposes of this section whether any provision contained in a scheme is of a required description, the fact that it is framed so as not to require the disposal of an investment held immediately before the day on which the section 591 regulations are made shall be disregarded.

(5) In this section—

(a) references to a provision of a prohibited description are to a provision of a description specified in the relevant provisions of the section 591 regulations as a description of provision which, if contained in a retirement benefits scheme, would prevent the Board from approving the scheme by virtue of section 591;

(b) references to a provision of a required description are to a provision of a description specified in the relevant provisions of the section 591 regulations as a description of provision which must be contained in a retirement benefits scheme before the Board may approve the scheme by virtue of section 591.**]**

Textual Amendments

F3978 S. 591A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s.35**

Modifications etc. (not altering text)

C612 S. 591A(2) disapplied (30.7.1999) by The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) (Amendment) Regulations 1999 (S.I. 1999/1964), **regs. 1**, 6

[591B F3979 Cessation of approval: general provisions.

(1) If in the opinion of the Board the facts concerning any approved scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time by notice to the administrator, withdraw their approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of their approval or 17th March 1987, whichever is the later), as may be specified in the notice.

(2) Where an alteration has been made in a retirement benefits scheme, no approval given by the Board as regards the scheme before the alteration shall apply after the date of the alteration unless—

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(a) the alteration has been approved by the Board, or

(b) the scheme is of a class specified in regulations made by the Board for the purposes of this paragraph and the alteration is of a description so specified in relation to schemes of that class.**]**

Textual Amendments

F3979 S. 591B inserted (retrospectively) by Finance Act 1991 (c. 31), **s. 36(1)(3)**

Modifications etc. (not altering text)

C613 S. 591B modified (6.4.1996 for specified purposes and 6.4.1997 otherwise) by Pensions Act 1995 (c. 26), **ss. 68(5)**, s. 180(1); S.I. 1996/778, art. 2(5)(a), **Sch. Pt. 5**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**

[F3980 591C Cessation of approval: tax on certain schemes.

(1) Where an approval of a scheme to which this section applies ceases to have effect **[**F3981 otherwise than by virtue of paragraph 3(2)(a) of Schedule 23ZA**]**, **[**F3982 income tax shall be charged under and**]** in accordance with this section.

(2) The tax shall be charged F3983 . . . at the rate of 40 per cent. on an amount equal to the value of the assets which immediately before the date of the cessation of the approval of the scheme are held for the purposes of the scheme (taking that value as it stands immediately before that date).

(3) Subject to section 591D(4), the person liable for the tax shall be the administrator of the scheme F3984 . . . .

(4) This section applies to a retirement benefits scheme in respect of which **[**F3985 one or more**]** of the conditions set out below is satisfied.

(5) The first condition is satisfied in respect of a scheme if, immediately before the date of the cessation of the approval of the scheme, the number of individuals who are members of the scheme is less than twelve.

(6) The second condition is satisfied in respect of a scheme if at any time within the period of one year ending with the date of the cessation of the approval of the scheme, a person who is or has been a controlling director of a company which has contributed to the scheme is a member of the scheme.

[The third condition is satisfied in respect of a scheme if—

F3986 (6A) (a) at any time within the period of three years ending with the date of the cessation of the approval of the scheme, the scheme has received a transfer value in respect of any person;

(b) contributions made by or in respect of that person to any approved pension arrangements (whether or not those from which the transfer value was received) were represented in the transfer value; and

(c) the contributions so represented were made by or in respect of that person by reference to—

(i) any service by him with a company of which he is or has at any time been a controlling director;

(ii) any remuneration in respect of any such service; or

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(iii) any income chargeable to tax under **[**F3987Part 2 of ITTOIA 2005**]** and immediately derived by him from the carrying on or exercise by him (whether as an individual or in partnership with others) of a trade, profession or vocation.**]**

(7) For the purposes of **[**F3988this section**]** a person is a controlling director of a company if he is a director of it and within section 417(5)(b) in relation to it.

[In subsection (6A) above—

F3989(8) (a) the references to the receipt of a transfer value by a scheme are references to the transfer, so as to become held for the purposes of the scheme, of any sum or asset held for the purposes of any other approved pension arrangements; and

(b) the references to contributions to approved pension arrangements include references to—

(i) any contributions made in accordance with, or for the purposes of, the arrangements; and

(ii) anything paid by way of premium or other consideration under an annuity contract for which the arrangements provide.

(9) In this section "approved pension arrangements" means—

(a) any scheme or arrangements approved for the purposes of this Chapter or Chapter IV of this Part or, in relation to a time before 6th April 1988, the corresponding provisions then in force;

(b) any scheme being considered for approval under this Chapter;

(c) any annuity contract entered into for the purposes of any scheme or arrangements falling within paragraph (a) or (b) above; or

(d) any contract or scheme approved for the purposes of Chapter III of this Part or, in relation to a time before 6th April 1988, the corresponding provisions then in force.**]]**

Textual Amendments

F3980 Ss. 591C, 591D inserted (with effect in accordance with s. 61(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 61(1)**

F3981 Words in s. 591C(1) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 3(2)** (with Sch. 13 Pt. 2)

F3982 Words in s. 591C(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 252(2)** (with Sch. 2)

F3983 Words in s. 591C(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 252(3), **Sch. 3** (with Sch. 2)

F3984 Words in s. 591C(3) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(20)**

F3985 Words in s. 591C(4) substituted (with effect in accordance with Sch. 15 para. 1(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para 1(2)**

F3986 S. 591C(6A) inserted (with effect in accordance with Sch. 15 para. 1(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 1(3)**

F3987 Words in s. 591C(6A)(c)(iii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 252(4)** (with Sch. 2)

F3988 Words in s. 591C(7) substituted (with effect in accordance with Sch. 15 para. 1(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 1(4)**

F3989 S. 591C(8)(9) inserted (with effect in accordance with Sch. 15 para. 1(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 1(5)**

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Modifications etc. (not altering text)
C614 S. 591C applied by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 239A** (as inserted (with effect in accordance with **s. 61(3)** of the amending Act) by Finance Act 1995 (c. 4), s. 61(2))

[F3980 591D Section 591C: supplementary.

(1) For the purposes of section 591C(2) the value of an asset is, subject to subsection (2) below, its market value, construing "market value" in accordance with section 272 of the 1992 Act.

(2) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (3) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.

(3) The persons are—

(a) any employer who has at any time contributed to the scheme;

(b) any company connected with such an employer;

[F3990 (c) any person who has at any time (whether or not before the making of the loan) been a member of the scheme;

(d) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (c) above.]

(4) Where the administrator of the scheme is constituted by persons who include a person who is an approved independent trustee in relation to a scheme, that person shall not be liable for tax chargeable by virtue of section 591C.

(5) A person is an approved independent trustee in relation to a scheme only if he is—

(a) approved by the Board to act as a trustee of the scheme; and

(b) not connected with—

(i) a member of the scheme;

(ii) any other trustee of the scheme; or

(iii) an employer who has contributed to the scheme.

(6) F3991 . . . . . .

(7) The reference in section 591C(1) to an approval of a scheme ceasing to have effect is a reference to—

(a) the scheme ceasing to be an approved scheme by virtue of section 591A(2);

(b) the approval of the scheme being withdrawn under section 591B(1); or

(c) the approval of the scheme no longer applying by virtue of section 591B(2);

and any reference in section 591C to the date of the cessation of the approval of the scheme shall be construed accordingly.

(8) For the purposes of section 591C and this section a person is a member of a scheme at a particular time if at that time a benefit—

(a) is being provided under the scheme, or

(b) may be so provided,

in respect of any past or present employment of his.

(9) Section 839 shall apply for the purposes of this section.]

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Textual Amendments

F3980 Ss. 591C, 591D inserted (with effect in accordance with s. 61(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 61(1)**

F3990 S. 591D(3)(c)(d) substituted (with effect in accordance with Sch. 15 para. 2(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 2(1)**

F3991 S. 591D(6) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 71, **Sch. 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C615 S. 591D(5) applied (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 15 para. 7(5)**

Tax reliefs

592 Exempt approved schemes.

M793(1) This section has effect as respects—

(a) any approved scheme which is shown to the satisfaction of the Board to be established under irrevocable trusts; or

(b) any other approved scheme as respects which the Board, having regard to any special circumstances, direct that this section shall apply;

and any scheme which is for the time being within paragraph (a) or (b) above is in this Chapter referred to as an "exempt approved scheme".

(2) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of income derived from investments or deposits if, or to such extent as the Board are satisfied that, it is income from investments or deposits held for the purposes of the scheme.

(3) Exemption from income tax shall, on a claim being made in that behalf, be allowed in respect of underwriting commissions if, or to such extent as the Board are satisfied that, the underwriting commissions are applied for the purposes of the schemes **[**F3992, are not relevant foreign income**]** and would, but for this subsection, be chargeable to tax under **[**F3993Chapter 8 of Part 5 of ITTOIA 2005 (income not otherwise charged)**]**.

[F3994(4) Where the employer makes contributions to the pension scheme in respect of any individual, then—

(a) for the purposes of **[**F3995Part 2 of ITTOIA 2005 or**]** Case I or II of Schedule D the contributions—

(i) are to be treated as not being payments of a capital nature, to the extent that they otherwise would be,

(ii) are allowed as a deduction in computing the amount of the profits for the period of account in which they are paid:

(b) for the purposes of section 75 (expenses of management: companies with investment business) the contributions —

(i) are to be treated as being expenses of management to the extent that they otherwise would not be; and

(ii) are referable to the accounting period in which they are paid;

(c) for the purposes of section 76 (expenses of insurance companies), the contributions—

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(i) are to be brought into account at Step 1 in subsection (7) of that section, to the extent that they otherwise would not be; and

(ii) are referable to the accounting period in which they are paid.**]**

(5) The amount of an employer's contributions which may—

[F3996(a) be deducted under paragraph (a) of subsection (4) above,

(b) be deductible under paragraph (b) of that subsection, or

(c) be included at Step 1 in section 76(7),**]**

shall not exceed the amount contributed by him under the scheme in respect of employees in a trade or undertaking in respect of the profits of which the employer is assessable to tax (that is to say, to United Kingdom income tax or corporation tax).

[F3997(6) A sum not paid by ordinary way of annual contribution shall for the purposes of subsection (4) above be treated, as the Board may direct, either—

(a) as an expense deductible for the chargeable period in which the sum is paid,

(b) as expenses of management deductible under section 75 for that chargeable period, or

(c) for the purposes of section 76, as expenses payable referable to that chargeable period,

or as an expense to be spread over such period of years as the Board think proper.**]**

[F3998(6A) Where any sum is paid to the trustees of the scheme in or towards the discharge of any liability of an employer under section 58B of the M794Social Security Pensions Act 1975 or section 144 of the Pension Schemes Act 1993 (deficiencies in the assets of a scheme) or under Article 68B of the M795Social Security Pensions (Northern Ireland) Order 1975 or section 140 of the Pension Schemes (Northern Ireland) Act 1993 (which contain corresponding provision for Northern Ireland), the payment of that sum—

(a) shall be treated for the purposes of this section as an employer's contribution under the scheme; and

(b) notwithstanding (where it is the case) that the employer's trade, profession, vocation or business is permanently discontinued before the making of the payment, shall be allowed, in accordance with subsection (4) above, to be deducted as such a contribution to the same extent as it would have been allowed but for the discontinuance and as if it had been made on the last day on which the trade, profession, vocation or business was carried on.**]**

[F3999(7) Any contribution paid under the scheme shall be allowed to be deducted from employment income for the year of assessment in which the contribution is paid.

A deduction under this subsection may only be made once in respect of the same contribution.**]**

(8) **[**F4000Subject to subsection (8A) below,**]** the amount allowed to be deducted by virtue of subsection (7) above in respect of contributions paid by an employee in a year of assessment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent., or such higher percentage as the Board may in a particular case prescribe, of his remuneration for that year.

[F4001(8A) Where an employee's remuneration for a year of assessment includes remuneration in respect of more than one employment, the amount allowed to be deducted by virtue of subsection (7) above in respect of contributions paid by the employee in that year by virtue of any employment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent, or such higher percentage as the Board

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may in a particular case prescribe, of his remuneration for the year in respect of that employment.

(8B) In arriving at an employee's remuneration for a year of assessment for the purposes of subsection (8) or (8A) above, any excess of what would be his remuneration (apart from this subsection) over the permitted maximum for that year shall be disregarded.

(8C) In subsection (8B) above "permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (8D) and (8E) below.

(8D) For the year 1989-90 the figure is £60,000.

(8E) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**[F4002]to (5A)**].]**

(9) Relief shall not be given under section 266 or 273 in respect of any payment in respect of which an allowance can be made under subsection (7) above.

(10) Subsection (2) of section 468 and subsection (3) of section 469 shall not apply to any authorised unit trust which is also an exempt approved scheme if the employer is not a contributor to the exempt approved scheme and that scheme provides benefits additional to those provided by another exempt approved scheme to which he is a contributor.

(11) Nothing in this section shall be construed as affording relief in respect of any sums to be brought into account under section 438.

(12) This section has effect only as respects income arising or contributions paid at a time when the scheme is an exempt approved scheme.

Textual Amendments

F3992 Words in s. 592(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 253(2)(a)** (with Sch. 2)

F3993 Words in s. 592(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 253(2)(b)** (with Sch. 2)

F3994 S. 592(4) substituted (31.12.2004 with effect in accordance with art. 1 of the amending S.I.) by The Finance Act 2004, Sections 38 to 45 and Schedule 6 (Consequential Amendment of Enactments No. 2) Order 2004 (S.I. 2004/3269), art. 2(2)

F3995 Words in s. 592(4)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 253(3)** (with Sch. 2)

F3996 S. 592(5)(a)-(c) substituted for words in s. 592(5) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 30(3)

F3997 S. 592(6) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 30(4)

F3998 S. 592(6A) inserted (with effect as mentioned in s. 112 of the amending Act) by Finance Act 1993 (c. 34), **s. 112(6)**

F3999 S. 592(7) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 72** (with Sch. 7)

F4000 1989 s.75*and* Sch.6 paras.5(2), (3)*and* 18(4)*for* 1989-90*and subsequent years.*

F4001 1989 s.75*and* Sch.6 paras.5(4)*and* 18(4)*for* 1989-90*and subsequent years.* Subss.(8B)*to* (8E)*do not have effect as regards such remuneration as may be prescribed by regulations—for which see* Part III Vol.5 (*under*

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"*Retirement benefit schemes: tax relief for contributions*").

F4002 Words in s. 592(8E) substituted (with effect for the year 1994-95 and subsequent years of assessment) by Finance Act 1993 (c. 34), **s. 107(6)(8)**

Modifications etc. (not altering text)

C616 *See* 1990 s.56*and* Sch.10 para.22—*convertible securities relieved of charge if held for purposes of exempt approved schemes.*

C617 S. 592(2) applied (with modifications) (temp. 6.4.2005 to 5.4.2006) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1**, 5

C618 S. 592(3) applied (with modifications) (temp. 6.4.2005 to 5.4.2006) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1**, 6

C619 S. 592(6A) applied (temp. 6.4.2005 to 5.4.2006) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1**, 7

Marginal Citations

M793 Source-1970(F) s.21(1)-(9); 1971 s.21(5); 1987 (No.2) Sch.3 4, 5

M794 1975 c. 60.

M795 S.I. 1975/1503 (N.I. 15).

593 Relief by way of deductions from contributions.

M796(1) Relief under section 592(7) shall be given in accordance with subsections (2) and (3) below in such cases and subject to such conditions as the Board may prescribe by regulations under section 612(3) in respect of schemes—

(a) to which employees, but not their employers, are contributors; and

(b) which provide benefits additional to benefits provided by schemes to which their employers are contributors.

(2) An employee who is entitled to relief under section 592(7) in respect of a contribution may deduct from the contribution when he pays it, and may retain, an amount equal to income tax at the basic rate on the contribution.

(3) The administrator of the scheme—

(a) shall accept the amount paid after the deduction in discharge of the employee's liability to the same extent as if the deduction had not been made; and

(b) may recover an amount equal to the deduction from the Board.

(4) Regulations under subsection (3) of section 612 may, without prejudice to the generality of that subsection—

(a) provide for the manner in which claims for the recovery of a sum under subsection (3)(b) above may be made;

(b) provide for the giving of such information, in such form, as may be prescribed by or under the regulations;

(c) provide for the inspection by persons authorised by the Board of books, documents and other records.

Modifications etc. (not altering text)

C620 *See* S.I. 1987 No.1749 (*in* Part III Vol.5).

C621 *See* S.I. 1987 No.1749 (*in* Part III Vol.5).

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Marginal Citations

M796 Source-1970(F) Sch.5 Part II 6A; 1987 (No.2) Sch.3 12

594 Exempt statutory schemes.

M797(1) Any contribution paid by any officer or employee under a **[**F4003relevant**]** statutory scheme established under a public general Act **[**F4004shall be allowed to be deducted from employment income for**]** the year of assessment in which the contribution is paid; and relief shall not be given under section 266 or 273 in respect of any contribution allowable as a deduction under this section.

[F4005A deduction under this section may only be made once in respect of the same contribution.**]**

(2) **[**F4006Subject to subsection (3) below,**]** the amount allowed to be deducted by virtue of subsection (1) above in respect of contributions paid by a person in a year of assessment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent., or such higher percentage as the Board may in a particular case prescribe, of his remuneration for that year.

[F4007(3) Where a person's remuneration for a year of assessment includes remuneration in respect of more than one office or employment, the amount allowed to be deducted by virtue of subsection (1) above in respect of contributions paid by the person in that year by virtue of any office or employment (whether under a single scheme or under two or more schemes) shall not exceed 15 per cent, or such higher percentage as the Board may in a particular case prescribe, of his remuneration for the year in respect of that office or employment.

(4) In arriving at a person's remuneration for a year of assessment for the purposes of subsection (2) or (3) above, any excess of what would be his remuneration (apart from this subsection) over the permitted maximum for that year shall be disregarded.

(5) In subsection (4) above "permitted maximum", in relation to a year of assessment, means the figure found for that year by virtue of subsections (6) and (7) below.

(6) For the year 1989-90 the figure is £60,000.

(7) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**F4008to (5A)**]**.**]**

Textual Amendments

F4003 1989 s.75*and* Sch.6 paras.6(2)*and* 18(1)*on and after* 14*March* 1989.

F4004 Words in s. 594(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 73(a)** (with Sch. 7)

F4005 Words in s. 594(1) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 73(b)** (with Sch. 7)

F4006 1989 s.75*and* Sch.6 paras.6(3)*and* 18(4)*for* 1989-90*and subsequent years.*

F4007 1989 s.75*and* Sch.6 paras.6(4)(5)*and* 18(4)*for* 1989-90*and subsequent years.* Subss.(4) to (7)*do not have effect as regards such remuneration as may be prescribed by regulations.*

F4008 Words in s. 594(7) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

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Modifications etc. (not altering text)

C622 S. 594 applied (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), **ss. 10(4)(b)(ii)**, 31(2); S.I. 1995/631, **art. 2**

Marginal Citations

M797 Source-1970(F) s.22; 1972 s.74(3); 1987 (No.2) Sch.3 6

Charge to tax in certain cases

595 Charge to tax in respect of certain sums paid by employer etc.

F4009 . . . . . .

Textual Amendments

F4009 Ss. 595, 596 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 74, **Sch. 8 Pt. 1** (with Sch. 7)

596 Exceptions from section 595.

F4010 . . . . . .

Textual Amendments

F4010 Ss. 595, 596 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 74, **Sch. 8 Pt. 1** (with Sch. 7)

[F4011 596A Charge to tax: benefits under non-approved schemes.

F4012 . . . . . .]

Textual Amendments

F4011 Ss. 596A, 596B inserted (with effect in accordance with Sch. 6 para. 18(7) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 6 para. 9**

F4012 Ss. 596A-596C repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 75, **Sch. 8 Pt. 1** (with Sch. 7)

[F4013 596B Section 596A: supplementary provisions.

F4014 . . . . . .]

Textual Amendments

F4013 Ss. 596A, 596B inserted (with effect in accordance with Sch. 6 para. 18(7) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 6 para. 9**

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F4014 Ss. 596A-596C repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 75, **Sch. 8 Pt. 1** (with Sch. 7)

[F4015 596C Notional interest treated as paid if amount charged in respect of beneficial loan.

F4016 . . . . . .]

Textual Amendments

F4015 S. 596C inserted (with effect in accordance with s. 93(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 93(3)**

F4016 Ss. 596A-596C repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 75, **Sch. 8 Pt. 1** (with Sch. 7)

597 Charge to tax: pensions.

F4017 . . . . . .

Textual Amendments

F4017 S. 597 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 76, **Sch. 8 Pt. 1** (with Sch. 7)

598 Charge to tax: repayment of employee's contributions.

M798 (1) Subject to the provisions of this section, **[**F4018 income**]** tax shall be charged under this section on any repayment to an employee during his lifetime of any contributions (including interest on contributions, if any) if the payment is made under—

(a) a scheme which is or has at any time been an exempt approved scheme, or

(b) a **[**F4019 relevant**]** statutory scheme established under a public general Act.

(2) **[**F4020 The person liable for any tax chargeable under this section shall be the administrator of the scheme**]** and, subject to subsection (3) below, the rate of tax shall be 10 per cent.

(3) The Treasury may by order from time to time increase or decrease the rate of tax under subsection (2) above.

(4) The tax shall be charged on the amount paid or, if the rules permit the administrator to deduct the tax before payment, on the amount before deduction of tax, and the amount so charged to tax shall not be treated as income for any other purpose of the Tax Acts.

(5) Subsection (1)(a) above shall not apply in relation to a contribution made after the scheme ceases to be an exempt approved scheme (unless it again becomes an exempt approved scheme).

(6) This section shall not apply where the employee's employment was carried on outside the United Kingdom.

(7) In relation to a statutory scheme, "employee" in this section includes any officer.

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Textual Amendments

F4018 Word in s. 598(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 254(2)** (with Sch. 2)

F4019 1989 s.75*and* Sch.6 paras.10*and* 18(1)*on and after* 14*March* 1989.

F4020 Words in s. 598(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 254(3)** (with Sch. 2)

Modifications etc. (not altering text)

C623 20*per cent. on and after* 6*April* 1988—*see* S.I. 1988 No.504*in* Part III Vol.5

Marginal Citations

M798 Source-1970(F) Sch.5 Part II 2, 3; 1971 Sch.3 7; 1987 (No.2) Sch.3 9

599 Charge to tax: commutation of entire pension in special circumstances.

M799(1) **[**F4021Subject to subsection (1A) below,**]** where a scheme to which this section applies contains a rule allowing, in special circumstances, a payment in commutation of an employee's entire pension, and any pension is commuted, whether wholly or not, under the rule, **[**F4022income**]** tax shall be charged on the amount by which the sum receivable exceeds—

(a) the largest sum which would have been receivable in commutation of any part of the pension if the scheme had secured that the aggregate value of the relevant benefits payable to an employee on or after retirement, excluding any pension which was not commutable, could not exceed three-eightieths of his final remuneration (disregarding any excess of that remuneration over the permitted maximum) for each year of service up to a maximum of 40; or

(b) the largest sum which would have been receivable in commutation of any part of the pension under any rule of the scheme authorising the commutation of part (but not the whole) of the pension, or which would have been so receivable but for those special circumstances;

whichever gives the lesser amount chargeable to tax.

[F4023(1A) Subsection (1) above shall have effect in relation to the commutation of the whole or any part of a pension the amount of which has been affected by the making of any pension sharing order or provision as if paragraph (a) and the words after paragraph (b) were omitted.

(1B) Where—

(a) a scheme to which this section applies contains a rule allowing, in special circumstances, a payment in commutation of the entire pension provided under the scheme for an ex-spouse **[**F4024or former civil partner**]**, and

(b) any pension is commuted, whether wholly or not, under the rule,

[F4025income**]** tax shall be charged on the amount by which the sum receivable exceeds the largest sum which would have been receivable in commutation of any part of the pension under any rule of the scheme authorising the commutation of a part (but not the whole) of the pension.

(1C) A pension provided for an ex-spouse **[**F4024or former civil partner**]** shall be disregarded when applying subsection (1) above in relation to the commutation of any pension provided for an employee.

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(1D) A pension provided for an employee shall be disregarded when applying subsection (1B) above in relation to the commutation of any pension provided for an ex-spouse **[**F4024or former civil partner**]**.

(1E) Subsections (4B) and (4C) of section 590 apply for the purposes of subsections (1C) and (1D) above as they apply for the purposes of that section.**]**

(2) This section applies to—

(a) a scheme which is or has at any time been an approved scheme, or

(b) a **[**F4026relevant**]** statutory scheme established under a public general Act.

(3) **[**F4027The person liable for any tax chargeable under this section shall be the administrator of the scheme**]**, and section 598(2), (3) and (4) shall apply as they apply to tax chargeable under that section.

(4) This section shall not apply where the employee's employment was carried on outside the United Kingdom.

(5) In relation to a statutory scheme, "employee" in this section includes any officer.

(6) In applying paragraph (a) or (b) of subsection (1) above **[**F4028, or in applying subsection (1B) above**]**—

(a) the same considerations shall be taken into account, including the provisions of any other relevant scheme, as would have been taken into account by the Board in applying section 590; and

(b) where the scheme has ceased to be an approved scheme, account shall only be taken of the rules in force when the scheme was last an approved scheme.

(7) Where the pension has been secured by means of an annuity contract with an insurance company and the sum receivable is payable under that contract by the insurance company, the references to the administrator of the scheme in subsection (3) above and in section 598(2) and (4) as applied by that subsection are to be read as references to the insurance company.

[F4029(8) In subsection (7) above "insurance company" has the meaning given by section 659B.**]**

(9) In relation to payments made under schemes approved or established before 17th March 1987 to employees who became members before that date, subsection (1)(a) above shall have effect with the omission of the words "(disregarding any excess of that remuneration over the permitted maximum)".

[F4030(10) In subsection (1)(a) above "the permitted maximum" means, as regards a charge to tax arising under this section in a particular year of assessment, the figure found for that year by virtue of subsections (11) and (12) below.

(11) For the years 1988-89 and 1989-90 the figure is £60,000.

(12) For any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**F4031to (5A)**]**.**]**

Textual Amendments

F4021 Words in s. 599(1) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 7(1)**

F4022 Word in s. 599(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 255(2)** (with Sch. 2)

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F4023 S. 599(1A)-(1E) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 7(1)**
F4024 Words in s. 599(1B)(1C)(1D) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 81
F4025 Word in s. 599(1B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 255(3)** (with Sch. 2)
F4026 1989 s.75*and* Sch.6 paras.11(2)*and* 18(1)*on and after* 14*March* 1989.
F4027 Words in s. 599(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 255(4)** (with Sch. 2)
F4028 Words in s. 599(6) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 7(2)**
F4029 S. 599(8) substituted (with application in accordance with s. 60(2) of the amending Act) by Finance Act 1995 (c. 4), **s. 59(3)**
F4030 1989 s.75*and* Sch.6 paras.11(3)*and* 18(8)*where the charge to tax under* s.559*arises on or after* 14*March* 1989*except where the scheme came into being before that date and the employee became a member before* 1*June* 1989.
F4031 Words in s. 599(12) substituted (27.7.1993 with effect for the year 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

Modifications etc. (not altering text)
C624 S. 599 applied (1.4.1998) by The Local Government Pension Scheme (Scotland) Regulations 1998 (S.I. 1998/366), **regs. 1**, 48(8), 49(3)

Marginal Citations
M799 Source-1970(F) Sch.5 Part II 2, 3; 1971 Sch.3 7; 197 (No.2) Sch.3 9

[F4032 599A Charge to tax: payments out of surplus funds.

(1) This subsection applies to any payment which is made to or for the benefit of an employee or to his personal representatives out of funds which are or have been held for the purposes of—

(a) a scheme which is or has at any time been an exempt approved scheme, or

(b) a relevant statutory scheme established under a public general Act,

and which is made in pursuance of a duty to return surplus funds.

[F4033 (2) On the making of a payment to which subsection (1) above applies—

(a) income tax is charged at the relevant rate on such amount as, after deduction of tax at that rate, would equal the amount of the payment, and

(b) the person liable for the tax so charged is the administrator of the scheme.**]**

(3) Subject to subsection (4) below, the relevant rate shall be 35 per cent.

(4) The Treasury may by order from time to time increase or decrease the relevant rate.

(5) F4034 . . . . . .

(6) F4034 . . . . . .

(7) F4035 . . . . . .

(8) F4034 . . . . . .

(9) Any payment chargeable to tax under this section shall not be chargeable to tax under section 598, 599 or 600 or under the Regulations mentioned in paragraph 8 of Schedule 3 to the Finance Act 1971.

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(10) In this section—

"employee", in relation to a relevant statutory scheme, includes any officer;

references to any payment include references to any transfer of assets or other transfer of money's worth.**]**

Textual Amendments

F4032 1989 s.75*and* Sch.6 paras.12*and* 18(9)*in relation to payments made on or after* 27*July* 1989.

F4033 S. 599A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 256** (with Sch. 2)

F4034 S. 599A(5)(6)(8) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 77, **Sch. 8 Pt. 1** (with Sch. 7)

F4035 S. 599A(7) repealed (with effect in accordance with s. 121(8) of the repealing Act) by Finance Act 1996 (c. 8), s. 122(7)(c), **Sch. 41 Pt. 5(6)**, Note 3

600 Charge to tax: unauthorised payments to or for employees.

F4036 . . . . . .

Textual Amendments

F4036 S. 600 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 78, **Sch. 8 Pt. 1** (with Sch. 7)

601 Charge to tax: payments to employers.

M800(1) Subsection (2) below applies where a payment is made to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an exempt approved scheme and whether or not the payment is made in pursuance of Schedule 22.

(2) An amount equal to **[**F4037the relevant percentage of the payment**]** shall be recoverable by the Board from the employer.

[F4038(2A) The relevant percentage is 35% or such other percentage (whether higher or lower) as may be prescribed.**]**

(3) Subsection (2) above does not apply to any payment—

(a) to the extent that, if this section had not been enacted, the employer would have been exempt, or entitled to claim exemption, from income tax or corporation tax in respect of the payment; or

(b) made before the scheme became an exempt approved scheme; or

(c) of any prescribed description; or

(d) made in pursuance of the winding-up of the scheme where the winding-up commenced on or before 18th March 1986; or

(e) made in pursuance of an application which—

(i) was made to the Board on or before that date and was not withdrawn before the making of the payment, and

(ii) sought the Board's assurance that the payment would not lead to a withdrawal of approval under section 19(3) of the Finance Act 1970;

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(4) Subsection (2) above does not apply where the employer is a charity (within the meaning of section 506).

(5) Where any payment is made or becomes due to an employer out of funds which are or have been held for the purposes of a scheme which is or has at any time been an exempt approved scheme then—

(a) if the scheme relates to a trade, profession or vocation carried on by the employer, the payment shall be treated for the purposes of the Tax Acts as a receipt of that trade, profession or vocation receivable when the payment falls due or on the last day on which the trade, profession or vocation is carried on by the employer, whichever is the earlier;

(b) if the scheme does not relate to such a trade, profession or vocation, the employer shall be charged

[F4039(i) to income tax on the full amount of the payment arising in the year of assessment; or

(ii) to corporation tax on the amount of the payment under Case VI of Schedule D**]**.

This subsection shall not apply to a payment which fell due before the scheme became an exempt approved scheme or to a payment to which subsection (2) above applies or would apply but for subsection (3)(a) or (4) above.

(6) In this section—

(a) references to any payment include references to any transfer of assets or other transfer of money's worth; and

(b) "prescribed" means prescribed by regulations made by the Treasury.

Textual Amendments

F4037 Words in s. 601(2) substituted (with application in accordance with s. 74(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 74(2)**

F4038 S. 601(2A) inserted (with application in accordance with s. 74(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 74(3)**

F4039 S. 601(5)(b)(i)(ii) substituted for words in s. 601(5)(b) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 257** (with Sch. 2)

Marginal Citations

M800 Source-1986 Sch.12 1; 1970(F) Sch.5 Part II 4; 1971 Sch.3 12(5)

602 Regulations relating to pension fund surpluses.

M801(1) In relation to an amount recoverable as mentioned in section 601(2), the Treasury may by regulations make any of the provisions mentioned in subsection (2) below; and for this purpose the amount shall be treated as if it were—

(a) an amount of income tax chargeable on the employer F4040. . . for the year of assessment in which the payment is made; or

(b) where the employer is a company, an amount of corporation tax chargeable on the company for the accounting period in which the payment is made.

(2) The provisions are—

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(a) provision requiring the administrator of the scheme or the employer (or both) to furnish to the Board, in respect of the amount recoverable and of the payment concerned, information of a prescribed kind;

(b) provision enabling the Board to serve a notice or notices requiring the administrator or employer (or both) to furnish to the Board, in respect of the amount and payment, particulars of a prescribed kind;

(c) provision requiring the administrator to deduct out of the payment the amount recoverable and to account to the Board for it;

(d) provision as to circumstances in which the employer may be assessed in respect of the amount recoverable;

(e) provision that, in a case where the employer has been assessed in respect of an amount recoverable but has not paid it (or part of it) within a prescribed period, the administrator may be assessed and charged (in the employer's name) in respect of the amount (or part unpaid);

(f) provision that, in a case where the amount recoverable (or part of it) has been recovered from the administrator by virtue of an assessment in the employer's name, the administrator is entitled to recover from the employer a sum equal to the amount (or part);

(g) provision enabling the employer or administrator (as the case may be) to appeal against an assessment made on him in respect of the amount recoverable;

(h) provision as to when any sum in respect of the amount recoverable is payable to the Board by the administrator or employer and provision requiring interest to be paid on any sum so payable;

(j) provision that an amount paid to the Board by the administrator shall be treated as paid on account of the employer's liability under section 601(2).

(3) For the purpose of giving effect to any provision mentioned in subsection (2)(c) to (j) above, regulations under this section may include provision applying (with or without modifications) provisions of the enactments relating to income tax and corporation tax.

(4) Subject to any provision of regulations under this section—

(a) a payment to which section 601(2) applies shall not be treated as a profit or gain brought into charge to income tax or corporation tax and shall not be treated as part of the employer's income for any purpose of this Act; and

(b) the amount recoverable shall not be subject to any exemption or reduction (by way of relief, set-off or otherwise) or be available for set-off against other tax.

(5) If the employer is a company and a payment to which section 601(1) and (2) applies is made at a time not otherwise within an accounting period of the company, an accounting period of the company shall for the purposes of subsection (1)(b) above be treated as beginning immediately before the payment is made.

Textual Amendments

F4040 Words in s. 602(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 258, **Sch. 3** (with Sch. 2)

Modifications etc. (not altering text)

C625 *For regulations see* Part III Vol.5 (*under* "*Pension Schemes Surpluses: administration*").

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Marginal Citations

M801 Source-1986 Sch.12 2(1), (i), (2), (4)-(6)

603 Reduction of surpluses.

Schedule 22 (which provides for the reduction of certain pension fund surpluses) shall have effect.

Supplementary provisions

604 Application for approval of a scheme.

M802(1) An application for the approval for the purposes of this Chapter of any retirement benefits scheme shall be made in writing by **[**F4041the appropriate applicant**]** to the Board before the end of the first year of assessment for which approval is required, and shall be accompanied by—

(a) two copies of the instrument or other document constituting the scheme; and

(b) two copies of the rules of the scheme and, except where the application is being sought on the setting up of the scheme, two copies of the accounts of the scheme for the last year for which such accounts have been made up; and

(c) such other information and particulars (including copies of any actuarial report or advice given to the **[**F4042appropriate applicant,**]** administrator or employer in connection with the setting up of the scheme) as the Board may consider relevant.

[F4043(1A) In subsection (1) above "the appropriate applicant" means—

(a) in the case of a trust scheme, the trustee or trustees of the scheme; and

(b) in the case of a non-trust scheme, the scheme sponsor or scheme sponsors;

and subsection (9) of section 611AA applies for the purposes of this subsection as it applies for the purposes of that section.**]**

(2) The form in which an application for approval is to be made, or in which any information is to be given, in pursuance of this section may be prescribed by the Board.

Textual Amendments

F4041 Words in s. 604(1) substituted (with effect in accordance with Sch. 15 para. 3(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 3(1)(a)**

F4042 Words in s. 604(1)(c) inserted (with effect in accordance with Sch. 15 para. 3(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 3(1)(b)**

F4043 S. 604(1A) inserted (with effect in accordance with Sch. 15 para. 3(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 3(2)**

Marginal Citations

M802 Source-1970(F) Sch.5 Part II 6, 7, 8, 9; 1987 (No.2), Sch.3 11, 13-15

605 Information.

M803(1) F4044 . . . . . .

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[F4045(1A) The Board may by regulations make any of the following provisions—

(a) provision requiring prescribed persons to furnish to the Board at prescribed times information relating to any of the matters mentioned in subsection (1B) below;

(b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;

(c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;

(d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;

(e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.

(1B) The matters referred to in subsection (1A) above are—

[F4046(a) a scheme which is or has been an approved scheme;**]**

(b) a relevant statutory scheme;

(c) an annuity contract by means of which benefits provided under an approved scheme or a relevant statutory scheme have been secured;

(d) a retirement benefits scheme which is not an approved scheme but in relation to which an application for approval for the purposes of this Chapter has been made.

(1C) A person who fails to comply with regulations made under subsection (1A)(e) above shall be liable to a penalty not exceeding £3,000.

(1D) Regulations under subsection (1A) above may make different provision for different descriptions of case.

(1E) In subsection (1A) above "prescribed" means prescribed by regulations made under that subsection.**]**

(2) **F4044** . . . . . .

(3) It shall be the duty of every employer—

(a) if there subsists in relation to any of his employees a retirement benefits scheme to which he contributes and which is neither an approved scheme nor a **[**F4047relevant**]** statutory scheme, to deliver particulars of that scheme to the Board within three months beginning with the date on which the scheme first comes into operation in relation to any of his employees, and

(b) when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to—

(i) any retirement benefits scheme relating to the employer which is neither an approved scheme nor a **[**F4047relevant**]** statutory scheme; and

(ii) the employees of his to whom any such scheme relates.

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(4) It shall be the duty of the administrator of a retirement benefits scheme which is neither an approved scheme nor a **[**F4047relevant**]** statutory scheme, when required to do so by notice given by the Board, to furnish within the time limited by the notice such particulars as the Board may require with regard to the scheme.

Textual Amendments

F4044 S. 605(1)(2) repealed (1.1.1996) by Finance Act 1994 (c. 4), s. 105(3)(5), **Sch. 26 Pt. 5(12)**, Note 3; S.I. 1995/3125, **art. 2**

F4045 S. 605(1A)-(1E) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 105(2)**

F4046 S. 605(1B)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 15 para. 4**

F4047 1989 s.75*and* Sch.6 paras.14*and* 18(1)*on and after* 14*March* 1989.

Marginal Citations

M803 Source-1970(F) Sch.5 Part II 6, 7, 8, 9; 1987 (No.2) Sch.3 11, 13-15

[F4048**605A False statements etc.**

(1) A person who fraudulently or negligently makes a false statement or false representation on making an application for the approval for the purposes of this Chapter of—

(a) a retirement benefits scheme, or

(b) an alteration in such a scheme,

shall be liable to a penalty not exceeding £3,000.

(2) In a case where—

(a) a person fraudulently or negligently makes a false statement or false representation, and

(b) in consequence that person, or any other person, obtains relief from or repayment of tax under this Chapter,

the person mentioned in paragraph (a) above shall be liable to a penalty not exceeding £3,000.**]**

Textual Amendments

F4048 S. 605A inserted (with application in accordance with s. 106(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 106(1)**

[F4049**606 Default of administrator etc.**

(1) This section applies in relation to a retirement benefits scheme if at any time—

(a) there is no administrator of the scheme, or

(b) the person who is, or all of the persons who are, the administrator of the scheme cannot be traced, or

(c) the person who is, or all of the persons who are, the administrator of the scheme is or are in default for the purposes of this section.

(2) If the scheme is a trust scheme, then—

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(a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is fulfilled, the trustee or trustees shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator's capacity as such (whenever falling due);

(b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (3) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator, or a trustee, of the scheme.

(3) The condition is that there is at least one trustee of the scheme who—

(a) can be traced,

(b) is resident in the United Kingdom, and

(c) is not in default for the purposes of this section.

(4) If the scheme is a non-trust scheme, then—

(a) if subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is fulfilled, the scheme sponsor or scheme sponsors shall at that time be responsible for the discharge of all duties imposed on the administrator under this Chapter (whenever arising) and liable for any tax due from the administrator in the administrator's capacity as such (whenever falling due);

(b) if subsection (1)(a) above applies, or subsection (1)(b) or (c) above applies and at the time in question the condition mentioned in subsection (5) below is not fulfilled, the employer shall at that time be so responsible and liable;

and paragraph (b) above shall apply to a person in his capacity as the employer even if he is also the administrator of the scheme, or a scheme sponsor.

(5) The condition is that there is at least one scheme sponsor who—

(a) can be traced,

(b) is resident in the United Kingdom, and

(c) is not in default for the purposes of this section.

(6) Where at any time—

(a) paragraph (b) or (c) of subsection (1) above applies in relation to a scheme, and

(b) a person is by virtue of this section responsible for the discharge of any duties, or liable for any tax, in relation to the scheme,

then at that time the person or persons mentioned in paragraph (b) or (as the case may be) paragraph (c) of subsection (1) above shall not, by reason only of being the administrator of the scheme, be responsible for the discharge of those duties or liable for that tax.

(7) Where the scheme is a trust scheme and the employer is not a contributor to the scheme, subsection (2) above shall have effect as if—

(a) for "the employer", in the first place where those words occur, there were substituted "the scheme sponsor or scheme sponsors", and

(b) for "the employer", in the second place where those words occur, there were substituted "scheme sponsor".

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(8) Where the scheme is a non-trust scheme and the employer is not a contributor to the scheme, subsection (4) above shall have effect as if paragraph (b) and the words after that paragraph were omitted.

(9) No liability incurred under this Chapter **[**F4050or Chapter 2 of Part 6 of ITEPA 2003 (benefits from non-approved pension schemes)**]**—

(a) by the administrator of a scheme, or

(b) by a person by virtue of this section,

shall be affected by the termination of a scheme or by its ceasing to be an approved scheme or to be an exempt approved scheme.

[F4051(9A) Where by virtue of this section any person is the person, or one of the persons, responsible for the discharge of the duties of the administrator of a scheme, any power or duty by virtue of this Part to serve any notice on, or to do any other thing in relation to, the administrator may be exercised or performed, instead, by the service of that notice on that person or, as the case may be, by the doing of that other thing in relation to that person.**]**

(10) Where by virtue of this section a person becomes responsible for the discharge of any duties, or liable for any tax, the Board shall, as soon as is reasonably practicable, notify him of that fact; but any failure to give such notification shall not affect that person's being responsible or liable by virtue of this section.

(11) A person is in default for the purposes of this section if—

(a) he has failed to discharge any duty imposed on him under this Chapter, or

(b) he has failed to pay any tax due from him by virtue of this Chapter **[**F4052or Chapter 2 of Part 6 of ITEPA 2003 (benefits from non-approved pension schemes)**]**,

and (in either case) the Board consider the failure to be of a serious nature.

[F4053(11A) In determining for the purposes of this section—

(a) whether all of the persons who are the administrator of a scheme are at any time in default in respect of an amount of tax chargeable by virtue of section 591C, or

(b) whether a trustee of a scheme is in default in respect of any amount of tax so chargeable,

the persons who at that time are trustees of the scheme or hold appointments in relation to the scheme under section 611AA(4) to (6) shall be deemed not to include any person who by virtue of section 591D(4) is not liable for that tax.**]**

(12) References in this section to a trust scheme, a non-trust scheme, trustees and scheme sponsors shall be construed in accordance with section 611AA.

[F4054(13) References in this section to the employer include, where the employer is not resident in the United Kingdom, any person who is treated as UK representative of the employer under section 126 of the Finance Act 1995 or section 150 of the Finance Act 2003.**]**

(14) This section does not apply for the purposes of sections 602 and 603 and Schedule 22.**]**

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Textual Amendments

F4049 S. 606 substituted (with application in accordance with s. 104(3) of the amending Act) by Finance Act 1994 (c. 9), **s. 104(1)**

F4050 Words in s. 606(9) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 79(2)** (with Sch. 7)

F4051 S. 606(9A) inserted (retrospectively) by Finance Act 1998 (c. 36), **Sch. 15 para. 5(1)**

F4052 Words in s. 606(11)(b) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 79(3)** (with Sch. 7)

F4053 S. 606(11A) inserted (with effect in accordance with Sch. 15 para. 5(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 5(2)**

F4054 S. 606(13) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 1(2)**

Modifications etc. (not altering text)

C626 S. 606 excluded (temp. 6.4.2005 to 5.4.2006) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1**, 8(2)

C627 S. 606(13) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

[F4055 606A Recourse to scheme members.

(1) This section applies where—

(a) an approval of a retirement benefits scheme has ceased to have effect;

(b) a person ("the employer") has become liable by virtue of section 606 to any tax chargeable on the administrator of the scheme under section 591C;

(c) the employer has failed, either in whole or in part, to pay that tax; and

(d) a person falling within subsection (2) below ("the relevant member") was a member of the scheme at the time ("the relevant time") immediately before the date of the cessation of its approval.

(2) A person falls within this subsection in relation to any tax chargeable under section 591C if—

(a) at the relevant time or at any time before that time he was a controlling director of the employer; or

(b) he is a person by or in respect of whom any contributions were made by reference to which the condition in subsection (6A) of that section has been satisfied for the purpose of the charge to that tax.

(3) Subject to subsection (4) below, if in a case where this section applies—

(a) the employer has ceased to exist, or

(b) the Board notify the relevant member that they consider the failure of the employer to pay the unpaid tax to be of a serious nature,

the relevant member shall be treated as included in the persons on whom the unpaid tax was charged and shall be assessable accordingly.

(4) The amount of tax for which the relevant member shall be taken to be assessable by virtue of this section shall not exceed the amount determined by—

(a) taking the amount equal to 40 per cent. of his share of the scheme; and

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(b) subtracting from that amount his share of any tax charged under section 591C that has already been paid otherwise than by another person on whom it is treated as charged in accordance with this section.

(5) For the purposes of this section the relevant member's share of the scheme is the amount equal to so much of the value of the assets held for the purposes of the scheme at the relevant time (taking the value at that time) as, on a just and reasonable apportionment, would have fallen to be treated as the value at that time of the assets then held for the purposes of the provision under the scheme of benefits to or in respect of the relevant member.

(6) For the purposes of this section the relevant member's share of an amount of tax already paid is such sum as bears the same proportion to the amount paid as is borne by his share of the scheme to the total value at the relevant time of the assets then held for the purposes of the scheme.

(7) The reference in subsection (5) above to the provision of benefits to or in respect of the relevant member includes a reference to the provision of a benefit to or in respect of a person connected with the relevant member.

(8) For the purposes of this section a person is a controlling director of a company if he is a director of the company and is within section 417(5)(b) in relation to the company.

(9) A notification given to any person for the purposes of subsection (3)(b) above may be included in any assessment on that person of the tax to which he becomes liable by virtue of the notification.

(10) An assessment to tax made by virtue of this section shall not be out of time if it is made within three years after the date on which the tax which the employer has failed to pay first became due from him.

(11) Subsections (1) to (3) of section 591D shall apply to the determination of the value at any time of an asset held for the purposes of a scheme as they apply for the purposes of section 591C(2).

(12) Subsections (7) and (8) of section 591D shall apply for the purposes of this section as they apply for the purposes of subsection (1) of section 591C and section 591C, respectively.

(13) Section 839 (connected persons) shall apply for the purposes of this section.**]**

Textual Amendments

F4055 S. 606A inserted (with effect in accordance with Sch. 15 para. 6(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 15 para. 6(1)**

607 Pilots' benefit fund.

M804(1) The Board may, if they think fit, and subject to such conditions as they think proper to attach to the approval, approve a pilots' benefit fund for the purposes of this Chapter as if it were a retirement benefits scheme and notwithstanding that it does not satisfy one or more of the conditions set out in section 590(2) and (3).

(2) If a fund is approved by virtue of this section—

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(a) sections 592, **[**F4056598 to 599A**]** and 604 to 606 shall have effect in relation to the fund with the modifications specified in subsection (3) below;

(b) pensions paid out of the fund and any sums chargeable to tax in connection with the fund **[**F4057in accordance with section 584 of ITEPA 2003 (unauthorised payments)**]** shall be treated for the purposes of the Income Tax Acts as earned income; and

(c) Chapter III of this Part shall have effect as if a member of the fund were the holder of a pensionable office or employment and his earnings as a pilot (estimated in accordance with **[**F4058such of the provisions of Part 2 of ITTOIA 2005 as apply in calculating the profits of a profession**]**) were remuneration from such an office or employment.

(3) The modifications referred to in subsection (2)(a) above are as follows—

[F4059(a) in section 592—

(i) subsections (4) to (6) shall be omitted; and

(ii) for subsection (7) there shall be substituted—

"(7) Any contribution paid under the scheme by a member of the fund shall, **[**F4060in calculating the profits of the profession**]**, be allowed to be deducted as an expense.";**]**

(b) in **[**F4061sections 598 to 599A and sections 604 to 606**]**—

(i) for references to an employee there shall be substituted references to a member or former member of the fund;

(ii) in section 599(1)(a) for the reference to a year of service there shall be substituted a reference to a year as a pilot licensed by a pilotage authority or authorised by a competent harbour authority;

(iii) **[**F4062section 606(2)(b), (4)(b), (7), (8) and (13)**]** and so much of any other provision as applies to an employer shall be omitted; F4063. . .

(iv) F4063. . . . . .

(4) In this section "pilots' benefit fund" means a fund established under section 15(1)(i) of the M805Pilotage Act 1983 or any scheme supplementing or replacing any such fund.

Textual Amendments

F4056 Words in s. 607(2)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 80(2)** (with Sch. 7)

F4057 Words in s. 607(2)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 80(3)** (with Sch. 7)

F4058 Words in s. 607(2)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 259(2)** (with Sch. 2)

F4059 S. 607(3)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 80(4)** (with Sch. 7)

F4060 Words in s. 607(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 259(3)** (with Sch. 2)

F4061 Words in s. 607(3)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 80(5)** (with Sch. 7)

F4062 Words in s. 607(3)(b)(iii) substituted (with application in accordance with s. 104(3) of the amending Act) by Finance Act 1994 (c. 9), **s. 104(2)**

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F4063 S. 607(3)(b)(iv) and preceding word repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 80(6), **Sch. 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C628 *See* Sch.1 para.4 Pilotage Act 1987—continuation of fund following repeal of s.15(1)(i) Pilotage Act 1983 by Pilotage Act 1987 (*on and after* 1*February* 1988*by virtue of* S.I. 1987 No. 2138).

Marginal Citations

M804 Source-1980 s.35

M805 1983 c. 21.

608 Superannuation funds approved before 6th April 1980.

M806(1) This section applies to any fund which immediately before 6th April 1980 was an approved superannuation fund for the purposes of section 208 of the 1970 Act if—

(a) it has not been approved under this Chapter (or under Chapter II of Part II of the Finance Act 1970); and

(b) no sum has been paid to it by way of contribution since 5th April 1980.

(2) Subject to subsection (3) below, exemption from income tax shall, on a claim being made in that behalf, be allowed to a fund to which this section applies in respect of—

(a) income derived from investments or deposits of the fund;

(b) any underwriting commissions **[**F4064which are not relevant foreign income and**]** which apart from this subsection would be chargeable to tax under **[**F4065Chapter 8 of Part 5 of ITTOIA 2005**]**; and

(c) any profits or gains which (apart from this subsection) would be chargeable to tax **[**F4066under Chapter 11 of Part 4 of ITTOIA 2005 (transactions in deposits) by virtue of a disposal of deposit rights falling within section 552(1)(a) or (b) of that Act**]**;

if, or to such extent as the Board are satisfied that, the income, commissions, profits or gains are applied for the purposes of the fund.

(3) No claim under subsection (2) above shall be allowed unless the Board are satisfied that the terms on which benefits are payable from the fund have not been altered since 5th April 1980.

(4) F4067 . . . . . .

Textual Amendments

F4064 Words in s. 608(2)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 260(a)(i)** (with Sch. 2)

F4065 Words in s. 608(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 260(a)(ii)** (with Sch. 2)

F4066 Words in s. 608(2)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 260(b)** (with Sch. 2)

F4067 S. 608(4) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 81, **Sch. 8 Pt. 1** (with Sch. 7)

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Marginal Citations
M806 Source-1980 s.36 (1), (2), (4), (6)

609 Schemes approved before 23rd July 1987.

Schedule 23 to this Act, which makes provision with respect to retirement benefit schemes approved before 23rd July 1987, shall have effect.

610 Amendments of schemes.

M807(1) This section applies to any amendment of a retirement benefits scheme proposed in connection with an application for the Board's approval for the purposes of this Chapter which is needed in order to ensure that approval is so given, or designed to enhance the benefits under the scheme up to the limits suitable in a scheme for which approval is sought.

(2) A provision, however expressed, designed to preclude any amendment of a scheme which would have prejudiced its approval under section 208 or 222 of the 1970 Act shall not prevent any amendment to which this section applies.

(3) In the case of a scheme which contains no powers of amendment, the administrator of the scheme may, with the consent of all the members of the scheme, and of the employer (or of each of the employers), make any amendment to which this section applies.

Marginal Citations
M807 Source-1971 s.22(1)-(3)

611 Definition of "retirement benefits scheme".

(1) M808In this Chapter "retirement benefits scheme" means, subject to the provisions of this section, a scheme for the provision of benefits consisting of or including relevant benefits, but does not include—

[F4068(a)**]** any national scheme providing such benefits**[**F4069; or

(b) any scheme providing such benefits which is an approved personal pension scheme under Chapter IV of this Part**]**.

(2) References in this Chapter to a scheme include references to a deed, agreement, series of agreements, or other arrangements providing for relevant benefits notwithstanding that it relates or they relate only to—

(a) a small number of employees, or to a single employee, or

(b) the payment of a pension starting immediately on the making of the arrangements.

(3) The Board may, if they think fit, treat a F4070. . . scheme relating to **[**F4071scheme members**]** of two or more different classes or descriptions as being for the purposes of this Chapter **[**F4072and Chapter IV of this Part**]** two or more F4070. . . benefits schemes relating respectively to such one or more of those classes or descriptions of those **[**F4071scheme members**]** as the Board think fit.

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(4) For the purposes of this section, and of any other provision of this Chapter—

(a) **[**F4073scheme members**]** may be regarded as belonging to different classes or descriptions if they are employed by different employers; and

(b) a particular class or description of **[**F4074scheme member**]** may consist of a single **[**F4074scheme member**]**, or any number of **[**F4074scheme members**]**, however small.

(5) M809Without prejudice to subsections (3) and (4) above, the Board may continue to treat as two different schemes, for the purposes of this Chapter, any retirement benefits scheme which, in pursuance of paragraph 5 of Schedule 3 to the Finance Act 1971 (schemes in existence before 5th April 1973), they treated, immediately before the coming into force of this Chapter, as two separate schemes for the purposes of Chapter II of Part II of the Finance Act 1970.

[F4075(6) In this section "scheme member", in relation to a scheme means—

(a) an employee; or

(b) a person whose rights under the scheme derive from a pension sharing order or provision**[**F4076; or

(c) if the scheme is an approved personal pension scheme under Chapter IV of this Part, any other person who is a member of the scheme.**]]**

Textual Amendments

F4068 Words in s. 611(1) renumbered as s. 611(1)(a) (28.7.2000) by virtue of Finance Act 2000 (c. 17), **Sch. 13 para. 4(2)** (with Sch. 13 Pt. 2)

F4069 S. 611(1)(b) and preceding word added (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 4(2)** (with Sch. 13 Pt. 2)

F4070 Words in s. 611(3) repealed (28.7.2000) by Finance Act 2000 (c. 17), Sch. 13 para. 4(3)(a), **Sch. 40 Pt. 2(4)** (with Sch. 13 Pt. 2)

F4071 Words in s. 611(3) substituted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 9(1)**

F4072 Words in s. 611(3) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 4(3)(b)** (with Sch. 13 Pt. 2)

F4073 Words in s. 611(4)(a) substituted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 4(4)** (with Sch. 13 Pt. 2)

F4074 Words in s. 611(4)(b) substituted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para 9(1)**

F4075 S. 611(6) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 9(2)**

F4076 S. 611(6)(c) and preceding word added (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 4(5)** (with Sch. 13 Pt. 2)

Marginal Citations

M808 Source-1970(F) s.25

M809 Source-1971 Sch.3 5

[F4077611A Definition of relevant statutory scheme.

[F4078(1) In this Chapter any reference to a relevant statutory scheme is to—

(a) a statutory scheme established before 14th March 1989, or

(b) a statutory scheme established on or after that date and entered in the register maintained by the Board for the purposes of this section, or

(c) a parliamentary pension scheme.

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(2) The Board shall maintain a register for the purposes of this section and shall enter in it the relevant particulars of any statutory scheme established on or after 14th March 1989 which is reported to the Board by the authority responsible for establishing it as a scheme the provisions of which correspond with those of an approved scheme.

(3) The reference in subsection (2) above to the relevant particulars, in relation to a scheme, is a reference to—

(a) the identity of the scheme,

(b) the date on which it was established,

(c) the authority responsible for establishing it, and

(d) the date on which that authority reported the scheme to the Board.

(4) Where the Board enter the relevant particulars of a scheme in the register maintained by them for the purposes of this section, they shall inform the authority responsible for establishing the scheme of the date of the entry.

F4079 **[** (5) In subsection (1)(c) "parliamentary pension scheme" means—

(a) the Parliamentary pension scheme within the meaning of the M810Parliamentary and other Pensions Act 1987;

(b) any pension scheme established for members of the Scottish Parliament under section 81(4) of the Scotland Act 1998;

(c) any pension scheme established for members of the Welsh Assembly under section 18(2) of the Government of Wales Act 1998;

(d) any pension scheme established for members of the Northern Ireland Assembly under section 48(2) of the Northern Ireland Act 1998;

(e) the pension scheme established for members of the European Parliament under section 4 of the M811European Parliament (Pay and Pensions) Act 1979;

(f) the pension scheme established under section 3 of the M812Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965;

(g) the pension scheme established under the M813Assembly Pensions (Northern Ireland) Order 1976.

Textual Amendments

F4077 S. 611A inserted (14.3.1989) by Finance Act 1989 (c. 26), Sch. 6 paras. 15, **18(1)**

F4078 S. 611A(1) substituted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 5(1)**

F4079 S. 611A(5) added (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 5(2)**

Modifications etc. (not altering text)

C629 *Definition employed for purposes of* S.I. 1987 No.1749, regn.5(2), ("The Occupational Pension Schemes (Addditional Voluntary Contributions) Regulations 1987"—*in* Part III Vol.5).

Marginal Citations

M810 1987 c.45.

M811 1979 c.50.

M812 1965 c.18(N.I.).

M813 S.I. 1976/1779.

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[F4080 611A Definition of the administrator.

(1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.

(2) Subject to subsection (7) below, where—

(a) the scheme is a trust scheme, and

(b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the trustee or trustees of the scheme.

(3) Subject to subsection (7) below, where—

(a) the scheme is a non-trust scheme, and

(b) at any time the scheme sponsor, or any of the scheme sponsors, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the scheme sponsor or scheme sponsors.

(4) At any time when the trustee of a trust scheme is not resident in the United Kingdom or (if there is more than one trustee) none of the trustees is so resident, the trustee or trustees shall ensure that there is a person, or there are persons—

(a) resident in the United Kingdom, and

(b) appointed by the trustee or trustees to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(5) At any time when the scheme sponsor of a non-trust scheme is not resident in the United Kingdom or (if there is more than one scheme sponsor) none of the scheme sponsors is so resident, the scheme sponsor or scheme sponsors shall ensure that there is a person, or there are persons—

(a) resident in the United Kingdom, and

(b) appointed by the scheme sponsor or scheme sponsors to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(6) Without prejudice to subsections (4) and (5) above—

(a) the trustee or trustees of a trust scheme, or

(b) the scheme sponsor or scheme sponsors of a non-trust scheme,

may at any time appoint a person who is, or persons who are, resident in the United Kingdom to be responsible for the discharge of all duties relating to the scheme which are imposed on the administrator under this Chapter.

(7) Where at any time there is or are a person or persons—

(a) for the time being appointed under subsection (4), (5) or (6) above as regards a scheme, and

(b) resident in the United Kingdom,

the administrator of the scheme at that time shall be that person or those persons (and no other person).

(8) Any appointment under subsection (4), (5) or (6) above—

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(a) must be in writing, and

(b) if made after the time when the scheme is established, shall constitute an alteration of the scheme for the purposes of section 591B(2).

(9) In this section—

(a) references to a trust scheme are to a retirement benefits scheme established under a trust or trusts;

(b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time;

(c) references to a non-trust scheme are to a retirement benefits scheme not established under a trust or trusts, and

(d) references to the scheme sponsor or scheme sponsors, in relation to a retirement benefits scheme and to a particular time, are references to any person who established the scheme and is in existence at that time or, if more than one, all such persons.**]**

Textual Amendments

F4080 S. 611AA inserted (with application in accordance with s. 103(3) of the amending Act) by Finance Act 1994 (c. 4), **s. 103(1)**

Modifications etc. (not altering text)

C630 S. 611AA excluded (temp. 6.4.2005 to 5.4.2006) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1**, 9(2)

611A Definition of relevant statutory scheme.

(1) In this Chapter any reference to a relevant statutory scheme is to—

(a) a statutory scheme established before 14th March 1989, or

(b) a statutory scheme established on or after that date and entered in the register maintained by the Board for the purposes of this section, or

(c) a parliamentary pension scheme.**]**

(2) The Board shall maintain a register for the purposes of this section and shall enter in it the relevant particulars of any statutory scheme established on or after 14th March 1989 which is reported to the Board by the authority responsible for establishing it as a scheme the provisions of which correspond with those of an approved scheme.

(3) The reference in subsection (2) above to the relevant particulars, in relation to a scheme, is a reference to—

(a) the identity of the scheme,

(b) the date on which it was established,

(c) the authority responsible for establishing it, and

(d) the date on which that authority reported the scheme to the Board.

(4) Where the Board enter the relevant particulars of a scheme in the register maintained by them for the purposes of this section, they shall inform the authority responsible for establishing the scheme of the date of the entry.

(5) In subsection (1)(c) "parliamentary pension scheme" means—

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(a) the Parliamentary pension scheme within the meaning of the [M810]Parliamentary and other Pensions Act 1987;

(b) any pension scheme established for members of the Scottish Parliament under section 81(4) of the Scotland Act 1998;

(c) any pension scheme established for members of the Welsh Assembly under section 18(2) of the Government of Wales Act 1998;

(d) any pension scheme established for members of the Northern Ireland Assembly under section 48(2) of the Northern Ireland Act 1998;

(e) the pension scheme established for members of the European Parliament under section 4 of the [M811]European Parliament (Pay and Pensions) Act 1979;

(f) the pension scheme established under section 3 of the [M812]Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965;

(g) the pension scheme established under the [M813]Assembly Pensions (Northern Ireland) Order 1976.**]]**

Textual Amendments

F4077 S. 611A inserted (14.3.1989) by Finance Act 1989 (c. 26), Sch. 6 paras. 15, **18(1)**

F4078 S. 611A(1) substituted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 5(1)**

F4079 S. 611A(5) added (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 5(2)**

Modifications etc. (not altering text)

C629 *Definition employed for purposes of* S.I. 1987 No.1749, regn.5(2), ("The Occupational Pension Schemes (Addditional Voluntary Contributions) Regulations 1987"—*in* Part III Vol.5).

Marginal Citations

M810 1987 c.45.
M811 1979 c.50.
M812 1965 c.18(N.I.).
M813 S.I. 1976/1779.

612 Other interpretative provisions, and regulations for purposes of this Chapter.

(1) [M814]In this Chapter, except where the context otherwise requires—

[F4081] . . . . . .

"approved scheme" means a retirement benefits scheme for the time being approved by the Board for the purposes of this Chapter;

"director" in relation to a company includes—

(a) in the case of a company the affairs of which are managed by a board of directors or similar body, a member of that board or body,

(b) in the case of a company the affairs of which are managed by a single director or similar person, that director or person,

(c) in the case of a company the affairs of which are managed by the members themselves, a member of that company;

and includes a person who is to be or has been a director;

"employee"—

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(a) in relation to a company, includes any officer of the company, any director of the company and any other person taking part in the management of the affairs of the company, and

(b) in relation to any employer, includes a person who is to be or has been an employee;

and "employer" and other cognate expressions shall be construed accordingly;

"exempt approved scheme" has the meaning given by section 592(1);

"final remuneration" means the average annual remuneration of the last three years' service;

"pension" includes annuity;

"the permitted maximum" has the meaning given by section 590(3);

"relevant benefits" means any pension, lump sum, gratuity or other like benefit given or to be given on retirement or on death **[**F4082, or by virtue of a pension sharing order or provision**]**, or in anticipation of retirement, or, in connection with past service, after retirement or death, or to be given on or in anticipation of or in connection with any change in the nature of the service of the employee in question, except that it does not include any benefit which is to be afforded solely by reason of the disablement by accident of a person occurring during his service or of his death by accident so occurring and for no other reason;

"remuneration" does not include—

(a) anything **[**F4083which is chargeable to tax as employment income and**]** which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares; or

(b) anything in respect of which tax is chargeable by virtue of **[**F4084 Chapter 3 of Part 6 of ITEPA 2003 (payments and benefits on termination of employment etc.)**]**;

"service" means service as an employee of the employer in question and other expressions, including "retirement", shall be construed accordingly; and

"statutory scheme" means a retirement benefits scheme established by or under any enactment—

(a) the particulars of which are set out in any enactment, or in any regulations made under any enactment, or

(b) which has been approved as an appropriate scheme by a Minister or government department (including the head of a Northern Ireland department or a Northern Ireland department).

(2) M815Any reference in this Chapter **[**F4085, in relation to a scheme,**]** to the provision of relevant benefits, or of a pension, for employees **[**F4086or ex-spouses**][**F4087or former civil partners**]** includes a reference to the provision of relevant benefits or a pension by means of a contract between the administrator or the employer or the employee **[**F4088or ex-spouse**][**F4089or former civil partner**]** and a third person; and any reference to pensions or contributions paid, or payments made, under a scheme includes a reference to pensions or contributions paid, or payments made, under such a contract entered into for the purposes of the scheme.

[F4090(2A) In subsection (2) above the reference to the employer is a reference to the person who is the employer in relation to the scheme.**]**

(3) M816The Board may make regulations generally for the purpose of carrying the preceding provisions of this Chapter into effect.

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Textual Amendments

F4081 S. 612(1): definition of "administrator" repealed (with effect in accordance with s. 103(3) of the repealing Act) by Finance Act 1994 (c. 9), s. 103(2), **Sch. 26 Pt. 5(12)**, Note 4

F4082 Words in s. 612(1) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 10(1)**

F4083 S. 612(1): words in definition of "remuneration" substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 82(a)** (with Sch. 7)

F4084 S. 612(1): words in definition of "remuneration" substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 82(b)** (with Sch. 7)

F4085 Words in s. 612(2) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 10(2)(a)**

F4086 Words in s. 612(2) substituted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 10(2)(b)**

F4087 Words in s. 612(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 82(a)

F4088 Words in s. 612(2) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 10(2)(c)**

F4089 Words in s. 612(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 82(b)

F4090 S. 612(2A) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 10(3)**

Modifications etc. (not altering text)

C631 *Definition employed for purposes of* S.I. 1987 No.1749, regn.2(1A) ("The Occupational Pension Schemes (Additional Voluntary Contributions) Regulations 1987"—*in* Part III Vol.5).

C632 *See* s.686—*liability to additional rate of certain income of discretionary trusts.*

C633 *Interpretation employed for purposes of* S.I. 1987 No.1749, regn.2(1) ("The Occupational Pension Schemes (Additional Voluntary Contributions) Regulations 1987" *in* Part III Vol.5).

C634 S. 612(2) applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 400(2)** (with Sch. 7)

C635 *For regulations see* Part III Vol.5

Marginal Citations

M814 Source-1970(F) s.26 (1); 1971 Sch.3 12(4); 1986 Sch.12 1(10); 1987 (No.2) Sch.3 7

M815 Source-1970(F) s.26(2); 1987 (No.2) Sch.3 8

M816 Source-1970(F) Sch.5 Part II 10; 1971 Sch.3 13(3)

CHAPTER II

OTHER PENSION FUNDS AND SOCIAL SECURITY BENEFITS AND CONTRIBUTIONS

613 Parliamentary pension funds.

[**F4091**(1) **M817**The salary of a Member of the House of Commons shall, for all the purposes of the Income Tax Acts, be treated as reduced by the amounts deducted in pursuance of section 1 of the **M818**House of Commons Members' Fund Act 1939; but a Member shall not by reason of any such deduction be entitled to relief under any other provision of the Income Tax Acts.

(2) In subsection (1) above the reference to salary shall be construed as mentioned in subsection (3) of section 1 of the House of Commons Members' Fund Act 1939, the

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reference to amounts deducted includes a reference to amounts required to be set aside under that subsection, and "deduction" shall be construed accordingly.**]**

(3) [F4092] . . . . . .

(4) [M819]The respective trustees of—

(a) the House of Commons Members' Fund established under section 1 of that Act of 1939;

(b) the Parliamentary Contributory Pension Fund;

[[F4093](bb) any fund maintained for the purposes of a pension scheme—

(i) established for members of the Scottish Parliament under section 81(4) of the Scotland Act 1998,

(ii) established for members of the Welsh Assembly under section 18(2) of the Government of Wales Act 1998, or

(iii) established for members of the Northern Ireland Assembly under section 48(2) of the Northern Ireland Act 1998;**]**

(c) the Members' Contributory Pension (Northern Ireland) Fund constituted under section 3(2) of the [M820]Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965; and

(d) the Assembly Contributory Pension Fund constituted under the [M821]Assembly Pensions (Northern Ireland) Order 1976;

shall be entitled to exemption from income tax in respect of all income derived from those **[**[F4094]funds**]** or any investment of those **[**[F4094]funds**]**.

A claim under this subsection shall be made to the Board.

Textual Amendments

F4091 S. 613(1)(2) (which were repealed by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 83, **Sch. 8 Pt. 1**) restored (retrospectively) by Finance Act 2005 (c. 7), **Sch. 10 para. 63**

F4092 S. 613(3) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 83, **Sch. 8 Pt. 1** (with Sch. 7)

F4093 S. 613(4)(bb) inserted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 4**

F4094 Words in s. 613(4) substituted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 4**

Marginal Citations

M817 Source-1970 s.211(1), (4)

M818 1939 c. 49.

M819 Source-1970 s.211(2) 1981 s.50(1); PPA 1987 Sch.3 2(1)

M820 1965 c. 18 (N.I.).

M821 S.I. 1976/1779.

614 Exemptions and reliefs in respect of income from investments etc. of certain pension schemes.

(1) [F4095] . . . . . .

(2) [M822]Any interest or dividends received by the person in whom is vested any of the Family Pension Funds mentioned in section 273 of the [M823]Government of India Act

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1935, and having effect as a scheme made under section 2 of the [M824]Overseas Pensions Act 1973, on sums forming part of that fund shall be exempt from income tax.

[[F4096](2A) The reference in subsection (2) above to interest on sums forming part of a fund include references to any amount which is treated as income by virtue of **[**[F4097]Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply**]** discounted securities) and derives from any investment forming part of that fund.**]**

(3) [M825]Income derived from investments or deposits of any fund referred to in **[**[F4098]section 648, 649, 650 or 651 of ITEPA 2003**]** shall not be charged to income tax, and any income tax deducted from any such income shall be repaid by the Board to the persons entitled to receive the income.

(4) [M826]In respect of income derived from investments or deposits of the Overseas Service Pensions Fund established pursuant to section 7(1) of the [M827]Overseas Aid Act 1966, the Board shall give by way of repayment such relief from income tax as is necessary to secure that the income is exempt to the like extent (if any) as if it were income of a person not domiciled, ordinarily resident or resident in the United Kingdom.

(5) [M828]In respect of dividends and other income derived from investments, deposits or other property of a superannuation fund to which section 615(3) applies the Board shall give by way of repayment such relief from income tax as is necessary to secure that the income is exempt to the like extent (if any) as if it were income of a person not domiciled, ordinarily resident or resident in the United Kingdom.

(6) [M829]A claim under this section shall be made to the Board.

Textual Amendments

F4095 S. 614(1) repealed (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 26 Pt. 5(22)**

F4096 S. 614(2A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 34** (with Sch. 15)

F4097 Words in s. 614(2A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 261** (with Sch. 2)

F4098 Words in s. 614(3) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 84** (with Sch. 7)

Marginal Citations

M822 Source-1970 s.213(1)

M823 1935 c. 2.

M824 1973 c. 21.

M825 Source-1970 s.214(2), 216(2); 1973 s.53(1)

M826 Source-1970 s.217(2), (4)

M827 1966 c. 21.

M828 Source-1970 s.218(1)

M829 Source-1970 s.212(3), 213(1), 214(3), 216(2), 217(2), 218(1); 1987 Sch.15 2(13)

615 Exemption from tax in respect of certain pensions.

(1) [F4099]. . . . . .

(2) [F4099]. . . . . .

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(3) [M830]Where an annuity is paid from a superannuation fund to which this subsection applies to a person who is not resident in the United Kingdom, income tax shall not be deducted from any payment of the annuity or accounted for under section 349(1) by the trustees or other persons having the control of the fund.

(4) [F4099]. . . . . .

(5) [F4099]. . . . . .

(6) [M831]Subsection (3) above applies to any superannuation fund which—

(a) is bona fide established under irrevocable trusts in connection with some trade or undertaking carried on wholly or partly outside the United Kingdom;

(b) has for its sole purpose **[**[F4100](subject to any enactment or Northern Ireland legislation requiring or allowing provision for the value of any rights to be transferred between schemes or between members of the same scheme)**]** the provision of superannuation benefits in respect of persons' employment in the trade or undertaking wholly outside the United Kingdom; and

(c) is recognised by the employer and employed persons in the trade or undertaking;

and for the purposes of this subsection duties performed in the United Kingdom the performance of which is merely incidental to the performance of other duties outside the United Kingdom shall be treated as performed outside the United Kingdom.

(7) [M832]In this section—

"pension" includes a gratuity or any sum payable on or in respect of death or, in the case of a pension falling within subsection (2)(g) above, ill-health, and a return of contributions with or without interest thereon or any other addition thereto;

"overseas territory" means any territory or country outside the United Kingdom;

"the Pensions (Increase) Acts" means the [M833]Pensions (Increase) Act 1971 and any Act passed after that Act for purposes corresponding to the purposes of that Act;

"United Kingdom trust territory" means a territory administered by the government of the United Kingdom under the trusteeship system of the United Nations.

(8) [F4099]. . . . . .

[[F4101](9) For the purposes of this section, a person shall be taken to be employed in the public service of an overseas territory at any time when—

(a) he is employed in any capacity under the government of that territory, or under any municipal or other local authority in it,

(b) he is employed, in circumstances not falling within paragraph (a) above, by a body corporate established for any public purpose in that territory by an enactment of a legislature empowered to make laws for that territory, or

(c) he is the holder of a public office in that territory in circumstances not falling within either paragraph (a) or (b).

(10) For the purposes of subsection (9), references to the government of an overseas territory include references to a government constituted for two or more overseas territories, and to any authority established for the purpose of providing or

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administering services which are common to, or relate to matters of common interest to, two or more such territories.**]**

Textual Amendments

F4099 S. 615(1)(2)(4)(5)(8) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 85, **Sch. 8 Pt. 1** (with Sch. 7)

F4100 Words in s. 615(6)(b) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 11**

F4101 S. 615(9)(10) inserted (17.6.2002) by International Development Act 2002 (c. 1), s. 20(2), **Sch. 3 para. 9(3)** (with Sch. 5); S.I. 2002/1408, **art. 2**

Marginal Citations

M830 Source-1970 s.218(3)

M831 Source-1970 s.218(4)

M832 Source-1970 s.214(5), 215(3), 216(4), 217(4)

M833 1971 c. 56.

616 Other overseas pensions.

F4102 . . . . . .

Textual Amendments

F4102 S. 616 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 86, **Sch. 8 Pt. 1** (with Sch. 7)

617 Social security benefits and contributions.

(1) F4103 . . . . . .

(2) F4103 . . . . . .

(3) M834 Subject to **[**F4104 subsections (4) and (5) below**]**, no relief or deduction shall be given or allowed **[**F4105 for corporation tax purposes**]** in respect of any contribution paid by any person under—

(a) Part I of the Social Security **[**F4106 Contributions and Benefits Act 1992**]**, or

(b) Part I of the Social Security **[**F4107 Contributions and Benefits (Northern Ireland) Act 1992**]**.

[F4108 (4) Subsection (3) above shall not apply to a contribution if it is a secondary Class 1 contribution **[**F4109, a Class 1A contribution or a Class 1B contribution**]** (within the meaning of Part I of either of those Acts) and is allowable—

(a) as a deduction in computing profits or gains;

(b) as expenses of management deductible under section 75 or **[**F4110 falls to be brought into account under section 76 as expenses payable**]**;**[**F4111 or**]**

(c) as expenses of management or supervision deductible under section 121;

[F4112 (d) F4113 . . . . . .

(e) F4113 . . . . . .**]]**

[F4114 (5) Subsection (3) above shall not apply for the purposes of deductions under Chapter 2 of Part 5 of ITEPA 2003 (in relation to which section 360A of that Act applies).**]**

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(5) F4115 . . . . . .

(6) F4116 . . . . . .

Textual Amendments

F4103 S. 617(1)(2) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 87(2), **Sch. 8 Pt. 1** (with Sch. 7)

F4104 Words in s. 617(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 262(2)(a)** (with Sch. 2)

F4105 Words in s. 617(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 262(2)(b)** (with Sch. 2)

F4106 Words in s. 617(3)(a) substituted (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 4, 7(2), **Sch. 2 para. 93(4)**

F4107 Words in s. 617(3)(b) substituted (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 4, 7(2), **Sch. 2 para. 33(4)**

F4108 S. 617(4) substituted (with effect in accordance with s. 65(5) of the amending Act) by Finance Act 1997 (c. 16), **s. 65(3)**

F4109 Words in s. 617(4) substituted (with effect in accordance with s. 61(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 61(1)**

F4110 Words in s. 617(4)(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004, Sch. para. 31(2)

F4111 Word at the end of s. 617(4)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 262(3)(a)** (with Sch. 2)

F4112 S. 617(4)(d)(e) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 87(3)** (with Sch. 7)

F4113 S. 617(4)(d)(e) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 262(3)(b), **Sch. 3** (with Sch. 2)

F4114 S. 617(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 262(4)** (with Sch. 2)

F4115 S. 617(5) repealed (with effect in accordance with s. 147(3) of the repealing Act) by Finance Act 1996 (c. 8), s. 147(1), **Sch. 41 Pt. 5(15)**, Note

F4116 S. 617(6) repealed (24.4.2000 for specified purposes and 9.4.2001 otherwise) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(1), Sch. 8 para. 1(3), **Sch. 13 Pt. 5**; S.I. 2000/1047, art. 2(2)(a), **Sch. Pt. 1**

Marginal Citations

M834 Source-1970 s.219(3)

[F4117 617A Tax credits under Part 1 of Tax Credits Act 2002

F4118 . . . . . .]

Textual Amendments

F4117 S. 617A inserted (prosp.) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 3 para. 14** (the insertion being brought into force at 6.4.2003 by S.I. 2003/962, **art. 2(3)(d)(iii)**)

F4118 S. 617A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 88, **Sch. 8 Pt. 1** (with Sch. 7)

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CHAPTER III

RETIREMENT ANNUITIES

618 Termination of relief under this Chapter, and transitional provisions.

M835(1) Nothing in this Chapter shall apply in relation to—

(a) a contract made or trust scheme established on or after **[**F4119**]**1st July**]** 1988; or

(b) a person by whom contributions are first paid on or after that date under a trust scheme established before that date.

(2) Subject to subsection (4) below, the terms of a contract made, or the rules of a trust scheme established, on or after 17th March 1987 and before **[**F4119**]**1st July**]** 1988 and approved by the Board under section 620 shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to the individual by whom the contract is made, or an individual paying contributions under the scheme, of a lump sum exceeding £150,000 or such other sum as may for the time being be specified in an order under section 635(4).

(3) Subject to subsection (5) below, the rules of a trust scheme established before 17th March 1987 and approved by the Board under section 620 shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to any person first paying contributions under the scheme on or after 17th March 1987 of a lump sum such as is mentioned in subsection (2) above.

(4) Subsection (2) above shall not apply—

(a) to a contract if, before the end of January 1988, the persons by and to whom premiums are payable under it jointly give notice to the Board that subsection (2) is not to apply; or

(b) to a scheme if, before the end of January 1988, the trustees or other persons having the management of the scheme give notice to the Board that subsection (2) is not to apply;

and where notice is given to the Board under this subsection, the contract or scheme shall, with effect from the date with effect from which it was approved, cease to be approved.

(5) Subsection (3) above shall not apply in the case of any person paying contributions under a scheme if, before the end of January 1988, he and the trustees or other persons having the management of the scheme jointly give notice to the Board that subsection (3) is not to apply; and where notice is given to the Board, the scheme shall cease to be approved in relation to the contributor with effect from the date on which he first paid a contribution under it or (if later) the date with effect from which it was approved.

Textual Amendments

F4119 1988(F) s.54(2)—*deemed always to have had effect. Previously* "4th January".

Marginal Citations

M835 Source-1987 (No.2) s.54

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619 Exemption from tax in respect of qualifying premiums.

(1) [M836]Where in any year of assessment an individual is (or would but for an insufficiency of profits or gains be) chargeable to income tax in respect of relevant earnings from any trade, profession, vocation, office or employment carried on or held by him, and pays a qualifying premium, then—

(a) relief from income tax shall be given under this section in respect of that qualifying premium, but only on a claim made for the purpose, and where relief is to be so given, the amount of that premium shall, subject to the provisions of this section, be deducted from or set off against his relevant earnings for the year of assessment in which the premium is paid; and

(b) any annuity payable to the same or another individual shall be treated as earned income of the annuitant to the extent to which it is payable in return for any amount on which relief is so given.

Paragraph (b) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the annuity contract under which it is paid.

(2) [M837]Subject to the provisions of this section and section 626, the amount which may be deducted or set off in any year of assessment (whether in respect of one or more qualifying premiums, and whether or not including premiums in respect of a contract approved under section 621) shall not be more than 17.5 per cent. of the individual's net relevant earnings for that year.

(3) Subject to the provisions of this section, the amount which may be deducted or set off in any year of assessment in respect of qualifying premiums paid under a contract approved under section 621 (whether in respect of one or more such premiums) shall not be more than 5 per cent. of the individual's net relevant earnings for that year.

(4) [M838]An individual who pays a qualifying premium in a year of assessment (whether or not a year for which he has relevant earnings) may **[**[F4120] on or before the 31st January next following **]** that year elect that the premium shall be treated as paid—

(a) in the last preceding year of assessment; or

(b) if he had no net relevant earnings in the year referred to in paragraph (a) above, in the last preceding year of assessment but one;

and where an election is made under this subsection in respect of a premium the other provisions of this Chapter shall have effect as if the premium had been paid in the year specified in the election and not in the year in which it was actually paid.

(5) [M839]Where relief under this section for any year of assessment is claimed and allowed (whether or not relief then falls to be given for that year), and afterwards there is made any assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this section for that or any subsequent year of assessment.

(6) Where relief under this section is claimed and allowed for any year of assessment in respect of any payment, relief shall not be given in respect of it under any other provision of the Income Tax Acts for the same or a later year of assessment nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract; and references in the Income Tax Acts to relief in respect of life assurance premiums shall not be taken to include relief under this section.

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(7) If any person, for the purpose of obtaining for himself or any other person any relief from or repayment of tax under this section, knowingly makes any false statement or false representation, he shall be liable to a penalty not exceeding **[**F4121£3,000**]**.

Textual Amendments

F4120 Words in s. 619(4) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 17**

F4121 1989 s.170(4)(a), (6)*in relation to things done or omitted to be done on or after* 27*July* 1989.*Previously*
"£500".

Marginal Citations

M836 Source-1970 s.226(1), (4), 227(1)
M837 Source-1970 s.227(1A), (1B); 1971 s.20(2); 1980 s.31(1), (2)
M838 Source-1970 s.227(1BB); 1980 s.33(2)
M839 Source-1970 s.227(10), (11), (13)

620 Qualifying premiums.

(1) M840In this Chapter "qualifying premium" means, subject to subsection (5) below, a premium or other consideration paid by an individual—

(a) under an annuity contract for the time being approved by the Board under this section as having for its main object the provision for the individual of a life annuity in old age, or

(b) under a contract for the time being approved under section 621.

(2) M841Subject to subsection (3) and (4) below, the Board shall not approve a contract under this section unless it appears to them to satisfy the conditions that it is made by the individual with a person lawfully carrying on in the United Kingdom the business of granting annuities on human life, and that it does not—

(a) provide for the payment by that person during the life of the individual of any sum except sums payable by way of annuity to the individual; or

(b) provide for the annuity payable to the individual to commence before he attains the age of 60 or after he attains the age of 75; or

(c) provide for the payment by that person of any other sums except sums payable by way of annuity to the individual's widow or widower **[**F4122or surviving civil partner**]** and any sums which, in the event of no annuity becoming payable either to the individual or to a widow or widower **[**F4122or surviving civil partner**]**, are payable by way of return of premiums, by way of reasonable interest on premiums or by way of bonuses out of profits; or

(d) provide for the annuity, if any, payable to a widow or widower **[**F4123or surviving civil partner**]** of the individual to be of a greater annual amount than that paid or payable to the individual; or

(e) provide for the payment of any annuity otherwise than for the life of the annuitant;

and that it does include provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

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(3) A contract shall not be treated as not satisfying the requirements of subsection (2) above by reason only that it—

(a) gives the individual the right to receive, by way of commutation of part of the annuity payable to him, a lump sum not exceeding three times the annual amount of the remaining part of the annuity, taking, where the annual amount is or may be different in different years, the initial annual amount, and

(b) makes any such right depend on the exercise by the individual of an election at or before the time when the annuity first becomes payable to him.

(4) **M842**The Board may, if they think fit, and subject to any conditions they think proper to impose, approve, under this section, a contract otherwise satisfying the preceding conditions, notwithstanding that the contract provides for one or more of the following matters—

(a) for the payment after the individual's death of an annuity to a dependant not the widow or widower **[**F4124or surviving civil partner**]** of the individual;

(b) for the payment to the individual of an annuity commencing before he attains the age of 60, if the annuity is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted;

(c) if the individual's occupation is one in which persons customarily retire before attaining the age of 60, for the annuity to commence before he attains that age;

(d) for the annuity payable to any person to continue for a term certain (not exceeding ten years), notwithstanding his death within that term, or for the annuity payable to any person to terminate, or be suspended, on marriage (or re-marriage) **[**F4125or on the formation of a civil partnership (or another civil partnership)**]** or in other circumstances;

(e) in the case of an annuity which is to continue for a term certain, for the annuity to be assignable by will, and in the event of any person dying entitled to it, for it to be assignable by his personal representatives in the distribution of the estate so as to give effect to a testamentary disposition, or to the rights of those entitled on intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

(5) **M843**Subject to section 621(5), section 619 and subsections (1) to (4) above shall apply in relation to a contribution under a trust scheme approved by the Board as they apply in relation to a premium under an annuity contract so approved, with the modification that, for the condition as to the person with whom the contract is made, there shall be substituted a condition that the scheme—

(a) is established under the law of any part of, and administered in, the United Kingdom; and

(b) is established for the benefit of individuals engaged in or connected with a particular occupation (or one or other of a group of occupations), and for the purpose of providing retirement annuities for them, with or without subsidiary benefits for their families or dependants; and

(c) is so established under irrevocable trusts by a body of persons comprising or representing a substantial proportion of the individuals so engaged in the United Kingdom, or of those so engaged in England, Wales, Scotland or Northern Ireland;

and with the necessary adaptations of other references to the contract or the person with whom it is made.

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(6) Exemption from income tax shall be allowed in respect of income derived from investments or deposits of any fund maintained for the purpose mentioned in subsection (5)(b) above under a scheme for the time being approved under that subsection.

(7) The Board may at any time, by notice given to the persons by and to whom premiums are payable under any contract for the time being approved under this section, or to the trustees or other persons having the management of any scheme so approved, withdraw that approval on such grounds and from such date as may be specified in the notice.

(8) [M844]Nothing in sections 4 and 6 of the [M845]Policies of Assurance Act 1867 (obligations of assurance companies in respect of notices of assignment of policies of life assurance) shall be taken to apply to any contract approved under this section.

(9) For the purposes of any provision applying this subsection "approved annuities" means—

(a) annuities under contracts approved by the Board under this section, being annuities payable wholly in return for premiums or other consideration paid by a person who (when the premiums or other consideration are or is payable) is, or would but for an insufficiency of profits or gains be, chargeable to tax in respect of relevant earnings from a trade, profession, vocation, office or employment carried on or held by him; and

(b) annuities or lump sums under approved personal pension arrangements within the meaning of Chapter IV of this Part.

Textual Amendments

F4122 Words in s. 620(2)(c) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 83(2)(a)

F4123 Words in s. 620(2)(d) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 83(2)(b)

F4124 Words in s. 620(4)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 83(3)(a)

F4125 Words in s. 620(4)(d) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 83(3)(b)

Marginal Citations

M840 Source-1970 s.226(1)(b), 1971 s.20(1)

M841 Source-1970 s.226(2), 226A(5); 1976 s.30(2); 1971 s.20(3)

M842 Source-1970 s.226(3), 226A(5)

M843 Source-1970 s.226(5)-(7)

M844 Source-1970 s.226(12), (13); 1987 (No.2) Sch.2 1

M845 1867 c. 144.

621 Other approved contracts.

[M846](1) The Board may approve under this section—

(a) a contract the main object of which is the provision of an annuity for the **[**[F4126]spouse or civil partner**]** of the individual, or for any one or more dependants of the individual,

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(b) a contract the sole object of which is the provision of a lump sum on the death of the individual before he attains the age of 75.

(2) The Board shall not approve the contract unless it appears to them that it is made by the individual with a person lawfully carrying on in the United Kingdom the business of granting annuities on human life.

(3) The Board shall not approve a contract under subsection (1)(a) above unless it appears to them to satisfy all the following conditions, that is to say—

(a) that any annuity payable to the **[**F4127spouse or civil partner**]** or dependant of the individual commences on the death of the individual,

(b) that any annuity payable to the individual commences at a time after the individual attains the age of 60, and, unless the individual's annuity is one to commence on the death of a person to whom an annuity would be payable under the contract if that person survived the individual, cannot commence after the time when the individual attains the age of 75;

(c) that the contract does not provide for the payment by the person contracting with the individual of any sum, other than any annuity payable to the individual's **[**F4128spouse or civil partner**]** or dependant, or to the individual, except, in the event of no annuity becoming payable under the contract, any sums payable by way of return of premiums, by way of reasonable interest on premiums or by way of bonuses out of profits;

(d) that the contract does not provide for the payment of any annuity otherwise than for the life of the annuitant;

(e) that the contract does include provision securing that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

(4) The Board may, if they think fit, and subject to any conditions that they think proper to impose, approve a contract under subsection (1)(a) above notwithstanding that, in one or more respects, they are not satisfied that the contract complies with the provisions of paragraphs (a) to (e) of subsection (3) above.

(5) The main purpose of a trust scheme, or part of a trust scheme, within section 620(5) may be to provide annuities for the **[**F4129spouses, civil partners**]** and dependants of the individuals, or lump sums payable on death and in that case—

(a) approval of the trust scheme shall be subject to subsections (1) to (4) above with any necessary modifications, and not subject to section 620(2) to (4);

(b) the provisions of this Chapter shall apply to the scheme or part of the scheme when duly approved as they apply to a contract approved under this section; and

(c) section 620(6) shall apply to any duly approved trust scheme, or part of a trust scheme.

(6) Except as otherwise provided in this Chapter (and in particular except in section 620), any reference in the Tax Acts to a contract or scheme approved under that section shall include a reference to a contract or scheme approved under this section.

Textual Amendments

F4126 Words in s. 621(1)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 84(2)

F4127 Words in s. 621(3)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 84(3)(a)

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F4128 Words in s. 621(3)(c) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 84(3)(b)

F4129 Words in s. 621(5) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 84(4)

Marginal Citations

M846 Source-1970 s.226A(1)-(4), (6), (7); 1971 Sch.2 1; 1976 s.30(2)

622 Substituted retirement annuity contracts.

M847(1) The Board may, if they think fit, and subject to any conditions they think proper to impose, approve an annuity contract under section 620 notwithstanding that the contract provides that the individual by whom it is made—

(a) may agree with the person with whom it is made that a sum representing the value of the individual's accrued rights under it should be applied as the premium or other consideration either under another annuity contract made between them and approved by the Board under section 620, or under personal pension arrangements made between them and approved by the Board under Chapter IV of this Part; or

(b) may require the person with whom it is made to pay such a sum to such other person as the individual may specify, to be applied by that other person as the premium or other consideration either under an annuity contract made beween the individual and him and approved by the Board under section 620, or under personal pension arrangements made between the individual and him and approved by the Board under Chapter IV of this Part.

(2) References in subsection (1) above to the individual by whom the contract is made include references to any widow, widower **[**F4130, surviving civil partner**]** or dependant having accrued rights under the contract.

(3) Where in pursuance of any such provision as is mentioned in subsection (1) above of an annuity contract approved under section 620, or of a corresponding provision of a contract approved under section 621(1)(a), a sum representing the value of accrued rights under one contract ("the original contract") is paid by way of premium or other consideration under another contract ("the substituted contract"), any annuity payable under the substituted contract shall be treated as earned income of the annuitant to the same extent that an annuity payable under the original contract would have been so treated.

Textual Amendments

F4130 Words in s. 622(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 85

Marginal Citations

M847 Source-1978 s.26(1)-(3); 1987 (No.2) Sch.2 4

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623 Relevant earnings.

F4131(1) M848*For the purposes of this Chapter, a married woman's relevant earnings shall not be treated as her husband's relevant earnings, notwithstanding that her income chargeable to tax is treated as his income .*

(2) F4131*Subject to subsection* (1)*above* , "relevant earnings", in relation to any individual, means, for the purposes of this Chapter, any income of his chargeable to tax for the year of assessment in question, being either—

(a) income arising in respect of remuneration from an office or employment held by him other than a pensionable office or employment; or

(b) income from any property which is attached to or forms part of the emoluments of any such office or employment held by him; or

(c) income which is chargeable under F4132*Schedule B or***[**F4133Part 2 of ITTOIA 2005**]** and is immediately derived by him from the carrying on or exercise by him of his trade, profession or vocation either as an individual or, in the case of a partnership, as a partner personally acting therein; or

[F4134(d) income to to which section 833(5B) (patent income) applies;**]**

but does not include any remuneration as director of a company whose income consists wholly or mainly of investment income **[**F4135(that is to say, income which, if the company were an individual, would not be earned income)**]**, being a company of which he is a controlling director.

(3) For the purposes of this Chapter, an office or employment is a pensionable office or employment if, and only if, service in it is service to which a sponsored superannuation scheme relates (not being a scheme under which the benefits provided in respect of that service are limited to a lump sum payable on the termination of the service through death or disability before the age of 75 or some lower age); but references to a pensionable office or employment apply whether or not the duties are performed wholly or partly in the United Kingdom or the holder is chargeable to tax in respect of it.

(4) Service in an office or employment shall not for the purposes of subsection (3) above be treated as service to which a sponsored superannuation scheme relates by reason only of the fact that the holder of the office or employment might (though he does not) participate in the scheme by exercising or refraining from exercising an option open to him by virtue of that service.

(5) M849For the purposes of relief under section 619, an individual's relevant earnings are those earnings before giving effect to any capital allowances, other than deductions allowable in computing profits or gains, but after taking into account the amounts on which charges fall to be made under **[**F4136the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]**; and references to income in the following provisions of this section (other than references to total income) shall be construed similarly.

(6) Subject to the following provisions of this section "net relevant earnings" means, in relation to an individual, the amount of his relevant earnings for the year of assessment in question, less the amount of any deductions falling to be made from the relevant earnings in computing for the purposes of income tax his total income for that year, being—

(a) deductions which but for **[**F4137section 51 of ITTOIA 2005**]** could be made in computing his profits or gains; or

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[F4138(aa) deductions in respect of any annuity or other annual payment (other than interest) payable out of his profits; or**]**

(b) deductions in respect of relief under Schedule 9 of the Finance Act 1981 (stock relief); or

(c) deductions in respect of losses or capital allowances arising from activities profits or gains of which would be included in computing relevant earnings of the individual F4139*or of the individual's wife or husband*.

(7) Where in any year of assessment for which an individual claims and is allowed relief under section 619—

(a) there falls to be made in computing the total income of the individual F4140*or that of his wife or her husband* a deduction in respect of any such loss or allowance of the individual as is mentioned in subsection (6)(c) above; and

(b) the deduction or part of it falls to be so made from income other than relevant earnings,

the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment (being deducted as far as may be from those of the immediately following year, whether or not he claims or is entitled to claim relief under this section for that year, and so far as it cannot be so deducted, then from those of the next year, and so on).

(8) M850An individual's net relevant earnings for any year of assessment are to be computed without regard to any relief which falls to be given for that year under section 619 F4140*either* to that individual F4140*or to that individual's wife or husband*.

(9) An individual's relevant earnings, in the case of partnership profits, shall be taken to be his share of the partnership income, estimated in accordance with the Income Tax Acts, but the amount to be included in respect of those earnings in arriving at his net relevant earnings shall be his share of that income after making therefrom all such deductions (if any) in respect of payments made by the partnership or of relief given to the partnership under Schedule 9 of the Finance Act 1981 (stock relief) or in respect of capital allowances falling to be made to the partnership as would be made in computing the tax payable in respect of that income.

Textual Amendments

F4131 *S. 623(1) and words in s. 623(2) repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F4132 *Words in s. 623(2)(c) repealed by* 1988(F) s.148*and* Sch.14 Part V*from* 6*April* 1988.

F4133 Words in s. 623(2)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 263(2)(a)** (with Sch. 2)

F4134 S. 623(2)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 263(2)(b)** (with Sch. 2)

F4135 1989 s.107*and* Sch.12 para.15—*in relation to accounting periods beginning after* 31*March* 1989.*Previously*

"(construed in accordance with paragraph 7 of Schedule 19)".

F4136 Words in s. 623(5) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 53**

F4137 Words in s. 623(6)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 263(3)(a)** (with Sch. 2)

F4138 S. 623(6)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 263(3)(b)** (with Sch. 2)

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F4139 *Words in s. 623(6)(c) repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*
F4140 *Words in s. 623(7)(a)(8) repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)
C636 S. 623(2)(c) extended (with effect in accordance with s. 44 of the extending Act) by Finance Act 1998 (c. 36), Sch. 6 paras. 1, **2**
C637 S. 623(2)(c) extended (with effect in accordance with Sch. 22 paras. 16-18 of the extending Act) by Finance Act 2002 (c. 23), **Sch. 22 para. 4**

Marginal Citations
M848 Source-1970 s.226(8)-(10); 1976 s.30(2); 1972 Sch.24 17
M849 Source-1970 s.227(4), (5)(a), (aa), (b), (6); 1971 Sch.8 16; 1970 s.33(3); 1981 s.35; 1986 s.56(7), Sch.13 2
M850 Source-1970 s.227(8), (9); 1980 s.33(4); 1981 s.35

624 Sponsored superannuation schemes and controlling directors.

(1) [M851]In section 623 "a sponsored superannuation scheme" means a scheme or arrangement—

(a) relating to service in particular offices or employments, and

(b) having for its object or one of its objects to make provision in respect of persons serving in those offices or employments against future retirement or partial retirement, against future termination of service through death or disability, or against similar matters,

being a scheme or arrangement under which any part of the cost of the provision so made is or has been borne otherwise than by those persons by reason of their service (whether it is the cost or part of the cost of the benefits provided, or of paying premiums or other sums in order to provide those benefits, or of administering or instituting the scheme or arrangement).

(2) For the purposes of subsection (1) above a person shall be treated as bearing by reason of his service the cost of any payment made or agreed to be made in respect of his service, if that payment or the agreement to make it is treated under the Income Tax Acts as increasing his income, or would be so treated if he were chargeable to tax under **[**[F4141]section 15 of ITEPA 2003 in respect of his general earnings**]** from that service.

(3) [M852]In section 623 "controlling director" means a director of a company, the directors of which have a controlling interest in the company, who is the beneficial owner of, or able either directly or through the medium of other companies or by any other indirect means to control, more than 5 per cent. of the ordinary share capital of the company; and for the purposes of this definition—

"company" means one within the [M853]Companies Act 1985 or the [M854]Companies (Northern Ireland) Order 1986; and

"director" means—

(a) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;

(b) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;

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(c) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate;

and includes any person who is to be or has been a director.

Textual Amendments

F4141 Words in s. 624(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 89** (with Sch. 7)

Marginal Citations

M851 Source-1970 s.226(11)
M852 Source-1970 s.226(9), 224(1)
M853 1985 c. 6.
M854 S.I. 1986/1032 (N.I. 6).

625 Carry-forward of unused relief under section 619.

M855(1) Where—

(a) in any year of assessment an individual is (or would but for an insufficiency of profits or gains be) chargeable to income tax in respect of relevant earnings from any trade, profession, vocation, office or employment carried on or held by him, but

(b) there is unused relief for that year, that is to say, an amount which could have been deducted from or set off against the individual's relevant earnings for that year under subsection (1) of section 619 if—

(i) he had paid a qualifying premium in that year; or

(ii) the qualifying premium or premiums paid by him in that year had been greater;

then, subject to section 655(1)(b), relief may be given under that section, up to the amount of the unused relief, in respect of so much of any qualifying premium or premiums paid by the individual in any of the next six years of assessment as exceeds the maximum applying for that year under subsection (2) of that section.

(2) Relief by virtue of this section shall be given for an earlier year rather than a later year, the unused relief taken into account in giving relief for any year being deducted from that available for giving relief in subsequent years and unused relief derived from an earlier year being exhausted before unused relief derived from a later year.

(3) Where a relevant assessment to tax in respect of a year of assessment becomes final and conclusive more than six years after the end of that year and there is an amount of unused relief for that year which results from the making of the assessment—

(a) that amount shall not be available for giving relief by virtue of this section for any of the six years following that year, but

(b) the individual may, within the period of six months beginning with the date on which the assessment becomes final and conclusive, elect that relief shall be given under section 619, up to that amount, in respect of so much of any qualifying premium or premiums paid by him within that period as exceeds the maximum applying under subsection (2) of that section for the year of assessment in which they were paid;

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and to the extent to which relief in respect of any premium or premiums is given by virtue of this subsection it shall not be given by virtue of subsection (1) above.

(4) In this section "a relevant assessment to tax" means an assessment on the individual's relevant earnings or on the profits or gains of a partnership from which the individual derives relevant earnings.

Marginal Citations
M855 Source-1970 s.277A; 1980 s.32(1)

626 Modification of section 619 in relation to persons over 50.

M856In the case of an individual whose age at the beginning of a year of assessment is within a range specified in the first column of the Table set out below, section 619(2) shall have effect for that year with the substitution for the reference to 17.5 per cent. of a reference to the relevant percentage specified in the second column of the Table.

TABLE

Age range	*Percentage*
51 to 55	20
56 to 60	22½
61 or more	27½

Marginal Citations
M856 Source-1970 s.228; 1987 (No.2) s.54(2)

F4142627 Lloyd's underwriters.

. . . . . .

Textual Amendments
F4142 S. 627 repealed (with effect as mentioned in s. 228(4) of the repealing Act) by Finance Act 1994 (c. 9), s. 228(2)(a), **Sch. 26 Pt. 5(25)**, Note 1

628 Partnership retirement annuities.

M857(1) Where a person ("the former partner") has ceased to be a member of a partnership on retirement, because of age or ill-health or on death and, under—

(a) the partnership agreement; or

(b) an agreement replacing the partnership agreement or supplementing it or supplementing an agreement replacing it; or

(c) an agreement made with an individual who acquires the whole or part of the business carried on by the partnership;

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annual payments are made for the benefit of the former partner or **[**[F4143]a widow, widower **[**[F4144], surviving civil partner**]** or dependant of the former partner**]** and are for the purposes of income tax income of the person for whose benefit they are made, the payments shall be treated as earned income of that person, except to the extent that they exceed the limit specified in subsection (2) below.

(2) The limit mentioned in subsection (1) above is 50 per cent. of the average of the amounts which, in the best three of the relevant years of assessment, were the former partner's shares of the relevant profits or gains; and for this purpose—

(a) the former partner's share in any year of the relevant profits or gains is, subject to subsection (3) below, so much of the relevant profits or gains as fell to be included in a return of his income for that year; and

(b) the relevant profits or gains are the profits or gains of any trade, profession or vocation on which the partnership or any other partnership of which the former partner was a member was assessed to income tax; and

(c) the relevant years of assessment are the last seven years of assessment in which he was required to devote substantially the whole of his time to acting as a partner in the partnership or those partnerships; and

(d) the best three of the relevant years of assessment are those three of them in which the amounts of his shares of the relevant profits were highest;

but where, in any of the relevant years, the circumstances were such that any of the profits or gains of a partnership were not assessable to income tax, paragraphs (a), (b) and (d) above shall apply as they would apply had those profits or gains been so assessable.

(3) If the retail prices index for the month of December in the last of the seven years referred to in paragraph (c) of subsection (2) above is higher than it was for the month of December in any of the other years referred to in that paragraph, the amount which, for that other year, was the former partner's share of the relevant profits or gains shall be treated for the purposes of that subsection as increased by the same percentage as the percentage increase in that index.

(4) If the retail prices index for the month of December preceding a year of assessment after that in which the former partner ceased to be a member of the partnership is higher than it was for the month of December in the year of assessment in which he ceased to be such a member, the amount which under subsection (2) above is the limit for the first-mentioned year of assessment shall be treated as increased by the same percentage as the percentage increase in that index.

(5) Where the former partner ceased to be a member of the partnership before the year 1974-75, subsection (4) above shall have effect as if he had ceased to be a member in that year.

Textual Amendments

F4143 1988(F) s.35*and* Sch.3 para.19*for* 1990-91*and subsequent years. Previously* "his widow or a dependant of his".

F4144 Words in s. 628(1) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 86

Marginal Citations

M857 Source-1974 s.16; 1982 s.39(1); 1980 s.34(3)

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629 Annuity premiums of Ministers and other officers.

[M858](1) For the purposes of this Chapter so much of any salary which—

(a) is payable to the holder of a qualifying office who is also a Member of the House of Commons, and

(b) is payable for a period in respect of which the holder is not a participant in relation to that office in arrangements contained in the Parliamentary pension scheme but is a participant in relation to his membership of the House of Commons in any such arrangements, or for any part of such a period,

as is equal to the difference between a Member's pensionable salary and the salary which (in accordance with any such resolution as is mentioned in subsection (3)(a) below) is payable to him as a Member holding that qualifying office shall be treated as remuneration from the office of Member and not from the qualifying office.

(2) In this section—

"Member's pensionable salary" means a Member's ordinary salary under any resolution of the House of Commons which, being framed otherwise than as an expression of opinion, is for the time being in force relating to the remuneration of Members or, if the resolution provides for a Member's ordinary salary thereunder to be treated for pension purposes as being at a higher rate, a notional yearly salary at that higher rate;

"qualifying office" means an office mentioned in section 2(2)(b), (c) or (d) of the Parliamentary and other [M859]Pensions Act 1987;

"the Parliamentary pension scheme" has the same meaning as in that Act;

and without prejudice to the power conferred by virtue of paragraph 13 of Schedule 1 to that Act, regulations under section 2 of that Act may make provision specifying the circumstances in which a person is to be regarded for the purposes of this section as being or not being a participant in relation to his Membership of the House of Commons, or in relation to any office, in arrangements contained in the Parliamentary pension scheme.

(3) In subsection (2) above "a Member's ordinary salary", in relation to any resolution of the House of Commons, means—

(a) if the resolution provides for salary to be paid to Members at different rates according to whether or not they are holders of particular offices, or are in receipt of salaries or pensions as the holders or former holders of particular offices, a Member's yearly salary at the higher or highest rate; and

(b) in any other case, a Member's yearly salary at the rate specified in or determined under the resolution.

Modifications etc. (not altering text)

C638 S. 629 applied (with modifications) (with effect in accordance with s. 52(2) of the affecting Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 6**

Marginal Citations

M858 Source-1970 s.229

M859 1987 c. 45.

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CHAPTER IV

PERSONAL PENSION SCHEMES

Modifications etc. (not altering text)
C639 Pt. 14 Ch. 5 excluded (1.5.1995) by Finance Act 1995 (c. 4), **s. 60(5)**

Preliminary

630 Interpretation.

[F4145(1)**]** M860In this Chapter—

"approved"—

(a) in relation to a scheme **[**F4146(other than an approved retirement benefits scheme)**]**, means approved by the Board under this Chapter; and

(b) in relation to arrangements, means—

(i) F4147made in accordance with a scheme which is for the time being, and was when the arrangements were made, an approved scheme**[**F4148; or

(ii) made in accordance with a scheme which is for the time being an approved converted scheme but which was, when the arrangements were made, an approved retirement benefits scheme;**]**

but does not refer to cases in which approval has been withdrawn;

[F4149"approved converted scheme" means an approved personal pension scheme which is such a scheme by virtue of paragraph 3(2)(b) of Schedule 23ZA;**]**

[F4150"approved retirement benefits scheme" means a retirement benefits scheme approved under Chapter I of this Part;**]**

[F4151"authorised insurance company" has the meaning given by section 659B;**]**

[F4152"the earnings threshold" for any year of assessment is £3,600;

[F4153"higher level contributions", in the case of any year of assessment, means contributions in excess of the earnings threshold for the year;**]**

[F4154"income withdrawal" means a payment of income, under arrangements made in accordance with a personal pension scheme, otherwise than by way of an annuity;**]**

"member", in relation to a personal pension scheme, means an individual who makes arrangements in accordance with the scheme;

[F4155"pension date", in relation to any personal pension arrangements, means **[**F4156(subject to section 638ZA)**]** the date determined in accordance with the arrangements on which—

(a) an annuity such as is mentioned in section 634 is first payable, or

(b) the member elects to defer the purchase of such an annuity and to make income withdrawals in accordance with section 634A;**]**

"personal pension arrangements" means arrangements made by an individual in accordance with a personal pension scheme;

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[F4157"the personal pension fund", in the case of any personal pension arrangement and an individual, means the accrued rights to which the individual is entitled conferring prospective entitlement to benefits under the arrangement;

"personal pension scheme" means a scheme whose sole purpose is the provision of annuities **[**F4158, income withdrawals**]** or lump sums under arrangements made by individuals in accordance with the scheme;

[F4159"retirement benefits scheme" has the same meaning as in Chapter I of this Part (see section 611);**]**

"scheme administrator" means the person referred to in section 638(1);

[F4160and references to an employee or to an employer include references to the holder of an office or to the person under whom an office is held.**]**

F4161(1A) **[** The Treasury may by order amend the definition of "the earnings threshold" in subsection (1) above for any year of assessment by varying the amount there specified.**]**

F4162(2) **[** For the purposes of this Chapter the annual amount of the annuity which would have been purchasable by a person on any date shall be calculated by reference to—

(a) the value on that date, determined by or on behalf of the scheme administrator, of the **[**F4163personal pension fund**]** under the arrangements in question, and

(b) the current published tables of rates of annuities prepared for the purposes of this Chapter by the Government Actuary.

[F4164 Where a lump sum falls to be paid on the date in question, the reference is to the value of the personal pension fund after allowing for that payment.**]**

(3) F4165. . . . . .

(4) The Board may make provision by regulations as to the basis on which the tables mentioned in subsection (2)(b) above are to be prepared and the manner in which they are to be applied.**]]]**

Textual Amendments

F4145 S. 630 renumbered as s. 630(1) (with effect in accordance with Sch. 11 para. 1 of the amending Act) by virtue of Finance Act 1995 (c. 4), **Sch. 11 para. 2(2)**

F4146 S. 630(1): words in definition of "approved" inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para 2(a)** (with Sch. 13 Pt. 2)

F4147 S. 630(1): in definition of "approved", words in para. (b) renumbered as para. (b)(i) (28.7.2000) by virtue of Finance Act 2000 (c. 17), **Sch. 13 para. 5(2)(b)** (with Sch. 13 Pt, 2)

F4148 S. 630(1): in definition of "approved", para. (b) and preceding word inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(2)(b)** (with Sch. 13 Pt. 2)

F4149 S. 630(1): definition of "approved converted scheme" inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(4)(a)** (with Sch. 13 Pt. 2)

F4150 S. 630(1): definition of "approved retirement benefits scheme" inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(4)(b)** (with Sch. 13 Pt. 2)

F4151 S. 630(1): definition of "authorised insurance company" substituted (with effect in accordance with s. 60(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 59(4)**

F4152 S. 630(1): definition of "the earnings threshold" inserted (with effect in accordance with Sch. 13 para. 5(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(4)(c)** (with Sch. 13 Pt. 2)

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F4153 S. 630(1): definition of "higher level contributions" inserted (with effect in accordance with Sch. 13 para. 5(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(4)(d)** (with Sch. 13 Pt. 2)
F4154 S. 630(1): definition of "income withdrawal" inserted (with effect in accordance with Sch. 11 para. 1 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 11 para. 2(2)**
F4155 S. 630(1): definition of "pension date" inserted (with effect in accordance with Sch. 11 para. 1 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 11 para. 2(2)**
F4156 S. 630(1): words in definition of "pension date" inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(3)** (with Sch. 13 Pt. 2)
F4157 S. 630(1): definition of "the personal pension fund" inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(4)(e)** (with Sch. 13 Pt. 2)
F4158 S. 630(1): words in definition of "personal pension scheme" inserted (with effect in accordance with Sch. 11 para. 1 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 11 para. 2(2)**
F4159 S. 630(1): definition of "retirement benefits scheme" inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(4)(f)** (with Sch. 13 Pt. 2)
F4160 1988(F) s.55(1)—*from* 1*July* 1988.
F4161 S. 630(1A) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(5)** (with Sch. 13 Pt. 2)
F4162 S. 630(2)-(4) inserted (with effect in accordance with Sch. 11 para. 1 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 11 para. 2(3)**
F4163 Words in s. 630(2)(a) substituted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(6)(a)** (with Sch. 13 Pt. 2)
F4164 Words in s. 630(2) added (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 5(6)(b)** (with Sch. 13 Pt. 2)
F4165 S. 630(3) repealed (28.7.2000) by Finance Act 2000 (c. 17), Sch. 13 para. 5(7), **Sch. 40 Pt. 2(4)** (with Sch. 13 Pt. 2)

Marginal Citations
M860 Source-1987 (No.2) s.18

631 Approval of schemes.

M861(1) An application to the Board for their approval of a personal pension scheme shall be in such form, shall contain such information, and shall be accompanied by such documents, in such form, as the Board may prescribe.

(2) The Board may at their discretion grant or refuse an application for approval of a personal pension scheme, but their discretion shall be subject to the restrictions set out in sections 632 to **[**F4166638A**][**F4167(and, where applicable, Schedule 23ZA)**]**.

[F4168(2A) An application for approval of a personal pension scheme may, if the Board think fit, be granted subject to conditions.**]**

(3) The Board shall give notice to the applicant of the grant or refusal of an application; and

[F4169(a) in the case of a grant subject to conditions, the notice shall state that the grant is so subject and shall specify the conditions; and

(b)**]** in the case of a refusal the notice shall state the grounds for the refusal.

(4) If an amendment is made to an approved scheme without being approved by the Board, their approval of the scheme shall cease to have effect.

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Textual Amendments

F4166 Words in s. 631(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 94(2)**

F4167 Words in s. 631(2) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 6(2)** (with Sch. 13 Pt. 2)

F4168 S. 631(2A) inserted (with effect in accordance with Sch. 13 para. 6(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 6(3)** (with Sch. 13 Pt. 2)

F4169 Words in s. 631(3) inserted (with effect in accordance with Sch. 13 para. 6(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 6(4)** (with Sch. 13 Pt. 2)

Modifications etc. (not altering text)

C640 *See* S.I. 1987 No.1765 (*in* Part III Vol.5)*for regulations governing the provisional approval of schemes where application is made before* 10*August* 1989.

Marginal Citations

M861 Source-1987 (No.2) s.19

[F4170 631A Conversion of certain approved retirement benefits schemes.

Schedule 23ZA to this Act (which makes provision for or in connection with the conversion of certain retirement benefits schemes approved under Chapter I of this Part into personal pension schemes approved under this Chapter) shall have effect.]

Textual Amendments

F4170 S. 631A inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 7** (with Sch. 13 Pt. 2)

Restrictions on approval

632 Establishment of schemes.

M862(1) [F4171 Subject to subsection (1A), the] Board shall not approve a personal pension scheme established by any person other than—

(a) a person who [F4172 has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance or to manage unit trust schemes authorised under section 243 of that Act;]

[F4173 [F4174 (aa) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000 which—

(i) has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance; and

(ii) fulfils any one of the requirements under subsections (5), (6) or (7) of section 659B;

(ab) a firm which has permission under paragraph 4 of Schedule 4 to the Financial Services and Markets Act 2000 (as a result of qualifying for authorisation under paragraph 2 of that Schedule) to manage unit trust schemes authorised under section 243 of that Act;

(ac) a person who qualifies for authorisation under Schedule 5 to the Financial Services and Markets Act 2000;]]

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(b) a building society within the meaning of the [M863]Building Societies Act 1986;

[F4175(bb) [F4176]. . . . . .]

[F4177(c) a person falling within section 840A(1)(b);]

[F4175(cc) a body corporate which is a subsidiary or holding company of [F4178a person falling within section 840A(1)(b)], or is a subsidiary of the holding company of [F4179such a person];]

(d) [F4180]. . . . . .

[F4181(e) an institution which—

[F4182(i) is an EEA firm of the kind mentioned in paragraph 5(a), (b) or (c) of Schedule 3 to the Financial Services and Markets Act 2000,

(ii) qualifies for authorisation under paragraph 12(1) or (2) of that Schedule, and

(iii) has permission under that Act to manage portfolios of investments.]]

[F4183(1A) The Board may approve a personal pension scheme established by any person other than a person mentioned in subsection (1)(a) to (e) if the scheme is established under a trust or trusts.]

[F4184(2) In subsection (1)(a) above "contracts of long-term insurance" means contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.]

[F4185(2A) In subsection 1(cc) above "holding company" and "subsidiary" are to be construed in accordance with section 736 of the [M864]Companies Act 1985 or Article 4 of the [M865]Companies (Northern Ireland) Order 1986.]

[F4186(2B) [F4187]. . . . . .]

(3) Subsection (1) above shall not apply in relation to a scheme approved by the Board by virtue of section 620(5) if it was established before [F4188]1st July] 1988.

(4) The Treasury may by order amend this section as it has effect for the time being.

Textual Amendments

F4171 Words in s. 632(1) substituted (1.10.2000) by The Personal Pension Schemes (Establishment of Schemes) Order 2000 (S.I. 2000/2317), **arts. 1**, 2(2)

F4172 Words in s. 632(1)(a) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(2)**

F4173 S. 632(1)(aa) inserted (24.10.1997) by The Personal Pension Schemes (Establishment of Schemes) Order 1997 (S.I. 1997/2388), **arts. 1**, 3(a)

F4174 S. 632(1)(aa)-(ac) substituted for s. 632(1)(aa) (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(3)**

F4175 S.I. 1988 No.993

F4176 S. 632(1)(bb) omitted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(4)**

F4177 S. 632(1)(c) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(5)**

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F4178 Words in s. 632(1)(cc) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(6)(a)**

F4179 Words in s. 632(1)(cc) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(6)(b)**

F4180 S. 632(1)(d) omitted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(7)**

F4181 S. 632(1)(e) added (24.10.1997) by The Personal Pension Schemes (Establishment of Schemes) Order 1997 (S.I. 1997/2388), **arts. 1**, 3(b)

F4182 S. 632(1)(e)(i)-(iii) substituted for s. 632(1)(e)(i)(ii) (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I 2001/3629), art. 41(8)

F4183 S. 632(1A) inserted (1.10.2000) by The Personal Pension Schemes (Establishment of Schemes) Order 2000 (S.I. 2000/2317), **arts. 1**, 2(3)

F4184 S. 632(2) substituted for s. 632(2)(2ZA) (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(9)**

F4185 S.I. 1988 No.993

F4186 S. 632(2B) inserted (24.10.1997) by The Personal Pension Schemes (Establishment of Schemes) Order 1997 (S.I. 1997/2388), **arts. 1**, 5

F4187 S. 632(2B) omitted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 41(10)**

F4188 1988(F) s.54(2)(a)—*deemed always to have had effect. Previously* "4th January".

Marginal Citations

M862 Source-1987 (No.2) s.20

M863 1986 c. 53.

M864 1985 c.6

M865 S.I. 1986 No.1032.

[F4189 632A Eligibility to make contributions.

(1) The Board shall not approve a personal pension scheme if it permits, in relation to arrangements made by a member in accordance with the scheme, the acceptance of—

(a) contributions by the member, or

(b) contributions by an employer of the member,

at a time when the member is not eligible to make contributions.

(2) The Board shall not approve a personal pension scheme unless it makes provision for ensuring, in relation to any such arrangements, that any contributions accepted at a time when the member is not eligible to make contributions are repaid—

(a) to the member, to the extent of his contributions; and

(b) as to the remainder, to his employer.

(3) The following provisions of this section, and the provisions of section 632B, have effect for determining for the purposes of subsections (1) and (2) above the times at which a member is eligible to make contributions (and, for those purposes, a member is not eligible to make contributions at any other time).

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(4) A member is eligible to make contributions at any time during a year of assessment for which he has actual net relevant earnings.

(5) A member who does not have actual net relevant earnings for a year of assessment ("the relevant year") is eligible to make contributions at any time during that year if—

(a) for at least some part of the year he does not hold an office or employment to which section 645 applies; and

(b) the condition in any of subsections (6) to (9) below is satisfied.

(6) Condition A is that at some time in the relevant year the member is resident and ordinarily resident in the United Kingdom.

(7) Condition B is that the member—

(a) at some time during the five years of assessment preceding the relevant year, has been resident and ordinarily resident in the United Kingdom; and

(b) was resident and ordinarily resident in the United Kingdom when he made the personal pension arrangements in question.

(8) Condition C is that at some time in the relevant year the member is a person who performs duties which, by virtue of section 132(4)(a), are treated as being performed in the United Kingdom.

(9) Condition D is that at some time in the relevant year the member is the spouse **[**F4190or civil partner**]** of a person who performs such duties as are mentioned in subsection (8) above.**]**

Textual Amendments

F4189 Ss. 632A, 632B inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 8** (with Sch. 13 Pt. 2)

F4190 Words in s. 632A(9) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 87

[F4189**632B Eligibility to make contributions: concurrent membership.**

(1) A member who would not, apart from this section, be eligible to make contributions during a year of assessment shall be eligible to make contributions at any time during that year if—

(a) throughout the year he holds an office or employment to which section 645 applies;

(b) the condition in any of subsections (6) to (9) of section 632A is satisfied in his case as respects the year;

(c) he is not, and has not been, a controlling director of a company at any time in the year or in any of the five years of assessment preceding it;

(d) for at least one of the five years of assessment preceding the year, the aggregate of his grossed-up remuneration from each office and each employment held on 5th April in that preceding year does not exceed the remuneration limit for the relevant year; and

(e) the total relevant contributions made in the year do not exceed the earnings threshold for the year.

(2) For the purposes of paragraphs (c) and (d) of subsection (1) above, no account shall be taken of any year of assessment earlier than the year 2000-01.

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(3) For the purposes of paragraph (c) of subsection (1) above, a person is a controlling director of a company at any time if at that time—

(a) he is a director, as defined by section 612(1); and

(b) he is within paragraph (b) of section 417(5) in relation to the company.

(4) For the purposes of paragraph (d) of subsection (1) above—

(a) "grossed up", in relation to a person's remuneration from an office or employment, means increased by being multiplied by a figure determined in accordance with an order made by the Treasury (or left unchanged, if that figure is unity);

(b) "remuneration" shall be construed in accordance with an order made by the Treasury;

(c) "the remuneration limit" for any year of assessment is £30,000;

(d) "the relevant year" means the year of assessment first mentioned in subsection (1) above.

The Treasury may by order amend the definition of "the remuneration limit" in paragraph (c) above for any year of assessment by varying the amount there specified.

(5) For the purposes of paragraph (e) of subsection (1) above and the following provisions of this section, "the total relevant contributions", in the case of a year of assessment, means the aggregate amount of the contributions made in the year—

(a) by the member in question, and

(b) by any employer of his,

under arrangements made by the member under the scheme in question, together with the aggregate amounts of such contributions under other approved personal pension arrangements made by that member.

(6) If—

(a) in the case of a member, the total relevant contributions in a year of assessment, apart from this subsection, exceed the earnings threshold for the year, and

(b) but for that, the member would be eligible to make contributions by virtue of subsection (1) above at any time in that year,

the repayment required by subsection (2) of section 632A is repayment of the relevant excess contributions only (so that the condition in subsection (1)(e) above becomes satisfied).

(7) In subsection (6) above "the relevant excess contributions" means—

(a) to the extent that a contribution is the first which caused the total relevant contributions in the year to exceed the earnings threshold for the year, that contribution; and

(b) all subsequent contributions in the year.

(8) The Treasury may by order make provision requiring any person who claims to be eligible to make contributions by virtue of this section to provide to—

(a) the Board,

(b) an officer of the Board, or

(c) the scheme administrator of the personal pension scheme concerned,

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such declarations, certificates or other evidence in support of the claim as may be specified or described in, or determined in accordance with, the order.

(9) A person shall only be eligible to make contributions by virtue of this section in a year of assessment if he complies with any requirements imposed by order under subsection (8) above.**]**

Textual Amendments

F4189 Ss. 632A, 632B inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 8** (with Sch. 13 Pt. 2)

Modifications etc. (not altering text)

C641 S. 632B(4)(a) modified (6.4.2001 in accordance with art. 1(1) of the modifying S.I.) by The Personal Pension Schemes (Concurrent Membership) Order 2000 (S.I. 2000/2318), **art. 3(1)**

633 Scope of benefits.

M866(1) The Board shall not approve a personal pension scheme which makes provision for any benefit other than—

(a) the payment of an annuity satisfying the conditions in section 634 **[**F4191or income withdrawals with respect to which the conditions in section 634A are satisfied**]**;

(b) the payment to a member of a lump sum satisfying the conditions in section 635;

(c) the payment after the death of a member of an annuity satisfying the conditions in section 636 **[**F4192or income withdrawals with respect to which the conditions in section 636A are satisfied**]**;

(d) the payment on the death of a member of a lump sum satisfying **[**F4193the conditions in section 637 (death benefit);**]**

[F4194(e) the payment on or after the death of a member of a lump sum **[**F4195with respect to which the conditions in section 637A (return of contributions) are satisfied**]]**.

(2) F4196. . . . . .

Textual Amendments

F4191 Words in s. 633(1)(a) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 3(2)**

F4192 Words in s. 633(1)(c) inserted (1.5.1995) by Finance Act 1995 (c 4), Sch. 11 para. 3(3)

F4193 Words in s. 633(1)(d) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 3(4)**

F4194 S. 633(1)(e) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 3(5)**

F4195 Words in s. 633(1)(e) substituted (with effect in accordance with s. 172(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 172(1)**

F4196 S. 633(2) repealed (with effect in accordance with Sch. 13 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 13 para. 9(2), **Sch. 40 Pt. 2(4)**, Note 1 (with Sch. 13 Pt. 2)

Marginal Citations

M866 Source-1987 (No.2) s.21

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634 Annuity to member.

M867(1) The annuity must be payable by an authorised insurance company which may be chosen by the member.

(2) Subject to subsection (3) below, the annuity must not commence before the member attains the age of 50 or after he attains the age of 75.

(3) The annuity may commence before the member attains the age of 50 if—

(a) it is payable on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted; or

(b) the Board are satisfied that his occupation is one in which persons customarily retire before that age.

(4) Subject to subsection (5) below, the annuity must be payable to the member for his life.

(5) The annuity may continue for a term certain not exceeding ten years, notwithstanding the member's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the member and before expiry of that term, on the happening of any of the following—

(a) the **[**F4197annuitant marrying or forming a civil partnership**]**;

(b) his attaining the age of 18;

(c) the later of his attaining that age and ceasing to be in full-time education.

(6) The annuity must not be capable of assignment or surrender, **[**F4198except that—

(a) an annuity may be assigned or surrendered for the purpose of giving effect to a pension sharing order or provision; and

(b)**]** an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

Textual Amendments

F4197 Words in s. 634(5)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 88

F4198 Words in s. 634(6) substituted (with application in accordance with Sch. 10 para. 18(8)(9) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para 12(1)**; S.I. 2000/1093, **art. 2**

Marginal Citations

M867 Source-1987 (No.2) s.22

[F4199**634A** Income withdrawals by member.

(1) Where a member elects to defer the purchase of an annuity such as is mentioned in section 634, income withdrawals may be made by him during the period of deferral, subject as follows.

F4200**[**(1A) The Board shall not refuse to approve a personal pension scheme by reason only that it makes provision for arrangements under the scheme which enable a member who makes such an election as is mentioned in subsection (1) above to apply different parts of the personal pension fund at different times in the purchase of different annuities

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satisfying the conditions in section 634 (whether commencing on the same day or on different days).**]**

(2) Income withdrawals must not be made before the member attains the age of 50, unless—

(a) they are available on his becoming incapable through infirmity of body or mind of carrying on his own occupation or any occupation of a similar nature for which he is trained or fitted, or

(b) the Board are satisfied that his occupation is one in which persons customarily retire before that age.

(3) Income withdrawals must not be made after the member attains the age of 75.

(4) The aggregate amount of income withdrawals by a member in each successive period of twelve months **[**F4201in each valuation period**]** must be not less than 35 per cent. or more than 100 per cent. of the annual amount of the annuity which would have been purchasable by him—

[F4202(a) in the case of the initial period, on the relevant reference date; and

(b) in the case of any subsequent valuation period,

[F4203(i)**]** on a particular day in the period of sixty days ending with the relevant reference date**[**F4204, or

(ii) immediately after the last qualifying annuitisation,

whichever is the later**]]**.

[For the purposes of subsection (4) above—

F4205(4A) (a) "annuitisation" means the application of part of the personal pension fund in the purchase of an annuity satisfying the conditions in section 634; and

(b) an annuitisation is a "qualifying annuitisation", in relation to any such period of twelve months as is mentioned in subsection (4) above, if it has taken place—

(i) in an earlier such period, but

(ii) since the relevant reference date.**]**

[F4206(5) For the purposes of this section, in the case of any arrangements the relevant reference date—

(a) for the period beginning with the member's pension date ("the initial period"), is that pension date; and

(b) for each succeeding period, is the first day of the period;

and, subject to subsection (5D) below, any period mentioned in paragraph (a) or (b) above (a "valuation period") is a period of three years.**]**

[Where—

F4207(5A) (a) a member has made an election under subsection (1) above in respect of two or more personal pension arrangements under the same personal pension scheme, and

(b) in the case of one or more of those arrangements, the relevant reference date for any valuation period after the initial period would not, apart from this subsection, coincide with a date which is (or, but for the ending of the period of deferral, would be) the relevant reference date for a valuation period in the case of the arrangements with the earliest pension date,

the relevant reference date for any valuation period other than the initial period, and the valuation period to which that date relates, shall, if the scheme or the arrangements

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so require, be determined in the case of all those arrangements on the assumption that the pension date is in each case the same as in the case of the arrangements with the earliest pension date.

(5B) In determining in accordance with subsection (5A) above the relevant reference date and the valuation period to which it relates, in the case of any arrangements ("the relevant arrangements"), there shall be left out of account any arrangements in whose case the period of deferral ended—

(a) before the actual pension date in the case of the relevant arrangements; or

(b) before the date on which the relevant arrangements first become subject to such a requirement as is mentioned in subsection (5A) above.

(5C) But where, in the case of any arrangements,—

(a) the relevant reference date for any valuation period falls to be determined, in accordance with the assumption in subsection (5A) above, by reference to the pension date for any other arrangements, and

(b) the period of deferral in the case of those other arrangements comes to an end,

the same pension date shall continue to be assumed under that subsection for that and any subsequent valuation period, notwithstanding the coming to an end of the period of deferral in the case of those other arrangements (and references in subsection (5A) to the arrangements with the earliest pension date shall be construed accordingly).

(5D) Where, in the case of any personal pension arrangements, in consequence of subsection (5A) above the relevant reference date for any valuation period ("the later date") falls less than three years after the relevant reference date for the previous valuation period ("the earlier date")—

(a) the valuation period beginning with the earlier date shall end with the day before the later date; and

(b) **[**[F4208]subsections (4) and (4A)**]** above shall apply in relation to any portion of the period which remains after the completion of any successive periods of twelve months as if it were a period of twelve months.**]**

(6) The right to income withdrawals must not be capable of assignment or surrender **[**[F4209], except for the purpose of giving effect to a pension sharing order or provision**].]**

Textual Amendments

F4199 S. 634A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 4**

F4200 S. 634A(1A) inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 11(2)(6)** (with Sch. 13 Pt. 2)

F4201 Words in s. 634A(4) substituted (1.10.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 10(2)(a)(5)** (with Sch. 13 Pt. 2)

F4202 S. 634(4)(a)(b) substituted for words in s. 634(4) (with effect in accordance with Sch. 13 para. 10(6)(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para 10(2)(b)** (with Sch. 13 Pt. 2)

F4203 Words in s. 634A(4)(b) renumbered as s. 634A(4)(b)(i) (6.4.2001) by virtue of Finance Act 2000 (c. 17), **Sch. 13 para. 11(3)(a)(6)** (with Sch. 13 Pt. 2)

F4204 Words in s. 634A(4)(b) added (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 11(3)(b)(6)** (with Sch. 13 Pt. 2)

F4205 S. 634A(4A) inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 11(4)(6)** (with Sch 13 Pt. 2)

F4206 S. 634A(5) substituted (1.10.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 10(3)(5)** (with Sch. 13 Pt. 2)

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F4207 S. 634A(5A)-(5D) inserted (with effect in accordance with Sch. 13 para. 10(6)(7) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 10(4)** (with Sch. 13 Pt. 2)
F4208 Words in s. 634A(5D)(b) substituted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 11(5)(6)** (with Sch. 13 Pt. 2)
F4209 Words in s. 634A(6) inserted (with application in accordance with Sch. 10 para 18(8)(9) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 12(2)**; S.I. 2000/1093, **art. 2**

635 Lump sum to member.

M868(1) The lump sum must be payable only if the member so elects on or before **[**F4210his pension date under the arrangements in question**]**.

(2) The lump sum must be payable **[**F4211on the date which is his pension date under the arrangements in question**]**.

[F4212(3) The lump sum must not exceed one quarter of the difference between—

(a) the total value, at the time when the lump sum is paid, of the benefits provided for by **[**F4213the arrangements in question**]**, and

(b) the value, at that time, of such of the member's rights **[**F4214under those arrangements**]** as are protected rights for the purposes of the **[**F4215Pension Schemes Act 1993**]** or the **[**F4216Pension Schemes (Northern Ireland) Act 1993**]**.**]**

(4) *The lump sum must not exceed* £150,000*or such other sum as may for the time being be specified in an order made by the Treasury*F4217.

(5) The right to payment of the lump sum must not be capable of assignment or surrender **[**F4218, except for the purpose of giving effect to a pension sharing order or provision**]**.

Textual Amendments

F4210 Words in s. 635(1) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 5(2)**
F4211 Words in s. 635(2) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 5(3)**
F4212 1989 s.77*and* Sch.7 para.2(2)*in relation to the approval of a scheme on or after* 27*July* 1989*but if the scheme came into existence before* 27*July* 1989 para.2(2)*shall not have effect as regards arrangements made by a member in accordance with the scheme before that date. Previously*
"(3) The lump sum must not exceed one quarter of the total value, at the time when the lump sum is paid, of the benefits for the member provided for by the arrangements made by him in accordance with the scheme.".
F4213 Words in s. 635(3)(a) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 5(4)(a)**
F4214 Words in s. 635(3)(b) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 5(4)(b)**
F4215 Words in s. 635(3)(b) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(2)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**
F4216 Words in s. 635(3)(b) substituted (7.2.1994) by Pension Schemes (Northern Ireland) Act 1993 (c. 49), ss. 184, 186(2), **Sch. 7 para. 22(1)**; S.R. 1994/17, **art. 2**
F4217 *Words repealed by* 1989 ss.77, 187*and* Schs.7 para. 2(3)*and* 17 Part IV*in relation to approvals on or after* 27*July* 1989.
F4218 Words in s. 635(5) inserted (with application in accordance with Sch. 10 para. 18(8)(9) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 12(3)**; S.I. 2000/1093, **art. 2**

Marginal Citations

M868 Source-1987 (No.2) s.23

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636 Annuity after death of member.

M869(1) The annuity must be payable by an authorised insurance company which may be chosen by the member or by the annuitant.

(2) The annuity must be payable to the surviving spouse **[**F4219or civil partner**]** of the member, or to a person who was at the member's death a dependant of his.

(3) The aggregate annual amount (or, if that amount varies, the aggregate of the initial annual amounts) of all annuities to which this section applies and which are payable under the same personal pension arrangements shall not exceed—

(a) where before his death the member was in receipt of an annuity under the arrangements, the annual amount (or, if it varied, the highest annual amount) of that annuity; or

(b) where paragraph (a) does not apply, the highest annual amount of the annuity that would have been payable under the arrangements to the member (ignoring any entitlement of his to commute part of it for a lump sum) if it had **[**F4220been purchased**]** on the day before his death.

[F4221(3A) The references in subsection (3) above—

(a) to the annual amount or highest annual amount of an annuity of which the member was in receipt before his death, and

(b) to the highest annual amount of an annuity that would have been payable if it had been purchased on the day before the member's death,

shall each be construed in a case where payments of that annuity were or would have been affected by the making of any pension sharing order or provision as if the only payments of that annuity to be taken into account were those that have been or would have been so affected.**]**

(4) Subject to subsections (5) to (9) below, the annuity must be payable for the life of the annuitant.

(5) Where the annuity is payable to the surviving spouse **[**F4222or civil partner**]** of the member and at the time of the member's death the surviving spouse **[**F4222or civil partner**]** is under the age of 60, the annuity may be deferred to a time not later than—

(a) the time when the surviving spouse **[**F4222or civil partner**]** attains that age; or

(b) where the member's annuity is payable to the surviving spouse **[**F4222or civil partner**]** for a term certain as mentioned in section 634(5) and the surviving spouse **[**F4222or civil partner**]** attains the age of 60 before the time when the member's annuity terminates, that time.

(6) The annuity may cease to be payable on the **[**F4223annuitant marrying or forming a civil partnership**]**.

(7) Where the annuity is payable to the surviving spouse **[**F4224or civil partner**]** of the member, it may cease before the death of the surviving spouse **[**F4224or civil partner**]** if—

(a) the member was survived by one or more dependants under the age of 18 and at the time of the member's death the surviving spouse **[**F4224or civil partner**]** was under the age of 45; and

(b) at some time before the surviving spouse **[**F4224or civil partner**]** attains that age no such dependant remains under the age of 18.

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(8) Where the annuity is payable to a person who is under the age of 18 when it is first payable, it must cease to be payable either—

(a) on his attaining that age; or

(b) on the later of his attaining that age and ceasing to be in full-time education,

unless he was a dependant of the member otherwise than by reason only that he was under the age of 18.

(9) The annuity may continue for a term certain not exceeding ten years, notwithstanding the original annuitant's death within that term; and for this purpose an annuity shall be regarded as payable for a term certain notwithstanding that it may terminate, after the death of the original annuitant and before the expiry of that term, on the happening of any of the following—

(a) F4225. . . the annuitant to whom it is payable **[**F4226 marrying or forming a civil partnership**]**;

(b) his attaining the age of 18;

(c) the later of his attaining that age and ceasing to be in full-time education.

(10) The annuity must not be capable of assignment or surrender, **[**F4227except that—

(a) an annuity may be assigned or surrendered for the purpose of giving effect to a pension sharing order or provision; and

(b)**]** an annuity for a term certain may be assigned by will or by the annuitant's personal representatives in the distribution of his estate so as to give effect to a testamentary disposition, or to the rights of those entitled on an intestacy, or to an appropriation of it to a legacy or to a share or interest in the estate.

Textual Amendments

F4219 Words in s. 636(2) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 89(2)

F4220 Words in s. 636(3) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 6**

F4221 S. 636(3A) inserted (with application in accordance with Sch. 10 para. 18(8)(9) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 13(1)**; S.I. 2000/1093, **art. 2**

F4222 Words in s. 636(5) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 89(3)

F4223 Words in s. 636(6) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 89(4)

F4224 Words in s. 636(7) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 89(5)

F4225 Words in s. 636(9)(a) omitted (5.12.2005) by virtue of The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 89(6)

F4226 Words in s. 636(9)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 89(6)

F4227 Words in s. 636(10) substituted (with application in accordance with Sch. 10 para. 18(8)(9) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 13(2)**; S.I. 2000/1093, **art. 2**

Marginal Citations

M869 Source-1987 (No.2) s.24

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[F4228 636A Income withdrawals after death of member.

(1) Where a person entitled to such an annuity as is mentioned in section 636 elects to defer the purchase of the annuity, income withdrawals may be made by him during the period of deferral, subject as follows.

F4229 [(1A) The Board shall not refuse to approve a personal pension scheme by reason only that it makes provision for arrangements under the scheme which enable a person who makes such an election as is mentioned in subsection (1) above to apply different parts of the personal pension fund at different times in the purchase of different annuities satisfying the conditions in section 636 (whether commencing on the same day or on different days).]

(2) No such deferral may be made, and accordingly income withdrawals may not be made, if the person concerned elects in accordance with section 636(5)(a) to defer the purchase of an annuity.

(3) Income withdrawals must not be made after the person concerned if he had purchased such an annuity as is mentioned in section 636 would have ceased to be entitled to payments under it.

(4) Income withdrawals must not in any event be made after the member would have attained the age of 75 or, if earlier, after the person concerned attains the age of 75.

(5) The aggregate amount of income withdrawals by a person in each successive period of twelve months beginning with the date of the member's death must be not less than 35 per cent. or more than 100 per cent. of the annual amount of the annuity which would have been purchasable by him—

[F4230 (a) in the case of the first period of three years, on the relevant reference date; and

(b) in the case of any succeeding period of three years,

[F4231 (i)] on a particular day in the period of sixty days ending with the relevant reference date[F4232, or

(ii) immediately after the last qualifying annuitisation,

whichever is the later]].

F4233 [(5A) For the purposes of subsection (5) above—

(a) "annuitisation" means the application of part of the personal pension fund in the purchase of an annuity satisfying the conditions in section 636; and

(b) an annuitisation is a "qualifying annuitisation", in relation to any such period of twelve months as is mentioned in subsection (5) above, if it has taken place—

(i) in an earlier such period, but

(ii) since the relevant reference date.]

(6) For the purposes of this section the relevant reference date for the first three years is the date of the member's death, and for each succeeding period of three years is the first day of that period.

(7) The right to income withdrawals must not be capable of assignment or surrender [F4234, except for the purpose of giving effect to a pension sharing order or provision].]

Textual Amendments

F4228 S. 636A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 7**

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F4229 S. 636A(1A) inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 12(2)(7)** (with Sch. 13 Pt. 2)
F4230 S. 636A(5)(a)(b) substituted for words in s. 636A(5) (1.10.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 12(3)(6)** (with Sch. 13 Pt. 2)
F4231 Words in s. 636A(5)(b) renumbered as s. 636A(5)(b)(i) (6.4.2001) by virtue of Finance Act 2000 (c. 17), **Sch. 13 para. 12(4)(a)(7)** (with Sch. 13 Pt. 2)
F4232 Words in s. 636A(5)(b) added (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 12(4)(b)(7)** (with Sch. 13 Pt. 2)
F4233 S. 636A(5A) inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 12(5)(7)** (with Sch. 13 Pt. 2)
F4234 Words in s. 636A(7) inserted (with application in accordance with Sch. 10 para. 18(8)(9) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 10 para. 14**; S.I. 2000/1093, **art. 2**

[F4235 637 Death benefit.

The lump sum—

(a) must be payable on the death of the member before he attains the age of 75, and

(b) must be payable by an authorised insurance company.]

Textual Amendments

F4235 Ss. 637, 637A substituted for s. 637 (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 8**

[F4236 [F4237 637A Return of contributions on or after death of member.

(1) The lump sum payable under the arrangements in question (or, where two or more lump sums are so payable, those lump sums taken together) must represent no more than the return of contributions together with reasonable interest on contributions or bonuses out of profits, after allowing for—

(a) any income withdrawals, and

(b) any purchases of annuities such as are mentioned in section 636.

To the extent that contributions are invested in units under a unit trust scheme, the lump sum (or lump sums) may represent the sale or redemption price of the units.

(2) A lump sum must be payable only if, in the case of the arrangements in question,—

(a) no such annuity as is mentioned in section 634 has been purchased by the member;

(b) no such annuity as is mentioned in section 636 has been purchased in respect of the relevant interest; and

(c) no election in accordance with subsection (5)(a) of section 636 has been made in respect of the relevant interest.

(3) Where the member's death occurs after the date which is his pension date in relation to the arrangements in question, a lump sum must not be payable more than two years after the death unless, in the case of that lump sum, the person entitled to such an annuity as is mentioned in section 636 in respect of the relevant interest—

(a) has elected in accordance with section 636A to defer the purchase of an annuity; and

(b) has died during the period of deferral.

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(4) In this section "the relevant interest" means the interest, under the arrangements in question, of the person to whom or at whose direction the payment in question is made, except where there are two or more such interests, in which case it means that one of them in respect of which the payment is made.

(5) Where, under the arrangements in question, there is a succession of interests, any reference in subsection (2) or (3) above to the relevant interest includes a reference to any interest (other than that of the member) in relation to which the relevant interest is a successive interest.**]]**

Textual Amendments

F4236 S. 637A substituted (with effect in accordance with s. 172(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 172(2)**

F4237 Ss. 637, 637A substituted for s. 637 (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 8**

638 Other restrictions on approval.

(1) **M870**The Board shall not approve a personal pension scheme unless they are satisfied that there is a person resident in the United Kingdom who will be responsible for the management of the scheme.

(2) The Board shall not approve a personal pension scheme unless it makes such provision for the making, acceptance and application of transfer payments as satisfies any requirements imposed by or under regulations made by the Board.

(3) **M871**The Board shall not approve a personal pension scheme unless it makes provision, in relation to arrangements made in accordance with the scheme, for ensuring that—

(a) the aggregate amount of the contributions that may be made in a year of assessment by the member and an employer of his under the arrangements, together with the aggregate amounts of such contributions under other approved personal pension arrangements made by that member, does not exceed **[**F4238the earnings threshold for that year or, if greater,**]** the permitted maximum for that year; and

(b) any excess is repaid to the member of the extent of his contributions and otherwise to his employer.

(4) In subsection (3) above "the permitted maximum" for a year of assessment means an amount equal to F4239. . . —

(a) the relevant percentage of the member's net relevant earnings for the year;

F4240. . .

(b) F4240. . . . . .

and references in subsection (3) to contributions by the member do not include references to contributions treated by virtue of section 649(3) as paid by him.

(5) In subsection (4) above "the relevant percentage" means 17.5 per cent. or, in a case where section 640(2) applies, the relevant percentage there specified.

(6) **M872**The Board shall not approve a personal pension scheme which permits the acceptance of contributions other than—

(a) contributions by members;

(b) contributions by employers of members;

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(c) minimum contributions paid by the **[**F4241Board**]** under **[**F4242section 43 of the Pension Schemes Act 1993**]** or F4243. . . under **[**F4244section 39 of the Pension Schemes (Northern Ireland) Act 1993**]**.

[F4245(7) The Board shall not approve a personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (6)(c) above in respect of an individual's service as director of a company, if his **[**F4246general earnings**]** as such are within section 644(5).

F4247**[** (7A) The Board shall not approve a personal pension scheme unless it prohibits, except in such cases as may be prescribed by regulations made by the Board—

(a) the acceptance of further contributions, and

(b) the making of transfer payments,

after the date which is the member's pension date in relation to the arrangements in question.**]**

F4248**[** (7B) Subsection (7A) above shall have effect subject to and in accordance with section 638ZA.**]**

(8) A personal pension scheme which permits the acceptance of minimum contributions paid as mentioned in subsection (6)(c) above in respect of an individual's service in an office or employment to which section 645 applies may be approved by the Board only if—

(a) the scheme does not permit the acceptance of contributions from the individual or from the person who is his employer in relation to that office or employment; or

(b) at the time when the minimum contributions are paid the individual is not serving in an office or employment to which section 645 applies.**]**

[F4249(9) The Board may only approve a personal pension scheme if it prohibits the acceptance of contributions in any form other than—

(a) the payment of monetary sums; or

(b) the transfer, subject to the conditions in subsection (12) below, of eligible shares in a company;

and any reference in this Chapter to the payment of contributions includes a reference to the making of contributions in accordance with paragraph (b) above.

(10) For the purposes of this Chapter, the amount of a contribution made by way of a transfer of shares shall be the aggregate market value of the shares at the date of the transfer.

(11) For the purposes of subsection (9)(b) above, "eligible shares" means shares—

(a) which the member has exercised the right to acquire, or

(b) which have been appropriated to the member,

in accordance with the provisions of **[**F4250an SAYE option scheme**]**, an approved profit-sharing scheme or **[**F4251a share incentive plan**]**.

(12) The conditions mentioned in subsection (9)(b) above are—

(a) in relation to shares which the member has exercised his right to acquire in accordance with the provisions of **[**F4252an SAYE option scheme**]**, that the transfer of the shares as contributions under the personal pension scheme takes place before the expiry of the period of 90 days following the exercise of that right;

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(b) in relation to shares appropriated to the member in accordance with the provisions of an approved profit-sharing scheme or **[**F4253a share incentive plan**]**, that the transfer of the shares as contributions under the personal pension scheme takes place before the expiry of the period of 90 days following the date when the member directed the trustees of the approved profit-sharing scheme or **[**F4254share incentive plan**]** to transfer the ownership of the shares to him or, if earlier, the release date in relation to the shares.

(13) In this section—

"approved profit-sharing scheme" has the same meaning as in section 186;

F4255 . . . . . .

"market value" shall be construed in accordance with section 272 of the M873Taxation of Chargeable Gains Act 1992;

[F4256 "SAYE option scheme" has the same meaning as in the SAYE code (see section 516 of ITEPA 2003 (approved SAYE option schemes)), and

"share incentive plan" has the same meaning as in the SIP code (see section 488 of that Act (approved share incentive plans)).**]]**

Textual Amendments

F4238 Words in s. 638(3)(a) inserted (with effect in accordance with Sch. 13 para. 13(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 13(2)** (with Sch. 13 Pt. 2)

F4239 Words in s. 638(4) repealed (with effect in accordance with Sch. 13 para 13(7), Sch. 40 Pt. 2(4) Note 2 of the repealing Act) by Finance Act 2000 (c. 17), Sch. 13 para. 13(3)(a), **Sch. 40 Pt. 2(4)**

F4240 S. 638(4)(b) and preceding word repealed (with effect in accordance with Sch. 13 para 13(7), Sch. 40 Pt. 2(4) Note 2 of the repealing Act) by Finance Act 2000 (c. 17), Sch. 13 para. 13(3)(b)(c), **Sch. 40 Pt. 2(4)**

F4241 Word in s. 638(6)(c) substituted (25.2.1999 for specified purposes and 1.4.1999 otherwise) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a)(3), **Sch. 1 para. 3** (with Sch. 8); S.I. 1999/527, art. 2(b), **Sch. 2**

F4242 Words in s. 638(6)(c) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(3)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F4243 Words in s. 638(6)(c) repealed (1.4.1999) by The Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), art. 1(3), Sch. 1 para. 3, **Sch. 9 Pt. 1** (with Sch. 7); S.R. 1999/149, art. 2(c), **Sch. 2**

F4244 Words in s. 638(6)(c) substituted (7.2.1994) by Pension Schemes (Northern Ireland) Act 1993 (c. 49), ss. 184, 186(2), **Sch. 7 para. 22(2)**; S.R. 1994/17, **art. 2**

F4245 S. 638(7)(8) substituted for s. 638(7) by Finance Act 1988 (c. 39), **s. 55(2)(4)**

F4246 Words in s. 638(7) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(2)** (with Sch. 7)

F4247 S. 638(7A) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 9**

F4248 S. 638(7B) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 13(4)** (with Sch. 13 Pt. 2)

F4249 S. 638(9)-(13) inserted (with effect in accordance with Sch. 13 para. 13(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 13(5)** (with Sch. 13 Pt. 2)

F4250 Words in s. 638(11) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(3)(a)** (with Sch. 7)

F4251 Words in s. 638(11) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(3)(b)** (with Sch. 7)

F4252 Words in s. 638(12)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(4)(a)** (with Sch. 7)

F4253 Words in s. 638(12)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(4)(b)(i)** (with Sch. 7)

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F4254 Words in s. 638(12)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(4)(b)(ii)** (with Sch. 7)

F4255 Words in s. 638(13) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 90(5)(a), **Sch. 8 Pt. 1** (with Sch. 7)

F4256 Words in s. 638(13) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 90(5)(b)** (with Sch. 7)

Modifications etc. (not altering text)

C642 *For regulations see* Part III Vol.5 (*under* "*Personal pension schemes*").

Marginal Citations

M870 Source-1987 (No.2) s.27

M871 Source-1987 (No.2) s.29

M872 Source-1987 (No.2) s.30

M873 1992 c. 12.

[F4257 638Z Personal pension arrangements with more than one pension date etc.

(1) This section applies where a personal pension scheme makes provision for a personal pension arrangement under the scheme to make provision—

(a) for the payment of more than one annuity satisfying the conditions in section 634 or 636 (a "qualifying annuity") and for different such annuities to commence, or be capable of commencing, on different days;

(b) for elections such as are mentioned in section 634A(1) or 636A(1) ("elections for deferral") to be capable of being made at different times in relation to different portions of the personal pension fund; and

(c) for a qualifying lump sum to be payable in connection with—

(i) each qualifying annuity (other than one purchased pursuant to section 634A, 636 or 636A); and

(ii) each election for deferral such as is mentioned in section 634A(1).

(2) The Board shall not refuse to approve a personal pension scheme by reason only that it makes such provision as is mentioned in subsection (1) above if they are satisfied that it makes provision in conformity with the provisions of this section.

(3) In this section—

"income withdrawal fund" means a portion of the personal pension fund which is specified or described in an election for deferral as the portion of that fund to which the election relates;

"qualifying lump sum" means a lump sum satisfying the conditions of section 635 (as that section has effect by virtue of and in accordance with this section);

"the relevant date", in relation to any qualifying annuity or election for deferral, means the date determined in accordance with the arrangement on which—

(a) the qualifying annuity commences; or

(b) the member makes the election for deferral.

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(4) In the application of section 635 in relation to a qualifying lump sum, for the condition in subsection (3) there shall be substituted the conditions in subsections (5) and (6) below (as read with subsection (7) below).

(5) The first condition is that the lump sum must not exceed one-third of—

(a) the difference between—

(i) the value of the portion of the personal pension fund applied in the provision of the qualifying annuity in connection with which the lump sum is paid, determined as at the date on which that portion is so applied, and

(ii) the value, determined as at that date, of so much of that portion as represents protected rights, or

(b) the value, as at the relevant date, of the income withdrawal fund which relates to the election for deferral in connection with it is paid,

as the case may be.

(6) The second condition is that the lump sum must not represent any of the value, at the time when the lump sum is paid, of any protected rights.

(7) In subsections (5) and (6) above, "protected rights" means any of the member's rights under the personal pension arrangement which are protected rights for the purposes of the [M874]Pension Schemes Act 1993 or the [M875]Pension Schemes (Northern Ireland) Act 1993.

(8) Where a qualifying annuity commences, this Chapter and the personal pension scheme concerned shall have effect, as from the relevant date, as if there had been a separate personal pension arrangement and—

(a) the annuity, and any qualifying lump sum payable in connection with it, were benefits provided for by that separate arrangement (instead of by the personal pension arrangement by which it was actually provided (in this subsection referred to as "the relevant arrangement"));

(b) the portion of the personal pension fund applied in the provision of the annuity, together with the amount of any qualifying lump sum payable in connection with the annuity, had been the personal pension fund in the case of that separate arrangement (and were excluded from the personal pension fund in the case of the relevant arrangement);

(c) any election for the annuity, or for such a qualifying lump sum, had been made under that separate arrangement (instead of under the relevant arrangement); and

(d) except in the case of an annuity satisfying the conditions in section 636, the relevant date were the pension date in relation to that separate arrangement (and were not, by reference to that annuity, the pension date in relation to the relevant arrangement).

(9) Where, in the case of any personal pension arrangement (in this subsection referred to as "the relevant arrangement"), an election for deferral is made, this Chapter and the personal pension scheme concerned shall have effect, as from the relevant date, as if there had been, and continued to be, a separate personal pension arrangement and—

(a) the income withdrawal fund which relates to the election, together with the amount of any qualifying lump sum payable in connection with the election, had been the personal pension fund in the case of that separate arrangement

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(and were excluded from the personal pension fund in the case of the relevant arrangement);

(b) the election for deferral, and any election for such a qualifying lump sum, had been made under that separate arrangement (instead of under the relevant arrangement);

(c) the election for deferral had been made in respect of the whole of the income withdrawal fund which relates to the election; and

(d) except in the case of an election such as is mentioned in section 636A(1), the relevant date were the pension date in relation to that separate arrangement (and were not, by reference to that election, the pension date in relation to the relevant arrangement).**]**

Textual Amendments

F4257 S. 638ZA inserted (6.4.2001) by Finance Act 2000 (c. 17), **Sch. 13 para. 14** (with Sch 13 Pt. 2)

Marginal Citations

M874 1993 c. 48.

M875 1993 c. 49.

[F4258 638A Power to prescribe restrictions on approval.

(1) The Board—

(a) may by regulations restrict their discretion to approve a personal pension scheme; and

(b) shall not approve any such scheme if to do so would be inconsistent with any regulations under this section.

(2) The restrictions that may be imposed by regulations under this section may be imposed by reference to any one or more of the following, that is to say—

(a) the benefits for which the scheme provides;

(b) the investments held for the purposes of the scheme;

(c) the manner in which the scheme is administered;

(d) any other circumstances whatever.

(3) The following provisions of this section apply where—

(a) any regulations are made under this section imposing a restriction ("the new restriction") on the Board's discretion to approve a personal pension scheme;

(b) the new restriction did not exist immediately before the making of the regulations; and

(c) that restriction is one imposed by reference to circumstances other than the benefits for which the scheme provides.

(4) Subject to subsections (5) and (6) below, a personal pension scheme which is an approved scheme immediately before the day on which the regulations imposing the new restriction come into force shall cease to be approved at the end of the period of 36 months beginning with that day if, at the end of that period, the scheme—

(a) contains a provision of a prohibited description, or

(b) does not contain every provision which is a provision of a required description.

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(5) The Board may by regulations provide that subsection (4) above is not to apply in the case of the inclusion of such provisions of a prohibited description, or in the case of the omission of such provisions of a required description, as may be specified in the regulations.

(6) For the purposes of subsection (4) above—

(a) a provision contained in a scheme shall not be treated as being of a prohibited description to the extent that it authorises the retention of an investment held immediately before the day of the making of the new regulations; and

(b) so much of any provision contained in a scheme as authorises the retention of an investment held immediately before that day shall be disregarded in determining if any provision of the scheme is of a required description.

(7) In this section—

(a) references to a provision of a prohibited description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which, if contained in a personal pension scheme, would prevent the Board from approving it; and

(b) references to a provision of a required description are references to a provision of a description which, by virtue of the new restriction, is a description of provision which must be contained in a personal pension scheme before the Board may approve it.**]**

Textual Amendments

F4258 S. 638A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 94(1)**

Tax reliefs

639 Member's contributions.

[F4259(1) An individual who pays a contribution under approved personal pension arrangements made by him shall be entitled to relief under this section in respect of the contribution.

(1A) Subsection (1) above is subject to the other provisions of this Chapter.

(1B) The total amount of contributions in respect of which relief may be given to an individual under this section for any year of assessment must not exceed—

(a) the permitted maximum for the year, as defined in section 638(4), or

(b) the earnings threshold for the year,

whichever is the greater.

(2) Any relief under this section shall be given in accordance with—

(a) subsections (3) and (4) below, and

(b) where applicable, subsection (5A) below.

(2A) Relief in accordance with subsections (3) and (4) below shall be subject to such conditions as the Board may prescribe in regulations.**]**

[F4260(3) An individual who is entitled to relief under this section in respect of a contribution shall be entitled, on making the payment, to deduct and retain out of it a sum equal

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to income tax on the contribution at the basic rate for the year of assessment in which the payment is made.**]**

[F4261(4) Where a sum is deducted under subsection (3) above from a contribution—

(a) the scheme administrator shall allow the deduction on receipt of the residue;

(b) the individual paying the contribution shall be acquitted and discharged of so much money as is represented by the deduction as if the sum had been actually paid; and

(c) the sum deducted shall be treated as income tax paid by the scheme administrator.**]**

[F4262(4A) Where payment of a contribution under approved personal pension arrangements is received—

(a) the scheme administrator shall be entitled to recover from the Board, in accordance with regulations, an amount which by virtue of subsection (4)(c) above is treated as income tax paid by him; and

(b) any amount so recovered shall be treated for the purposes of the Tax Acts in like manner as the payment of the contribution to which it relates.**]**

(5) Regulations under this section may make provision for carrying subsections **[**F4263(3) to (4A)**]** above into effect and, without prejudice to the generality of that, may provide—

(a) for the manner in which claims for the recovery of a sum under subsection **[**F4264(4A)(a)**]** may be made;

(b) for the giving of such information, in such form, as may be prescribed by or under the regulations;

(c) for the inspection by persons authorised by the Board of books, documents and other records.

[F4265(5A) Where—

(a) an individual is entitled to relief under this section in respect of contributions paid in any year of assessment, and

(b) apart from this subsection, income tax at the higher rate is chargeable in respect of any part of his total income for the year,

the basic rate limit for that year shall in his case be increased by the addition of the amount of the contributions in respect of which he is entitled to relief under this section.

(5B) Relief in accordance with subsection (5A) above shall be given only on a claim made for the purpose.**]**

(6) M876Where relief under this section for any year of assessment is claimed and allowed (whether or not it then falls to be given for that year), and afterwards an assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax is made, there shall also be made such consequential adjustments in the relief allowed or given under this section for that or any subsequent year as are appropriate.

(7) M877Where relief **[**F4266is given under this section**]** for any year of assessment in respect of a contribution, relief shall not be given in respect of it under any other provision of the Income Tax Acts for the same or any subsequent year, nor (in the case of a contribution under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

(8) References in the Income Tax Acts to relief in respect of life assurance premiums shall not be taken to include relief under this section.

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Textual Amendments

F4259 S. 639(1)-(1B)(2)(2A) substituted for s. 639(1)(2) (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(2)** (with Sch. 13 Pt. 2)

F4260 S. 639(3) substituted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(3)** (with Sch. 13 Pt. 2)

F4261 S. 639(4) substituted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(4)** (with Sch. 13 Pt. 2)

F4262 S. 639(4A) inserted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(5)** (with Sch. 13 Pt. 2)

F4263 Words in s. 639(5) substituted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(6)(a)** (with Sch. 13 Pt. 2)

F4264 Words in s. 639(5) substituted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(6)(b)** (with Sch. 13 Pt. 2)

F4265 S. 639(5A)(5B) inserted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(7)** (with Sch. 13 Pt. 2)

F4266 Words in s. 639(7) substituted (with effect in accordance with Sch. 13 para. 15(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 15(8)** (with Sch. 13 Pt. 2)

Modifications etc. (not altering text)

C643 *For regulations see* Part III Vol.5 (*under* "*Personal pension schemes*").

Marginal Citations

M876 Source-1987 (No.2) s.48

M877 Source-1987 (No.2) s.49

640 Maximum amount of deductions.

M878(1) The maximum amount **[**F4267of contributions in respect of which relief may be given**]** in any year of assessment by virtue of section 639(1) shall be—

[F4268(a) an amount equal to the earnings threshold for that year; or

(b) if greater,**]** 17.5 per cent. of the individual's net relevant earnings for that year.

(2) In the case of an individual whose age at the beginning of the year of assessment is within a range specified in the first column of the following table, subsection (1) above shall have effect with the substitution for 17.5 per cent. of the relevant percentage specified in the second column.

[F4269	20 per cent.
36 to 45	
46 to 50	25 per cent.
51 to 55	30 per cent.
56 to 60	35 per cent.
61 or more	40 per cent.**]**

(3) **[**F4270Without prejudice to subsection (1) above, where any contributions are paid in a year of assessment by an individual to secure benefits satisfying the conditions in

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section 637, the maximum amount of those contributions in respect of which relief may be given by virtue of section 639(1)**[**F4271shall be an amount equal to 10 per cent. of the aggregate amount of the relevant pension contributions made in that year by the individual and an employer of his**]**.

[F4272(3A) In subsection (3) above "relevant pension contribution" means a contribution paid towards securing benefits falling within paragraph (a), (b) or (c) of section 633(1) under arrangements made under a personal pension scheme on or after 6th April 2001.**]**

(4) Where personal pension arrangements are made by an employee whose employer makes contributions under the arrangements, the maximum amount **[**F4273of contributions in respect of which relief may be given by virtue of section 639(1)**]** in any year of assessment shall be reduced by the amount of the employer's contributions in the year.

(5) Any minimum contributions treated by virtue of section 649(3) as paid by the individual in respect of whom they are paid shall be disregarded for the purposes of this section.

Textual Amendments

F4267 Words in s. 640(1) substituted (with effect in accordance with Sch. 13 para. 16(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 16(2)(a)** (with Sch. 13 Pt. 2)

F4268 Words in s. 640(1) inserted (with effect in accordance with Sch. 13 para. 16(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 16(2)(b)** (with Sch. 13 Pt. 2)

F4269 1989 s.77*and* Sch.7 para.3*for* 1989-90*and subsequent years. Previously* "51 to 55—20 per cent., 56 to 60—22.5 per cent., 61 or more—27.5 per cent.".

F4270 Words in s. 640(3) substituted (with effect in accordance with Sch. 13 para. 16(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 16(4)** (with Sch. 13 Pt. 2)

F4271 Words in s. 640(3) substituted (with effect in accordance with Sch. 13 para. 16(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 16(5)** (with Sch. 13 Pt. 2)

F4272 S. 640(3A) inserted (with effect in accordance with Sch. 13 para. 16(9) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 16(6)** (with Sch. 13 Pt. 2)

F4273 Words in s. 640(4) substituted (with effect in accordance with Sch. 13 para. 16(8) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 16(7)** (with Sch. 13 Pt. 2)

Marginal Citations

M878 Source-1987 (No.2) s.32

[F4274640A Earnings cap.

(1) In arriving at an individual's net relevant earnings for a year of assessment **[**F4275for the purposes of section 638 or 640 above**]**, any excess of what would be his net relevant earnings for the year (apart from this subsection) over the allowable maximum for the year shall be disregarded.

(2) In subsection (1) above "the allowable maximum" means, as regards a particular year of assessment, the figure found for that year by virtue of subsections (3) and (4) below.

(3) For the year of assessment 1989-90 the figure is £60,000.

(4) For the year of assessment 1990-91 and any subsequent year of assessment the figure is the figure found for that year, for the purposes of section 590C, by virtue of section 590C(4) **[**F4276to (5A)**]**.**]**

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Textual Amendments

F4274 S. 640A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 7 para. 4(1)**

F4275 Words in s. 640A(1) substituted (with effect in accordance with s. 174(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 174(1)**

F4276 Words in s. 640A(4) substituted (27.7.1993 with effect for 1994-95 and subsequent years of assessment) by 1993 c. 34, **s. 107(6)(8)**

641 Carry-back of contributions.

F4277 . . . . . .

Textual Amendments

F4277 S. 641 repealed (with effect in accordance with Sch. 13 para. 17 of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40** Pt, 2(4), Note 3 (with Sch. 13 Pt. 2)

[F4278 641A Election for contributions to be treated as paid in previous year.

(1) **[**F4279 An individual who under approved personal pension arrangements made by him pays a contribution**]** on or before the 31st January in any year of assessment may, at or before the time when he pays the contribution, irrevocably elect that the contribution, or part of it, shall be treated as paid in the preceding year of assessment.

(2) Where an election is made under this section in respect of a contribution or part of a contribution, the other provisions of this Chapter shall have effect as if the contribution or part had been paid in the year specified in the election and not in the year in which it was actually paid.**]**

Textual Amendments

F4278 S. 641A inserted (with effect in accordance with Sch. 13 para. 18(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 18(1)** (with Sch. 13 Pt. 2)

F4279 Words in s. 641A(1) substituted (with effect in accordance with s. 174(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 174(3)**

642 Carry-forward of relief.

F4280 . . . . . .

Textual Amendments

F4280 S. 642 repealed (with effect in accordance with Sch. 13 para. 19 of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40** Pt, 2(4), Note 4 (with Sch. 13 Pt. 2)

643 Employer's contributions and personal pension income etc.

(1) F4281 . . . . . .

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(2) [M879]Income derived by a person from investments or deposits held by him for the purposes of an approved personal pension scheme shall be exempt from income tax.

(3) [M880]An annuity payable under approved personal pension arrangements shall be treated as earned income of the annuitant.

(4) Subsection (3) above applies only in relation to the annuitant to whom the annuity is made payable by the terms of the arrangements.

[[F4282](5) Income withdrawals under approved personal pension arrangements [F4283]. . . shall be treated as earned income of the recipient.**]**

Textual Amendments

F4281 S. 643(1) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 91(2), **Sch. 8 Pt. 1** (with Sch. 7)

F4282 S. 643(5) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 11**

F4283 Words in s. 643(5) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 91(3), **Sch. 8 Pt. 1** (with Sch. 7)

Marginal Citations

M879 Source-1987 (No.2) s.39(1)

M880 Source-1987 (No.2) s.41(1), (2)

644 Meaning of "relevant earnings".

[M881](1) In this Chapter, "relevant earnings", in relation to an individual, means any income of his which is chargeable to tax for the year of assessment in question and is within subsection (2) below.

(2) Subject to subsections (3) to **[**[F4284](6F)**]** below, income is within this subsection if it is—

(a) **[**[F4285]general earnings**]** from an office or employment held by the individual;

(b) income from any property which is attached to or forms part of the **[**[F4286]earnings from**]** an office or employment held by him;

(c) income which is chargeable under **[**[F4287]Part 2 of ITTOIA 2005**]** and is immediately derived by him from the carrying on or exercise by him of his trade, profession or vocation (either as an individual or as a partner acting personally in a partnership);

[[F4288](d) income to which section 833(5B) (patent income) applies.**]**

(3) Where section 645 applies to an office or employment held by the individual, neither **[**[F4289]general earnings**]** from the office or employment nor income from any property which is attached to it or forms part of its **[**[F4289]general earnings**]** are within subsection (2) above.

(4) The following are not income within subsection (2) above—

(a) anything in respect of which tax is chargeable under **[**[F4290]ITEPA 2003**]** and which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares;

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(b) anything in respect of which tax is chargeable by virtue of **[**F4291Chapter 3 of Part 6 of ITEPA 2003 (payments and benefits on termination of employment etc.)**]**.

(5) **[**F4292general earnings**]** of an individual as director of a company are not income within subsection (2) above if—

(a) the income of the company consists wholly or mainly of investment income; and

(b) the individual, either alone or together with any other persons who are or have been at any time directors of the company, controls the company;

and section 840 shall apply for the purposes of this subsection.

(6) For the purposes of subsection (5) above—

"director" includes any person occupying the position of director by whatever name called; and

[F4293"investment income" means income which if the company were an individual, would not be earned income.**]**

[F4294(6A) **[**F4295general earnings**]** of an individual as an employee of a company are not income within subsection (2) above if—

(a) he is a controlling director of the company at any time in the year of assessment in question or has been a controlling director of the company at any time in the ten years immediately preceding that year of assessment, and

(b) any of subsections (6B) to (6E) below applies in his case.

(6B) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a relevant superannuation scheme, and

(b) the benefits are payable in respect of past service with the company.

(6C) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a personal pension scheme.

(b) the scheme has received a transfer payment relating to him from a relevant superannuation scheme, and

(c) the transfer payment is in respect of past service with the company.

(6D) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a relevant superannuation scheme,

(b) the benefits are payable in respect of past service with another company,

(c) the **[**F4296general earnings**]** are for a period during which the company mentioned in subsection (6A) above has carried on a trade or business previously carried on by the other company, and

(d) the other company carried on the trade or business at anytime during the period of service in respect of which the benefits are payable.

(6E) This subsection applies in the case of the individual if—

(a) at any time in the year of assessment in question he is in receipt of benefits under a personal pension scheme,

(b) the scheme has received a transfer payment relating to him from a relevant superannuation scheme,

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(c) the transfer payment is in respect of past service with another company,

(d) the **[**F4297general earnings**]** are for a period during which the company mentioned in subsection (6A) above has carried on a trade or business previously carried on by the other company, and

(e) the other company carried on the trade or business at any time during the period of service in respect of which the transfer payment was made.

[Where—

F4298(6EA)

(a) there is a time at which a person would be in receipt of any benefits under a scheme but for any debit to which any of his rights under that scheme became subject by virtue of any pension sharing order or provision, and

(b) the benefits he would be in receipt of are benefits payable in respect of past service with a company,

that person shall be deemed for the purposes of subsections (6A) to (6E) above to be in receipt at that time of benefits under that scheme and the benefits which he is deemed to be in receipt of shall be deemed to be benefits in respect of past service with that company.**]**

(6F) For the purposes of subsections (6A) to **[**F4299(6EA)**]** above—

(a) a person is a controlling director of a company if he is a director (as defined by section 612(1)), and he is within paragraph (b) of section 417(5), in relation to the company;

(b) "relevant superannuation scheme" has the same meaning as in section 645(1);

(c) references to benefits payable in respect of past service with a company include references to benefits payable partly in respect of past service with the company **[**F4300but do not include references to benefits which (within the meaning of section 590) are provided for him as an ex-spouse**][**F4301or former civil partner**]**; and

(d) references to a transfer payment in respect of past service with a company include references to a transfer payment partly in respect of past service with the company **[**F4302but do not include references to any transfer payment made for the purpose of giving effect to a pension sharing order or provision.**]]**

(7) *For the purposes of this Chapter, a married woman's relevant earnings shall not be treated as her husband's relevant earnings, notwithstanding that her income chargeable to tax is treated as his income*F4303.

Textual Amendments

F4284 1989 s.77*and* Sch.7 para.5(2)*from* 6*April* 1989.*Previously* "(5)".

F4285 Words in s. 644(2)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(2)** (with Sch. 7)

F4286 Words in s. 644(2)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(3)** (with Sch. 7)

F4287 Words in s. 644(2)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 264(a)** (with Sch. 2)

F4288 S. 644(2)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 264(b)** (with Sch. 2)

F4289 Words in s. 644(3) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(4)** (with Sch. 7)

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F4290 Words in s. 644(4)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(5)** (with Sch. 7)
F4291 Words in s. 644(4)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(6)** (with Sch. 7)
F4292 Words in s. 644(5) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(7)(a)** (with Sch. 7)
F4293 1989 s.107*and* Sch. 12 para.16*in relation to accounting periods beginning after* 31*March* 1989.*Previously*
" "investment income" shall be construed in accordance with paragraph 7 of Schedule 19.".
F4294 1989 s.77*and* Sch.7 para.5(3)*from* 6*April* 1989.
F4295 Words in s. 644(6A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(7)(b)** (with Sch. 7)
F4296 Words in s. 644(6D)(c) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(7)(c)** (with Sch. 7)
F4297 Words in s. 644(6E)(d) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 92(7)(d)** (with Sch. 7)
F4298 S. 644(6EA) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 15(1)**
F4299 Words in s. 644(6F) substituted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 15(2)(a)**
F4300 Words in s. 644(6F)(c) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 15(2)**b)
F4301 Words in s. 644(6F)(c) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 90
F4302 Words in s. 644(6F)(d) inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 15(2)(c)**
F4303 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Modifications etc. (not altering text)
C644 S. 644 modified (6.4.2003 with effect in accordance with s. 723(1) of the modifying Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 56(8)** (with s. 48(2))
C645 S. 644(2)(c) extended (with effect in accordance with s. 44 of the extending Act) by Finance Act 1998 (c. 36), Sch. 6 paras. 1, **2**
C646 S. 644(2)(c) extended (with effect in accordance with Sch. 22 paras. 16-18 of the extending Act) by Finance Act 2002 (c. 23), **Sch. 22 para. 4**

Marginal Citations
M881 Source-1987 (No.2) s.35

645 Earnings from pensionable employment.

M882(1) This section applies to an office or employment held by an individual if—
(a) service in it is service to which a relevant superannuation scheme relates; and
(b) the individual is a participant in the scheme; and
(c) **[**F4304subsection (4) below does not apply**]** to his participation in the scheme.

(2) This section applies whether or not the duties of the office or employment are performed wholly or partly in the United Kingdom or the individual is chargeable to tax in respect of it.

(3) In subsection (1) above "a relevant superannuation scheme" means a scheme or arrangement—
(a) the object or one of the objects of which is the provision, in respect of persons serving in particular offices or employments, of relevant benefits within the meaning of section 612; F4305 . . .
(b) which is established by a person other than the individual **[**F4304, F4306 . . .

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(c) which is of a description mentioned in **[**F4307section 387(2) of ITEPA 2003 (meaning of non-approved retirement benefits scheme)**]**[F4308; and

(d) which is not an approved converted scheme**]**.

(4) This subsection applies to an individual's participation in a scheme if the scheme provides no benefits in relation to him other than—

(a) an annuity payable to his surviving spouse **[**F4309or civil partner**]** or a dependant of his;

(b) a lump sum payable on his death in service.

[F4310(4A) Where the **[**F4311earnings**]** from an office or employment held by an individual are **[**F4312earnings and amounts treated as earnings to which subsection (4B) applies**]**, this section shall have effect with the substitution of the following for paragraph (c) of subsection (3) above—

"(c) which corresponds to a scheme of a description mentioned in **[**F4313section 387(2) of ITEPA 2003 (meaning of non-approved retirement benefits scheme)**]**.".**]**

[F4314(4B) This subsection applies to earnings and amounts treated as earnings for a year of assessment if—

(a) the employee or office-holder is not domiciled in the United Kingdom in that year, and

(b) the employment is with a foreign employer.

(4C) If there is a dispute as to whether the employee or office-holder is not domiciled in the United Kingdom, sections 42 and 43 of ITEPA 2003 (Board to determine dispute as to domicile) apply to the dispute as they apply to a dispute mentioned in section 42(1) of that Act.

(4D) In this section—

"earnings and amounts treated as earnings" means earnings and amounts treated as earnings which constitute employment income (see section 7(2)(a) or (b) of ITEPA 2003);

"foreign employer" has the meaning given by section 721 of ITEPA 2003.**]**

(5) *This subsection applies to an individual's participation in a scheme if any sums paid pursuant to the scheme with a view to the provision of relevant benefits for him are treated as his income for the purposes of the Income Tax Acts*F4315.

Textual Amendments

F4304 1989 s.77*and* Sch.7 para.6(2), (3)*from* 6*April* 1989.*Previously*
"neither subsection (4) nor subsection (5) below applies"
in subs.(1).

F4305 *Repealed by* 1989 ss.77*and* 187, Schs.7 para.6(3)*and* 17 Part IV*from* 6*April* 1989.

F4306 Word preceding s. 645(3)(c) repealed (28.7.2000) by Finance Act 2000 (c, 17), Sch. 13 para. 20(2), Sch. 40 Pt. 2(4) (with Sch. 13 Pt. 2)

F4307 Words in s. 645(3)(c) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 93(2)** (with Sch. 7)

F4308 S. 645(3)(d) and preceding word inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 20(2)** (with Sch. 13 Pt. 2)

F4309 Words in s. 645(4)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 91

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F4310 1989 s.77*and* Sch.7 para.6(4)*from* 6*April* 1989.
F4311 Words in s. 645(4A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 93(3)(a)** (with Sch. 7)
F4312 Words in s. 645(4A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 93(3)(b)** (with Sch. 7)
F4313 Words in s. 645(4A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 93(3)(c)** (with Sch. 7)
F4314 S. 645(4B)-(4D) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 93(4)** (with Sch. 7)
F4315 *Repealed by* 1989 ss.77*and* 187, Schs.7 para.6(5)*and* 17 Part IV*from* 6*April* 1989.

Marginal Citations
M882 Source-1987 (No.2) s.36

646 Meaning of "net relevant earnings".

M883(1) Subject to subsections (3) to (7) below **[**F4316and section 646(A)**]**, in this Chapter "net relevant earnings", in relation to an individual, means the amount of his relevant earnings for the year of assessment in question, less the amount of any deductions within subsection (2) below which fall to be made from the relevant earnings in computing for the purposes of income tax his total income for that year.

(2) Deductions are within this subsection if they are—

(a) deductions which but for **[**F4317section 51 of ITTOIA 2005**]** could be made in computing the profits or gains of the individual;

[F4318(aa) deductions in respect of any annuity or other annual payment (other than interest) payable out of his profits;**]**

[F4319(b) deductions made by virtue of section 232, 336, 343, 344 or 351 of ITEPA 2003 (mileage allowance, expenses, professional membership fees, annual subscriptions, ministers of religion);

(ba) travelling or subsistence expenses deducted by virtue of Part 5 of that Act;

(bb) deductions made by virtue of **[**F4320section 159 of ITTOIA 2005**]**;**]**

(c) deductions in respect of relief under Schedule 9 to the Finance Act 1981 (stock relief);

(d) deductions in respect of losses or capital allowances, being losses or capital allowances arising from activities profits or gains of which would be included in computing relevant earnings of the individual*or the individual's wife or husband*F4321.

(3) For the purposes of this section, an individual's relevant earnings shall be taken to be those earnings before giving effect to any capital allowances, other than deductions allowable in computing profits or gains, but after taking into account the amounts on which charges fall to be made **[**F4322under **[**F4323the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]]**; and in subsections (4) and (5) below, references to income (other than references to total income) shall be construed similarly.

(4) In the case of an individual's partnership profits, the amount to be included in arriving at his net relevant earnings shall be his share of the partnership income (estimated in accordance with the Income Tax Acts) after making from it any such deductions in respect of—

(a) payments made by the partnership;

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(b) relief given to the partnership under Schedule 9 to the Finance Act 1981; or

(c) capital allowances falling to be made to the partnership,

as would be made in computing the tax payable in respect of that income.

(5) Where, in a year of assessment for which **[**F4324the basic rate limit is increased in accordance with section 639(5A) in the case**]** of an individual—

(a) a deduction in respect of such a loss or allowance of the individual as is mentioned in subsection (2)(d) above falls to be made in computing the total income of the individual*or the individual's wife or husband*F4325; and

(b) the deduction or part of it falls to be so made from income other than relevant earnings;

the amount of the deduction made from that other income shall be treated as reducing the individual's net relevant earnings for subsequent years of assessment in accordance with subsection (6) below.

(6) The deduction shall be made so far as possible from the individual's net relevant earnings for the first of the subsequent years of assessment (whether or not he is entitled to relief **[**F4326in accordance with section 639(5A)**]** for that year), and then, so far as it cannot be so made, from those of the next year, and so on.

(7) F4327. . . . . .

Textual Amendments

F4316 1989 s.77*and* Sch.7 para.7*for the year* 1989-90*and subsequent years.*

F4317 Words in s. 646(2)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 265(a)** (with Sch. 2)

F4318 S. 646(2)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 265(b)** (with Sch. 2)

F4319 S. 646(2)(b)-(bb) substituted for s. 646(2)(b) (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 94** (with Sch. 7)

F4320 Words in s. 646(2)(bb) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 265(c)** (with Sch. 2)

F4321 *Words repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F4322 1990(C) s.164*and* Sch.1 para.8(29).*Previously*
"under the 1968 Act (including the enactments which under this Act or the 1970 Act are to be treated as contained in Part I of the 1968 Act)".

F4323 Words in s. 646(3) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 54**

F4324 Words in s. 646(5) substituted (with effect in accordance with Sch. 13 para. 21(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 21(2)** (with Sch. 13 Pt. 2)

F4325 *Words repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F4326 Words in s. 646(6) substituted (with effect in accordance with Sch. 13 para. 21(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 21(3)** (with Sch. 13 Pt. 2)

F4327 S. 646(7) repealed (with effect in accordance with Sch. 13 para. 21(5), Sch. 40 Pt. 2(4) Note 5 of the repealing Act) by Finance Act 2000 (c. 17), Sch. 13 para. 21(4), **Sch. 40 Pt. 2(4)**

Marginal Citations

M883 Source-1987 (No.2) s.37

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[F4328 646A Earnings from associated employments.

(1) This section applies where in the year of assessment in question—

(a) an individual holds two or more offices or employments which are associated in that year,

(b) one or more of them is an office or employment to which section 645 applies ("pensionable job"), and

(c) one or more of them is an office or employment to which that section does not apply ("non-pensionable job").

(2) Where the **[**F4329 general earnings**]** for that year from the pensionable job (or jobs) are equal to or exceed the allowable maximum for that year, section 646(1) shall have effect in the case of the individual as if the references to relevant earnings were references to relevant earnings not attributable to the non-pensionable job (or jobs).

(3) Where the allowable maximum for that year exceeds the **[**F4330 general earnings**]** for that year from the pensionable job (or jobs), the individual's net relevant earnings, so far as attributable to the non-pensionable job (or jobs), shall not be greater than the amount of the excess.

(4) For the purposes of this section two or more offices or employments held by an individual in a year of assessment are associated in that year if the employers in question are associated at any time during it.

(5) For the purposes of subsection (4) above, employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person.

(6) In subsection (5) above the reference to control, in relation to a body corporate, shall be construed—

(a) where the body corporate is a close company, in accordance with section 416, and

(b) where it is not, in accordance with section 840.

(7) In this section "the allowable maximum" has the same meaning as in section 640A(1).**]**

Textual Amendments

F4328 S. 646A inserted (with effect in accordance with Sch. 7 para. 8(2) of the amending Act) by Finance Act 1989 (c. 26), **Sch. 7 para. 8(1)**

F4329 Words in s. 646A(2) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 95(2)** (with Sch. 7)

F4330 Words in s. 646A(3) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 95(3)** (with Sch. 7)

[F4331 646B Presumption of same level of relevant earnings etc for 5 years.

(1) This section applies where an individual (the "relevant member") who is or becomes a member of a personal pension scheme provides to the scheme administrator the requisite evidence of the relevant amounts for any year of assessment (the "basis year").

(2) For the purposes of this section, the "relevant amounts" for any year of assessment are the amounts which need to be known in order to calculate the relevant member's net relevant earnings for that year.

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(3) The basis year need not be a year of assessment in which the relevant member is a member of the personal pension scheme concerned.

(4) Where this section applies, it shall be presumed for the purposes of this Chapter in the case of the relevant member and the personal pension scheme concerned that, for each of the five years of assessment following the basis year, the relevant amounts (and, accordingly, the relevant member's net relevant earnings) are the same as for the basis year.

(5) Subsection (4) above is subject to—

(a) subsections (6) to (9) below; and

(b) such conditions or exceptions as may be prescribed.

(6) For the purposes of this section, the requisite evidence provided for a later basis year (the "later basis year") supersedes the requisite evidence provided for an earlier basis year (the "earlier basis year").

(7) Subsection (6) above has effect subject to, and in accordance with, subsections (8) and (9) below.

(8) If—

(a) the actual net relevant earnings for the later basis year,

exceed

(b) the actual net relevant earnings for the earlier basis year,

the supersession effected by subsection (6) above has effect as respects the later basis year and subsequent years of assessment (and subsection (4) above applies accordingly).

(9) Where the condition in subsection (8) above is not satisfied, the supersession effected by subsection (6) above has effect only as respects years of assessment later than the last of the five years of assessment following the earlier basis year (and subsection (4) above applies accordingly).

(10) It is immaterial for the purposes of this section whether the requisite evidence for a later year of assessment is provided before or after, or at the same time as, the requisite evidence for an earlier year of assessment.

(11) This section is subject to section 646D.**]**

Textual Amendments

F4331 Ss. 646B, 646C inserted (with effect in accordance with Sch. 13 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 22(1)** (with Sch. 13 Pt. 2)

[F4331 646C Provisions supplementary to section 646B.

(1) In this section and section 646B, "requisite evidence" means evidence—

(a) of such a description as may be prescribed;

(b) in such form as may be prescribed; and

(c) satisfying such conditions as may be prescribed.

(2) Regulations may make further provision in connection with requisite evidence.

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(3) The provision that may be made by regulations under subsection (2) above includes provision for or in connection with the provision, use, retention, production or inspection of, or of copies of,—

(a) requisite evidence;

(b) books, documents or other records relating to any requisite evidence; or

(c) extracts from requisite evidence or from such books, documents or other records.

(4) Any power to make regulations under this section or section 646B includes power to make different provision for different cases or different purposes.

(5) In this section and section 646B—

"prescribed" means specified in or determined in accordance with regulations;

"regulations" means regulations made by the Board.**]**

Textual Amendments

F4331 Ss. 646B, 646C inserted (with effect in accordance with Sch. 13 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 22(1)** (with Sch. 13 Pt. 2)

[F4332 646D Higher level contributions after cessation of actual relevant earnings: modification of section 646B.

(1) This section applies where a member of a personal pension scheme—

(a) has no actual relevant earnings in a year of assessment (the "break year"); but

(b) had actual relevant earnings in the preceding year of assessment (the "cessation year"); and

(c) was entitled to make higher level contributions under arrangements under the scheme in any one or more of the six years of assessment preceding the break year (the "reference years").

(2) In the application of the presumption in subsection (4) of section 646B for any qualifying post-cessation year, in a case where this section applies, the basis year may be any one of the reference years for which the member provides or has provided the requisite evidence—

(a) notwithstanding anything in subsections (6) to (9) of that section; and

(b) whether or not the qualifying post-cessation year is included among the five years of assessment following the basis year.

(3) If the member provides or has provided the requisite evidence for two or more of the reference years, he may by notice in writing to the scheme administrator nominate that one of those years which is to be the basis year by virtue of subsection (2) above.

(4) In this section "post-cessation year", in the case of the member concerned, means any of the five years of assessment following the cessation year.

(5) For the purposes of this section any post-cessation year is a "qualifying" post-cessation year unless—

(a) it is a year for which the member has any actual relevant earnings;

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(b) it is a year throughout which the member holds an office or employment to which section 645 applies; or

(c) it immediately follows a post-cessation year which is not a qualifying post-cessation year.

(6) Subsection (5) above is without prejudice to the further application of this section in relation to the member if the conditions in subsection (1) above are again fulfilled.

(7) In this section—

"the basis year" shall be construed in accordance with section 646B;

"the requisite evidence" has the same meaning as in that section.**]**

Textual Amendments

F4332 S. 646D inserted (with effect in accordance with Sch. 13 para. 23(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 23(1)** (with Sch. 13 Pt. 2)

Charge to tax

647 Unauthorised payments.

F4333 . . . . . .

Textual Amendments

F4333 Ss. 647-648A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 96, **Sch. 8 Pt. 1** (with Sch. 7)

648 Contributions under unapproved arrangements.

F4334 . . . . . .

Textual Amendments

F4334 Ss. 647-648A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 96, **Sch. 8 Pt. 1** (with Sch. 7)

[F4335F4336 . . . . . .

Textual Amendments

F4335 S. 648A and preceding cross-heading inserted (with application in accordance with s. 109(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 109(1)**

F4336 Cross-heading preceding s. 648A omitted (1.5.1995) by virtue of Finance Act 1995 (c. 4), **Sch. 11 para. 12**

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648A Annuities: charge under Schedule E.

F4337 . . . . . .

Textual Amendments

F4335 S. 648A and preceding cross-heading inserted (with application in accordance with s. 109(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 109(1)**

F4337 Ss. 647-648A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 96, **Sch. 8 Pt. 1** (with Sch. 7)

[F4338 648B Return of contributions after pension date.]

(1) [F4339 Income tax] shall be charged under this section on any payment to a person under approved personal pension arrangements of such a lump sum as is mentioned in section 637A in a case where the member's death occurred after his pension date in relation to the arrangement in question.

(2) [F4340 The person liable for any tax chargeable under this section shall be the administrator of the scheme] and, subject to subsection (3) below, the rate of tax shall be 35 per cent.

(3) The Treasury may by order from time to time increase or decrease the rate of tax under subsection (2) above.

(4) The tax shall be charged on the amount paid or, if the rules of the scheme permit the scheme administrator to deduct the tax before payment, on the amount before deduction of tax; and the amount so charged to tax shall not be treated as income for any other purpose of the Tax Acts.]

Textual Amendments

F4335 S. 648A and preceding cross-heading inserted (with application in accordance with s. 109(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 109(1)**

F4338 S. 648B inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 11 para. 12**

F4339 Words in s. 648B(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 266(2)** (with Sch. 2)

F4340 Words in s. 648B(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 266(3)** (with Sch. 2)

Miscellaneous

649 Minimum contributions under Social Security Act 1986.

M884 (1) Where under [F4341 section 43 of the Pension Schemes Act 1993] the [F4342 Board pay] minimum contributions for the purposes of approved personal pension arrangements, the amount of the employee's share of those contributions shall, instead of being the amount provided for in that Part, be the grossed-up equivalent of the amount so provided for.

(2) For the purposes of this section—

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[F4343"the employee"s share' of minimum contributions is the amount that would be the minimum contributions if, for the reference in section 45(1) of the Pension Schemes Act 1993 to the appropriate age-related percentage, there were substituted a reference to the percentage mentioned in section 41(1A)(a) of that Act**]**;

"the grossed-up equivalent" of an amount is such sum as, after deduction of income tax at the basic rate in force for the year of assessment for which the contributions are paid, is equal to that amount.

(3) The employee's share of minimum contributions paid for a year of assessment by the **[**F4344Board**]** for the purposes of approved personal pension arrangements shall be treated for the purposes of income tax—

(a) as the income for that year of the individual in respect of whom it is paid; and

(b) as contributions paid in that year by that individual under those arrangements.

(4) The Board may make regulations—

(a) F4345. . . . . .

(b) F4345. . . . . .

(c) prescribing circumstances in which this section or any provision of it shall not apply;

(d) making such provision as appears to the Board to be necessary or expedient for the purposes of supplementing the provisions of this section.

[F4346(5) The Board shall pay into the National Insurance Fund out of money provided by Parliament the amount of any increase attributable to this section in the sums paid out of that Fund under the Pension Schemes Act 1993.**]**

(6) In relation to Northern Ireland, this section shall have effect as if—

(a) F4347. . . . . .

(b) references to **[**F4348section 43, section 45(1) and section 41(1)(a) of the Pension Schemes Act 1993**]** were references to **[**F4349sections 39, 41(1) and 37(1)(a) of the Pension Schemes (Northern Ireland) Act 1993, respectively**]**;

[F4350(bb) references to sections 45(1) and 41(1A)(a) of the Pension Schemes Act 1993 were references to sections 41(1) and 37(1A)(a) of the Pension Schemes (Northern Ireland) Act 1993, respectively;**]** and

(c) references to the National Insurance Fund were references to the Northern Ireland National Insurance Fund.

Textual Amendments

F4341 Words in s. 649(1) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(3)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F4342 Words in s. 649(1) substituted (25.2.1999 for specified purposes and 1.4.1999 otherwise) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 4(2)** (with Sch. 8); S.I. 1999/527, art. 2(b), **Sch. 2**

F4343 S. 649(2): definition of "the employee's share" substituted (E.W.S.) (6.4.1997) by Pensions Act 1995 (c. 26), **Sch. 5 para. 12**; S.I. 1997/664, art. 2(3), **Sch. Pt. 2**

F4344 Word in s. 649(3) substituted (25.2.1999 for specified purposes and 1.4.1999 otherwise) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 4(3)** (with Sch. 8); S.I. 1999/527, art. 2(b), **Sch. 2**

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F4345 S. 649(4)(a)(b) repealed (25.2.1999 for specified purposes and 1.4.1999 otherwise) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), Sch. 1 para. 4(4), **Sch. 10 Pt. 1** (with Sch. 8); S.I. 1999/527, art. 2(b), **Sch. 2**

F4346 S. 649(5) substituted (25.2.1999 for specified purposes and 1.4.1999 otherwise) by Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), s. 28(2)(a), **Sch. 1 para. 4(5)** (with Sch. 8); S.I. 1999/527, art. 2(b), **Sch. 2**

F4347 S. 649(6)(a) repealed (1.4.1999) by The Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), art. 1(3), Sch. 1 para. 4, **Sch. 9 Pt. 1** (with Sch. 7); S.R. 1999/149, art. 2(c), **Sch. 2**

F4348 Words in s. 649(6)(b) substituted (7.2.1994) by Pension Schemes Act 1993 (c. 48), ss. 190, 193(2), **Sch. 8 para. 20(5)** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

F4349 Words in s. 649(6)(b) substituted (7.2.1994) by Pension Schemes (Northern Ireland) Act 1993 (c. 49), ss. 184, 186(2), **Sch. 7 para. 22(3)**; S.R. 1994/17, **art. 2**

F4350 S. 649(6)(bb) inserted (N.I.) (6.4.1997) by The Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213), art. 1(2), **Sch. 3 para. 8**; S.R. 1997/192, **art. 2(b)**

Modifications etc. (not altering text)

C647 *For regulations see* Part III Vol.5 (*under* "*Personal pension schemes*").

Marginal Citations

M884 Source-1987 (No.2) s.42.

650 Withdrawal of approval.

M885 (1) If in the opinion of the Board the facts concerning an approved personal pension scheme or its administration or arrangements made in accordance with it do not warrant the continuance of their approval of the scheme, they may at any time by notice given to the scheme administrator withdraw their approval of the scheme.

(2) If in the opinion of the Board the facts concerning any approved personal pension arrangements do not warrant the continuance of their approval in relation to the arrangements, they may at any time by notice given to the individual who made them and to the scheme administrator withdraw their approval in relation to the arrangements.

(3) Without prejudice to the generality of subsection (2) above, the Board may withdraw their approval in relation to any personal pension arrangements if they are of the opinion that securing the provision of benefits under the arrangements was not the sole purpose of the individual in making them.

(4) A notice under subsection (1) or (2) above shall state the grounds on which, and the date from which, approval is withdrawn.

(5) The Board may not withdraw their approval from a date earlier than the date when the facts were first such that they did not warrant the continuance of their approval (so, however, that in a case within subsection (3) above their approval may be withdrawn from the day the arrangements in question were made).

[F4351 (6) The power of the Board under this section to withdraw their approval in relation to any arrangements made under a personal pension scheme shall be exercisable for the purposes of section 650A notwithstanding that the time from which the approval is withdrawn is a time from which, by virtue of section 631(4) or 638A(4), the whole scheme ceases to be an approved scheme.**]**

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Textual Amendments

F4351 S. 650(6) inserted (with effect in accordance with s. 95(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 95(2)**

Marginal Citations

M885 Source-1987 (No.2) s.43

[F4352 650A Charge on withdrawal of approval from arrangements.

(1) Where any personal pension arrangements cease to be approved arrangements by virtue of the exercise by the Board of their power under section 650(2), **[**F4353 income tax shall be charged under and**]** in accordance with this section.

(2) The tax shall be charged F4354. . . at the rate of 40 per cent. on an amount equal to the value (taking that value at the relevant time) of the appropriate part of the assets held at that time for the purposes of the relevant scheme.

(3) In subsection (2) above—

"the appropriate part", in relation to the value of any assets, is so much of those assets as is properly attributable, in accordance with the provisions of the scheme and any just and reasonable apportionment, to the arrangements in question; and

"the relevant time" means the time immediately before the date from which the Board's approval is withdrawn.

(4) Subject to subsection (5) below, the person liable for the tax charged under this section shall be the scheme administrator for the relevant scheme.

(5) If, in any case where an amount of tax has been charged under this section and has not been paid—

(a) there is at any time no person who, as the scheme administrator for the relevant scheme, may be assessed to that amount of tax, or is liable to pay it,

(b) the scheme administrator for that scheme cannot for the time being be traced,

(c) there has been such a failure by the scheme administrator for that scheme to meet a liability to pay that amount as the Board consider to be a failure of a serious nature, or

(d) it appears to the Board that a liability of the scheme administrator for that scheme to pay that amount of tax is a liability that he will be, or (were there an assessment) would be, unable to meet out of assets held in accordance with the scheme for the purposes of those arrangements,

the Board shall be entitled to assess the unpaid tax on the person who made the arrangements in question as if the tax charged under this section, to the extent that it is unpaid, were assessable under this section on that person, instead of on the scheme administrator.

(6) An assessment to tax made by virtue of subsection (5)(c) above shall not be out of time if it is made within three years after the date on which the tax which the scheme administrator has failed to pay first became due from him.

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(7) For the purposes of this section the value of an asset is, subject to subsection (8) below, its market value, construing "market value" in accordance with section 272 of the 1992 Act.

(8) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (9) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.

(9) Those persons are—

(a) the person who (whether or not before the making of the loan) made the arrangements in relation to which the Board's approval has been withdrawn;

(b) any other person who has at any time (whether or not before the making of the loan) made contributions under those arrangements; and

(c) any person connected, at the time of the making of the loan or subsequently, with a person falling within paragraph (a) or (b) above.

(10) In this section "the relevant scheme", in relation to any personal pension arrangements, means the scheme in accordance with which those arrangements were made.

(11) Section 839 shall apply for the purposes of this section.**]**

Textual Amendments

F4352 S. 650A inserted (with effect in accordance with s. 95(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 95(1)**

F4353 Words in s. 650A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 267(2)** (with Sch. 2)

F4354 Words in s. 650A(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 267(3), **Sch. 3** (with Sch. 2)

651 Appeals.

M886(1) Where the Board—

(a) refuse an application by notice under section 631 **[**F4355or paragraph 3 of Schedule 23ZA**]**; or

(b) withdraw an approval by notice under section 650;

the person to whom the notice is given may appeal to the Special Commissioners against the refusal or, as the case may be, the withdrawal.

(2) An appeal under this section shall be made by notice stating the grounds for the appeal and given to the Board before the end of the period of 30 days beginning with the day on which the notice of refusal or withdrawal was given to the appellant.

(3) On an appeal under this section against the withdrawal of an approval, the Special Commissioners may, instead of allowing or dismissing the appeal, order that the withdrawal shall have effect from a date other than that determined by the Board.

(4) The bringing of an appeal under this section shall not affect the validity of the decision appealed against pending the determination of the proceedings.

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Textual Amendments

F4355 Words in s. 651(1)(a) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 24(2)** (with Sch. 13 Pt. 2)

Marginal Citations

M886 Source-1987 (No.2) s.47

[F4356 651A Information powers.

(1) The Board may by regulations make any of the following provisions—

(a) provision requiring prescribed persons to furnish to the Board, at prescribed times, information relating to any of the matters mentioned in subsection (2) below;

(b) provision enabling the Board to serve a notice requiring prescribed persons to furnish to the Board, within a prescribed time, particulars relating to any of those matters;

(c) provision enabling the Board to serve a notice requiring prescribed persons to produce to the Board, within a prescribed time, documents relating to any of those matters;

(d) provision enabling the Board to serve a notice requiring prescribed persons to make available for inspection on behalf of the Board books, documents and other records, being books, documents and records which relate to any of those matters;

(e) provision requiring prescribed persons to preserve for a prescribed time books, documents and other records, being books, documents and records which relate to any of those matters.

(2) The matters referred to in subsection (1) above are—

(a) any personal pension scheme which is or has been approved; and

(b) any personal pension arrangements which are or have been approved.

(3) A person who fails to comply with regulations made under subsection (1)(e) above shall be liable to a penalty not exceeding £3,000.

(4) Regulations under this section may make different provision for different descriptions of case.

(5) In this section "prescribed" means prescribed by regulations made under this section.]

Textual Amendments

F4356 S. 651A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 96(1)**

652 Information about payments.

F4357 . . . . . .

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Textual Amendments

F4357 S. 652 repealed (1.10.2000) by Finance Act 1998 (c. 36), s. 96(4), **Sch. 27 Pt. 3(21)**, Note; S.I. 2000/2319, **art. 2**

653 Information: penalties.

M887 A person who knowingly makes a false statement or false representation on making an application under section 631 or for the purpose of obtaining for himself or any other person any relief from or repayment of tax under this Chapter shall be liable to a penalty not exceeding **[**F4358 £3,000**]**.

Textual Amendments

F4358 1989 s.170(4)(b) *in relation to things done or omitted to be done on or after* 27*July* 1989. *Previously* "£500".

Marginal Citations

M887 Source-1987 (No.2) s.51(1)

[F4359 653A Notices to be given to scheme administrator.

(1) Where—

(a) the Board, or any officer of the Board, is authorised or required by or in consequence of any provision of this Chapter to give a notice to the person who is the scheme administrator of a personal pension scheme, but

(b) there is for the time being no scheme administrator for that scheme or the person who is the scheme administrator for that scheme cannot be traced,

that power or duty may be exercised or performed by giving that notice, instead, to the person specified in subsection (2) below.

(2) That person is—

(a) the person who established the scheme; or

(b) any person by whom that person has been directly or indirectly succeeded in relation to the provision of benefits under the scheme.

(3) The giving of a notice in accordance with this section shall have the same effect as the giving of that notice to the scheme administrator and, without prejudice to section 650A(5), shall not impose an additional obligation or liability on the person to whom the notice is actually given.**]**

Textual Amendments

F4359 S. 653A inserted (with effect in accordance with s. 97(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 97(1)**

654 Remuneration of Ministers and other officers.

M888 (1) This section applies to any salary—

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(a) payable to the holder of a qualifying office who is also a Member of the House of Commons; and

(b) payable for a period in respect of which the holder is not a participant in relation to that office in arrangements contained in the Parliamentary pension scheme but is a participant in relation to his membership of the House of Commons in any such arrangements, or for any part of such a period.

(2) So much of any salary to which this section applies as is equal to the difference between a Member's pensionable salary and the salary which (in accordance with any such resolution as is mentioned in subsection (4)(a) below) is payable to him as a Member holding that qualifying office, shall be treated for the purposes of this Chapter as remuneration from the office of Member and not from the qualifying office.

(3) In this section—

"Member's pensionable salary" means a Member's ordinary salary under any resolution of the House of Commons which, being framed otherwise than as an expression of opinion, is for the time being in force relating to the remuneration of Members or, if the resolution provides for a Member's ordinary salary thereunder to be treated for pension purposes as being at a higher rate, a notional yearly salary at that higher rate;

"qualifying office" means an office mentioned in paragraph (b), (c) or (d) of subsection (2) of section 2 of the [M889]Parliamentary and other Pensions Act 1987;

"the Parliamentary pension scheme" has the same meaning as in that Act;

and, without prejudice to the power conferred by virtue of paragraph 13 of Schedule 1 to that Act, regulations under section 2 of that Act may make provision specifying the circumstances in which a person is to be regarded for the purposes of this section as being or not being a participant in relation to his membership of the House of Commons, or in relation to any office, in arrangements contained in the Parliamentary pension scheme.

(4) In subsection (3) above "a Member's ordinary salary", in relation to any resolution of the House of Commons, means—

(a) if the resolution provides for salary to be paid to Members at different rates according to whether or not they are holders of particular offices or are in receipt of salaries or pensions as the holders or former holders of particular offices, a Member's yearly salary at the higher or highest rate; and

(b) in any other case, a Member's yearly salary at the rate specified in or determined under the resolution.

Modifications etc. (not altering text)

C648 S. 654 applied (with modifications) (with effect in accordance with s. 52(2) of the affecting Act) by Finance Act 1999 (c. 16), **Sch. 5 para. 6**

Marginal Citations

M888 Source-1987 (No.2) s.52

M889 1987 c. 45.

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655 Transitional provisions.

(1) M890Where approved personal pension arrangements are made by an individual who pays qualifying premiums within the meaning of section 620(1)—

(a) the amount **[**F4360of contributions in respect of which relief may be given**]** by virtue of section 639(1) in any year of assessment shall be reduced by the amount of any qualifying premiums which are paid in the year by the individual and in respect of which relief is given for the year under section 619(1)(a); and

(b) the relief which, by virtue of section 625, may be given under section 619 by reference to the individual's unused relief for any year shall be reduced by the amount of any contributions paid by him in that year under the approved personal pension arrangements.

(2) Where an individual elects under section 641 that a contribution or part of a contribution shall be treated as paid in the year of assessment **[**F4361**]**1985-86, 1986-87 or 1987-88**]**, the payment shall be treated as the payment of a qualifying premium for the purposes of Chapter III of this Part; and in such a case references in section 641 to an amount of unused relief shall be construed in accordance with section 625.

(3) The references in section 642 to unused relief for any year are, for years of assessment before **[**F4362**]**1988-89**]**, references to unused relief within the meaning of section 625.

(4) M891The Board shall not grant any application under section 631 so as to approve a scheme with effect from a date earlier than **[**F4362**]**1st July**]** 1988.

(5) The Board may by regulations make provision for applications for approval of personal pension schemes to be granted provisionally*in cases where the applications are made before* 1*st* ***[****F4362February* 1990**]** notwithstanding that the Board have not satisfied themselves that the schemes comply with the requirements of sections 632 to 638; and such regulations may, in particular, provide—

(a) for the contents and form of certificates or other documents which the Board may require the applicant to give them before they grant an application provisionally;

(b) for the making of such amendments of the rules of the scheme after the provisional grant of an application as are necessary to enable the scheme to comply with the requirements of sections 632 to 638, and for those amendments to have effect as from the date of approval of the scheme;

(c) for the withdrawal of approval of the scheme as from that date if it does not comply with the requirements of sections 632 to 638 and such amendments as are mentioned in paragraph (b) above are not made;

and may make such supplementary provision as appears to the Board to be necessary or expedient.

Textual Amendments

F4360 Words in s. 655(1)(a) substituted (with effect in accordance with Sch. 13 para. 25(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 13 para. 25(2)** (with Sch. 13 Pt. 2)

F4361 1988(F) s.54 (*which also specifies changes to* ss.20, 54, 55*and* 56 of 1987 (No.2)).*Deemed always to have had effect. Previously*
"1984-85, 1985-86 or 1986-87".

F4362 1988(F) s.54 (*which also specifies changes to* ss.20, 54, 55*and* 56*of* 1987 (No.2)).*Deemed always to have had effect. Previously*

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"1987-88", "4th January"
and
"August 1989"
respectively.

Modifications etc. (not altering text)
C649 *For regulations see* S.I. 1987 No.1765*in* Part III Vol.5.

Marginal Citations
M890 Source-1987 (No.2) s.55.
M891 Source-1987 (No.2) s.56

CHAPTER V

PURCHASED LIFE ANNUITIES

656 Purchased life annuities other than retirement annuities.

(1) [M892]Subject to section 657, a purchased life annuity shall, for the purposes of the provisions of the **[**[F4363]Corporation Tax Acts**]** relating to tax on annuities and other annual payments, be treated as containing a capital element and, to the extent of the capital element, as not being an annual payment or in the nature of an annual payment; but the capital element in such an annuity shall be taken into account in computing profits or gains or losses for **[**[F4364]other corporation tax purposes**]** in any circumstances in which a lump sum payment would be taken into account.

(2) [M893]Where, in the case of any purchased life annuity to which this section applies, the amount of any annuity payment (but not the term of the annuity) depends on any contingency other than the duration of a human life or lives—

(a) the capital element shall be determined by reference—

(i) to the amount or value of the payments made or other consideration given for the grant of the annuity ("the purchase price"); and

(ii) to the expected term of the annuity, as at the date when the first annuity payment began to accrue, expressed in years (and any odd fraction of a year), and determined by reference to the prescribed tables of mortality;

and in head (ii) above "term" means the period from the date when the first annuity payment begins to accrue to the date when the last payment becomes payable;

(b) the capital element in any annuity payment made in respect of a period of 12 months shall be a fraction—

$$\frac{1}{E}$$

of the purchase price, where E is the expected term referred to in paragraph (a)(ii) above;

(c) the capital element in any annuity payment made in respect of a period of less than, or more than, 12 months shall be the amount at (b) above reduced or, as

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the case may be, increased, in the same proportion as the length of that period bears to a period of 12 months;

(d) subsection (3) below shall not apply but paragraphs (a) and (b) of subsection (4) below shall apply as they apply to that subsection.

(3) Subject to subsection (2) above, in the case of any purchased life annuity to which this section applies—

(a) [M894]the capital element shall be determined by reference to the amount or value of the payments made or other consideration given for the grant of the annuity; and

(b) the proportion which the capital element in any annuity payment bears to the total amount of that payment shall be constant for all payments on account of the annuity; and

(c) where neither the term of the annuity nor the amount of any annuity payment depends on any contingency other than the duration of a human life or lives, that proportion shall be the same proportion which the total amount or value of the consideration for the grant of the annuity bears to the actuarial value of the annuity payments as determined in accordance with subsection (4) below; and

(d) [M895]where either the term of the annuity or the amount of any annuity payment (but not both) depends on any contingency other than the duration of a human life or lives, that proportion shall be such as may be just, having regard to paragraph (c) above and to the contingencies affecting the annuity; and

(e) where both the term of the annuity and the amount of any annuity payment depend on any contingency other than the duration of a human life or lives, that proportion shall be such as may be just, having regard to subsection (2) above and to the contingencies affecting the annuity.

(4) [M896]For the purposes of subsection (3) above—

(a) any entire consideration given for the grant of an annuity and for some other matter shall be apportioned as appears just (but so that a right to a return of premiums or other consideration for an annuity shall not be treated for this purpose as a distinct matter from the annuity);

(b) where it appears that the amount or value of the consideration purporting to be given for the grant of an annuity has affected, or has been affected by, the consideration given for some other matter, the aggregate amount or value of those considerations shall be treated as one entire consideration given for both and shall be apportioned under paragraph (a) above accordingly; and

(c) the actuarial value of any annuity payments shall be taken to be their value as at the date when the first of those payments begins to accrue, that value being determined by reference to the prescribed tables of mortality and without discounting any payment for the time to elapse between that date and the date it is to be made.

(5) Where a person making a payment on account of any life annuity has been notified in the prescribed manner of any decision as to its being or not being a purchased life annuity to which this section applies or as to the amount of the capital element (if any), and has not been notified of any alteration of that decision, the notice shall be conclusive as to those matters for the purpose of determining the amount of income tax which **[**[F4365]the person**]** is entitled or required to deduct from the payment, or for which **[**[F4365]the person**]** is chargeable in respect of it.

(6) Where a person making a payment on account of a purchased life annuity to which this section applies has not been notified in the prescribed manner of the amount of

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the capital element, the amount of income tax which **[**F4365the person**]** is entitled or required to deduct from the payment, or for which **[**F4365the person**]** is chargeable in respect of it, shall be the same as if the annuity were not a purchased life annuity to which this section applies.

[F4366(7) In using the prescribed tables of mortality to determine—

(a) the expected term of an annuity for the purposes of subsection (2)(a) above, or

(b) the actuarial value of any annuity payments for the purposes of subsection (4)(c) above,

the age, as at the date when the first of the annuity payments begins to accrue, of a person during whose life the annuity is payable shall be taken to be the number of years of his age at his last birthday preceding that date.

(8) In any case where it is not possible to determine the expected term of an annuity for the purposes of subsection (2)(a) above by reference to the prescribed tables of mortality, that term shall for those purposes be such period as may be certified by the Government Actuary or the Deputy Government Actuary.

(9) In any case where it is not possible to determine the actuarial value of any annuity payments for the purposes of subsection (4)(c) above by reference to the prescribed tables of mortality, that value shall for those purposes be such amount as may be certified by the Government Actuary or the Deputy Government Actuary.**]**

Textual Amendments

F4363 Words in s. 656(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 268(2)(a)** (with Sch. 2)

F4364 Words in s. 656(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 268(2)(b)** (with Sch. 2)

F4365 Words in s. 656(5)(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 268(3)** (with Sch. 2)

F4366 S. 656(7)-(9) inserted (retrospectively) by Finance Act 1991 (c. 31, SIF 63:1), **s. 76(1)**

Marginal Citations

M892 Source-1970 s.230(1)

M893 Source-1970 s.230(2A); 1970(F) Sch.4 8

M894 Source-1970 s.230(2)(a)-(c)

M895 Source-1970 s.230(2)(d), (2A); 1970(F) Sch.4 8

M896 Source-1970 s.230(3)-(5)

657 Purchased life annuities to which section 656 applies.

M897(1) For the purposes of section 656—

"life annuity" means an annuity payable for a term ending with (or at a time ascertainable only by reference to) the end of a human life, whether or not there is provision for the annuity to end during the life on the expiration of a fixed term or on the happening of any event or otherwise, or to continue after the end of the life in particular circumstances; and

"purchased life annuity" means a life annuity granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life.

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(2) Section 656 does not apply—

(a) to any annuity which would, apart from that section, be treated for the purposes of the provisions of the **[**F4367Corporation Tax Acts**]** relating to tax on annuities and other annual payments as consisting to any extent in the payment or repayment of a capital sum;

(b) to any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief under section 266, 273 or 619 or to any annuity payable under a substituted contract within the meaning of section 622(3);

(c) to any annuity purchased in pursuance of any direction in a will, or to provide for an annuity payable by virtue of a will or settlement out of income of property disposed of by the will or settlement (whether with or without resort to capital);

(d) to any annuity purchased under or for the purposes of any sponsored superannuation scheme (as defined in section 624) or any scheme approved under section 620 or in pursuance of any obligation imposed, or offer or invitation made, under or in connection with any such scheme or to any other annuity purchased by any person in recognition of another's services (or past services) in any office or employment;

[F4368(da) to any annuity purchased under or for the purposes of a scheme approved by virtue of section 591 or in pursuance of any obligation imposed, or offer or invitation made, under or in connection with any such scheme;**]**

(e) to any annuity payable under approved personal pension arrangements within the meaning of Chapter IV of this Part**[**F4369; or

(f) to any annuity purchased, for purposes connected with giving effect to any pension sharing order or provision, for consideration which derives from—

(i) a retirement benefits scheme (within the meaning of Chapter I of this Part) of a description mentioned in **[**F4370section 387(2) of ITEPA 2003 (meaning of non-approved retirement benefits scheme)**]**;

(ii) sums satisfying the conditions for relief under section 619;

(iii) any such scheme or arrangements as are mentioned in paragraph (d) or (e) above; or

(iv) the surrender, in whole or in part, of an annuity falling within paragraph (da) above or this paragraph, or of a contract for such an annuity.**]**

Textual Amendments

F4367 Words in s. 657(2)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 269** (with Sch. 2)

F4368 S. 657(2)(da) substituted for word at the end of s. 657(2)(d) (retrospectively) by Finance Act 1999 (c. 16), **s. 80**

F4369 S. 657(2)(f) and preceding word inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 16**

F4370 Words in s. 657(2)(f)(i) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 97** (with Sch. 7)

Marginal Citations

M897 Source-1970 s.230(6), (7); 1978 s.26(4); 1987 (No.2), s.41(3)

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658 Supplementary.

M898(1) Any question whether an annuity is a purchased life annuity to which section 656 applies, or what is the capital element in such an annuity, shall be determined by the inspector; but a person aggrieved by the inspector's decision on any such question may appeal within the prescribed time to the Special Commissioners.

(2) Save as otherwise provided in this Chapter, the procedure to be adopted in giving effect to this Chapter shall be such as may be prescribed.

(3) The Board may make regulations for prescribing anything which is to be prescribed under this Chapter, and the regulations may apply for the purposes of this Chapter or of the regulations any provision of the Income Tax Acts, with or without modifications.

(4) Regulations under subsection (3) above may in particular make provision as to the time limit for making any claim for relief from or repayment of tax under this Chapter and as to all or any of the following matters, that is to say—

(a) as to the information to be furnished in connection with the determination of any question whether an annuity is a purchased life annuity to which section 656 applies or what is the capital element in an annuity, and as to the persons who may be required to furnish any such information;

(b) as to the manner of giving effect to the decision on any such question, and (notwithstanding anything in section 348) as to the making of assessments for the purpose on the person entitled to the annuity; and

(c) as to the extent to which the decision on any such question is to be binding, and the circumstances in which it may be reviewed.

(5) **[**F4371Any person who**]**, for the purpose of obtaining F4372. . . any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation F4372. . . shall be liable to a penalty not exceeding **[**F4373£3,000**]**.

[F4374(6) It does not matter for whom that relief or repayment is to be obtained.**]**

Textual Amendments

F4371 Words in s. 658(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 270(2)(a)** (with Sch. 2)

F4372 Words in s. 658(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 270(2)(b), **Sch. 3** (with Sch. 2)

F4373 1989 s.170(4)(c)*in relation to things done or omitted to be done on or after* 27*July* 1989.*Previously* "£500".

F4374 S. 658(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 270(3)** (with Sch. 2)

Modifications etc. (not altering text)

C650 *For regulations see* Part III Vol.5 (*under* "*Life annuities, purchased*").

Marginal Citations

M898 Source-1970 s.231

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CHAPTER VI

MISCELLANEOUS

[F4375 658A Charges and assessments on administrators.

(1) Tax charged under Chapter I or IV of this Part **[**F4376 or under section 394(2) of ITEPA 2003 (benefits from non-approved pension schemes)**]** on the administrator of a scheme—

(a) shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme, but

(b) shall not be assessable on any relevant person who, at the time of the assessment, is no longer either the administrator of the scheme or included in the persons who are the administrator of the scheme.

(2) For the purposes of subsection (1) above a person is a relevant person in relation to any charge to tax on the administrator of a scheme if he is a person who at the time when the charge is treated as arising or any subsequent time is, or is included in the persons who are, the administrator of the scheme.

(3) Where tax charged under Chapter I of this Part on the administrator of a scheme is assessable by virtue of section 606 or 606A on a person who is not a relevant person for the purposes of subsection (1) above, the assessment shall be made by the Board.

(4) In this section "administrator", in relation to a scheme, means the person who is—

(a) the administrator of the scheme within the meaning given by section 611AA; or

(b) the scheme administrator, as defined in section 630.

(5) This section is without prejudice to section 591D(4).**]**

Textual Amendments

F4375 S. 658A inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 98(1)**

F4376 Words in s. 658A(1) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 98** (with Sch. 7)

F4377 659 Financial futures and traded options.

. . . . . .

Textual Amendments

F4377 S. 659 repealed (with effect in accordance with s. 81(7)(8) of the repealing Act) by Finance Act 1990 (c. 29), s. 81(4), **Sch. 19 Pt. 4**, Note 9

[F4378 659A Futures and options.

(1) For the purposes of sections 592(2), 608(2)(a), 613(4), 614(3) and (4), 620(6) and 643(2)—

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(a) "investments" (or "investment") includes futures contracts and options contracts, and

(b) income derived from transactions relating to such contracts shall be regarded as income derived from (or income from) such contracts,

and paragraph 7(3)(a) of Schedule 22 to this Act shall be construed accordingly.

(2) For the purposes of subsection (1) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.**]**

Textual Amendments

F4378 S. 659A inserted (with effect in accordance with s. 81(5) of the amending Act) by Finance Act 1990 (c. 29), **s. 81(2)**

[F4379 659B Definition of insurance company.

[F4380 (1) in sections 591(2)(g) and 599(7) "insurance company" means one of the following—

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance;

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act which—

(i) has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance; and

(ii) fulfils the requirement under subsection (5), (6) or (7) below.

(1A) In subsection (1) above "contracts of long-term insurance" means contracts which fall within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.**]**

(2) In Chapter IV of this Part "authorised insurance company" means a company that is an insurance company within the meaning given by subsection (1) above.

(3) F4381 . . . . . .

(4) F4381 . . . . . .

(5) The requirement under this subsection is that—

(a) a person who falls within subsection (8) below is for the time being appointed by the company to be responsible for securing the discharge of the duties mentioned in subsection (9) below, and

(b) his identity and the fact of his appointment have been notified to the Board by the company.

(6) The requirement under this subsection is that there are for the time being other arrangements with the Board for a person other than the company to secure the discharge of those duties.

(7) The requirement under this subsection is that there are for the time being other arrangements with the Board designed to secure the discharge of those duties.

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(8) A person falls within this subsection if—

(a) he is not an individual and has a business establishment in the United Kingdom, or

(b) he is an individual and is resident in the United Kingdom.

(9) The duties are the following duties that fall to be discharged by the company—

[F4382(a) any duty to pay under PAYE regulations tax charged under Part 9 of ITEPA 2003 (pension income) because section 580 of that Act applies (approved retirement benefits schemes: pensions and annuities);**]**

(b) any duty to pay tax charged under section 599(3) and (7);

(c) any duty imposed by regulations made under section 605 **[**F4383of this Act or section 589 of ITEPA 2003**]**;

[F4384(d) any duty to pay under PAYE regulations tax charged under Part 9 of ITEPA 2003 (pension income) because section 595 of that Act applies (approved personal pension schemes: annuities).**]**

(10) F4381. . . . . .**]**

Textual Amendments

F4379 Ss. 659B, 659C inserted (with effect in accordance with s. 60 of the amending Act) by Finance Act 1995 (c. 4), **s. 59(5)**

F4380 S. 659B(1)(1A) substituted for s. 659B(1) (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 42(2)**

F4381 S. 659B(3)(4)(10) omitted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 42(3)**

F4382 S. 659B(9)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 99(2)** (with Sch. 7)

F4383 Words in s. 659B(9)(c) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 99(3)** (with Sch. 7)

F4384 S. 659B(9)(d) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 99(4)** (with Sch. 7)

[F4379659C Effect of appointment or arrangements under section 659B.

(1) This section shall have effect where—

(a) in accordance with section 659B(5) a person is for the time being appointed to be responsible for securing the discharge of duties, or

(b) in accordance with section 659B(6) there are for the time being arrangements for a person to secure the discharge of duties.

(2) In such a case the person concerned—

(a) shall be entitled to act on the company's behalf for any of the purposes of the provisions relating to the duties;

(b) shall secure (where appropriate by acting on the company's behalf) the company's compliance with and discharge of the duties;

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(c) shall be personally liable in respect of any failure of the company to comply with or discharge any such duty as if the duties imposed on the company were imposed jointly and severally on the company and the person concerned.**]**

Textual Amendments

F4379 Ss. 659B, 659C inserted (with effect in accordance with s. 60 of the amending Act) by Finance Act 1995 (c. 4), **s. 59(5)**

[F4385 659D Interpretation of provisions about pension sharing.

(1) In this Part **[**F4386 "ex-spouse"**]** means a party to a marriage that has been dissolved or annulled and, in relation to any person, means the other party to a marriage with that person that has been dissolved or annulled.

[F4387 (1A) In this Part "former civil partner" means a party to a civil partnership that has been dissolved or annulled and, in relation to any person, means the other party to a civil partnership with that person that has been dissolved or annulled.**]**

(2) References in this Part to a pension sharing order or provision are references to any such order or provision as is mentioned in section **[**F4388 28(1)**]** of the Welfare Reform and Pensions Act 1999 (rights under pension sharing arrangements).**]**

Textual Amendments

F4385 S. 659D inserted (27.7.1999) by Finance Act 1999 (c. 16), **Sch. 10 para. 17**

F4386 Words in s. 659D(1) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 92(a)

F4387 S. 659D(1A) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 92(b)

F4388 Words in s. 659D(2) substituted (1.11.1999) by Welfare Reform and Pensions Act 1999 (c. 30), s. 89(4)(e), **Sch. 12 para. 13**

[F4389 659E Treatment of income from property investment LLPs

(1) The exemptions specified below do not apply to income derived from investments, deposits or other property held as a member of a property investment LLP.

(2) The exemptions are those provided by—

section 592(2) (exempt approved schemes),
section 608(2)(a) (former approved superannuation funds),
section 613(4) (Parliamentary pension funds),
section 614(3) (certain colonial, &c. pension funds),
section 614(4) (the Overseas Service Pension Fund),
section 614(5) (other pension funds for overseas employees),
section 620(6) (retirement annuity trust schemes), and
section 643(2) (approved personal pension schemes).

(3) The income to which subsection (1) above applies includes relevant stock lending fees, in relation to any investments, to which any of the provisions listed in subsection (2) above would apply by virtue of section 129B.

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(4) Section 659A (treatment of futures and options) applies for the purposes of subsection (1) above.**]**

Textual Amendments

F4389 S. 659E inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 2**

PART XV

SETTLEMENTS

Modifications etc. (not altering text)

C651 Pt. 15 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 6(1)** (with Sch. 13 para. 16, Sch. 15)

[F4390 CHAPTER IA

LIABILITY OF SETTLOR

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

Modifications etc. (not altering text)

C652 Pt. 15 Ch. 1A excluded (with effect in accordance with s. 44(6) of the affecting Act) by Finance Act 2000 (c. 17), **s. 44(1)**

C653 Pt. 15 Ch. 1A modified (with effect in accordance with s. 45(3) of the modifying Act) by Finance Act 2000 (c. 17), **s. 45(1)**

Main provisions

660A Income arising under settlement where settlor retains an interest.

F4391 . . . . . .

Textual Amendments

F4391 Ss. 660A, 660B repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 271, **Sch. 3** (with Sch. 2)

660B Payments to unmarried minor children of settlor.

F4392 . . . . . .

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Textual Amendments

F4392 Ss. 660A, 660B repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 271, **Sch. 3** (with Sch. 2)

660C Nature of charge on settlor.

(1) F4393. . . . . .

[F4394(1A) F4393. . . . . .]

(2) F4393. . . . . .

(3) Subject to section 833(3), income which is treated by virtue of [F4395section 624 or 629 of ITTOIA 2005 (income where settlor retains an interest or income paid to [F4396relevant] children of settlor)] as income of a settlor shall be deemed for the purposes of [F4397section 619 of that Act (charge to tax under Chapter 5 of Part 5 of that Act) so far as relating to income so treated] to be the highest part of his income.

[F4398(4) Income which is treated for income tax purposes as the income of the settlor alone by virtue of section 624 or 629 of ITTOIA 2005 is accordingly not the income of any company for corporation tax purposes.]

Textual Amendments

F4393 S. 660C(1)-(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 272(2), **Sch. 3** (with Sch. 2)

F4394 S. 660C(1A) inserted (with effect in accordance with Sch. 4 para. 14(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 14(3)**

F4395 Words in s. 660C(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 272(3)(a)** (with Sch. 2)

F4396 Words in s. 660C(3) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 93

F4397 Words in s. 660C(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 272(3)(b)** (with Sch. 2)

F4398 S. 660C(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 272(4)** (with Sch. 2)

660D Adjustments between settlor and trustees, &c.

F4399. . . . . .

Textual Amendments

F4399 Ss. 660D-660G repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 273, **Sch. 3** (with Sch. 2)

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Supplementary provisions

660E Application to settlements by two or more settlors.

F4400 . . . . . .

Textual Amendments

F4400 Ss. 660D-660G repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 273, **Sch. 3** (with Sch. 2)

660F Power to obtain information.

F4401 . . . . . .

Textual Amendments

F4401 Ss. 660D-660G repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 273, **Sch. 3** (with Sch. 2)

660G Meaning of "settlement" and related expressions.

F4402 . . . . . .]

Textual Amendments

F4402 Ss. 660D-660G repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 273, **Sch. 3** (with Sch. 2)

CHAPTER I

DISPOSITIONS FOR SHORT PERIODS

F4390660 Dispositions for period which cannot exceed six years.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390661 Adjustments between disponor and trustees.

. . . . . .

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 662 Application of Chapter I to dispositions by two or more disponors.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

CHAPTER II

SETTLEMENTS ON CHILDREN

F4390 663 The general rule.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 664 Accumulation settlements.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 665 Meaning of “irrevocable”.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

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F4390 666 Interest paid by trustees.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 667 Adjustments between disponor and trustees.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 668 Application of Chapter II to settlements by two or more settlors.

. . . . . .

Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 669 Power to obtain information under Chapter II.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 670 Interpretation of Chapter II.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

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[F4403CHAPTER 1B

PROVISIONS AS TO CAPITAL SUMS PAID TO SETTLOR]

Textual Amendments

F4403 Pt. 15 Ch. 1B heading inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 8**

F4390671 Revocable settlements allowing release of obligation.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390672 Revocable settlements allowing reversion of property.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390673 Settlements where settlor retains an interest.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390674 Settlements: discretionary power for benefit of settlor etc.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390674A[F4404 Other settlements where settlor retains interest in settled property.]

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4404 1989 s.109(1).

F4390 675 Provisions supplementary to sections 671 to 674.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

F4390 676 Disallowance of deduction from total income of certain sums paid by settlor.

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Textual Amendments

F4390 Pt. 15 Ch. 1A inserted (in place of ss. 660-676, 683-685) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 1**

677 Sums paid to settlor otherwise than as income.

F4405

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Textual Amendments

F4405 S. 677 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 274, **Sch. 3** (with Sch. 2)

678 Capital sums paid by body connected with settlement.

F4406

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Textual Amendments

F4406 S. 678 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 275, **Sch. 3** (with Sch. 2)

679 Application of Chapter III to settlements by two or more settlors.

F4407

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Textual Amendments

F4407 Ss. 679-681 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

680 Power to obtain information for purposes of Chapter III.

F4408 . . . . . .

Textual Amendments

F4408 Ss. 679-681 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

681 Interpretation of Chapter III.

F4409 . . . . . .

Textual Amendments

F4409 Ss. 679-681 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

682 Ascertainment of undistributed income.

F4410 . . . . . .

Textual Amendments

F4410 Ss. 682, 682A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 276, **Sch. 3** (with Sch. 2)

[F4411 682A Supplementary provisions.

F4412 . . . . . .]

Textual Amendments

F4411 S. 682A inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 11**

F4412 Ss. 682, 682A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 276, **Sch. 3** (with Sch. 2)

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[F4413CHAPTER 1C

LIABILITY OF TRUSTEES]

Textual Amendments

F4413 Pt. 15 Ch. 1C heading substituted for heading before s. 686 (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 12**

Modifications etc. (not altering text)

C654 Pt. 15 Ch. 1C modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 457(1)(3)** (with Sch. 2)

F4414 . . .

Textual Amendments

F4414 Ss. 683-685 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

683 Settlements made after 6th April 1965.

F4415 . . . . . .

Textual Amendments

F4415 Ss. 683-685 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

684 Settlements made before 7th April 1965 but after 9th April 1946.

F4416 . . . . . .

Textual Amendments

F4416 Ss. 683-685 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

685 Provisions supplementary to sections 683 and 684.

F4417 . . . . . .

Textual Amendments

F4417 Ss. 683-685 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

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F4418 . . .

Textual Amendments

F4418 Cross-heading before s. 686 replaced by Pt. 15 Ch. 1C heading (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 12**

VALID FROM 06/04/2006

[F4419 685A Meaning of "settled property"

(1) For the purposes of the Tax Acts, unless the context otherwise requires,

(a) "settled property" means any property held in trust other than—

(i) property held by a person as nominee for another,

(ii) property held by a person as trustee for another person who is absolutely entitled as against the trustee, and

(iii) property held by a person as trustee for another person who would be absolutely entitled as against the trustee if he were not an infant or otherwise under a disability, and

(b) references, however expressed, to property comprised in a settlement are references to settled property.

(2) For the purposes of the Tax Acts, a reference to a person who is or would be absolutely entitled to property as against the trustee—

(a) means a person who has the exclusive right (subject to satisfying the right of the trustees to resort to the property for the payment of duty, taxes, costs or other outgoings) to direct how the property shall be dealt with, and

(b) includes two or more persons who are or would be jointly absolutely entitled as against the trustee.**]**

Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F4419 685B Meaning of "settlor"

(1) In the Tax Acts, unless the context otherwise requires—

(a) "settlor" in relation to a settlement means the person, or any of the persons, who has made or is treated for the purposes of the Tax Acts as having made the settlement, and

(b) a person is a settlor of property which—

(i) is settled property by reason of his having made the settlement (or by reason of an event which causes him to be treated under this Act as having made the settlement), or

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(ii) derives from property to which sub-paragraph (i) applies.

(2) A person is treated for the purposes of the Tax Acts as having made a settlement if—

(a) he has made or entered into the settlement, directly or indirectly, or

(b) the settled property, or property from which the settled property is derived, is or includes property of which he was competent to dispose immediately before his death and the settlement arose on his death, whether by will, on his intestacy, or otherwise.

(3) A person is, in particular, treated for the purposes of the Tax Acts as having made a settlement if—

(a) he has provided property directly or indirectly for the purposes of the settlement, or

(b) he has undertaken to provide property directly or indirectly for the purposes of the settlement.

(4) Where one person (A) makes or enters into a settlement in accordance with reciprocal arrangements with another person (B), for the purposes of the Tax Acts—

(a) B shall be treated as having made the settlement, and

(b) A shall not be treated as having made the settlement by reason only of the reciprocal arrangements.

(5) In subsection (2)(b) the reference to property of which a deceased person was competent to dispose is a reference to property of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the property were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and includes references to his severable share in any property to which, immediately before his death, he was beneficially entitled as a joint tenant.

(6) A person who has been a settlor in relation to a settlement shall be treated for the purposes of the Tax Acts as having ceased to be a settlor in relation to the settlement if—

(a) no property of which he is the settlor is comprised in the settlement,

(b) he has not undertaken to provide property directly or indirectly for the purposes of the settlement in the future, and

(c) he has not made reciprocal arrangements with another person for that other person to enter into the settlement in the future.

(7) For the purpose of this section and sections 685C and 685D property is derived from other property—

(a) if it derives (directly or indirectly and wholly or partly) from that property or any part of it, and

(b) in particular, if it derives (directly or indirectly and wholly or partly) from income from that property or any part of it.

(8) In this section "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.**]**

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Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F4419 685C Transfer between settlements: identification of settlor

(1) This section applies in relation to a transfer of property from the trustees of one settlement ("Settlement 1") to the trustees of another ("Settlement 2") otherwise than—

(a) for full consideration, or

(b) by way of a bargain made at arm's length.

(2) In this section "transfer of property" means—

(a) a disposal of property by the trustees of Settlement 1, and

(b) the acquisition by the trustees of Settlement 2 of—

(i) property disposed of by the trustees of Settlement 1, or

(ii) property created by the disposal;

and a reference to transferred property is a reference to property acquired by the trustees of Settlement 2 on the disposal.

(3) For the purposes of the Tax Acts, except where the context otherwise requires—

(a) the settlor (or each settlor) of the property disposed of by the trustees of Settlement 1 shall be treated from the time of the disposal as having made Settlement 2, and

(b) if there is more than one settlor of the property disposed of by the trustees of Settlement 1, each settlor shall be treated in relation to Settlement 2 as the settlor of a proportionate part of the transferred property.

(4) For the purposes of the Tax Acts, except where the context otherwise requires, if and to the extent that the property disposed of by the trustees of Settlement 1 was provided for the purposes of Settlement 1, or is derived from property provided for the purposes of Settlement 1, the transferred property shall be treated from the time of the disposal as having been provided for the purposes of Settlement 2.

(5) If transferred property is treated by virtue of subsection (4) as having been provided for the purposes of Settlement 2—

(a) the person who provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1 shall be treated as having provided the transferred property, and

(b) if more than one person provided the property disposed of by the trustees of Settlement 1, or property from which it was derived, for the purposes of Settlement 1, each of them shall be treated as having provided a proportionate part of the transferred property.

(6) But subsections (3) and (4) do not apply in relation to a transfer of property—

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(a) which occurs by reason only of the assignment or assignation by a beneficiary under Settlement 1 of an interest in that settlement to the trustees of Settlement 2,

(b) which occurs by reason only of the exercise of a general power of appointment, or

(c) to which section 685D(6) applies.

(7) There is an acquisition or disposal of property for the purposes of this section if there would be an acquisition or disposal of property for the purposes of the 1992 Act.**]**

Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F4419 685D Variation of will or intestacy, etc: identification of settlor

(1) This section applies where—

(a) a disposition of property following a person's death is varied, and

(b) section 62(6) of the 1992 Act applies in respect of the variation.

(2) Where property becomes settled property in consequence of the variation (and would not, but for the variation, have become settled property), a person mentioned in subsection (3) shall be treated for the purposes of the Tax Acts, except where the context otherwise requires—

(a) as having made the settlement, and

(b) as having provided the property for the purposes of the settlement.

(3) Those persons are—

(a) a person who immediately before the variation was entitled to the property, or to property from which it derives, absolutely as legatee,

(b) a person who would have become entitled to the property, or to property from which it derives, absolutely as legatee but for the variation,

(c) a person who immediately before the variation would have been entitled to the property, or to property from which it derives, absolutely as legatee but for being an infant or other person under a disability, and

(d) a person who would, but for the variation, have become entitled to the property, or to property from which it derives, absolutely as legatee if he had not been an infant or other person under a disability.

(4) For the purposes of this section—

(a) "legatee" includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee,

(b) property taken under a testamentary disposition or on an intestacy or partial intestacy includes any property appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy, and

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(c) a person taking under a donatio mortis causa shall be treated as a legatee and his acquisition as made at the time of the donor's death.

(5) Where—

(a) property would have become comprised in a settlement—

(i) which arose on the deceased person's death (whether in accordance with his will, on his intestacy or otherwise, or

(ii) which was already in existence on the deceased person's death (whether or not the deceased person was a settlor in relation to that settlement), but

(b) in consequence of the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of the Tax Acts, except where the context otherwise requires, as having made the other settlement.

(6) Where—

(a) immediately before the variation property is comprised in a settlement and is property of which the deceased person is a settlor, and

(b) immediately after the variation the property, or property derived from it, becomes comprised in another settlement,

the deceased person shall be treated for the purposes of the Tax Acts, except where the context otherwise requires, as having made the other settlement.

(7) If a person is treated as having made a settlement under subsection (5) or (6), for the purposes of the Tax Acts he shall be treated as having made the settlement immediately before his death.

(8) But subsection (7) does not apply in relation to a settlement which arose on the person's death.**]**

Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F4419 685H Trustees of settlements

(1) For the purposes of the Tax Acts the trustees of a settlement shall, unless the context otherwise requires, together be treated as if they were a single person (distinct from the persons who are the trustees of the settlement from time to time).

(2) The deemed person referred to in subsection (1) shall be treated for the purposes of the Tax Acts as resident and ordinarily resident in the United Kingdom at any time when a condition in subsection (3) or (4) is satisfied.

(3) Condition 1 is that all the trustees are resident in the United Kingdom.

(4) Condition 2 is that—

(a) at least one trustee is resident in the United Kingdom,

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(b) at least one is not resident in the United Kingdom, and

(c) a settlor in relation to the settlement was resident, ordinarily resident or domiciled in the United Kingdom at a time which is a relevant time in relation to him.

(5) In subsection (4)(c) "relevant time" in relation to a settlor means—

(a) where the settlement arose on the settlor's death (whether by will, intestacy or otherwise), the time immediately before his death, and

(b) in any other case, a time when the settlor made the settlement (or was treated for the purposes of the Tax Acts as making the settlement);

and, in the case of a transfer of property from Settlement 1 to Settlement 2 in relation to which section 685C applies, "relevant time" in relation to a settlor of the transferred property in respect of Settlement 2 includes any time which, immediately before the time of the disposal by the trustees of Settlement 1, was a relevant time in relation to that settlor in respect of Settlement 1.

(6) A trustee who is not resident in the United Kingdom shall be treated for the purposes of subsections (3) and (4) as if he were resident in the United Kingdom at any time when he acts as trustee in the course of a business which he carries on in the United Kingdom through a branch, agency or permanent establishment there.

(7) If the deemed person referred to in subsection (1) is not treated for the purposes of the Tax Acts as resident and ordinarily resident in the United Kingdom, then for the purposes of the Tax Acts it shall be treated as neither resident nor ordinarily resident in the United Kingdom.

(8) If part of the settled property in relation to a settlement is vested in one trustee or body of trustees and another part of the settled property in relation to that settlement is vested in another trustee or body of trustees (and in particular where settled land within the meaning of the Settled Land Act 1925 (c. 18) is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement) they shall together be treated for the purposes of this section as constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

(9) If the trustees of a settlement are carrying on a trade, profession or vocation, a change in the trustees of the settlement by reason of the coming into force of this section and section 685A shall not result in—

(a) any of the trustees before the change permanently ceasing to carry on the trade, profession or vocation, or

(b) any of the trustees after the change starting to carry on the trade, profession or vocation.**]**

Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

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VALID FROM 06/04/2006

[F4419 685I Application of section 739 and 740

(1) Section 685E(2) and (7) shall not apply for any of the purposes of section 739 in relation to income payable before 15th June 1989, or for the purposes of subsection (3) of that section in relation to income payable on or after that date if—

(a) the capital sum mentioned in that subsection was received, or the right to receive it was acquired, before that date, and

(b) the sum was wholly repaid, or the right to it waived, before 1st October 1989.

(2) Section 685E shall not apply for any of the purposes of section 740 in relation to benefits received before 15th June 1989; and, in relation to benefits received on or after that date, "relevant income" includes income arising to the trustees of a settlement before 6 April 1989, notwithstanding that one or more trustees was not resident outside the United Kingdom, unless the trustees have been charged to tax in relation to that income.**]**

Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

VALID FROM 06/04/2006

[F4419 685J Sub-funds

(1) If the trustees of a settlement have made a sub-fund election under paragraph 1 of Schedule 4ZA to the 1992 Act, then for the purposes of the Tax Acts, unless the context otherwise requires—

(a) the sub-fund settlement shall be treated as a settlement,

(b) the sub-fund settlement shall be treated as having been created at the time when the sub-fund election is treated as having taken effect,

(c) each trustee of the trusts on which the property comprised in the sub-fund settlement is held shall be treated as a trustee of the sub-fund settlement,

(d) a person who is a trustee of the sub-fund settlement shall be treated, from the time when the election is to be treated as having taken effect, as having ceased to be a trustee of the principal settlement unless he is also a trustee of trusts on which property comprised in the principal settlement is held,

(e) a person who is a trustee of the principal settlement shall not be treated as a trustee of the sub-fund settlement unless he is also a trustee of trusts on which property comprised in the sub-fund settlement is held, and

(f) the trustees of the sub-fund settlement shall be treated as having become absolutely entitled, at the time when the sub-fund election is treated as having taken effect, to the property comprised in that settlement as against the trustees of the principal settlement.

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(2) References in subsection (1) to the time when the sub-fund election is treated as having taken effect are references to the time when the sub-fund election is treated as having taken effect under paragraph 2 of Schedule 4ZA to the 1992 Act.

(3) In this section—

"principal settlement" has the meaning given by paragraph 1 of Schedule 4ZA to the 1992 Act,

"sub-fund election" has the meaning given by paragraph 2 of that Schedule, and

"sub-fund settlement" has the meaning given by paragraph 1 of that Schedule.**]**

Textual Amendments

F4419 Ss. 685A-685G inserted (coming into force and with effect in accordance with Sch. 13 para. 1(2)-(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 13 para. 1(1)**

686 [F4420Accumulation and discretionary trusts: special rates of tax.]

(1) M899 So far as income arising to trustees is income to which this section applies it shall [F4421(subject to section 686D)][F4422be chargeable to income tax [F4423at the rate applicable in accordance with subsection (1AA) below], instead of at the basic rate or, in accordance with [F4424section 1A], at the lower rate [F4425or the [F4426dividend] ordinary rate].]

[F4427(1AA) The rate applicable in accordance with this subsection is—

(a) in the case of so much of any income to which this section applies as is [F4428distribution] type income, the [F4429dividend] trust rate; and

(b) in the case of any other income to which this section applies, the rate applicable to trusts.]

[F4430(1A) [F4431In relation to any year of assessment for which income tax is charged—

(a) the [F4432dividend] trust rate shall be [F4433]32.5 per cent]., and

(b) the rate applicable to trusts shall be [F4434]40 per cent]].,

or, in either case, such other rate as Parliament may determine.]

[F4435For the purposes of assessments] for the year 1993-94 and in relation to years of assessment for which tax at the basic rate and the additional rate was separately chargeable, references to the charging of income with tax at the rate applicable to trusts shall be taken to include references to the charging of income with tax both at the basic rate and at the additional rate.]

(2) This section applies to income arising to trustees in any year of assessment so far as it—

(a) is income which is to be accumulated or which is payable at the discretion of the trustees or any other person (whether or not the trustees have power to accumulate it); and

[F4436(b) is not, before being distributed, either—

(i) the income of any person other than the trustees, or

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(ii) treated for any of the purposes of the Income Tax Acts as the income of a settlor; and**]**

[F4437(c) is not income arising under a trust established for charitable purposes only or **[**F4438, subject to section (6A) below,**]** income from investments, deposits or other property held—

(i) for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; or

(ii) for the purposes of a personal pension scheme (within the meaning of section 630) which makes provision only for benefits such as are mentioned in section 633; F4439. . . **]**

(d) F4439. . . . . .

[F4440(2AA) The rate at which income tax is chargeable on so much of any income arising to trustees in any year of assessment as—

(a) is income to which this section applies, and

(b) is treated in accordance with section 689B as applied in defraying the expenses of the trustees in that year which are properly chargeable to income (or would be so chargeable but for any express provisions of the trust),

shall be the rate at which it would be chargeable on that income apart from this section, instead of the rate applicable to trusts **[**F4441or the **[**F4442dividend**]** trust rate (as the case may be)**].]**

[F4443(2A) For the purposes of this section where—

(a) any trustees have expenses in any year of assessment ("management expenses") which are properly chargeable to income or would be so chargeable but for any express provisions of the trust, and

(b) there is income arising to them in that year ("the untaxed income") which does not bear income tax for that year by reason wholly or partly of the trustees not having been resident in the United Kingdom or being deemed under any arrangements under section 788, or any arrangements having effect by virtue of that section, to have been resident in a territory outside the United Kingdom,

there shall be disregarded for the purposes of **[**F4444subsection (2AA)**]** above such part of the management expenses as bears the same proportion to all those expenses as the untaxed income bears to all the income arising to the trustees in that year.**]**

[F4445(2B) For the purposes of subsection (2A) above where the income tax borne by any income arising to trustees is limited in accordance with section 128 of the M900Finance Act 1995 (limit on income chargeable on non-residents), the income arising to the trustees which shall be taken not to bear tax by reason wholly or partly of their not having been resident in the United Kingdom shall include so much of any income arising to them as—

(a) is excluded income within the meaning of that section; and

(b) is not income which is treated for the purposes of subsection (1)(b) of that section as income the tax on which is deducted at source.**]**

(3) *This section also applies to sums apportioned to the trustees under section* 423*and treated, under* 426(2)*as applied by subsection* (4)*below, as income received by the trustees*F4446.

(4) *Sections* 426(1)*and* (2), 427*and* 428*shall, with the omission in section* 426(2)(a)*of the words following "the apportionment relates", the substitution of*" *income* " *for "total income" and all other necessary modifications, apply to a sum apportioned*

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to trustees as they apply to sums apportioned to an individual; and section 429*shall apply accordingly*[F4447].

(5) For the purposes of this section sums paid or credited to trustees in any year of assessment in respect of dividends or interest payable in respect of shares in or deposits with or loans to a building society being sums in respect of which the society is required to account for and pay an amount in accordance with regulations under section 476(1) shall be treated as income for that year received by the trustees after deduction of income tax from a corresponding gross amount.

In this subsection expressions used in section 476 have the same meanings as in that section.

[[F4448](5A) In this section **[**[F4449]"distribution type**]** income", in relation to trustees, means—

[[F4450](a) income chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.);

(b) income chargeable under Chapter 4 of that Part (dividends from non-UK resident companies);

(c) income treated as arising to the trustees under Chapter 5 of that Part (stock dividends from UK resident companies);

(d) income chargeable under Chapter 6 of that Part (release of loan to participator in close company);

(e) a relevant foreign distribution chargeable under Chapter 8 of Part 5 of that Act (income not otherwise charged); or

(f) any amount which, by virtue of section 686A of this Act, is treated for the purposes of the Tax Acts as if it were income to which this section applies.**]]**

[[F4451](5B) In subsection (5A) "relevant foreign distribution" means any distribution of a company not resident in the United Kingdom which—

(a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but

(b) would be chargeable under Chapter 3 of that Part if the company were resident in the United Kingdom.**]**

(6) In this section "trustees" does not include personal representatives; but where personal representatives, on or before the completion of the administration of the estate, pay to trustees any sum representing income which, if personal representatives were trustees within the meaning of this section, would be income to which this section applies, that sum shall be deemed to be paid to the trustees as income and to have borne income tax at the **[**[F4452]applicable rate**]**.

This subsection shall be construed as if it were contained in **[**[F4453]Chapter 6 of Part 5 of ITTOIA 2005**]**.

[[F4454](6A) The exemptions provided for by subsection (2)(c) above in relation to income from investments, deposits or other property held as mentioned in sub-paragraph (i) or (ii) of that paragraph do not apply to income derived from investments, deposits or other property held as a member of a property investment LLP.**]**

Textual Amendments

F4420 S. 686 sidenote substituted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(8)**

F4421 Words in s. 686(1) inserted (with effect in accordance with s. 14(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 14(2)**

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F4422 Words in s. 686(1) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(1), **25(1)**

F4423 Words in s. 686(1) substituted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(2)(a)**

F4424 Words in s. 686(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 13**

F4425 Words in s. 686(1) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(2)(b)**

F4426 Word in s. 686(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(2)** (with Sch. 2)

F4427 S. 686(1AA) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(3)**

F4428 Word in s. 686(1AA)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(3)(a)** (with Sch. 2)

F4429 Word in s. 686(1AA)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(3)(b)** (with Sch. 2)

F4430 S. 686(1A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(2), **25(1)**

F4431 Words in s. 686(1A) substituted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(4)**

F4432 Word in s. 686(1A)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(4)** (with Sch. 2)

F4433 Words in s. 686(1A)(a) substituted (with effect in accordance with s. 29(3) of the amending Act) by Finance Act 2004 (c. 12), **s. 29(2)(a)**

F4434 Words in s. 686(1A)(b) substituted (with effect in accordance with s. 29(3) of the amending Act) by Finance Act 2004 (c. 12), **s. 29(2)(b)**

F4435 Words in s. 686(1A) substituted (6.4.1999) by Finance (No. 2) Act 1997 (c. 58), **s. 32(5)(10)**

F4436 S. 686(2)(b) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 13**

F4437 1988(F) s.55(3)—*from* 1*July* 1988.*Previously*
"(c) is not income arising under a trust established for charitable purposes only or income from investments, deposits or other property held for the purposes of a fund or scheme established for the sole purpose of providing relevant benefits within the meaning of section 612; and".

F4438 Words in s. 686(2)(c) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 3(2)**

F4439 S. 686(2)(d) and preceding word repealed (with effect in accordance with Sch. 7 para. 12(4) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, 12(1), **Sch. 18 Pt. 6(7)**, Note 1

F4440 S. 686(2AA) inserted (with effect in accordance with Sch. 7 para. 12(4) of the amending Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, **12(1)**

F4441 Words in s. 686(2AA) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(6)**

F4442 Word in s. 686(2AA) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(5)** (with Sch. 2)

F4443 S. 686(2A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(3), **25(1)**

F4444 Words in s. 686(2A) substituted (with effect in accordance with Sch. 7 para. 12(4) of the amending Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, **12(2)**

F4445 S. 686(2B) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 15**

F4446 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F4447 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

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F4448 S. 686(5A) inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(7)**

F4449 Words in s. 686(5A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(6)** (with Sch. 2)

F4450 S. 686(5A)(a)-(f) substituted for s. 686(5A)(a)-(g) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(6)** (with Sch. 2)

F4451 S. 686(5B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(7)** (with Sch. 2)

F4452 Words in s. 686(6) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 8(4), **25(1)**

F4453 Words in s. 686(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 277(8)** (with Sch. 2)

F4454 S. 686(6A) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 3(3)**

Modifications etc. (not altering text)

C655 S. 686 extended (with effect in accordance with Sch. 7 para. 3(5) of the extending Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, **3(2)**

C656 *See*—s.186(11)*—approved profit sharing schemes.*s.454*—underwriter's special reserve fund not to be treated as settlement.*s.469(1)*—unit trusts.*s.832— "additional rate" *defined.*1990 s.56*and* Sch.10 para.19*—convertible securities.*Vol.1. Table D(2).

C657 *See* 1990 s.30*and* Sch.5 para.13*and* s.132*and* Sch.19 Part IV—subs.(5)*repealed as regards a sum paid or credited on or after* 6*April* 1991.

C658 S. 686(6) applied (with effect in accordance with Sch. 7 para. 3(5) of the affecting Act) by Finance Act 1997 (c. 16), Sch. 7 paras. 1, **3(4)**

Marginal Citations

M899 Source-1973 s.16(1)-(6); 1986 s.47(4)(a)

M900 1995 c. 4.

[F4455 686A Certain distributions to be treated as income to which section 686 applies.

(1) This section applies where—

(a) a qualifying distribution is made to trustees;

(b) the trustees are not the trustees of a unit trust scheme; and

(c) the qualifying distribution falls within subsection (2) below.

(2) A qualifying distribution falls within this subsection if it is a payment made by a company—

(a) on the redemption, repayment or purchase of its own shares; or

(b) on the purchase of rights to acquire its own shares.

(3) The relevant part of the distribution shall be treated for the purposes of the Tax Acts as if it were income to which section 686 applies.

(4) In subsection (3) above the reference to the relevant part of the distribution is a reference to so much (if any) of the distribution as—

(a) is not income falling within paragraph (a) of section 686(2);

(b) does not fall to be treated for the purposes of the Income Tax Acts as income of a settlor;

(c) is not income arising under a trust established for charitable purposes; and

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(d) is not income from investments, deposits or other property held for any such purposes as are mentioned in sub-paragraph (i) or (ii) of section 686(2)(c).

(5) Subsection (6) of section 686 shall apply for the purposes of this section as it applies for the purposes of that section.**]**

Textual Amendments

F4455 S. 686A inserted (with effect in accordance with s. 32(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 32(9)**

[F4456 686B Share incentive plans: distributions in respect of unappropriated shares

(1) This section applies to income of the trustees of an approved share incentive plan consisting of dividends or other distributions in respect of shares held by them in relation to which the requirements of Part 4 of Schedule 2 to ITEPA 2003 (approved share incentive plans: types of shares that may be awarded) are met.

(2) Income to which this section applies is income to which section 686 applies only if and when—

(a) the period applicable to the shares under the following provisions of this section comes to an end without the shares being awarded to a participant in accordance with the plan, or

(b) if earlier, the shares are disposed of by the trustees.

(3) If any of the shares in the company in question are readily convertible assets at the time the shares are acquired by the trustees, the period applicable to the shares is the period of two years beginning with the date on which the shares were acquired by the trustees.

This is subject to subsection (5).

(4) If at the time of the acquisition of the shares by the trustees none of the shares in the company in question are readily convertible assets, the period applicable to the shares is—

(a) the period of five years beginning with the date on which the shares were acquired by the trustees, or

(b) if within that period any of the shares in that company become readily convertible assets, the period of two years beginning with the date on which they did so,

whichever ends first.

This is subject to subsection (5).

(5) If the shares are acquired by the trustees by virtue of a payment in respect of which a deduction is allowed under paragraph 9 of Schedule 4AA (deduction for contribution to plan trust), the period applicable to the shares is the period of ten years beginning with the date of acquisition.

(6) For the purposes of determining whether shares are awarded to a participant within the period applicable under the above provisions, shares acquired by the trustees at an earlier time are taken to be awarded to a participant before shares of the same class acquired by the trustees at a later time.

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(7) For the purposes of this section shares which are subject to provision for forfeiture are treated as acquired by the trustees if and when the forfeiture occurs.

(8) In relation to shares acquired by the trustees before 11th May 2001 this section has effect with the substitution—

(a) in subsection (3), of "Subject to subsection (4)" for the words before "the period applicable", and

(b) in subsection (4)(b), of "the shares in question" for "any of the shares in that company".**]**

Textual Amendments

F4456 Ss. 686B, 686C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 100** (with Sch. 2 para. 87, Sch. 7)

[F4456 686C Interpretation of section 686B

(1) Section 686B and this section form part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in section 686B or this section and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) References in section 686B to shares being awarded to a participant include references to the shares being acquired on behalf of the participant as dividend shares.

(4) In section 686B, "readily convertible assets" has the meaning given by sections 701 and 702 of ITEPA 2003, but this is subject to subsection (5).

(5) In determining for the purposes of section 686B whether shares are readily convertible assets, any market for the shares that—

(a) is created by virtue of the trustees acquiring shares for the purposes of the plan, and

(b) exists solely for the purposes of the plan,

shall be disregarded.**]**

Textual Amendments

F4456 Ss. 686B, 686C inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 100** (with Sch. 2 para. 87, Sch. 7)

[F4457 686D Special trust rates not to apply to first slice of trust income

(1) This section applies where income arising (or treated as arising) to the trustees of a trust in a year of assessment consists of or includes income subject to a special trust tax rate ("the special trust tax rate income").

(2) "Income subject to a special trust tax rate" means any income which is (or apart from this section would be) chargeable to income tax at—

(a) the dividend trust rate, or

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(b) the rate applicable to trusts.

(3) So much of the special trust tax rate income as does not exceed £500 is not chargeable to income tax at the dividend trust rate or the rate applicable to trusts (but is instead chargeable to income tax at the basic rate, the lower rate or the dividend ordinary rate, depending on the nature of the income).

(4) In the following provisions "the relevant purposes" means the purposes of—

(a) determining (in accordance with section 1A(5)) which of the special trust tax rate income is not chargeable to income tax at the dividend trust rate, or the rate applicable to trusts, by virtue of subsection (3), and

(b) determining at which of the basic rate, the lower rate and the dividend ordinary rate that special trust tax rate income is chargeable to income tax.

(5) For the relevant purposes the fact that any amount forming part of the special trust tax rate income is subject to a special trust tax rate is to be disregarded if, in any circumstances, an amount of that description is chargeable on trustees at the basic rate, the lower rate or the dividend ordinary rate.

(6) For the relevant purposes any of the special trust tax rate income that consists of—

(a) an amount which, by virtue of section 686A, is treated for the purposes of the Tax Acts as if it were income to which section 686 applies, or

(b) income treated as arising under Chapter 5 of Part 4 of ITTOIA 2005 (stock dividends from UK resident companies),

is to be regarded as income to which section 1A applies and which is chargeable at the dividend ordinary rate.

(7) For the relevant purposes any of the special trust tax rate income that consists of—

(a) income treated as arising under section 761(1) (offshore income gains),

(b) income treated as received under section 68 of FA 1989 (employee share ownership trusts), or

(c) profits or gains which are treated as income under Chapter 12 of Part 4 of ITTOIA 2005 (guaranteed returns on disposals of futures and options) and in relation to which section 568 of that Act applies (profits or gains not meeting conditions of that section),

is or are to be regarded as chargeable at the basic rate.

(8) For the relevant purposes any of the special trust tax rate income that consists of—

(a) income treated as received under section 714(2) or 716(3) (transfers of securities),

(b) profits taken to be income arising under Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities), or

(c) gains which are treated as arising under Chapter 9 of that Part and on which tax is charged at the rate applicable to trusts under section 467(7)(b) of that Act (gains from contracts for life assurance),

is or are chargeable at the lower rate.**]**

Textual Amendments

F4457 S. 686D inserted (with effect in accordance with s. 14(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 14(1)**

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[F4458 686E Application of section 686D where settlor has made more than one settlement

(1) If a settlor in relation to a settlement has made more than one settlement, section 686D shall have effect in relation to each settlement made by him with the following modification.

(2) The reference in subsection (3) to £1000 shall be treated as a reference to—

(a) £200, or

(b) such amount as may be obtained by dividing £1000 by the total number of settlements in the class, provided that the amount is not less than £200.

(3) If there is more than one settlor in relation to a settlement, the amount shall be the amount obtained under subsection (2)(b) in relation to the largest class of settlements.

(4) In this section a reference to a class of settlements is a reference to the class of settlements which were made by a settlor and which are in existence during any part of the year of assessment.**]**

Textual Amendments

F4458 S. 686E inserted (6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 4(2)(3)**

687 Payments under discretionary trusts.

[F4459 (1) Where in any year of assessment trustees make a payment to any person in the exercise of a discretion, whether a discretion exercisable by them or by any other person, then if the payment—

(a) is for all the purposes of the Income Tax Acts income of the person to whom it is made (but would not be his income if it were not made to him), or

(b) is treated for those purposes as the income of the settlor by virtue of **[F4460** section 629 of ITTOIA 2005 (income paid to **[F4461** relevant**]** children of settlor)**]**,

the following provisions of this section apply with respect to the payment in lieu of section 348 or 349(1).**]**

(2) The payment shall be treated as a net amount corresponding to a gross amount from which tax has been deducted at **[F4462** the rate applicable to trusts**]** for the year in which the payment is made; and the sum treated as so deducted shall be treated—

(a) as income tax paid by the person to whom the payment is made **[F4463** or, as the case may be, the settlor**]**; and

(b) so far as not set off under the following provisions of this section, as income tax assessable on the trustees.

(3) **M901** The following amounts, so far as not previously allowed, shall be set against the amount assessable (apart from this subsection) on the trustees in pursuance of subsection (2)(b) above—

[F4464 (a) the amount of any tax on income arising to the trustees which (not being income the tax on which falls within paragraphs (a1) to (bc) below) is charged

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in pursuance of section 686 at the rate applicable to trusts or the **[**F4465dividend**]** trust rate;

[F4466(aa1) the amount of any tax on income arising to the trustees which is charged by virtue of section 686D(3) at the basic rate or the lower rate;**]**

(a1) the amount of tax at a rate equal to the difference between the **[**F4467dividend**]** ordinary rate and the **[**F4467dividend**]** trust rate on any income of the trustees chargeable under **[**F4468Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.)**]**;

(a2) the amount of tax which, by virtue of section **[**F4469399 of ITTOIA 2005 (non-UK residents other than eligible non-UK residents receiving qualifying distributions)**]**, is charged, at a rate equal to the difference between the **[**F4470dividend**]** ordinary rate and the **[**F4470dividend**]** trust rate, on the amount or value of the whole or any part of any qualifying distribution included in the income arising to the trustees;

(aa) the amount of tax which, by virtue of section **[**F4471400 of that Act (non-qualifying distributions)**]**, is charged, at a rate equal to the difference between the **[**F4472dividend**]** ordinary rate and the **[**F4472dividend**]** trust rate, on the amount or value of the whole or any part of any non-qualifying distribution included in the income arising to the trustees;**]**

[F4473(aaa) F4474 . . . . . .**]**

[F4475(b) the amount of tax at a rate equal to the difference between the **[**F4476dividend**]** ordinary rate and the **[**F4476dividend**]** trust rate on any sum treated, under **[**F4477section 410(3) of ITTOIA 2005 (when stock dividend income arises)**]**, as income of the trustees;**]**

[F4478(bb) the amount of tax at a rate equal to the difference between the **[**F4476dividend**]** ordinary rate and the **[**F4476dividend**]** trust rate on any sum treated under section **[**F4479416(3) of ITTOIA 2005 (income charged on release of loan to participator in close company)**]** as income of the trustees;

(bc) the amount of tax at a rate equal to the difference between the **[**F4476dividend**]** ordinary rate and the **[**F4476dividend**]** trust rate on any sum treated under section 686A as income of the trustees;**]**

(c) *the amount of tax at the basic rate on any amount taken for the purposes of sections* 426*to* 428*as applied by section* 686(4)*to be the amount to be excluded from the income of the trustees in accordance with section* 427(4) F4480;

(d) an amount of tax in respect of income found on a claim made by the trustees to have been available to them for distribution at the end of the year 1972-73, which shall be taken to be two-thirds of the net amount of that income;

(e) the amount of any tax on income arising to the trustees by virtue of section 761(1) and charged **[**F4481at the rate applicable to trusts**]** by virtue of section 764; and

(f) the amount of any tax on annual profits or gains treated as received by trustees by virtue of section 714(2) or 716(3) of this Act or paragraph 2(2) or (3) of Schedule 22 to the Finance Act 1985 and charged **[**F4481at the rate applicable to trusts**]** by virtue of section 720(5) of this Act or paragraph 8(1) of Schedule 23 to that Act;

(g) the amount of any tax on income which arose to the trustees by virtue of section 38(2) of the Finance Act 1974 (development gains) and charged at a rate equal to the basic rate and the additional rate in pursuance of section 43(1) of that Act;

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[F4482(h) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 4 of Schedule 4 and is charged to tax **[**F4481at the rate applicable to trusts**]** by virtue of paragraph 17 of that Schedule;

(i) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 5 of Schedule 11 to the Finance Act 1989 and is charged to tax **[**F4481at the rate applicable to trusts**]** by virtue of paragraph 11 of that Schedule;**]**

[F4483(j) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 12 of Schedule 10 to the M902Finance Act 1990 and is charged to tax **[**F4481at the rate applicable to trusts**]** by virtue of paragraph 19 of that Schedule;**]**

[F4484(k) the amount of any tax on an amount which is treated as income of the trustees by virtue of paragraph 1 of Schedule 13 to the Finance Act 1996 and is charged to tax at the rate applicable to trusts by virtue of paragraph 6 of that Schedule;**]**

[F4485(l) the amount of any tax on an amount which is treated as income of the trustees by virtue of Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) and is charged to tax at the rate applicable to trusts by virtue of section 457 of that Act;**]**

[F4486(l) the amount of any income tax determined in accordance with section 26 of the Finance Act 2005;**]**

but tax on any income represented by amounts paid or credited as mentioned in section 686(5) shall be taken into account under paragraph (a) above only on production of a certificate from the building society concerned specifying those amounts and stating that an amount representing income tax on that income calculated at the basic rate has been or will be accounted for.

[F4487(3A) Paragraphs (a1) to (bc) of subsection (3) above do not apply in relation to income, distributions or sums chargeable to tax by virtue of section 686D(3) at the basic rate, the lower rate or the dividend ordinary rate.**]**

(4) M903In this section "trustees" does not include personal representatives within the meaning of section 701(4).

[F4488(5) References in this section to payments include payments in money or money's worth.**]**

Textual Amendments

F4459 S. 687(1) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 14(2)**

F4460 Words in s. 687(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(2)** (with Sch. 2)

F4461 Word in s. 687(1)(b) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 94

F4462 Words in s. 687(2) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(1), **25(1)**

F4463 Words in s. 687(2)(a) inserted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 14(3)**

F4464 S. 687(3)(a)(a1)(a2)(aa) substituted for s. 687(3)(a)(aa) (with effect in accordance with Sch. 4 para. 15(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 15(2)**

F4465 Word in s. 687(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(3)** (with Sch. 2)

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F4466 S. 687(3)(aa1) inserted (with effect in accordance with s. 14(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 14(3)**

F4467 Words in s. 687(3)(a1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(4)(a)** (with Sch. 2)

F4468 Words in s. 687(3)(a1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(4)(b)** (with Sch. 2)

F4469 Words in s. 687(3)(a2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(5)(a)** (with Sch. 2)

F4470 Words in s. 687(3)(a2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(5)(b)** (with Sch. 2)

F4471 Words in s. 687(3)(aa) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(6)(a)** (with Sch. 2)

F4472 Words in s. 687(3)(aa) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(6)(b)** (with Sch. 2)

F4473 S. 687(3)(aaa) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 15**

F4474 S. 687(3)(aaa) repealed (with effect in accordance with Sch. 6 para. 10(2) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 10(1), **Sch. 8 Pt. 2(11)**, Note

F4475 S. 687(3)(b) substituted (with effect in accordance with Sch. 4 para. 15(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 15(3)**

F4476 Words in s. 687(3)(b)(bb)(bc) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(7)** (with Sch. 2)

F4477 Words in s. 687(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(8)** (with Sch. 2)

F4478 S. 687(3)(bb)(bc) inserted (with effect in accordance with Sch. 4 para. 15(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 15(4)**

F4479 Words in s. 687(3)(bb) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(9)** (with Sch. 2)

F4480 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989

F4481 Words in s. 687(3)(e)(f)(h)(i) and (j), as it so has effect, substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 9(2)(d), **25(1)**

F4482 1989 s.96(2)*in relation to certain deep discount securities and certain deep gain securities from* 14*March* 1989.

F4483 S. 687(3)(j) inserted (*retrospectively* s. 687(3) has effect, and is deemed always to have had effect, as if s. 687(3) included para. (j)) by 1993 c. 34, **s. 79(2)**

F4484 S. 687(3)(k) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 35** (with Sch. 15)

F4485 S. 687(3)(l) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 278(10)** (with Sch. 2)

F4486 S. 687(3)(l) inserted (with effect in accordance with s. 45 of the amending Act) by Finance Act 2005 (c. 7), **s. 44(1)**

F4487 S. 687(3A) inserted (with effect in accordance with s. 14(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 14(4)**

F4488 S. 687(5) added (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 14(4)**

Modifications etc. (not altering text)

C659 *See* 1990 s.30*and* Sch.5 para.14*and* s.132*and* Sch.19 Part IV—*words following* paragraph (i)*repealed as regards an amount paid or credited on or after* 6*April* 1991.

C660 S. 687(3) amended (*retrospectively*) by 1993 c. 34, s. 79(1)(2), **Sch. 6 para. 9(2)(d)**

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Marginal Citations

M901 Source-1973 s.17(3)(a)-(d), (f), (g); 1975 (No.2) s.34 (6); 1984 s.100(2); 1985 Sch.23 8(3); 1974 Sch.7 8

M902 1990 c. 29.

M903 Source-1973 s.17(5)

[F4489 687A Payments to companies under section 687.

(1) This section applies where—

(a) trustees make a payment to a company;

(b) section 687 applies to the payment; and

(c) the company is chargeable to corporation tax and does not fall within subsection (2) below.

(2) A company falls within this subsection if it is—

(a) a charity, as defined in section 506(1);

(b) a body mentioned in section 507 (heritage bodies); or

(c) an Association of a description specified in section 508 (scientific research organisations).

(3) Where this section applies—

(a) none of the following provisions, namely—

(i) section 7(2),

(ii) section 11(3),

(iii) paragraph 5(1) of Schedule 16,

shall apply in the case of the payment;

(b) the payment shall be left out of account in calculating the profits of the company for the purposes of corporation tax; and

(c) no repayment shall be made of the amount treated under section 687(2) as income tax paid by the company in the case of the payment.

(4) If the company is not resident in the United Kingdom, this section applies only in relation to so much (if any) of the payment as is comprised in the company's chargeable profits for the purposes of corporation tax.**]**

Textual Amendments

F4489 S. 687A inserted (with effect in accordance with s. 27(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 27(1)**

688 Schemes for employees and directors to acquire shares.

F4490 . . . . . .

Textual Amendments

F4490 S. 688 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 279, **Sch. 3** (with Sch. 2)

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689 Recovery from trustees of discretionary trusts of higher rate tax due from beneficiaries.

F4491 . . . . . .

Textual Amendments

F4491 S. 689 repealed (with effect in accordance with s. 74(2), Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), Sch. 17 para. 15, **Sch. 29 Pt. 8(8)**

[F4492 CHAPTER ID

TRUST MANAGEMENT EXPENSES

Textual Amendments

F4492 Pt. 15 Ch. 1D (ss. 689A, 689B) inserted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 16**

689A Disregard of expenses where beneficiary non-resident.

(1) This section applies where—

(a) there is income ("the distributed income") arising to trustees in any year of assessment which (before being distributed) is income of a person ("the beneficiary") other than the trustees;

(b) the trustees have any expenses in that year ("the management expenses") which are properly chargeable to that income or would be so chargeable but for any express provisions of the trust; and

(c) the beneficiary is not liable to income tax on an amount of the distributed income ("the untaxed income") by reason wholly or partly of—

(i) his not having been resident in the United Kingdom, or

(ii) his being deemed under any arrangements under section 788, or any arrangements having effect by virtue of that section, to have been resident in a territory outside the United Kingdom.

(2) Where this section applies, there shall be disregarded in computing the income of the beneficiary for the purposes of the Income Tax Acts such part of the management expenses as bears the same proportion to all those expenses as the untaxed income bears to the distributed income.

(3) For the purpose of computing the proportion mentioned in subsection (2) above, the amounts of the distributed income and of the untaxed income shall not, in either case, include so much (if any) of the income as is equal to the amount of income tax, or of any foreign tax, chargeable on the trustees (by way of deduction or otherwise) in respect of that income.

(4) In subsection (3) above, "foreign tax" means any tax which is—

(a) of a similar character to income tax; and

(b) imposed by the laws of a territory outside the United Kingdom.

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(5) For the purposes of this section, where the income tax chargeable on any person is limited in accordance with section 128 of the [M904]Finance Act 1995 (limit on income chargeable on non-residents), the income of that person on which he is not liable to tax by reason of not having been resident in the United Kingdom shall be taken to include so much of any income of his as—

(a) is excluded income within the meaning of that section; and

(b) is not income which is treated for the purposes of subsection (1)(b) of that section as income the tax on which is deducted at source.

Marginal Citations

M904 1995 c. 4.

689B Order in which expenses to be set against income.

(1) The expenses of any trustees in any year of assessment, so far as they are properly chargeable to income (or would be so chargeable but for any express provisions of the trust), shall be treated—

(a) as set against so much (if any) of any income as is income falling within subsection (2) **[**[F4493], (2A)**]** or (3) below before being set against other income; and

(b) as set against so much (if any) of any income as is income falling within subsection (2) **[**[F4494]or (2A)**]** below before being set against income falling within subsection (3) below; **[**[F4495] and

(c) as set against so much (if any) of any income as is income falling within subsection (2) below before being set against income falling within subsection (2A) below**]**.

(2) Income falls within this subsection if it is—**]**

[[F4496](a) so much of the income of the trustees as is income chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.);

(b) income treated as arising to the trustees under Chapter 5 of that Part (stock dividends from UK resident companies); or

(c) income chargeable under Chapter 6 of that Part (release of loan to participator in close company).**]**

[[F4497](2A) Income falls within this subsection if it is **[**[F4498]—

(a) income chargeable under Chapter 4 of Part 4 of ITTOIA 2005 (dividends from non-UK resident companies); or

(b) a relevant foreign distribution chargeable under Chapter 8 of Part 5 of that Act (income not otherwise charged).**]]**

[[F4499](2B) In subsection (2A) "relevant foreign distribution" means any distribution of a company not resident in the United Kingdom which—

(a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but

(b) would be chargeable under Chapter 3 of that Part if the company were resident in the United Kingdom.**]**

(3) Income falls within this subsection if it is income to which section 1A applies but which does not fall within subsection (2) **[**[F4500]or (2A)**]** above.

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(4) This section has effect—

(a) subject to sections 686(2A) and 689A, but

(b) notwithstanding anything in section 1A(5) and (6).

Textual Amendments

F4493 Words in s. 689B(1)(a) inserted (with effect in accordance with Sch. 4 para. 16(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 16(2)(a)**

F4494 Words in s. 689B(1)(b) inserted (with effect in accordance with Sch. 4 para. 16(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 16(2)(b)**

F4495 S. 689B(1)(c) and preceding word added (with effect in accordance with Sch. 4 para. 16(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 16(2)(c)**

F4496 S. 689B(2)(a)-(c) substituted for s. 689(2)(za)-(c) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 280(2)** (with Sch. 2)

F4497 S. 689B(2A) inserted (with effect in accordance with Sch. 4 para. 16(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 16(4)**

F4498 S. 689B(2A)(a)(b) substituted for words in s. 689(2A) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 280(3)** (with Sch. 2)

F4499 S. 689B(2B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 280(4)** (with Sch. 2)

F4500 Words in s. 689B(3) inserted (with effect in accordance with Sch. 4 para. 16(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 16(5)**

CHAPTER V

MAINTENANCE FUNDS FOR HISTORIC BUILDINGS

690 Schedule 4 directions.

In this Chapter "a Schedule 4 direction" means a direction under paragraph 1 of Schedule 4 to the [M905]Inheritance Tax Act 1984 (maintenance funds for historic buildings); and any reference in this Chapter to paragraph 1 or Schedule 4 is a reference to that paragraph or that Schedule, as the case may be.

Modifications etc. (not altering text)

C661 *See* Inheritance Tax Acts.

Marginal Citations

M905 1984 c. 51.

691 Certain income not to be income of settlor etc.

(1) [M906]This section applies to any settlement in relation to which a Schedule 4 direction has effect.

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(2) [M907]The trustees of the settlement may elect that this subsection shall have effect in relation to any year of assessment, and if they do so—

(a) any income arising in that year from the property comprised in the settlement which, apart from this subsection, would be treated by virtue of this Part as income of the settlor shall not be so treated; and

(b) no sum applied in that year out of the property for the purposes mentioned in paragraph 3(1)(a)(i) of Schedule 4 (maintenance etc. of qualifying property) shall be treated for any purposes of the Income Tax Acts as the income of any person—

(i) by virtue of any interest of that person in, or his occupation of, the qualifying property in question; or

(ii) by virtue of **[**[F4501]section 633 of ITTOIA 2005 (capital sums paid to settlor by trustees of settlement)**]**.

(3) [M908]Where income arising from the property comprised in the settlement in a year of assessment for which no election is made under subsection (2) above is treated by virtue of this Part as income of the settlor, paragraph (b) of that subsection shall have effect in relation to any sums in excess of that income which are applied in that year as mentioned in that paragraph.

(4) Any election under subsection (2) above shall be by notice to the Board in such form as the Board may require and shall be made **[**[F4502]on or before the first anniversary of the 31st January next following**]** the year of assessment to which it relates.

(5) [M909]Where—

(a) for part of a year of assessment a Schedule 4 direction has effect and circumstances obtain by virtue of which income arising from property comprised in the settlement is treated as income of a settlor under this Part; and

(b) for the remainder of that year either no such direction has effect, or no such circumstances obtain, or both,

subsections (1) to (4) above shall apply as if each of those parts were a separate year of assessment and separate elections may be made accordingly.

Textual Amendments

F4501 Words in s. 691(2)(b)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 281** (with Sch. 2)

F4502 Words in s. 691(4) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 19**

Marginal Citations

M906 Source-1977 s.38(1); 1982 Sch.10 1; ITA Sch.8 8

M907 Source-1977 s.38(2); 1980 s.88(7); 1987 Sch.15 10

M908 Source-1977 s.38(3), (4)

M909 Source-1977 s.38(5); 1982 Sch.10 1(3); ITA Sch.8 8

692 Reimbursement of settlor.

(1) [M910]This section applies to income arising from settled property in respect of which a Schedule 4 direction has effect if the income—

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(a) is treated by virtue of this Part as income of the settlor, and

(b) is applied in reimbursing the settlor for expenditure incurred by him for a purpose within paragraph 3(1)(a)(i) of Schedule 4,

and if that expenditure is (or would apart from the reimbursement be) deductible in computing **[**F4503either the profits of a trade carried on by the settlor or the profits of a **[**F4504UK property business**]** so carried on**]**.

(2) Income to which this section applies shall not be treated as reducing the expenditure deductible in computing the profits referred to in subsection (1) above, and shall not be regarded as income of the settlor otherwise than by virtue of this Part.

Textual Amendments

F4503 Words in s. 692(1) substituted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 26**

F4504 Words in s. 692(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 282** (with Sch. 2)

Marginal Citations

M910 Source-1982 s.61; ITA Sch.8 21

693 Severance of settled property for certain purposes.

M911Where settled property in respect of which a Schedule 4 direction has effect constitutes part only of the property comprised in a settlement, it and the other property shall be treated as comprised in separate settlements for the purposes of sections 27 and 380 to 387 and this Part.

Marginal Citations

M911 Source-1982 s.62(1), (2); ITA Sch.8 22

694 [F4505Trustees chargeable to income tax in certain cases at higher rate reduced by rate applicable to trusts]

(1) M912If in the case of a settlement in respect of which a Schedule 4 direction has effect—

(a) any of the property comprised in the settlement (whether capital or income) is applied otherwise than as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4; or

(b) any of that property on ceasing to be comprised in the settlement devolves otherwise than on any such body or charity as is mentioned in paragraph 3(1)(a)(ii) of that Schedule; or

(c) the direction ceases to have effect;

then, unless subsection (6) below applies, income tax shall be charged under this section in respect of the settlement.

(2) Subject to subsection (3) below, tax chargeable under this section shall be charged *at the rate of* 30*per cent.*F4506 on the whole of the income which has arisen in the relevant period from the property comprised in the settlement and has not been applied

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(or accumulated and then applied) as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4.

In this subsection "the relevant period" means, if tax has become chargeable under this section in respect of the settlement on a previous occasion, the period since the last occasion and, in any other case, the period since the settlement took effect.

[F4507(2A) The rate at which tax is charged under this section shall be equivalent to the higher rate of income tax for the year of assessment during which the charge arises, reduced by the **[**F4508amount of the rate applicable to trusts**]** for that year.**]**

(3) M913Tax shall not be chargeable under this section in respect of income which by virtue of **[**F4509section 624 or 629 of ITTOIA 2005 (income where settlor retains an interest in settlement or income paid to **[**F4510relevant**]** children of settlor)**]** is treated as income of the settlor; but where income arising in any year of assessment is exempted by this subsection any sums applied in that year as mentioned in paragraph 3(1)(a)(i) or (ii) of Schedule 4 shall be treated as paid primarily out of that income and only as to the excess, if any, out of income not so exempted.

(4) Tax charged under this section shall be in addition to any tax chargeable apart from this section and—

(a) the persons assessable and chargeable with tax under this section shall be the trustees of the settlement; and

(b) all the provisions of the Income Tax Acts relating to assessments and to the collection and recovery of income tax shall, so far as applicable, apply to the charge, assessment, collection and recovery of tax under this section.

(5) Tax shall also be chargeable in accordance with subsections (1) to (4) above if—

(a) any of the property comprised in a settlement to which subsection (1) above applies, on ceasing at any time to be comprised in the settlement, devolves on any such body or charity as is referred to in paragraph (b) of that subsection, and

(b) at or before that time an interest under the settlement is or has been acquired for a consideration in money or money's worth by that or another such body or charity;

but for the purposes of this subsection any acquisition from another such body or charity shall be disregarded.

(6) Tax shall not be chargeable under this section in respect of a settlement on an occasion when the whole of the property comprised in it is transferred tax-free into another settlement; but on the first occasion on which tax becomes chargeable under this section in respect of a settlement ("the current settlement") comprising property which was previously comprised in another settlement or settlements and has become comprised in the current settlement as a result of, or of a series of, tax-free transfers, the relevant period for the purposes of subsection (2) above shall, as respects that property, be treated as having begun—

(a) on the last occasion on which tax became chargeable under this section in respect of the other settlement or any of the other settlements; or

(b) if there has been no such occasion, when the other settlement or the first of the other settlements took effect.

(7) M914 For the purposes of subsection (6) above, property is transferred tax-free from one settlement into another if either—

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(a) it ceases to be comprised in the first-mentioned settlement and becomes comprised in the other settlement in circumstances such that by virtue of paragraph 9(1) of Schedule 4 there is (or, but for paragraph 9(4), there would be) no charge to capital transfer tax or inheritance tax in respect of the property; or

(b) both immediately before and immediately after the transfer it is property in respect of which a Schedule 4 direction has effect.

Textual Amendments

F4505 S. 694 sidenote substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 4 para. 2**

F4506 *Repealed by* 1988(F) s.24(3)*for* 1988-89*and subsequent years.*

F4507 1988(F) s.24(3).

F4508 Words in s. 694(2A) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.10, **25(1)**

F4509 Words in s. 694(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 283** (with Sch. 2)

F4510 Word in s. 694(3) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 95

Marginal Citations

M912 Source-1980 s.52(1), (2); 1982 Sch.10 2(2) (3); ITA Sch.8 17

M913 Source-1980 s.52(3)-(6); ITA Sch.8 17

M914 Source-1980 s.52(7); 1982 Sch.10 2(4); ITA Sch.8 17

PART XVI

ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION

695 Limited interests in residue.

M915(1) The following provisions of this section shall have effect in relation to a **[**F4511company which**]**, during the period commencing on the death of a deceased person and ending on the completion of the administration of his estate ("the administration period") or during a part of that period, has a limited interest in the residue of the estate or in a part thereof.

(2) When any sum has been paid during the administration period in respect of that limited interest, the amount of that sum shall F4512. . . be deemed for **[**F4513corporation tax**]** purposes to have been paid to that **[**F4514company**]** as income for the **[**F4515accounting period**]** in which that sum was paid or, in the case of a sum paid in respect of an interest that has ceased, for the last **[**F4515accounting period**]** in which it was subsisting.

[F4516(3) Where, on the completion of the administration of the estate, there is an amount which remains payable in respect of that limited interest, that amount shall be deemed for **[**F4517corporation tax**]** purposes to have been paid to that **[**F4518company**]** as income for the **[**F4519accounting period**]** in which the administration period ends or, in the case of a sum which is deemed to be paid in respect of an interest that ceased before the end of **[**F4520the administration period**]**, for the last **[**F4519accounting period**]** in which that interest was subsisting.**]**

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(4) Any amount which is deemed to have been paid to that **[**F4521company**]** as income **[**F4522for any accounting period**]** by virtue of this section shall—

(a) in the case of a United Kingdom estate, be deemed to be income of such an amount as would after deduction of income tax for **[**F4523the relevant year of assessment**]** be equal to the amount deemed to have been so paid, and to be income which has borne income tax at the **[**F4524applicable rate**]**; and

(b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid F4525. . . .

(5) Where—

(a) a **[**F4526company**]** has been charged to **[**F4527corporation tax for any accounting period**]** by virtue of this section in respect of an amount deemed to have been paid to **[**F4528it**]** as income in respect of an interest in a foreign estate ("the deemed income"), and

(b) any part of the aggregate income of that estate for **[**F4529the relevant year of assessment**]** has borne United Kingdom income tax by deduction or otherwise ("the aggregate income"),

the tax so charged on **[**F4528it**]** shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the deemed income which has borne United Kingdom income tax, less the tax so borne, bears to the amount of the aggregate income, less the tax so borne.

(6) Where relief has been given under subsection (5) above, such part of the amount in respect of which **[**F4530the company**]** has been charged **[**F4531to corporation tax**]** as corresponds to the proportion mentioned in that subsection shall F4532. . . be deemed to represent income of such an amount as would after deduction of income tax be equal to that part of the amount charged.

[F4533(7) In this section "the relevant year of assessment", in relation to an amount deemed to have been paid to a company as income for an accounting period by virtue of this section, means the year of assessment for which the amount would have been deemed to have been paid as income if references to accounting periods in subsections (2) and (3) were references to years of assessment.**]**

Textual Amendments

F4511 Words in s. 695(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(2)** (with Sch. 2)

F4512 Words in s. 695(2) repealed (with effect in accordance with Sch. 18 para. 2(2) of the amending Act) by Finance Act 1995 (c. 4), Sch. 18 para. 2(1), **Sch. 29 Pt. 8(10)**

F4513 Words in s. 695(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(3)(a)** (with Sch. 2)

F4514 Word in s. 695(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(3)(b)** (with Sch. 2)

F4515 Words in s. 695(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(3)(c)** (with Sch. 2)

F4516 S. 695(3) substituted (with effect in accordance with Sch. 18 para. 2(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 18 para. 2(1)**

F4517 Words in s. 695(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(4)(a)** (with Sch. 2)

F4518 Word in s. 695(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(4)(b)** (with Sch. 2)

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F4519 Words in s. 695(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(4)(c)** (with Sch. 2)
F4520 Words in s. 695(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(4)(d)** (with Sch. 2)
F4521 Word in s. 695(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(5)(a)** (with Sch. 2)
F4522 Words in s. 695(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(5)(b)** (with Sch. 2)
F4523 Words in s. 695(4)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(5)(c)** (with Sch. 2)
F4524 Words in s. 695(4)(a) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(1), **25(1)**
F4525 Words in s. 695(4)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 284(5)(d), **Sch. 3** (with Sch. 2)
F4526 Word in s. 695(5)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(6)(a)** (with Sch. 2)
F4527 Words in s. 695(5)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(6)(b)** (with Sch. 2)
F4528 Words in s. 695(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(6)(c)** (with Sch. 2)
F4529 Words in s. 695(5)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(6)(d)** (with Sch. 2)
F4530 Words in s. 695(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(7)(a)** (with Sch. 2)
F4531 Words in s. 695(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(7)(b)** (with Sch. 2)
F4532 Words in s. 695(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 284(7)(c), **Sch. 3** (with Sch. 2)
F4533 S. 695(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 284(8)** (with Sch. 2)

Modifications etc. (not altering text)
C662 *See* 1974 s.44(4) and Sch.7 para.9(1)(2)—*development gains to be excluded from aggregate income and United Kingdom tax thereon to be left out of account.*

Marginal Citations
M915 Source-1970 s.426; 1971 Sch.6 52

696 Absolute interests in residue.

M916(1) The following provisions of this section shall have effect in relation to a **[**F4534company which**]**, during the administration period or during a part of that period, has an absolute interest in the residue of the estate of a deceased person or in a part thereof.

(2) There shall be ascertained in accordance with section 697 the amount of the residuary income of the estate for each whole year of assessment, and for each broken part of a year of assessment, during which—

(a) the administration period was current, and

(b) that **[**F4535company**]** had that interest;

and the amount so ascertained in respect of any year or part of a year or, in the case of a **[**F4535company**]** having an absolute interest in a part of a residue, a proportionate part of

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that amount, is in this Part referred to as the "residuary income" of that **[**F4535company**]** for that year of assessment **[**F4536; and references to the residuary income of a company for an accounting period are to be construed in accordance with subsection (8)**]**.

[F4537(3) When any sum has been paid during the administration period in respect of that absolute interest, that sum, except so far as it is excluded from the operation of this subsection, shall be deemed for **[**F4538corporation tax**]** purposes to have been paid to that **[**F4539company**]** as income for the **[**F4540accounting period**]** in which it was actually paid.

(3A) A payment shall be excluded from the operation of subsection (3) above to the extent (if any) that the aggregate of that sum and all the sums which—

(a) have been paid previously during the administration period in respect of that absolute interest, and

(b) fall under this section to be treated as paid to that **[**F4541company**]** as income **[**F4542(whether or not the company was a company liable to corporation tax at the time of payment)**]**,

exceeds the aggregated income entitlement of that **[**F4541company**]** for the **[**F4543accounting period**]** in which the sum is paid.

(3B) For the purposes of this section the aggregated income entitlement of that **[**F4544company**]** for any **[**F4545accounting period**]** is the amount which would be the aggregate of the amounts received for that **[**F4545accounting period**]** and all previous **[**F4546accounting periods**]** in respect of the interest if that **[**F4544company**]** had a right in **[**F4547each accounting period**]** to receive, and had received—

(a) in the case of a United Kingdom estate, **[**F4548its**]** residuary income for **[**F4549that accounting period**]** less income tax at the applicable rate for **[**F4549that accounting period**]**; and

(b) in the case of a foreign estate, **[**F4548its**]** residuary income for **[**F4549that accounting period**]**.**]**

(4) In the case of a United Kingdom estate, any amount which is deemed to have been paid to that **[**F4550company**]** as income for **[**F4550any accounting period**]** by virtue of subsection (3) above shall be deemed to be income of such an amount as would, after deduction of income tax for **[**F4550that accounting period**]**, be equal to the amount deemed to have been so paid, and to be income that has borne income tax at the **[**F4551applicable rate**]**.

[F4552(5) Where, on the completion of the administration of the estate, the aggregate of all the sums which, apart from this subsection—

(a) have been paid during the administration period in respect of that absolute interest, and

(b) fall under this section to be treated as paid to that **[**F4553company**]** as income,

is exceeded by the aggregated income entitlement of that **[**F4553company**]** for the **[**F4554accounting period**]** in which the administration of the estate is completed, then an amount equal to the amount of the excess shall be treated for the purposes of subsections (3) to (4) above as having been actually paid, immediately before the end of the administration period, in respect of that interest.**]**

(6) In the case of a foreign estate, any amount which is deemed to have been paid to that **[**F4555company**]** as income for any **[**F4556accounting period**]** by virtue of this section shall be deemed to be income of that amount F4557. . . .

(7) Where—

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(a) a **[**F4558company**]** has been charged to **[**F4559corporation tax for any accounting period**]** by virtue of this section in respect of an amount deemed to have been paid to **[**F4560it**]** as income in respect of an interest in a foreign estate ("the deemed income"), and

(b) any part of the aggregate income of that estate for **[**F4561the relevant year of assessment**]** has borne United Kingdom income tax by deduction or otherwise ("the aggregate income"),

the tax so charged on **[**F4560it**]** shall, on proof of the facts on a claim, be reduced by an amount bearing the same proportion thereto as the amount of the deemed income which has borne United Kingdom income tax bears to the amount of the aggregate income.

(8) F4562. . . The residuary income of a company shall be computed in the first instance by reference to years of assessment, and the residuary income for any such year shall be apportioned between the accounting periods (if more than one) comprising that year.

[F4563(9) In subsection (7) "the relevant year of assessment", in relation to an amount deemed to have been paid to a company as income for an accounting period by virtue of this section, means the year of assessment for which the amount would have been deemed to have been paid as income if references in subsections (3) to (6) to accounting periods were references to years of assessment.**]**

Textual Amendments

F4534 Words in s. 696(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(2)** (with Sch. 2)

F4535 Words in s. 696(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(3)(a)** (with Sch. 2)

F4536 Words in s. 696(2) added (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(3)(b)** (with Sch. 2)

F4537 S. 696(3)-(3B) substituted for s. 696(3) (with effect in accordance with Sch. 18 para. 3(3)(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 18 para. 3(1)**

F4538 Words in s. 696(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(4)(a)** (with Sch. 2)

F4539 Word in s. 696(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(4)(b)** (with Sch. 2)

F4540 Words in s. 696(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(4)(c)** (with Sch. 2)

F4541 Words in s. 696(3A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(5)(a)** (with Sch. 2)

F4542 Words in s. 696(3A)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(5)(b)** (with Sch. 2)

F4543 Words in s. 696(3A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(5)(c)** (with Sch. 2)

F4544 Words in s. 696(3B) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(6)(a)** (with Sch. 2)

F4545 Words in s. 696(3B) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(6)(b)** (with Sch. 2)

F4546 Words in s. 696(3B) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(6)(c)** (with Sch. 2)

F4547 Words in s. 696(3B) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(6)(d)** (with Sch. 2)

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F4548 Words in s. 696(3B)(a)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(6)(e)** (with Sch. 2)

F4549 Words in s. 696(3B)(a)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(6)(f)** (with Sch. 2)

F4550 Words in s. 696(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(7)** (with Sch. 2)

F4551 Words in s. 696(3)-(5) substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(1), **25(1)**

F4552 S. 695(5) substituted (with effect in accordance with Sch. 18 para. 3(3)(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 18 para. 3(2)**

F4553 Words in s. 696(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(8)(a)** (with Sch. 2)

F4554 Words in s. 696(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(8)(b)** (with Sch. 2)

F4555 Word in s. 696(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(9)(a)** (with Sch. 2)

F4556 Words in s. 696(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(9)(b)** (with Sch. 2)

F4557 Words in s. 696(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 285(9)(c), **Sch. 3** (with Sch. 2)

F4558 Word in s. 696(7)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(10)(a)** (with Sch. 2)

F4559 Words in s. 696(7)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(10)(b)** (with Sch. 2)

F4560 Words in s. 696(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(10)(d)** (with Sch. 2)

F4561 Words in s. 696(7)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(10)(c)** (with Sch. 2)

F4562 Words in s. 696(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 285(11), **Sch. 3** (with Sch. 2)

F4563 S. 696(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 285(12)** (with Sch. 2)

Marginal Citations

M916 Source-1970 s.427; 1971 Sch.6 53

697 Supplementary provisions as to absolute interests in residue.

M917 (1) The amount of the residuary income of an estate for any year of assessment shall be ascertained by deducting from the aggregate income of the estate for that year—

(a) the amount of any annual interest, annuity or other annual payment for that year which is a charge on residue and the amount of any payment made in that year in respect of any such expenses incurred by the personal representatives as such in the management of the assets of the estate as, in the absence of any express provision in a will, would be properly chargeable to income, but excluding any such interest, annuity or payment allowed or allowable in computing the aggregate income of the estate; and

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(b) the amount of any of the aggregate income of the estate for that year to which a person has on or after assent become entitled by virtue of a specific disposition either for a vested interest during the administration period or for a vested or contingent interest on the completion of the administration.

[F4564(1A) For the purpose of ascertaining under subsection (1) above the residuary income of an estate for any year, where the amount of the deductions falling to be made from the aggregate income of the estate for that year (including any falling to be made by virtue of this subsection) exceeds the amount of that income, the excess shall be carried forward and treated for that purpose as an amount falling to be deducted from the aggregate income of the estate for the following year.**]**

(2) In the event of its appearing, on the completion of the administration of an estate in the residue of which, or in a part of the residue of which, a **[**F4565company**]** had an absolute interest at the completion of the administration, that the aggregate of the benefits received in respect of that interest does not amount to as much as the aggregate for all years of the residuary income of the **[**F4565company**]** having that interest, **[**F4566section 696 shall have effect as if the amount of the deficiency were to be applied in reducing the amount taken to be **[**F4567its**]** residuary income for the year in which the administration of the estate is completed and, in so far as the deficiency exceeds that income, in reducing the amount taken to be **[**F4567its**]** residuary income for the previous year, and so on.**]**

(3) In subsection (2) above "benefits received" in respect of an absolute interest means the following amounts in respect of all sums paid before, or payable on, the completion of the administration in respect of that interest, that is to say—

(a) as regards a sum paid before the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of income tax for the year of assessment in which that sum was paid, be equal to that sum, or in the case of a foreign estate the amount of that sum; and

(b) as regards a sum payable on the completion of the administration, in the case of a United Kingdom estate such an amount as would, after deduction of income tax for the year of assessment in which the administration is completed, be equal to that sum, or in the case of a foreign estate the amount of that sum.

(4) In the application of subsection (2) above to a residue or a part of a residue in which a person other than the person having an absolute interest at the completion of the administration had an absolute interest at any time during the administration period, the aggregates mentioned in that subsection shall be computed in relation to those interests taken together F4568. . . .

[F4569(5) If the amount resulting from the computation mentioned in subsection (4) is greater than the total amount of the reduction which can be made under subsection (2), the share of the residuary income of the estate of the last previous holder of the interest for the last year in which that person had that interest is to be reduced, and so on.**]**

Textual Amendments

F4564 S. 697(1A) inserted (with effect in accordance with Sch. 18 para. 4(3) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 18 para. 4(1)**

F4565 Words in s. 697(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 286(2)(a)** (with Sch. 2)

F4566 Words in s. 697(2) substituted (with effect in accordance with Sch. 18 para. 4(3) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 18 para. 4(2)**

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F4567 Words in s. 697(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 286(2)(b)** (with Sch. 2)
F4568 Words in s. 697(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 286(3), **Sch. 3** (with Sch. 2)
F4569 S. 697(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 286(4)** (with Sch. 2)

Marginal Citations
M917 Source-1970 s.428; 1971 Sch.6 54

698 Special provisions as to certain interests in residue.

M918(1) Where the personal representatives of a deceased person have as such a right in relation to the estate of another deceased person such that, if that right were vested in them for their own benefit, they would have an absolute or limited interest in the residue of that estate or in a part of that residue, they shall be deemed to have that interest notwithstanding that that right is not vested in them for their own benefit, and any amount deemed to be paid to them as income by virtue of this Part shall be treated as part of the aggregate income of the estate of the person whose personal representatives they are.

[F4570(1A) Subsection (1B) below applies where—

(a) successively during the administration period there are different persons with interests in the residue of the estate of a deceased person or in parts of such a residue;

(b) the later interest or, as the case may be, each of the later interests arises or is created on the cessation otherwise than by death of the interest that precedes it; and

(c) the earlier or, as the case may be, earliest interest is a limited interest.

(1B) Where this subsection applies, this Part shall have effect in relation to any payment made in respect of any of the interests referred to in subsection (1A) above—

(a) as if all those interests were the same interest so that none of them is to be treated as having ceased on being succeeded by any of the others;

(b) as if (subject to paragraph (c) below) the interest which is deemed to exist by virtue of paragraph (a) above ("the deemed single interest") were an interest of—

(i) except in a case to which sub-paragraph (ii) below applies, the person in respect of whose interest or previous interest the payment is made;

(ii) in a case where the person entitled to receive the payment is any other person who has or has had an interest which is deemed to be comprised in the deemed single interest, that other person;

and

(c) in so far as any of the later interests is an absolute interest as if, for the purposes of section 696(3A) to (5)—

(i) the earlier interest or interests had never existed and the absolute interest had always existed;

(ii) the sums (if any) which were deemed in relation to the earlier interest or interests to have been paid as income for any **[**F4571accounting period**]** to any of the persons entitled thereto were sums previously

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paid during the administration period in respect of the absolute interest; and

(iii) those sums were sums falling to be treated as sums paid as income to the person entitled to the absolute interest.

(2) Where successively during the administration period there are different persons with absolute interests in the residue of the estate of a deceased person or in parts of such a residue, the aggregate payments and aggregated income entitlement referred to in subsections (3A) and (3B) of section 696 shall be computed for the purposes of that section in relation to an absolute interest subsisting at any time ("the subsequent interest")—

(a) as if the subsequent interest and any previous absolute interest corresponding to the subsequent interest, or relating to any part of the residue to which the subsequent interest relates, were the same interest; and

(b) as if the residuary income for any **[**F4572accounting period**]** of the person entitled to the previous interest were residuary income of the person entitled to the subsequent interest and any amount deemed to be paid as income to the person entitled to the previous interest were an amount deemed to have been paid to the person entitled to the subsequent interest.**]**

(3) Where, upon the exercise of a discretion, any of the income of the residue of the estate of a deceased person for any period (being the administration period or a part of the administration period) would, if the residue had been ascertained at the commencement of that period, be properly payable to any person, or to another in his right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person—

(a) the amount of any sum paid pursuant to an exercise of the discretion in favour of that person shall be deemed for **[**F4573corporation tax**]** purposes to have been paid to that person as income for the **[**F4574accounting period**]** in which it was paid; and

(b) section 695(4) to (6) shall have effect in relation to an amount which is deemed to have been paid as income by virtue of paragraph (a) above.

[F4575(4) Subsection (5) applies in any case where—

(a) successively during the administration period there are different persons with absolute interests in the residue of the estate of a deceased person, or in parts of such a residue, and

(b) some, but not all are companies liable to corporation tax in respect of income within this Part.

(5) References in this section—

(a) to sums deemed to be paid as income for an accounting period to a person who is not such a company,

(b) to the residuary income for any accounting period of such a person, or

(c) to amounts deemed to be paid to such a person as income,

are references to sums that would be so deemed, to the income that would be such residuary income or, as the case may be, to the amounts that would be so deemed if the assumptions in subsection (6) were made.

(6) The assumptions are—

(a) that each of the persons who is not a company liable to corporation tax in respect of income within this Part is such a company, and

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(b) that in the case of each person who is not a company, the person's accounting periods correspond with years of assessment.**]**

Textual Amendments

F4570 S. 698(1A)(1B)(2) substituted for s. 698(2) (with effect in accordance with Sch. 18 para. 5(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 18 para. 5(1)**

F4571 Words in s. 698(1B)(c)(ii) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 287(2)** (with Sch. 2)

F4572 Words in s. 698(2)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 287(3)** (with Sch. 2)

F4573 Words in s. 698(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 287(4)(a)** (with Sch. 2)

F4574 Words in s. 698(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 287(4)(b)** (with Sch. 2)

F4575 S. 698(4)-(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 287(5)** (with Sch. 2)

Marginal Citations

M918 Source-1970 s.429; 1971 Sch.6 55

[F4576[F4577 Taxation of income of beneficiaries at lower rate or at rates applicable to [F4578distribution] income.

(1) Subject to subsection (3) below, in so far as any income of any person is treated under this Part as having borne income tax at the lower rate, section 1A shall have effect as if that income were income to which that section applies otherwise than by virtue of the income being income chargeable under **[**F4579Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.)**]**.

(2) Subject to subsection (3) below, in so far as any income of any person is treated under this Part as having borne income tax at the **[**F4580dividend**]** ordinary rate, that income shall be treated as if it were income chargeable under **[**F4581Chapter 3 of Part 4 of ITTOIA 2005**]**.

(3) Subsections (1) and (2) above shall not apply to income paid indirectly through a trustee and treated by virtue of section 698(3) **[**F4582above or of section 662 of ITTOIA 2005 read with section 656(3) or 657(4) of that Act**]** as having borne income tax at the lower rate or the **[**F4583dividend**]** ordinary rate; but, subject to section 686(1), section 1A shall have effect as if the payment made to the trustee were income of the trustee—

(a) to which section 1A applies by virtue of the income being chargeable under **[**F4584Chapter 3 of Part 4 of ITTOIA 2005**]**, in the case of income treated as having borne tax at the **[**F4585dividend**]** ordinary rate; and

(b) to which section 1A applies otherwise than by virtue of the income being chargeable under **[**F4586Chapter 3 of Part 4 of ITTOIA 2005**]**, in any other case.**]]**

Textual Amendments

F4576 S. 698A inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(2), **25(1)**

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F4577 S. 698A substituted (with effect in accordance with s. 33(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(1)**
F4578 Word in s. 698A sidenote substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(5)** (with Sch. 2)
F4579 Words in s. 698A(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(2)** (with Sch. 2)
F4580 Word in s. 698A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(3)(a)** (with Sch. 2)
F4581 Words in s. 698A(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(3)(b)** (with Sch. 2)
F4582 Words in s. 698A(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(4)(a)** (with Sch. 2)
F4583 Word in s. 698A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(4)(b)** (with Sch. 2)
F4584 Words in s. 698A(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(4)(c)** (with Sch. 2)
F4585 Word in s. 698A(3)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(4)(d)** (with Sch. 2)
F4586 Words in s. 698A(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 288(4)(e)** (with Sch. 2)

699 Relief from higher rate tax for inheritance tax on accrued income.

F4587 . . . . . .

Textual Amendments
F4587 S. 699 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 289, **Sch. 3** (with Sch. 2)

[F4588 699A Untaxed sums comprised in the income of the estate.

(1) In this section "a relevant amount" means so much of any amount which a person is deemed by virtue of this Part to receive or to have a right to receive as is or would be paid out of sums which—

(a) are included in the aggregate income of the estate of the deceased by virtue of any of [F4589 paragraphs (c) to (e) of section 701(8) below]; and

(b) are sums in respect of which the personal representatives are not directly assessable to United Kingdom income tax;

[F4590 or out of any sums included in the aggregate income of the estate of the deceased which fall within subsection (1A) below.]

F4591 [(1A) A sum falls within this subsection if it is a sum in respect of—

F4592 [(a) a distribution chargeable under [F4593 Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.)]; F4594 . . .

F4594 (b) . . . . .]

(1B) Any reference in this Part to a sum to which subsection (1)(a) and (b) above applies includes a reference to a sum falling within subsection (1A) above which is included in the aggregate income of the estate of the deceased.]

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(2) In determining for the purposes of this Part whether any amount is a relevant amount—

(a) such apportionments of any sums to which subsection (1)(a) and (b) above applies shall be made between different persons with interests in the residue of the estate as are just and reasonable in relation to their different interests; and

(b) subject to paragraph (a) above, the **[**F4595assumptions**]** in section 701(3A)(b) shall apply, but (subject to that) it shall be assumed that payments are to be made out of other sums comprised in the aggregate income of the estate before they are made out of any sums to which subsection (1)(a) and (b) above applies.

(3) In the case of a foreign estate, and notwithstanding anything in section 695(4)(b) or 696(6), a relevant amount shall be deemed—

(a) to be income of such amount as would, after deduction of income tax for the year in which it is deemed to be paid, be equal to the relevant amount; and

(b) to be income that has borne tax at the applicable rate.

(4) Sums to which subsection (1)(a) and (b) above applies shall be assumed, for the purpose of determining the applicable rate in relation to any relevant amount, to bear tax—

(a) in the case of sums included by virtue of **[**F4596section 701(8)(c) or (d), at the dividend**][**F4597ordinary rate**]**, and

(b) in the case of sums included by virtue of **[**F4598section 701(8)(e)**]**, at **[**F4599the lower rate**][**F4600; and

(c) in the case of sums falling within subsection (1A) above, at the **[**F4597**[**F4601dividend**]** ordinary rate**].]**

(5) No repayment shall be made of any income tax which by virtue of this Part is treated as having been borne by the income that is represented by a relevant amount.

(6) F4602. . . . . .**]**

Textual Amendments

F4588 S. 699A inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), **s. 76(4)**

F4589 Words in s. 699A(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 290(2)** (with Sch. 2)

F4590 Words in s. 699A(1) inserted (with effect in accordance with s. 21(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 21(2)**

F4591 S. 699A(1A)(1B) inserted (with effect in accordance with s. 21(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 21(3)**

F4592 Words in s. 699A(1A) inserted (with effect in accordance with s. 33(10) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(3)**

F4593 Words in s. 699A(1A)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 290(3)(a)** (with Sch. 2)

F4594 S. 699A(1A)(b) and preceding word repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 290(3)(b), **Sch. 3** (with Sch. 2)

F4595 Word in s. 699A(2)(b) substituted (with effect in accordance with s. 33(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(4)**

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F4596 Words in s. 699A(4)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 290(4)(a)** (with Sch. 2)
F4597 Words in s. 699A(4)(a)(c) substituted (with effect in accordance with s. 33(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(5)**
F4598 Words in s. 699A(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 290(4)(b)** (with Sch. 2)
F4599 Words in s. 699A(4)(b) substituted (with effect in accordance with s. 173(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 35 para. 4**
F4600 S. 699A(4)(c) and preceding word inserted (with effect in accordance with s. 21(5) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 21(4)**
F4601 Word in s. 699A(4)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 290(4)(c)** (with Sch. 2)
F4602 S. 699A(6) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 290(5), **Sch. 3** (with Sch. 2)

700 Adjustments and information.

M919 (1) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part to have been paid to any **[**F4603company**]** as income for any **[**F4604accounting period**]** and—

(a) that amount is greater than the amount that has previously been deemed to have been paid to **[**F4605it**]** as income for **[**F4606that accounting period**]** by virtue of this Part; or

(b) no amount has previously been so deemed to have been paid to **[**F4605it**]** as income for **[**F4606that accounting period**]**;

an assessment may be made upon **[**F4605it**]** for **[**F4606that accounting period**]** and **[**F4607corporation tax**]** charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which **[**F4608it**]** may be entitled shall be allowed accordingly.

(2) Where on the completion of the administration of an estate any amount is deemed by virtue of this Part to have been paid to any **[**F4609company**]** as income for any **[**F4610accounting period**]**, and that amount is less than the amount that has previously been so deemed to have been paid to **[**F4611it**]**, then—

(a) if an assessment has already been made upon **[**F4611it**]** for **[**F4612that accounting period**]**, such adjustments shall be made in that assessment as may be necessary for the purpose of giving effect to the provisions of this Part which take effect on the completion of the administration, and any **[**F4613corporation tax**]** overpaid shall be repaid; and

(b) if—

(i) any relief has been allowed to **[**F4611it**]** by reference to the amount which has been previously deemed by virtue of this Part to have been paid to **[**F4611it**]** as income for **[**F4612that accounting period**]**, and

(ii) the amount of that relief exceeds the amount of relief which could have been given by reference to the amount which, on the completion of the administration, is deemed to have been paid to **[**F4611it**]** as income for **[**F4612that accounting period**]**,

the relief so given in excess may, if not otherwise made good, be charged under Case VI of Schedule D and recovered from that **[**F4609company**]** accordingly.

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(3) Notwithstanding anything in the Tax Acts, the time within which an assessment may be made for the purposes of this Part, or an assessment may be adjusted for those purposes, or a claim for relief may be made by virtue of this Part, shall not expire before the end of the **[**F4614period of three years beginning with the 31st January next**]** following the **[**F4615accounting period**]** in which the administration of the estate in question was completed.

(4) An inspector may by notice require any person being or having been a personal representative of a deceased person, or having or having had an absolute or limited interest in the residue of the estate of a deceased person or in a part of such residue, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this Part **[**F4616or Chapter 6 of Part 5 of ITTOIA 2005**]**.

[F4617(5) It shall be the duty of a personal representative of a deceased person, if a request to do so is made in writing by a person who has, or has had, an absolute or limited interest in the residue of the estate of the deceased or by a person to whom any of the income of the residue of that estate has been paid in the exercise of any discretion, to furnish the person making the request with a statement in writing setting out—

(a) in respect of every amount which has been, or is treated as having been, actually paid to that person in respect of that interest or in the exercise of that discretion, the amount (if any) deemed under this Part to have been paid to him as income for **[**F4618an accounting period**]**; F4619. . .

[F4620(aa) the amount treated as estate income under Chapter 6 of Part 5 of ITTOIA 2005 in respect of that interest or the exercise of that discretion for which he is liable to income tax for a year of assessment, and**]**

(b) the amount of any tax at the applicable rate which any amount falling within paragraph (a) **[**F4621or (aa)**]** above is deemed to have borne;

and, where an amount deemed to have been paid as income to any person for **[**F4622any accounting period under this Part or treated as estate income under that Chapter**]** is deemed for any of the purposes of this Part **[**F4623or that Chapter**]** to have borne tax on different parts of it at different applicable rates, the matters to be set out in pursuance of **[**F4624paragraphs (a) to (b)**]** above shall be set out separately as respects each part of that amount.

(6) The duty imposed by subsection (5) above shall be enforceable at the suit or instance of the person making the request.**]**

Textual Amendments

F4603 Word in s. 700(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(2)(a)** (with Sch. 2)

F4604 Words in s. 700(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(2)(b)** (with Sch. 2)

F4605 Words in s. 700(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(2)(c)** (with Sch. 2)

F4606 Words in s. 700(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(2)(d)** (with Sch. 2)

F4607 Words in s. 700(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(2)(e)** (with Sch. 2)

F4608 Word in s. 700(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(2)(f)** (with Sch. 2)

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F4609 Words in s. 700(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(3)(a)** (with Sch. 2)
F4610 Words in s. 700(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(3)(b)** (with Sch. 2)
F4611 Words in s. 700(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(3)(c)** (with Sch. 2)
F4612 Words in s. 700(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(3)(d)** (with Sch. 2)
F4613 Words in s. 700(2)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(3)(e)** (with Sch. 2)
F4614 Words in s. 700(3) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 20**
F4615 Words in s. 700(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(4)** (with Sch. 2)
F4616 Words in s. 700(4) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(5)** (with Sch. 2)
F4617 S. 700(5)(6) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 18 para. 6**
F4618 Words in s. 700(5)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(6)(a)** (with Sch. 2)
F4619 Word at the end of s. 700(5)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 291(6)(b), **Sch. 3** (with Sch. 2)
F4620 S. 700(5)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(6)(c)** (with Sch. 2)
F4621 Words in s. 700(5)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(6)(d)** (with Sch. 2)
F4622 Words in s. 700(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(6)(e)** (with Sch. 2)
F4623 Words in s. 700(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(6)(f)** (with Sch. 2)
F4624 Words in s. 700(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 291(6)(g)** (with Sch. 2)

Marginal Citations
M919 Source-1970 s.431; 1971 Sch.6 57

701 Interpretation.

(1) [M920]The following provisions of this section shall have effect for the purpose of the interpretation of sections 695 to 700.

(2) A person shall be deemed to have an absolute interest in the residue of the estate of a deceased person, or in a part of such residue, if and so long as the capital of the residue or of that part would, if the residue had been ascertained, be properly payable to him, or to another in his right, for his benefit, or is properly so payable, whether directly by the personal representatives or indirectly through a trustee or other person.

(3) A person shall be deemed to have a limited interest in the residue of the estate of a deceased person, or in a part of such residue, during any period, being a period during which he has not an absolute interest in the residue or in that part, where the income of the residue or of that part for that period would, if the residue had been ascertained at the commencement of that period, be properly payable to him, or to another in his

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right, for his benefit, whether directly by the personal representatives or indirectly through a trustee or other person.

[F4625(3A) "Applicable rate", in relation to any amount which a person is deemed by virtue of this Part to receive or to have a right to receive, means the basic rate **[**F4626, the lower rate or the **[**F4627dividend**]** ordinary rate**]** according as the income of the residue of the estate out of which that amount is or would be paid bears tax at the basic rate **[**F4626, the lower rate or the **[**F4627dividend**]** ordinary rate**]**; and in determining for the purposes of this Part whether or how much of any payment is or would be deemed to be made out of income that bears tax at one rate rather than another—

(a) such apportionments of the amounts bearing tax at different rates shall be made between different persons with interests in the residue of the estate as are just and reasonable in relation to their different interests; and

(b) subject to paragraph (a) above, it shall be assumed that—

[payments are to be made out of income bearing tax at the basic rate F4628(i)**]** before they are made out of income bearing tax at the lower rate **[**F4629or the **[**F4627dividend**]** ordinary rate**][**F4630; and

(ii) that payments are to be made out of income bearing tax at the lower rate before they are made out of income bearing tax at the **[**F4627dividend**]** ordinary rate.**]]**

(4) "Personal representatives" means, in relation to the estate of a deceased person, his personal representatives as defined in relation to England and Wales by section 55 of the M921Administration of Estates Act 1925, and persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under the law of England and Wales of personal representatives as so defined; and references to "personal representatives as such" shall be construed as references to personal representatives in their capacity as having such functions.

(5) "Specific disposition" means a specific devise or bequest made by a testator, and includes the disposition of personal chattels made by section 46 of the Administration of Estates Act 1925 and any disposition having, whether by virtue of any enactment or otherwise, under the law of another country an effect similar to that of a specific devise or bequest under the law of England and Wales.

Real estate included (either by a specific or general description) in a residuary gift made by the will of a testator shall be deemed to be a part of the residue of his estate and not to be the subject of a specific disposition.

(6) Subject to subsection (7) below, "charges on residue" means, in relation to the estate of a deceased person, the following liabilities, properly payable thereout and interest payable in respect of those liabilities, that is to say—

(a) funeral, testamentary and administration expenses and debts, and

(b) general legacies, demonstrative legacies, annuities and any sum payable out of residue to which a person is entitled under the law of intestacy of any part of the United Kingdom or any other country, and

(c) any other liabilities of his personal representatives as such.

(7) Where, as between persons interested under a specific disposition or in a general or demonstrative legacy or in an annuity and persons interested in the residue of the estate, any such liabilities as are mentioned in subsection (6) above fall exclusively or primarily upon the property that is the subject of the specific disposition or upon the

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legacy or annuity, only such part (if any) of those liabilities as falls ultimately upon the residue shall be treated as charges on residue.

(8) References to the aggregate income of the estate of a deceased person for any year of assessment shall be construed as references to the aggregate income from all sources for that year of the personal representatives of the deceased as such, treated as consisting of—

(a) any such income which is chargeable to United Kingdom income tax by deduction or otherwise, such income being computed at the amount on which that tax falls to be borne for that year; [F4631]. . .

(b) any such income which would have been so chargeable if it had arisen in the United Kingdom to a person resident and ordinarily resident there, such income being computed at the full amount thereof actually arising during that year, less such deductions as would have been allowable if it had been charged to United Kingdom income tax;

[[F4632](c) any amount of income treated as arising to the personal representatives under section 410(4) of ITTOIA 2005 (stock dividends) that would be charged to income tax under Chapter 5 of Part 4 of that Act if income arising to personal representatives were so charged (see section 413 of that Act);

(d) in a case where section 419(2) of that Act applies (release of loans to participator in close company: debts due from personal representatives), the amount that would be charged to income tax under Chapter 6 of Part 4 apart from that section; and

(e) any amount that would have been treated as income of the personal representatives as such under section 466 of that Act if the condition in section 466(2) had been met (gains from contracts for life insurance);**]**

but excluding any income from property devolving on the personal representatives otherwise than as assets for payment of the debts of the deceased.

[F4633]
. . . . . .

(9) "United Kingdom estate" means, as regards any year of assessment **[**[F4634]or accounting period**]**, an estate the income of which comprises only income which either—

(a) has borne United Kingdom income tax by deduction, or

(b) in respect of which the personal representatives are directly assessable to United Kingdom income tax,

not being an estate any part of the income of which is income in respect of which the personal representatives are entitled to claim exemption from United Kingdom income tax by reference to the fact that they are not resident, or not ordinarily resident, in the United Kingdom.

(10) "Foreign estate" means, as regards any year of assessment **[**[F4635]or accounting period**]**, an estate which is not a United Kingdom estate.

[[F4636](10A) Amounts to which section 699A(1)(a) and (b) applies shall be disregarded in determining whether an estate is a United Kingdom estate or a foreign estate, except that any estate the aggregate income of which comprises only such amounts shall be a United Kingdom estate.**]**

(11) In a case in which different parts of the estate of a deceased person are the subjects respectively of different residuary dispositions, this Part shall have effect in relation to each of those parts with the substitution—

(a) for references to the estate of references to that part of the estate; and

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(b) for references to the personal representatives of the deceased as such of references to his personal representatives in their capacity as having the functions referred to in subsection (4) above in relation to that part of the estate.

(12) In this Part—

(a) references to sums paid include references to assets that are transferred or that are appropriated by a personal representative to himself, and to debts that are set off or released;

(b) references to sums payable include references to assets as to which an obligation to transfer or a right of a personal representative to appropriate to himself is subsisting on the completion of the administration and to debts as to which an obligation to release or set off, or a right of a personal representative so to do in his own favour, is then subsisting; and

(c) references to amount shall be construed, in relation to such assets as are referred to in paragraph (a) or (b) above, as references to their value at the date on which they were transferred or appropriated, or at the completion of the administration, as the case may require, and, in relation to such debts as are so referred to, as references to the amount thereof.

(13) [M922]In this Part references to the administration period shall be construed in accordance with section 695(1).

(14) [F4637] . . . . . .

Textual Amendments

F4625 S. 701(3A) inserted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 11(3), **25(1)**

F4626 Words in s. 701(3A) substituted (with effect in accordance with s. 33(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(8)**

F4627 Words in s. 701(3A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 292(2)** (with Sch. 2)

F4628 Words in s. 701(3A)(b) renumbered as s. 701(3A)(b)(i) (with effect in accordance with s. 33(11) of the amending Act) by virtue of Finance (No. 2) Act 1997 (c. 58), **s. 33(9)(a)**

F4629 Words in s. 701(3A)(b)(i) inserted (with effect in accordance with s. 33(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(9)(b)**

F4630 S. 701(3A)(b)(ii) added (with effect in accordance with s. 33(11) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 33(9)(c)**

F4631 Word at the end of s. 701(8)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 292(3)(a), **Sch. 3** (with Sch. 2)

F4632 S. 701(8)(c)-(e) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 292(3)(b)** (with Sch. 2)

F4633 Words in s. 701(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 292(3)(c), **Sch. 3** (with Sch. 2)

F4634 Words in s. 701(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 292(4)** (with Sch. 2)

F4635 Words in s. 701(10) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 292(5)** (with Sch. 2)

F4636 S. 701(10A) inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), **s. 76(5)**

F4637 S. 701(14) repealed (1.5.1995) by Finance Act 1995 (c. 4), Sch. 18 para. 7, **Sch. 29 Pt. 8(10)**

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Modifications etc. (not altering text)
C663 *Definition applied for purposes of* 1979(C)—*see* 1979(C) s.155(1).

Marginal Citations
M920 Source-1970 s.432; 1972 Sch.24 25; 1975 (No.2) s.34(5)
M921 1925 c. 23.
M922 Source-1970 s.426(1)

702 Application to Scotland.

M923For the purpose of the application of this Part to Scotland—

(a) any reference to the completion of the administration of an estate shall be construed as a reference to the date at which, after discharge of, or provision for, liabilities falling to be met out of the deceased's estate (including, without prejudice to the generality of the foregoing, debts, legacies immediately payable, prior rights of surviving spouse **[**F4638or civil partner**]** on intestacy and legal rights of surviving spouse **[**F4638or civil partner**]** or children), the free balance held in trust for behoof of the residuary legatees has been ascertained;

(b) for paragraph (b) of section 697(1) the following paragraph shall be substituted—

"(b) the amount of any of the aggregate income of the estate for that year to which a person has become entitled by virtue of a specific disposition";

(c) "real estate" means heritable estate, and

(d) "charge on residue" shall include, in addition to the liabilities specified in section 701(6), any sums required to meet claims in respect of prior rights by surviving spouse **[**F4638or civil partner**]** or in respect of legal rights by surviving spouse **[**F4638or civil partner**]** or children.

Textual Amendments
F4638 Words in s. 702(a)(d) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 96

Marginal Citations
M923 Source-1970 s.433; 1987 Sch.15 2(15)

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PART XVII

TAX AVOIDANCE

CHAPTER I

CANCELLATION OF TAX ADVANTAGES FROM CERTAIN TRANSACTIONS IN SECURITIES

Modifications etc. (not altering text)
C664 Pt. 17 Ch. 1 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 35(5)**

703 Cancellation of tax advantage.

(1) [M924]Where—

(a) in any such circumstances as are mentioned in section 704, and

(b) in consequence of a transaction in securities or of the combined effect of two or more such transactions,

a person is in a position to obtain, or has obtained, a tax advantage, then unless he shows that the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of making or managing investments, and that none of them had as their main object, or one of their main objects, to enable tax advantages to be obtained, this section shall apply to him in respect of that transaction or those transactions.

(2) For the purposes of this Chapter a tax advantage obtained or obtainable by a person shall be deemed to be obtained or obtainable by him in consequence of a transaction in securities or of the combined effect of two or more such transactions, if it is obtained or obtainable in consequence of the combined effect of the transaction or transactions and the liquidation of a company.

(3) Where this section applies to a person in respect of any transaction or transactions, the tax advantage obtained or obtainable by him in consequence thereof shall be counteracted by such of the following adjustments, that is to say an assessment, the nullifying of a right to repayment or the requiring of the return of a repayment already made (the amount to be returned being chargeable **[**[F4639]in the case of corporation tax**]** under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or liability to tax, on such basis as the Board may specify by notice served on him as being requisite for counteracting the tax advantage so obtained or obtainable.

[[F4640](3A) The amount of income tax which may be specified in an assessment which is made under subsection (3) above to counteract a tax advantage—

(a) obtained by a person in circumstances falling within paragraph D or paragraph E of section 704, and

(b) consisting of the avoidance of a charge to income tax,

shall not exceed the amount of income tax for which that person would be liable in respect of the receipt, on the date on which the consideration mentioned in paragraph D or paragraph E of section 704 is received, of a qualifying distribution of an amount equal to the amount or value of that consideration.**]**

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(4) [F4641] . . . . . .

(5) [F4641] . . . . . .

(6) [F4641] . . . . . .

(7) [M925]*In the case of a man and his wife living with him (whether or not she is separately assessed to tax), this Chapter shall, subject to subsection* (8)*below, be treated as applying to him in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the wife were his property, rights or liabilities in relation to which she had acted only as nominee for him, and shall be treated as applying to the wife in respect of any transaction or transactions as it would apply if any property, rights or liabilities of the man were her property, rights or liabilities in relation to which he had acted only as nominee for her*[F4642].

(8) *No adjustment made under subsection* (3)*above by reference to any transaction or transactions to counteract any tax advantage shall by virtue of subsection* (7)*above be so made that a person bears more tax than if the transaction or transactions had not had as a consequence that any relief or increased relief from, or repayment or increased repayment of, income tax, or any deduction in computing profits or gains, was obtained or obtainable, or that the way in which receipts accrued was such that the recipient did not pay or bear tax on them*[F4643].

(9) The Board shall not give a notice under subsection (3) above until they have notified the person in question that they have reason to believe that this section may apply to him in respect of a transaction or transactions specified in the notification; and if within 30 days of the issue of the notification that person, being of opinion that this section does not so apply to him, makes a statutory declaration to that effect stating the facts and circumstances upon which his opinion is based, and sends it to the Board, then subject to subsection (10) below, this section shall not apply to him in respect of the transaction or transactions.

(10) If, when a statutory declaration has been sent to the Board under subsection (9) above, they see reason to take further action in the matter—

(a) the Board shall send to the tribunal a certificate to that effect, together with the statutory declaration, and may also send therewith a counter-statement with reference to the matter;

(b) the tribunal shall take into consideration the declaration and the certificate, and the counter-statement, if any, and shall determine whether there is or is not a prima facie case for proceeding in the matter, and if they determine that there is no such case this section shall not apply to the person in question in respect of the transaction or transactions;

but any such determination shall not affect the operation of this section in respect of transactions which include that transaction or some or all of those transactions and also include another transaction or other transactions.

(11) Any notice or notification under subsection (3) or subsection (9) above, or under section 708, concerning the application of this section to a person who has died may be given or issued to his personal representatives, and the provisions of this Chapter relating to the making of a statutory declaration, to rights of appeal and to the giving of information shall be construed accordingly.

(12) This section applies whether the tax advantage in question relates to a chargeable period ending before or after the commencement of this Act, but nothing in this section

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shall authorise the making of an assessment later than six years after the chargeable period to which the tax advantage relates; and no other provision contained in the Tax Acts shall be construed as limiting the powers conferred by this section.

Textual Amendments

F4639 Words in s. 703(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 293** (with Sch. 2)

F4640 S. 703(3A) inserted (with effect in accordance with Sch. 3 para. 32(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 32(2)**

F4641 S. 703(4)-(6) repealed (with effect in accordance with Sch. 3 para. 32(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 32(3), **Sch. 27 Pt. 3(2)**, Note

F4642 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F4643 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

Marginal Citations

M924 Source—1970 s.460(1)-(3)

M925 Source—1970 s.460(5)-(9)

704 The prescribed circumstances.

[M926]The circumstances mentioned in section 703(1) are—

(A) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being a sale or purchase followed by the purchase or sale of the same or other securities, the person in question receives an abnormal amount by way of dividend, and the amount so received is taken into account for any of the following purposes—

(a) any exemption from tax, or

(b) the setting-off of losses against profits or income, or

(c) the giving of group relief, or

(d) [F4644] . . . . . .

(e) [F4645] . . . . . .

(f) the computation of profits or gains out of which are made payments falling within section 348 or 349(1), or

(g) the deduction from or set-off against income of interest under section 353.

OR

(B) (1) That in connection with the distribution of profits of a company, or in connection with the sale or purchase of securities being sale or purchase followed by the purchase or sale of the same or other securities, the person in question becomes entitled—

(a) in respect of securities held or sold by him, or

(b) in respect of securities formerly held by him (whether sold by him or not),

to a deduction in computing profits or gains by reason of a fall in the value of the securities resulting from the payment of a dividend thereon or from any other dealing with any assets of a company.

(2) Where a company in the circumstances mentioned in sub-paragraph (1) above becomes entitled to a deduction as there mentioned, section 703 shall apply

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in relation to any tax advantage obtained or obtainable in consequence of that deduction by another company by way of group relief as if obtained or obtainable by the other company in circumstances falling within sub-paragraph (1) above.

OR

(C) (1) That the person in question receives, in consequence of a transaction whereby any other person—

(a) subsequently receives, or has received, an abnormal amount by way of dividend; or

(b) subsequently becomes entitled, or has become entitled, to a deduction as mentioned in paragraph B(1) above, a consideration which either—

(i) is, or represents the value of, assets which are (or apart from anything done by the company in question would have been) available for distribution by way of dividend, or

(ii) is received in respect of future receipts of the company, or

(iii) is, or represents the value of, trading stock of the company,

and the person in question so receives the consideration that he does not pay or bear tax on it as income.

(2) The assets mentioned in sub-paragraph (1) above do not include assets which (while of a description which under the law of the country in which the company is incorporated is available for distribution by way of dividend) are shown to represent a return of sums paid by subscribers on the issue of securities.

OR

(D) (1) That in connection with the distribution of profits of a company to which this paragraph applies, the person in question so receives as is mentioned in paragraph C(1) above such a consideration as is therein mentioned.

(2) The companies to which this paragraph applies are—

(a) any company under the control of not more than five persons, and

(b) any other company which does not satisfy the condition that its shares or stocks or some class thereof (disregarding debenture stock, preferred shares or preferred stock), **[**[F4646]are listed in the Official List of the Stock Exchange, and are dealt in on the Stock Exchange regularly or from time to time**]**,

so, however, that this paragraph does not apply to a company under the control of one or more companies to which this paragraph does not apply.

(3) Subsections (2) to (6) of section 416 shall apply for the purposes of this paragraph.

OR

(E) (1) That in connection with the transfer directly or indirectly of assets of a company to which paragraph D above applies to another such company, or in connection with any transaction in securities in which two or more companies to which paragraph D above applies are concerned, the person in question receives non-taxable consideration which is or represents the value of assets available for distribution by such a company, and which consists of any share capital or any security (as defined by section 254(1)) issued by such a company.

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(2) So far as sub-paragraph (1) above relates to share capital other than redeemable share capital, it shall not apply unless and except to the extent that the share capital is repaid (in a winding-up or otherwise), and, where section 703 applies to a person by virtue of sub-paragraph (1) above on the repayment of any share capital, any assessment to tax under subsection (3) of that section shall be an assessment to tax for the year in which the share capital is repaid.

(3) In this paragraph—

"assets available for distribution" means assets which are, or apart from anything done by the company in question would have been, available for distribution by way of dividend, or trading stock of the company;

"non-taxable", in relation to a person receiving consideration, means that the recipient does not pay or bear tax on it as income (apart from the provisions of this Chapter);

"share" includes stock and any other interest of a member in a company;

and the references in sub-paragraph (2) above to the repayment of share capital include references to any distribution made in respect of any shares in a winding-up or dissolution of the company.

Textual Amendments

F4644 S. 704 para. A(d) repealed (with effect in accordance with Sch. 3 para. 33(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 33(2), **Sch. 27 Pt. 3(2)**, Note

F4645 S. 704 para. A(e) repealed (with effect in accordance with s. 20 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 8 Pt. 2(4)**, Note

F4646 Words in s.704 para. D(2)(b) substituted (with effect in accordance with s.175(4) of the amending Act) by Finance Act 1996 (c. 8), **s. 175(1)-(3)**

Modifications etc. (not altering text)

C665 S. 704 modified (9.3.1999) by The Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) Regulations 1999 (S.I. 1999/358), **regs. 1**, 23

Marginal Citations

M926 Source—1970 s.461; 1973 s.54, Sch.11 2(a), (b)

705 Appeals against Board's notices under section 703.

(1) [M927]Any person to whom notice has been given under section 703(3) may within 30 days by notice to the Board appeal to the Special Commissioners on the grounds that section 703 does not apply to him in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.

(2) If he or the Board are dissatisfied with the determination of the Special Commissioners he or they may, on giving notice to the clerk to the Special Commissioners within 30 days after the determination, require the appeal to be re-heard by the tribunal, and the Special Commissioners shall transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal.

(3) Where notice is given under subsection (2) above, the tribunal shall re-hear and determine the appeal and shall have and exercise the same powers and authorities in

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relation to the appeal as the Special Commissioners might have and exercise, and the determination of the tribunal thereon shall be final and conclusive.

(4) F4647 . . . . . .

(5) On an appeal under subsections (1) to (3) above the Special Commissioners or the tribunal shall have power to cancel or vary a notice under subsection (3) of section 703 or to vary or quash an assessment made in accordance with such a notice, but the bringing of an appeal or the statement of a case shall not affect the validity of a notice given or of any other thing done in pursuance of that subsection pending the determination of the proceedings.

(6) F4648 . . . . . .

(7) F4648 . . . . . .

(8) F4648 . . . . . .

Textual Amendments

F4647 S. 705(4) repealed (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), Sch. 1 para. 23, **Sch. 2 Pt. 1**

F4648 S. 705(6)-(8) repealed (with effect in accordance with Sch. 3 para. 34(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 34(2), **Sch. 27 Pt. 3(2)**, Note

Marginal Citations

M927 Source—1970 s.462

[F4649 705A Statement of case by tribunal for opinion of High Court.

(1) Immediately after the determination by the tribunal of an appeal re-heard by them under section 705 of this Act, the appellant or the Board, if dissatisfied with the determination as being erroneous in point of law, may declare his or their dissatisfaction to the tribunal.

(2) The appellant or the Board, as the case may be, having declared his or their dissatisfaction, may, within thirty days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court.

(3) The party requiring the case shall pay to the tribunal a fee of £25 for and in respect of the same, before he is entitled to have the case stated.

(4) The case shall set forth the facts and the determination of the tribunal, and the party requiring it shall transmit the case, when stated and signed, to the High Court, within thirty days after receiving the same.

(5) At or before the time when he transmits the case to the High Court, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(6) The High Court shall hear and determine any question of law arising on the case, and may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the tribunal with the Court's opinion on it, or make such other order in relation to the matter as the Court thinks fit.

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(7) The High Court may cause the case to be sent back for amendment, and thereupon the case shall be amended accordingly, and judgment shall be delivered after it has been amended.

(8) Subject to subsection (9) below and to Part II of the Administration of Justice Act 1969 (appeal from High Court to House of Lords), an appeal shall, in England and Wales, lie from the decision of the High Court to the Court of Appeal and thence to the House of Lords.

(9) No appeal shall lie to the House of Lords from the Court of Appeal unless leave has been given under and in accordance with section 1 of the Administration of Justice (Appeals) Act 1934.

(10) Subject to subsection (11) below, where the determination of the tribunal is in respect of an assessment made in accordance with a notice under subsection (3) of section 703, then notwithstanding that a case has been required to be stated or is pending before the High Court in respect of the determination, tax shall be paid in accordance with the determination.

(11) If the amount charged by the assessment is altered by the order or judgment of the High Court, then—

(a) if too much tax has been paid the amount overpaid shall be refunded with such interest, if any, as the High Court may allow; or

(b) if too little tax has been charged, the amount undercharged shall be due and payable at the expiration of a period of thirty days beginning with the date on which the Board issue to the other party a notice of the total amount payable in accordance with the order or judgment of that Court.

(12) All matters within the jurisdiction of the High Court under this section shall be assigned in Scotland to the Court of Session sitting as the Court of Exchequer (references in this section to the High Court being construed accordingly); and an appeal shall lie from the decision under this section of the Court of Session, as the Court of Exchequer in Scotland, to the House of Lords.**]**

Textual Amendments

F4649 Ss. 705A, 705B inserted (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), **Sch. 1 para. 24**

[F4649 705B Proceedings in Northern Ireland.

(1) A case which is stated by the tribunal under section 705A in proceedings in Northern Ireland shall be a case for the opinion of the Court of Appeal in Northern Ireland, and the Taxes Acts (as defined in section 118(1) of the Management Act F4650 shall have effect as if that section applied in relation to such proceedings—

(a) with the substitution for references to the High Court of references to the Court of Appeal in Northern Ireland;

(b) with the omission of subsections (4), (5), (8) and (9) of that section.

(2) The procedure relating to the transmission of the case to, and the hearing and determination of the case by, the Court of Appeal in Northern Ireland shall be that for the time being in force in Northern Ireland as respects cases stated by a county court in

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exercise of its general jurisdiction, and an appeal shall lie from the Court of Appeal to the House of Lords in accordance with section 42 of the Judicature (Northern Ireland) Act 1978.

(3) Where in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.

(4) For the purposes of this section "proceedings in Northern Ireland" means proceedings as respects which the place given by the rules in Schedule 3 to the Management Act is in Northern Ireland.**]**

Textual Amendments

F4649 Ss. 705A, 705B inserted (1.1.1994) by The General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813), reg. 1(1), **Sch. 1 para. 24**

F4650 The definition of "the Taxes Act" in section 118(1) was amended by paragraph 32(d) of Schedule 8 to the Development Land Tax Act 1976 (c.24), **paragraph 8** of Schedule 7 to the Capital Gains Tax Act 1979 (c.14), **Schedule 31** to the Income and Corporation Taxes Act 1988, and paragraph 2(11)(b) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c.12).

706 The tribunal.

[F4651(1)**]** M928For the purposes of this Chapter the tribunal shall consist of—

(a) a chairman, appointed by the Lord Chancellor, and

(b) two or more persons appointed by the Lord Chancellor as having special knowledge of and experience in financial or commercial matters.

[F4652(2) A person appointed as chairman or other member of the tribunal shall vacate his office on the day on which he attains the age of 70; but this subsection is subject to section 26(4) to (6) of the Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of 75).**]**

Textual Amendments

F4651 S. 706 renumbered as s. 706(1) (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), ss. 26, 31(2), **Sch. 6 para.44** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

F4652 S. 706(2) added (31.3.1995) by Judicial Pensions and Retirement Act 1993 (c. 8), ss. 26, 31(2), **Sch. 6 para.44** (with Sch. 7 paras. 2(2), 3(2), 4); S.I. 1995/631, **art. 2**

Modifications etc. (not altering text)

C666 *See*—1970(M) s.6(1)—*declaration to be made by member of tribunal on appointment.*1989 s.182—*disclosure of information* (*in* Part II Vol.5).

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M928 Source—1970 s.463; 1982 Sch.21 3(1)

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707 Procedure for clearance in advance.

M929(1) The following provisions shall have effect where in pursuance of this section a person furnishes to the Board particulars of a transaction or transactions effected or to be effected by him, that is to say—

(a) if the Board are of opinion that the particulars, or any further information furnished in pursuance of this paragraph, are not sufficient for the purposes of this section, they shall within 30 days of the receipt thereof notify to that person what further information they require for those purposes, and unless that further information is furnished to the Board within 30 days from the notification, or such further time as the Board may allow, they shall not be required to proceed further under this section;

(b) subject to paragraph (a) above, the Board shall within 30 days of the receipt of the particulars, or, where that paragraph has effect, of all further information required, notify that person whether or not they are satisfied that the transaction or transactions as described in the particulars were or will be such that no notice under section 703(3) ought to be given in respect of it or them;

and, subject to the following provisions of this section, if the Board notify him that they are so satisfied, section 703 shall not apply to him in respect of that transaction or those transactions.

(2) If the particulars, and any further information given under this section with respect to any transaction or transactions, are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the Board, any notification given by the Board under this section shall be void.

(3) In no event shall the giving of a notification under this section with respect to any transaction or transactions prevent section 703 applying to a person in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

Marginal Citations
M929 Source—1970 s.464

708 Power to obtain information.

M930Where it appears to the Board that by reason of any transaction or transactions a person may be a person to whom section 703 applies, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether a notice under section 703(3) should be given in respect of him.

Marginal Citations
M930 Source—1970 s.465

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709 Meaning of "tax advantage" and other expressions.

(1) [M931]In this Chapter "tax advantage" means a relief or increased relief from, or repayment or increased repayment of, tax, or the avoidance or reduction of a charge to tax or an assessment to tax or the avoidance of a possible assessment thereto, whether the avoidance or reduction is effected by receipts accruing in such a way that the recipient does not pay or bear tax on them, or by a deduction in computing profits or gains.

(2) [M932]In this Chapter—

"company" includes any body corporate,

"securities"—

(a) includes shares and stock, and

(b) in relation to a company not limited by shares (whether or not it has a share capital) includes also a reference to the interest of a member of the company as such, whatever the form of that interest;

"trading stock" has the same meaning as in section 100(1);

"transaction in securities" includes transactions, of whatever description, relating to securities, and in particular—

(i) the purchase, sale or exchange of securities;

(ii) the issuing or securing the issue of, or applying or subscribing for, new securities;

(iii) the altering, or securing the alteration of, the rights attached to securities;

and references to dividends include references to other qualifying distributions and to interest.

[[F4653](2A) In this Chapter references to a relief [F4654]. . . include [F4654]. . . references to a tax credit [F4654]. . . .**]**

(3) In section 704—

(a) references to profits include references to income, reserves or other assets;

(b) references to distribution include references to transfer or realisation (including application in discharge of liabilities); and

(c) references to the receipt of consideration include references to the receipt of any money or money's worth.

(4) For the purposes of section 704 an amount received by way of dividend shall be treated as abnormal if the Board, the Special Commissioners or the tribunal, as the case may be, are satisfied—

(a) in the case of a dividend at a fixed rate, that it substantially exceeds the amount which the recipient would have received if the dividend had accrued from day to day and he had been entitled only to so much of the dividend as accrued while he held the securities, so however that an amount shall not be treated as abnormal by virtue only of this paragraph if during the six months beginning with the purchase of the securities the recipient does not sell or otherwise dispose of, or acquire an option to sell, any of those securities or any securities similar to those securities; or

(b) in any case, that it substantially exceeds a normal return on the consideration provided by the recipient for the relevant securities, that is to say, the securities in respect of which the dividend was received and, if those securities are

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derived from securities previously acquired by the recipient, the securities which were previously acquired.

(5) For the purposes of subsection (4)(a) above securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred, and for those purposes rights guaranteed by the Treasury shall be treated as rights against the Treasury.

(6) For the purposes of subsection (4)(b) above—

(a) if the consideration provided by the recipient for any of the relevant securities was in excess of their market value at the time he acquired them, or if no consideration was provided by him for any of the relevant securities, the recipient shall be taken to have provided for those securities consideration equal to their market value at the time he acquired them; and

(b) in determining whether an amount received by way of dividend exceeds a normal return, regard shall be had to the length of time previous to the receipt of that amount that the recipient first acquired any of the relevant securities and to any dividends and other distributions made in respect of them during that time.

Textual Amendments

F4653 S. 709(2A) inserted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 73(1)**

F4654 Words in s. 709(2A) repealed (with effect in accordance with Sch. 4 para. 19(2), Sch. 8 Pt. 2(9) Note 2 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 19(1), **Sch. 8 Pt. 2(9)**

Modifications etc. (not altering text)

C667 *Definition applied for purposes of* 1990 Sch.10*—convertible securities.*

Marginal Citations

M931 Source—1970 s.466(1); 1973 Sch.11 4

M932 Source—1970 s.467; 1973 Sch.11 5

CHAPTER II

TRANSFERS OF SECURITIES

Transfers with or without accrued interest: introductory

710 Meaning of "securities", "transfer" etc. for purposes of sections 711 to 728.

(1) [M933]This section has effect for the interpretation of sections 711 to 728.

[[F4655](1A) Sections 711 to 728 shall not apply for the purposes of corporation tax except as respects transfers of securities taking place before 1st April 1996.**]**

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(2) "Securities" does not **[**F4656, except as provided by subsection (2A) below,**]** include shares in a company but, subject to subsection (3) below, includes any loan stock or similar security—

(a) whether of the government of the United Kingdom, any other government, any public or local authority in the United Kingdom or elsewhere, or any company or other body; and

(b) whether or not secured, whether or not carrying a right to interest of a fixed amount or at a fixed rate per cent. of the nominal value of the securities, and whether or not in bearer form.

[F4657(2A) "Securities" includes shares in a building society which are qualifying shares for the purposes of section **[**F4658117(4) of the 1992 Act**]]** (qualifying corporate bonds).

(3) "Securities" does not include—

(a) F4659 . . . . . .

(b) national savings certificates (including Ulster Savings Certificates **[**F4660, as defined in section 693(7) of ITTOIA 2005**]**);

(c) war savings certificates;

[F4661(ca) uncertificated eligible debt security units within the meaning of section 552(2) of that Act;**]**

(d) certificates of deposit (within the meaning of **[**F4662section 552(2) of that Act**]**);

[F4663(da) any security which **[**F4664is a right falling within section 552(1)(c) of that Act**]** at the time of the transfer concerned;**]**

(e) any security which fulfils the following conditions, namely, it is redeemable, the amount payable on its redemption exceeds its issue price, and no return other than the amount of that excess is payable on it;

[F4665**[**F4666(f) any security that is a deeply discounted security for the purposes of Chapter 8 of Part 4 of ITTOIA 2005 (see section 430 of that Act).**]]**

[F4667(3A) Paragraph (f) of subsection (3) does not apply to a security on the transfer of which Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply discounted securities) would apply subject to the rules in sections 454 to 456 of that Act (see section 453(2) and (3) of that Act).**]**

(4) Securities are to be taken to be of the same kind if they are treated as being of the same kind by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

(5) M934 "Transfer", in relation to securities, means transfer by way of sale, exchange, gift or otherwise **[**F4668, but—

(a) does not include the vesting of securities in a person's personal representatives on his death; F4669. . . **]**

[F4670(b) except as otherwise provided by subsections (1) and (3) of section 722A, does not include any transaction forming part of any such exchange as is mentioned in either of those subsections;**][**F4671and

(c) does not include any transfer of a security to which Chapter 8 of Part 4 of ITTOIA 2005 applies subject to the rules in sections 454 to 456 of that Act.**]**

(6) M935Where an agreement for the transfer of securities is made, they are transferred, and the person to whom they are agreed to be transferred becomes entitled to them, when the agreement is made and not on a later transfer made pursuant to the agreement; and "entitled", "transfer" and cognate expressions shall be construed accordingly.

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(7) [M936]A person holds securities—

(a) at a particular time if he is entitled to them at the time;

(b) on a day if he is entitled to them throughout the day or he becomes and does not cease to be entitled to them on the day.

(8) [M937]A person acquires securities when he becomes entitled to them.

(9) [M938]Where—

(a) one individual holds securities at a particular time, and

(b) any interest on them would, if it became payable at that time, be treated for the purposes of the Tax Acts as part of another individual's income,

then, for the purposes of section 715(1)(b) and section 715(2)(b) so far as relating to section 715(1)(b), each of them shall be treated as holding at that time the securities which the other holds as well as those which he actually holds.

(10) [M939]Where in Scotland two or more persons carry on a trade or business in partnership, any partnership dealings shall be treated as dealings by the partners and not by the firm as such and the partners as being entitled to securities held by the firm.

(11) [M940]The nominal value of securities is—

(a) where the interest on them is expressed to be payable by reference to a given value, that value; and

(b) in any other case, the price of the securities when they were issued.

(12) [M941]Where apart from this subsection the nominal value of securities would be a value ("the foreign value") expressed in a currency other than sterling, then, for the purposes of section 715, their nominal value on a particular day is the sterling equivalent on that day of the foreign value.

For the purposes of this subsection the sterling equivalent of a value on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

(13) [M942]Where there is a conversion of securities then,—

(a) the person who was entitled to them immediately before the conversion shall be treated as transferring them on the day of the conversion (if there is no actual transfer); and

(b) the interest period in which the conversion is made shall be treated as ending on the day on which it would have ended had the conversion not been made.

In this subsection "conversion" means a conversion within the meaning of section **[**[F4658]132 of the 1992**]** Act.

[[F4672](13A) Where a security is deemed to have been transferred by virtue of section 722A(1), the interest period in which the exchange in question takes place shall be treated as ending on the day on which it would have ended had the exchange not taken place.

(13B) Where a security is deemed to have been transferred by virtue of section 722A(3), the interest period in which the exchange in question takes place shall be treated as having begun on such day as shall for that purpose be specified in the security.**]**

[F4673](14) . . . . . .

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Textual Amendments

F4655 S. 710(1A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 36** (with Sch. 15)

F4656 Words in s. 710(2) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 2(2)(4)**

F4657 S. 710(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 2(3)(4)**

F4658 Words in s. 710(2A)(13) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(36)(a)(b)** (with ss. 60, 101(1), 171, 201(3)).

F4659 S. 710(3)(a) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

F4660 Words in s. 710(3)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(2)(a)** (with Sch. 2)

F4661 S. 710(3)(ca) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(2)(b)** (with Sch. 2)

F4662 Words in s. 710(3)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(2)(c)** (with Sch. 2)

F4663 S. 710(3)(da) inserted (16.7.1992 with effect as mentioned in Sch. 8 para. 6 of the amending Act) by Finance (No.2) Act 1992 (c. 48), s. 34, Sch. 8 paras. 5, **6**.

F4664 Words in s. 710(3)(da) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(2)(d)** (with Sch. 2)

F4665 S. 710(3)(f) inserted (with effect in accordance with Sch. 39 para. 6(1)(b)(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 39 para. 5(4)**

F4666 S. 710(3)(f) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(2)(e)** (with Sch. 2)

F4667 S. 710(3A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(3)** (with Sch. 2)

F4668 S. 710(5)(a) and preceding word inserted (with effect in accordance with s. 158(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 158(1)**

F4669 Word at the end of s. 710(5)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 294(4)(a), **Sch. 3** (with Sch. 2)

F4670 S. 710(5)(b) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 3(1)**

F4671 S. 710(5)(c) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 294(4)(b)** (with Sch. 2)

F4672 S. 710(13A)(13B) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 3(2)**

F4673 S. 710(14) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

Modifications etc. (not altering text)

C668 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C669 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

Marginal Citations

M933 Source—1985 Sch.23 1

M934 Source—1985 Sch.23 2(2)

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M935 Source—1985 Sch.23 2(3), (4)
M936 Source—1985 Sch.23 2(5), (6)
M937 Source—1985 Sch.23 2(7)
M938 Source—1985 Sch.23 2(8), (9)
M939 Source—1985 Sch.23 2(10)
M940 Source—1985 Sch.23 5
M941 Source—1985 Sch.23 10(6), (7)
M942 Source—1985 Sch.23 14(1), (3), (4)

711 Meaning of "interest", "transfers with or without accrued interest" etc.

(1) [M943]This section has effect for the interpretation of sections 710 and 712 to 728.

(2) An interest payment day, in relation to securities, is a day on which interest on them is payable; and, in a case where a particular payment of interest may be made on one of a number of days, the interest is for the purposes of this subsection payable on the first of those days.

(3) Subject to subsection (4) below, the following are interest periods in relation to securities—

(a) the period beginning with the day following that on which they are issued and ending with the first interest payment day to fall;

(b) the period beginning with the day following one interest payment day and ending with the next to fall.

(4) A period which would (apart from this subsection) be an interest period exceeding 12 months ("a long period") is not an interest period, but the following shall apply to it—

(a) the period of 12 months beginning with the day on which it begins is an interest period;

(b) each successive period (if any) of 12 months falling within it is an interest period;

(c) any period of it which remains after applying paragraphs (a) and (b) above is an interest period.

(5) Securities are transferred with accrued interest if they are transferred with the right to receive interest payable on—

(a) the settlement day, if that is an interest payment day; or

(b) the next (or first) interest payment day to fall after the settlement day, in any other case;

and they are transferred without accrued interest if they are transferred without that right.

(6) [M944]Where section 710(13), 715(3), 720(4), 721(1) **[**[F4674],722(1) or (2) or 724(1A)**]** applies, the transfer shall be treated as made with accrued interest if the person treated as making the transfer was entitled to receive in respect of the securities interest payable on—

(a) the settlement day, if that is an interest payment day; or

(b) the next (or first) interest payment day to fall after that day, in any other case;

and they shall be treated as transferred without accrued interest if he was not so entitled.

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[F4675(6A) In any case where section 722A(1) or (3) applies, the deemed transfer shall be treated as made—

(a) without accrued interest in any such case where the exchange in question is made at any time after the balance has been struck for a dividend on the security but before the day on which that dividend is payable;

(b) with accrued interest in any other such case.**]**

(7) M945The interest applicable to securities for an interest period is, subject to subsection (8) below, the interest payable on them on the interest payment day with which the period ends.

(8) In the case of a period which is an interest period by virtue only of subsection (4) above F4676. . .—

(a) the interest applicable to securities for the period is the interest payable on them on the interest payment day with which the long F4676. . . period concerned ends; and

(b) section 713(6) shall have effect as if the references to the period were to the long F4676. . . period concerned.

(9) "Interest" includes dividends and any other return (however described) except a return consisting of an amount by which the amount payable on a security's redemption exceeds its issue price.

Textual Amendments

F4674 1990 s.41*and* Sch.6 para.9(2)*on and after* 24*May* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*
"or 722(1) or (2)".

F4675 S. 711(6A) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 4**

F4676 Words in s. 711(8) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt.III(12)** Note 2

Modifications etc. (not altering text)

C670 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C671 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C672 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M943 Source—1985 Sch.23 3(1)-(5)

M944 Source—1985 Sch.23 14(2), 31(2), 12(2), 13(3), 7(2)

M945 Source—1985 Sch.23 3(6)-(8)

712 Meaning of "settlement day" for purposes of sections 711 to 728.

M946(1) This section has effect to determine, for the purposes of sections 711 and 713 to 728, the settlement day in relation to a transfer of securities.

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(2) Where the securities are transferred in accordance with the rules of a recognised market, the settlement day is the day on which the transferee agrees to settle or, if he may settle on one of a number of days, the day on which he settles; and, where they are transferred otherwise, subsections (3) to (5) below apply.

(3) Where the consideration for the transfer is money alone, and the transferee agrees to pay the whole of it on or before the next (or first) interest payment day to fall after an agreement for transfer is made, the settlement day is the day on which he agrees to make the payment or, if payment may be made on one of a number of days, or on a number of different days, the latest of them to fall.

(4) Where there is no consideration for the transfer, or the transfer is a transfer by virtue of sections 710(13), 715(3), 717(8), 720(4), 721 **[**F4677, 722 **[**F4678, 722A**]** and 724(1A)**]**, the settlement day is the day on which the securities are transferred.

(5) In any other case, the settlement day is such day as an inspector decides; and the jurisdiction of the General Commissioners or the Special Commissioners on any appeal shall include jurisdiction to review such a decision of the inspector.

Textual Amendments

F4677 1990 s.41*and* Sch.6 para.9(3)*on and after* 24*May* 1990*subject to the commencement provisions of* paras.11*and* 12.*Previously*
"and 722".

F4678 Words in s. 712(4) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 5**

Modifications etc. (not altering text)

C673 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C674 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C675 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M946 Source—1985 Sch.23 4; 1986 Sch.17 3(2)

Transfers with or without accrued interest: charge to tax and reliefs

713 Deemed sums and reliefs.

M947(1) Subject to sections 714 to 728, this section applies whether the securities in question are transferred before, on or after 6th April 1988; and in this section references to a period are references to the interest period in which the settlement day falls.

(2) If securities are transferred with accrued interest—

(a) the transferor shall be treated as entitled to a sum on them in the period of an amount equal to the accrued amount; and

(b) the transferee shall be treated as entitled to relief on them in the period of the same amount.

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(3) If securities are transferred without accrued interest—

(a) the transferor shall be treated as entitled to relief on them in the period of an amount equal to the rebate amount; and

(b) the transferee shall be treated as entitled to a sum on them in the period of the same amount.

(4) In subsection (2) above "the accrued amount" means—

(a) if the securities are transferred under an arrangement by virtue of which the transferee accounts to the transferor separately for the consideration for the securities and for gross interest accruing to the settlement day, an amount equal to the amount (if any) of gross interest so accounted for; and

(b) in any other case, an amount equal to the accrued proportion of the interest applicable to the securities for the period.

(5) In subsection (3) above "the rebate amount" means—

(a) if the securities are transferred under an arrangement by virtue of which the transferor accounts to the transferee for gross interest accruing from the settlement day to the next interest payment day, an amount equal to the amount (if any) of gross interest so accounted for; and

(b) in any other case, an amount equal to the rebate proportion of the interest applicable to the securities for the period.

(6) In this section—

(a) the accrued proportion is—

$$\frac{A}{B}$$

(b) the rebate proportion is—

$$\frac{B-A}{B}$$

where—

A is the number of days in the period up to (and including)the settlement day, and

B is the number of days in the period.

(7) [M948]For the purposes of subsection (2) above, in a case where the interest on the securities is payable in a currency other than sterling the accrued amount is to be determined as follows—

(a) if subsection (4)(a) above applies and the sterling equivalent of the amount of gross interest there mentioned is shown in an agreement for transfer, the accrued amount is the sterling equivalent so shown;

(b) if subsection (4)(a) applies but paragraph (a) above does not, or if subsection (4)(b) above applies, the accrued amount is the sterling equivalent on the settlement day of the amount found by virtue of subsection (4)(a) or (b) (as the case may be).

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(8) For the purposes of subsection (3) above, in a case where the interest on the securities is payable in a currency other than sterling the rebate amount is to be determined as follows—

(a) if subsection (5)(a) above applies and the sterling equivalent of the amount of gross interest there mentioned is shown in an agreement for transfer, the rebate amount is the sterling equivalent so shown;

(b) if subsection (5)(a) applies but paragraph (a) above does not, or if subsection (5)(b) above applies, the rebate amount is the sterling equivalent on the settlement day of the amount found by virtue of subsection (5)(a) or (b) (as the case may be).

(9) M949For the purposes of subsections (7) and (8) above the sterling equivalent of an amount on a particular day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

Modifications etc. (not altering text)

C676 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C677 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C678 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C679 S. 713(2)(3) excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 4**; S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

M947 Source—1985 s.73

M948 Source—1985 Sch.23 10(1)-(3)

M949 1985 Sch.23 10(7)

714 Treatment of deemed sums and reliefs.

M950(1) Subsection (2) below applies if a person is treated as entitled under section 713 to a sum on securities of a particular kind in an interest period, and either—

(a) he is not treated as entitled under that section to relief on securities of that kind in the period; or

(b) the sum (or total sum) to which he is treated as entitled exceeds the amount (or total amount) of relief to which he is treated as entitled under that section on securities of that kind in the period.

(2) The person shall be treated as receiving on the day the period ends **[**F4679income of an amount which**]** is (depending on whether subsection (1)(a) or (1)(b) above applies) equal to the sum (or total sum) to which he is treated as entitled or equal to the amount of the excess; and **[**F4680the income**]** shall be chargeable to tax F4681. . . for the chargeable period in which **[**F4682it is**]** treated as received.

[F4683(2A) Income tax chargeable by virtue of subsection (2) shall be charged on the full amount of the income treated as received.

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(2B) The person liable for any tax so charged shall be the person treated as receiving the income.**]**

(3) Subsection (4) below applies if a person is treated as entitled under section 713 to relief on securities of a particular kind in an interest period, and either—

(a) he is not treated as entitled under that section to a sum on securities of that kind in the period; or

(b) the amount (or total amount) of relief to which he is treated as entitled exceeds the sum (or total sum) to which he is treated as entitled under that section on securities of that kind in the period.

(4) The person shall be entitled to an allowance whose amount is (depending on whether subsection (3)(a) or (3)(b) above applies) equal to the amount (or total amount) of relief to which he is treated as entitled or equal to the amount of the excess; and subsection (5) below shall apply.

(5) Any amount to which the person is entitled by way of interest which—

(a) falls due on the securities at the end of the interest period, and

(b) is taken into account in computing tax charged for the chargeable period in which the interest period ends,

shall for the purposes of the Tax Acts be treated as reduced by the amount of the allowance; but if the period is one which does not end with an interest payment day, he shall be treated as becoming, in the next interest period, entitled under section 713 to relief on the securities of an amount equal to the amount of the allowance.

(6) [F4684] . . . . . .

Textual Amendments

F4679 Words in s. 714(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 295(2)(a)** (with Sch. 2)

F4680 Words in s. 714(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 295(2)(b)** (with Sch. 2)

F4681 Words in s. 714(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 295(2)(c), **Sch. 3** (with Sch. 2)

F4682 Words in s. 714(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 295(2)(d)** (with Sch. 2)

F4683 S. 714(2A)(2B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 295(3)** (with Sch. 2)

F4684 S. 714(6) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note

Modifications etc. (not altering text)

C680 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C681 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C682 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

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Marginal Citations
M950 Source—1985 s.74

715 Exceptions from sections 713 and 714

(1) [M951]Section 713(2)(a) or (3)(a) (as the case may be) does not apply—

(a) if the transferor carries on a trade and the transfer falls to be taken into account for the purposes of the Tax Acts in computing the profits or losses of that trade;

(b) if the transferor is an individual and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him exceeded £5,000;

(c) if the securities transferred form part of the estate of a deceased person, the transferor is that person's personal representative and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him as the deceased's personal representative exceeded £5,000;

(d) [M952]where—

(i) if the transferor became entitled to any interest on the securities transferred and applied it for charitable purposes only, exemption could be granted under section 505(1)(c) in respect of the interest;

(ii) if the transferor became entitled to any interest on the securities transferred and applied it for the purposes mentioned in paragraph (d) of section 505(1), exemption could be granted under that paragraph in respect of the interest;

(e) [M953]if the securities transferred are held on a disabled person's trusts, the transferor is trustee of the settlement and on no day in the year of assessment in which the interest period ends or the previous year of assessment the nominal value of securities held by him as trustee of the settlement exceeded £5,000;

(f) if the transferor does not fulfil the residence requirement for the chargeable period in which the transfer is made and is not a non-resident United Kingdom trader in that period;

(g) [F4685] . . . . . .

(h) [F4685] . . . . . .

(j) if the transferor is an individual who, if he became entitled in the year of assessment in which the transfer occurs to any interest on the securities transferred, would be liable, in respect of the interest, to tax **[**[F4686]charged in accordance with section 832 of ITTOIA 2005 (relevant foreign income charged on the remittance basis)**]**; or

(k) [M954]where, if the transferor became entitled to any interest on the securities transferred, exemption could be allowed under section 592(2) in respect of the interest.

(2) [M955]Section 713(2)(b) or (3)(b) (as the case may be) does not apply if—

(a) the transferee carries on a trade, and if at the time he acquired the securities he were to transfer them that transfer would fall to be taken into account for the purposes of the Tax Acts in computing the profits or losses of that trade; or

(b) any provision of subsection (1) above except paragraph (a) would apply if "transferor" read "transferee".

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(3) [M956]If securities held on charitable trusts cease to be subject to charitable trusts the trustees shall be treated for the purposes of sections 710 to 728 as transferring the securities (in their capacity as charitable trustees) to themselves (in another capacity) at the time when the securities cease to be so subject.

(4) [M957]For the purposes of this section a person fulfils the residence requirement for a chargeable period if he is resident in the United Kingdom during any part of the period or is ordinarily resident in the United Kingdom during the period.

(5) For the purposes of this section a person is a non-resident United Kingdom trader in a chargeable period if during any part of it he is (though neither resident during any part of it nor ordinarily resident during it) carrying on a trade in the United Kingdom through a branch or agency and the securities transferred—

(a) were situated in the United Kingdom and used or held for the purposes of the branch or agency at or before the time of the transfer (where the person concerned is a transferor); or

(b) were so situated at the time of the transfer and were acquired for use by or for the purposes of the branch or agency (where the person concerned is a transferee);

but the provisions of this subsection relating to the situation of the securities in the United Kingdom do not apply where the person concerned is a company.

(6) [M958]In any case where securities are transferred without accrued interest to a person ("the seller") and a contract is made for the sale by the seller of securities of that kind ("the seller's contract") and the seller's contract or any contract under which the securities are transferred to the seller is one in the case of which [F4687]. . . **[**[F4688]paragraph 3 or 4 of Schedule 23A**]** has effect and in relation to which the seller is the dividend manufacturer, then—

(a) where the nominal value of the securities subject to the seller's contract is greater than or equal to that of the securities transferred, the seller shall not be treated as entitled to any sum to which, but for this subsection, he would be treated as entitled under section 713(3)(b) on the securities transferred;

(b) where the nominal value of the securities subject to the seller's contract is less than that of the securities transferred, any sum (or the aggregate of any sums) to which he is treated as entitled under section 713(3)(b) on the securities transferred shall be reduced by the amount of any part of the sum (or aggregate) attributable to securities ("relevant securities") of a nominal value equal to that of the securities subject to the seller's contract;

and for the purposes of sections 710 to 728 the securities which the seller contracts to sell shall not be treated as transferred by him (though treated as transferred to the person to whom he contracts to sell).

(7) In determining for the purposes of subsection (6)(b) above which of the securities transferred are relevant securities, those transferred to the seller earlier must be chosen before those transferred to him later.

(8) [M959]For the purposes of this section—

"disabled person's trusts" means trusts falling within paragraph **[**[F4689]1(1) of Schedule 1 to the 1992**]** Act;

"branch or agency" has the meaning given by section **[**[F4689]10(6) of the 1992**]** Act;

[F4690]

. . . . . .

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and the place where securities are situated shall be determined in accordance with **[**[F4691]sections 275(1) and (2)(b) and 275C**][**[F4689]of the 1992**]** Act.

Textual Amendments

F4685 S. 715(1)(g)(h) repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(18)**, Note

F4686 Words in s. 715(1)(j) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 296** (with Sch. 2)

F4687 Words in s. 715(6) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 1 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4688 Words in s. 715(6) inserted (with application in accordance with s. 123(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 123(1)**

F4689 Words in s. 715(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(37)** (with ss. 60, 101(1), 171, 201(3))

F4690 S. 715(8): definition of "FOTRA securities" repealed (with effect in accordance with s. 154(9) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(18)**, Note

F4691 Words in s. 715(8) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 4 para. 1(2)**

Modifications etc. (not altering text)

C683 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C684 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C685 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C686 S. 715(1)(a) restricted (*retrospectively*) by Finance (No.2) Act 1992 (c. 48), **s. 65(2)(b)(5)(6)**
S. 715(2)(a) restricted (*retrospectively*) by Finance (No.2) Act 1992 (c. 48), **s. 65(2)(c)(5)(6)**

Marginal Citations

M951 Source—1985 s.71(1) (a)-(c)
M952 Source—1985 Sch.23 30(1), (4)
M953 Source—1985 s.75(1)(d)-(h)
M954 Source—1985 Sch.23 32(1)
M955 Source—1985 s.75(2), Sch.23 30(2), (5), 32(2)
M956 Source—1985 Sch.23 31(1)
M957 Source—1985 s.75(3), (4)
M958 Source—1985 Sch.23 43; 1986 Sch.17 5
M959 Source—1985 s.75(5), (6)

716 Transfer of unrealised interest.

[M960](1) This section applies where securities are transferred (whether before or after 6th April 1988) with the right to receive interest ("unrealised interest") payable on them on an interest payment day falling before the settlement day.

(2) Where the settlement day falls within an interest period, section 714 shall (subject to subsection (5) below) apply as if the transferor were entitled under section 713 to a

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sum on them in the period of an amount equal to the unrealised interest (in addition to any other sum to which he may be treated as so entitled).

(3) Where the settlement day falls after the end of the last interest period in relation to the securities, the transferor shall be treated as receiving on the settlement day **[**F4692income**]** of an amount equal to the unrealised interest; and **[**F4693the income**]** shall be chargeable to tax F4694. . . for the chargeable period in which **[**F4695it is**]** treated as received.

[F4696(3A) Income tax chargeable by virtue of subsection (3) shall be charged on the full amount of the income treated as received.

(3B) The person liable for any tax so charged shall be the person treated as receiving the income.**]**

(4) Where the transferee receives the unrealised interest, and but for this subsection it would be taken into account in computing tax charged for the chargeable period in which the interest is received, it shall for the purposes of the Tax Acts be left out of account.

(5) M961Section 715 shall apply for the purposes of this section as if—

(a) in subsection (1)—

(i) the reference to section 713(2)(a) or (3)(a) were a reference to subsection (2) or (3) above; and

(ii) references to the year of assessment in which the interest period ends were references to the year in which the settlement day falls; and

(b) in subsection (2) the reference to section 713(2)(b) or (3)(b) were a reference to subsection (4) above.

Paragraph (b) above does not apply where the securities in question were transferred before 19th March 1986.

(6) M962Where the unrealised interest is payable in a currency other than sterling its amount is for the purposes of this section the sterling equivalent on the settlement day of the amount it would be apart from this subsection; and for this purpose the sterling equivalent is to be calculated by reference to the London closing rate of exchange for the day.

Textual Amendments

F4692 Word in s. 716(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 297(2)(a)** (with Sch. 2)

F4693 Words in s. 716(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 297(2)(b)** (with Sch. 2)

F4694 Words in s. 716(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 297(2)(c), **Sch. 3** (with Sch. 2)

F4695 Words in s. 716(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 297(2)(d)** (with Sch. 2)

F4696 S. 716(3A)(3B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 297(3)** (with Sch. 2)

Modifications etc. (not altering text)

C687 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**

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Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C688 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C689 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C690 S. 716 excluded (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 4**; S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

M960 Source—1985 Sch.23 15(1)-(4)

M961 Source—1985 Sch.23 15(5); 1986 Sch.17 2(2)

M962 Source—1985 Sch.23 15(8)

717 Variable interest rate.

M963(1) This section applies to securities other than securities falling within subsection (2) F4697. . . below.

(2) Securities fall within this subsection if their terms of issue provide that throughout the period from issue to redemption (whenever redemption might occur) they are to carry interest at a rate which falls into one, and one only, of the following categories—

(a) a fixed rate which is the same throughout the period;

(b) a rate which bears to a standard published base rate the same fixed relationship throughout the period;

(c) a rate which bears to a published index of prices the same fixed relationship throughout the period.

(3) In subsection (2)(c) above "published index of prices" means the retail prices index or any similar general index of prices which is published by, or by an agent of, the government of any territory outside the United Kingdom.

(4) F4698. . . . . .

(5) F4698. . . . . .

(6) Subsections (7) to (11) below apply if securities to which this section applies are transferred at any time between the time they are issued and the time they are redeemed.

(7) If the securities are transferred without accrued interest they shall be treated for the purposes of sections 710 to 728 as transferred with accrued interest.

(8) The person entitled to the securities immediately before they are redeemed shall be treated for the purposes of those sections as transferring them with accrued interest on the day they are redeemed.

(9) Where there is a transfer as mentioned in subsection (6) above or by virtue of subsection (8) above, section 713 shall have effect with the omission of subsection (2)(b) and with the substitution for subsections (3) to (6) of the following subsection—

"(3) In subsection (2) above "the accrued amount" means such amount (if any) as **[**F4699is just and reasonable**]**.".

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(10) Subsection (11) below applies where there is a transfer by virtue of subsection (8) above and the settlement day in relation to the transfer falls after the end of a period which would (by virtue of section 711(3) and (4) and apart from this subsection) be the only or last interest period in relation to the securities.

(11) For the purposes of sections 710 to 728 the period beginning with the day following that interest period and ending with the settlement day shall be treated as an interest period in relation to the securities; and section 711(4) shall not apply to it.

Textual Amendments

F4697 Words in s. 717(1) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(22)**

F4698 S. 717(4)(5) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(22)**

F4699 Words in s. 717(9) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 35**

Modifications etc. (not altering text)

C691 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C692 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C693 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C694 S. 717 excluded (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 33(2)

Marginal Citations

M963 Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

718 Interest in default.

M964(1) This section applies where, because of any failure to fulfil the obligation to pay interest on securities, the value (on a day mentioned in section 711(7) or (8)(a), as the case may be) of the right to receive the interest payable on them on that day is less than the interest so payable.

(2) Section 711(7) or (8)(a), as the case may be, shall be construed as if the reference to that interest were to an amount equal to that value.

Modifications etc. (not altering text)

C695 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C696 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C697 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

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Marginal Citations

M964 Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

719 Unrealised interest in default

M965(1) Where securities are transferred as mentioned in section 716(1) and, because of any failure to fulfil the obligation to pay interest on them, the value (on the day of the transfer) of the right to receive the unrealised interest is less than the amount of the unrealised interest, section 716 shall have effect as modified by subsections (2) to (4) below.

(2) In subsections (2) and (3) for "the unrealised interest" there shall be substituted " amount A ".

(3) For subsection (4) there shall be substituted—

"(4) Where the transferee receives an amount by way of the unrealised interest (amount B) and that amount falls to be taken into account in computing tax charged for the chargeable period in which it is received, it shall for the purposes of the Tax Acts be treated as reduced by an amount (amount C) equal to—

(a) nil, if the amounts have been previously received by the transferee by way of the unrealised interest and their aggregate is equal to or greater than the value (on the day of the transfer to the transferee) of the right to receive the unrealised interest;

(b) amount B, if that value is equal to or greater than amount B (aggregated with other amounts previously so received, if any);

(c) that value, if no amount has been previously so received and that value is less than amount B; or

(d) so much of that value as exceeds the aggregate of amounts previously so received, in any other case.".

(4) The following shall be substituted for subsection (6)—

"(6) In this section "amount A" means, in a case where the transferor acquired the securities on or after 28th February 1986 with the right to received unrealised interest—

(a) an amount equal to amount D less amount E; or

(b) if amount D is equal to or less than amount E, nil.

(7) In this section "amount A" means, in a case not falling within subsection (6) above, an amount equal to amount D.

(8) In this section "amount D" means an amount equal to the value (on the day of the transfer by the transferor) of the right to receive the unrealised interest.

(9) In this section "amount E" means, in a case where the transferor (as transferee) has received in respect of the securities an amount or amounts falling within subsection (4) above—

(a) an amount equal to amount F less the total received; or

(b) if amount F is equal to or less than the total received, nil.

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(10) In this section "amount E" means, in any other case, an amount equal to amount F.

(11) In this section "amount F" means an amount equal to the value (on the day of the transfer to the transferor) of the right to receive the unrealised interest.

(12) In determining for the purposes of this section which securities of a particular kind a person has transferred, he is to be taken to have transferred securities of that kind which he acquired later before securities of that kind which he acquired earlier.

(13) Where the unrealised interest is payable in a currency other than sterling—

(a) any amount received by way of the interest is for the purposes of this section the sterling equivalent on the day it is received of the amount it would be apart from this subsection; and

(b) the value (on the day of a transfer) of the right to receive the interest is for the purposes of this section the sterling equivalent (on that day) of the value it would be apart from this subsection;

and for this purpose the sterling equivalent is to be calculated by reference to the London closing rate of exchange for the day concerned."

Modifications etc. (not altering text)

C698 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C699 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C700 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M965 Source—1985 Sch.23 15A, 15B, 15C; 1986 Sch.17 3

Transfers with or without accrued interest: supplemental

720 Nominees, trustees etc.

(1) [M966]Where securities are transferred by or to a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability, or for two or more persons who are or would be jointly so entitled, sections 713, 715 and 716 shall apply as if references to the transferor or the transferee (as the case may be) were to the person or persons for whom the nominee or trustee disposes or acquires.

(2) [M967]It is hereby declared that for the purposes of subsection (1) above—

(a) securities are transferred by a person as trustee for another person absolutely entitled as against the trustee if that other person has immediately before the transfer the exclusive right to direct how the securities shall be dealt with, subject only to satisfying any outstanding charge, lien or other right of the

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trustee to resort to the securities for payment of duty, taxes, costs or other outgoings; and

(b) securities are t ransferred to a person as trustee for another person so entitled if that other person has that right immediately after the transfer.

F4700(3) . . . . . .

(4) M968Where a person who is entitled to securities becomes trustee of them, he shall be treated for the purposes of sections 710 to 728 as transferring them (in a capacity other than trustee) to himself (in his capacity as trustee), or to himself and any other trustees, at the time he becomes trustee.

(5) **[**F4701M969Income**]** which by virtue of 714(2) or 716(3) **[**F4702is treated**]** as received in a year of assessment by trustees shall be chargeable to income tax **[**F4703at the rate applicable to trusts**]** for that year.

F4704 . . . . . .

(6) M970In any case where—

(a) a trustee of a settlement is treated as receiving **[**F4705income**]** under section 714(2), or

(b) a trustee of a settlement who is resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving **[**F4706income or income**]** of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,

[F4707Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor) and Chapter 1C of Part 15 of this Act (liability of trustees)**]** shall have effect as if the amount which the trustee is or would be treated as receiving were income **[**F4708arising under the settlement**]**.

(7) M971In any case where income of a trustee of a settlement who is resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest which—

(a) falls due at the end of the interest period; and

(b) would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period;

then, for the purposes of **[**F4709Chapter 5 of Part 5 of ITTOIA 2005 and Chapter 1C of Part 15 of this Act**]**, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).

(8) M972In subsections (6) and (7) above—

(a) "settlement" means settlement within the meaning of **[**F4710Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)**]**; and

(b) references to a trustee of a settlement are, where there is no trustee of the settlement, to any person entitled to securities comprised in the settlement.

Textual Amendments

F4700 S. 720(3) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

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F4701 Word in s. 720(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(2)(a)** (with Sch. 2)
F4702 Words in s. 720(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(2)(b)** (with Sch. 2)
F4703 Words in s. 720(5) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras. 13, **25**
F4704 Words in s. 720(5) repealed (with effect in accordance with s. 68 of the repealing Act) by Finance Act 1999 (c. 16), **Sch. 20 Pt. 3(17)**, Note
F4705 Word in s. 720(6)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(3)(a)** (with Sch. 2)
F4706 Words in s. 720(6)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(3)(b)** (with Sch. 2)
F4707 Words in s. 720(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(3)(c)** (with Sch. 2)
F4708 Words in s. 720(6) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 17(2)(b)**
F4709 Words in s. 720(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(4)** (with Sch. 2)
F4710 Words in s. 720(8)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 298(5)** (with Sch. 2)

Modifications etc. (not altering text)
C701 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)
C702 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)
C703 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations
M966 Source—1985 Sch.23 6(1), 15(6)
M967 Source—1985 Sch.23 6(2)
M968 Source—1985 Sch.23 7(1)
M969 Source—1985 Sch.23 8(1), (2), (4); 1986 Sch.17 1(1)
M970 Source—1985 Sch.23 9(1), (2)
M971 Source—1985 Sch.23 9(3), (4)
M972 Source—1985 Sch.23 9(5)

721 Death.

(1) [F4711] . . . . . .

[[F4712](2) Where—

(a) an individual who is entitled to securities dies, and

(b) in the interest period in which the individual died, the securities are transferred by his personal representatives to a legatee,

section 713 shall not apply to the transfer.**]**

(3) In subsection (2) above "legatee" includes any person taking (whether beneficially or as trustee) under a testamentary disposition or on an intestacy or partial

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intestacy, including any person taking by virtue of an appropriation by the personal representatives in or towards satisfaction of a legacy or other interest or share in the deceased's property.

(4) F4711 . . . . . .

F4713(5) . . . . . .

F4713(6) . . . . . .

Textual Amendments

F4711 S. 721(1)(4) repealed (with effect in accordance with s. 158(5) of the repealing Act) by Finance Act 1996 (c. 8), s. 158(2)(4), **Sch. 41 Pt. 5(20)**, Note

F4712 S. 721(2) substituted (with effect in accordance with s. 158(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 158(3)**

F4713 S. 721(5)(6) repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 2

Modifications etc. (not altering text)

C704 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C705 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C706 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C707 S. 721(1)-(4) excluded (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(3)(a)**, 184(3)

722 Trading stock.

M973(1) Where securities acquired by a person otherwise than as trading stock of a trade carried on by him are appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise), he shall be treated for the purposes of sections 710 to 728 as transferring them otherwise than in the course of the trade and re-acquiring them in the course of the trade on the day the appropriation is made.

(2) Where securities forming part of the trading stock of a person's trade are appropriated by him for any other purpose, or are retained by him on his ceasing to carry on the trade, he shall be treated for the purposes of sections 710 to 728 as transferring them in the course of the trade and re-acquiring them otherwise than in the course of the trade on the day the appropriation is made or (as the case may be) he ceases to carry on the trade.

Modifications etc. (not altering text)

C708 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**

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Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C709 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C710 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M973 Source—1985 Sch.23 (13) (1), (2)

[F4714 722A Gilt strips: deemed transfer.

(1) For the purposes of sections 710 to 728, where a gilt-edged security is exchanged by any person for strips of that security the security shall be deemed to have been transferred by that person.

(2) Nothing in subsection (1) above shall have effect to cause any person to be treated as the transferee of any securities for the purposes of section 713(2)(b).

(3) For the purposes of sections 710 to 728, where strips of gilt-edged securities are exchanged by any person for a single gilt-edged security consolidating those strips, that security shall be deemed to have been transferred to that person.

(4) Nothing in subsection (3) above shall have effect to cause any person to be treated as the transferor of any securities for the purposes of section 713(2)(a).

(5) In this section—

"gilt-edged security" has the same meaning as in section **[**F4715 50**]**; and

"strip" means anything which, within the meaning of section 47 of the M974 Finance Act 1942, is a strip of a gilt-edged security.**]**

Textual Amendments

F4714 S. 722A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 6**

F4715 Word in s. 722A(5) substituted (with effect in accordance with s. 37(8) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(7)**

Modifications etc. (not altering text)

C711 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C712 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M974 1942 c. 21.

723 Foreign securities: delayed remittances

M975 (1) This section applies where in an interest period a person is treated as entitled to a sum or sums under section 713(2)(a) in respect of a transfer or transfers of securities of a particular kind which are situated outside the United Kingdom.

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(2) Subject to subsection (3) below, the amount of **[**F4716any income**]** which the person is treated under section 714 as receiving on the day the period ends in respect of securities of that kind shall be reduced—

(a) if the amount of the sum or aggregate of the sums exceeds the amount of **[**F4717that income**]**, to nil; or

(b) in any other case, by the amount of the sum or aggregate.

(3) No reduction shall be made unless the person makes a claim and shows that the conditions in subsection (5) below are, so far as applicable, satisfied in the chargeable period in which the profits or gains are treated as received.

(4) The claimant (or his personal representatives) shall be charged to tax **[**F4718on the full amount**]** of the reduction for the chargeable period in which the conditions in subsection (5) below cease to be satisfied.

(5) The conditions are—

(a) that the claimant was unable to remit the proceeds of the transfer or transfers to the United Kingdom;

(b) that the inability was due to the laws of the territory in which the securities are situated, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and

(c) that the inability was not due to any want of reasonable endeavours on the part of the claimant.

(6) No claim under this section shall be made in respect of a transfer more than six years after the end of the interest period in which the transfer occurred.

(7) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.

(8) For the purposes of this section the place where securities are situated shall be determined in accordance with **[**F4719sections 275(1) and (2)(b) and 275C**][**F4720of the 1992**]** Act.

Textual Amendments

F4716 Words in s. 723(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 299(2)(a)** (with Sch. 2)

F4717 Words in s. 723(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 299(2)(b)** (with Sch. 2)

F4718 Words in s. 723(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 299(3)** (with Sch. 2)

F4719 Words in s. 723(8) substituted (with effect in accordance with Sch. 4 para. 10(1) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 4 para. 2(2)**

F4720 Words in s. 723(8) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(38)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C713 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**

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Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C714 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C715 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M975 Source—1985 Sch.23 11

724 Insurance companies.

F4721 . . . . . .

Textual Amendments

F4721 S. 724 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note

F4722 725 . . . . . .

Textual Amendments

F4722 S. 725 repealed (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, s. 213, **Sch. 23 Pt. III(12)** Note 5

F4723 726 . . . . . .

Textual Amendments

F4723 S. 726 repealed (for the year 1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 6

[726A F4724 New issues of securities.

(1) This section applies where—

(a) securities (old securities) of a particular kind are issued by way of the original issue of securities of that kind,

(b) on a later occasion securities (new securities) of the same kind are issued,

(c) a sum (the extra return) is payable in respect of the new securities, by the person issuing them, to reflect the fact that interest is accruing on the old securities,

(d) the issue price of the new securities includes an element (whether or not separately identified) representing payment for the extra return, and

(e) the extra return is equal to the amount of interest payable for the relevant period on so many old securities as there are new (or, if there are more new

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securities than old, the amount of interest which would be so payable if there were as many old securities as new).

(2) For the purposes of sections 710 to 728—

(a) the new securities shall be treated as having been issued on the relevant day;

(b) they shall be treated as transferred to the person to whom they are in fact issued (though not treated as transferred by any person);

(c) the transfer shall be treated as a transfer with accrued interest and as made on the day on which the new securities are in fact issued;

(d) that day shall be treated as the settlement day (notwithstanding section 712);

but this subsection is subject to subsection (7) below.

(3) If the new securities are in fact issued under an arrangement by virtue of which the acquirer accounts to the issuer separately for the extra return mentioned in subsection (1) above and the rest of the issue price, in relation to the transfer mentioned in subsection (2)(b) above—

(a) section 713(4) shall not apply, and

(b) for the purposes of section 713(2) the accrued amount shall be the amount found under subsection (4) or (5) below (as the case may be);

and here "the acquirer" means the person to whom the new securities are in fact issued and "the issuer" means the person by whom they are in fact issued.

(4) Subject to subsection (5) below, the amount is one equal to the amount (if any) of the extra return separately accounted for.

(5) If the interest on the new securities is payable in a currency other than sterling, the amount is the sterling equivalent on the settlement day of the amount found under subsection (4) above; and for this purpose the sterling equivalent of an amount on the settlement day is the sterling equivalent calculated by reference to the London closing rate of exchange for that day.

(6) If the new securities are in fact issued otherwise than as mentioned in subsection (3) above, section 713(4)(b) shall apply in relation to the transfer mentioned in subsection (2)(b) above.

(7) If the new securities are securities to which section 717 applies (after applying subsection (2)(a) above) subsection (2)(b) to (d) above shall not apply.

(8) For the purposes of this section the relevant period is the period beginning with the day following the relevant day and ending with the day on which the new securities are in fact issued.

(9) For the purposes of this section the relevant day is—

(a) the last (or only) interest payment day to fall in respect of the old securities before the day on which the new securities are in fact issued, or

(b) the day on which the old securities were issued, in a case where no interest payment day fell in respect of them before the day on which the new securities are in fact issued.**]**

Textual Amendments

F4724 S. 726A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 12 paras. 2, **5**

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Modifications etc. (not altering text)

C716 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C717 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C718 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

727 Stock lending.

M976(1) F4725 . . . . . .

(2) Where securities are transferred in circumstances such that by virtue of **[**F4726section 263B(2) of the 1992 Act**]** (capital gains tax exemption) any disposal and acquisition are disregarded for the purposes of capital gains tax, sections 713(2) and (3) and 716 shall not apply.

Textual Amendments

F4725 S. 727(1) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 1 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4726 Words in s. 727(2) substituted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 5(3)**; S.I. 1997/991, **art. 2**

Modifications etc. (not altering text)

C719 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

C720 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C721 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations

M976 Source—1985 Sch.23 32C; 1986 Sch.17 4

[F4727**727A** Exception for sale and repurchase of securities.

(1) Where securities are transferred under an agreement to sell them, **[**F4728and the transferor or a person connected with him—

(a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or

(b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises,**]**

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section 713(2) and (3) and section 716 do not apply to the transfer by the transferor or the transfer back **[**F4729except in a case where section 730A of the Taxes Act 1988 is prevented from applying by subsection (8) of that section.**]**

(2) For the purposes of this section agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(3) Section 839 (connected persons) applies for the purposes of this section.

(4) References in this section to buying back securities include buying similar securities.

For this purpose securities are similar if they entitle their holders—

(a) to the same rights against the same persons as to capital and interest, and

(b) to the same remedies for the enforcement of those rights,

notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(5) For the purposes of this section—

(a) a person connected with the transferor who is required to buy securities sold by the transferor shall be treated as being required to buy the securities back, and

(b) a person connected with the transferor who acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back,

notwithstanding that it was not he who sold them.**]**

Textual Amendments

F4727 S. 727A inserted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 79(1)** (with s. 79(4))

F4728 Words and paras. (a)(b) in s. 727A(1) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 4**

F4729 Words in s. 727A(1) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 15**

Modifications etc. (not altering text)

C722 S. 727A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 4

C723 S. 727A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

C724 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)

C725 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

C726 S. 727A(1) modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 14

728 Information.

M977(1) In order to obtain for the purposes of **[**F4730sections 710 to 727A**]** particulars relating to securities, an inspector may by notice require a return under subsection (2) or (3) below.

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(2) A member of the Stock Exchange, other than a market maker, may be required to make a return giving, in relation to any transactions effected by him in the course of his business in the period specified in the notice, such particulars as may be so specified.

In relation to transactions before 27th October 1986 this subsection shall have effect with the substitution of " jobber " for "market maker".

(3) A person (other than a member of the Stock Exchange), who acts as an agent or broker in the United Kingdom in transactions in securities, may be required to make a return giving, in relation to any such transactions effected by him in the period specified in the notice, such particulars as may be so specified.

(4) No person shall be required under subsection (2) or (3) above to include in a return particulars of any transaction effected more than three years before the service of the notice requiring him to make the return.

(5) In order to obtain for the purposes of **[**[F4730]sections 710 to 727A**]** particulars relating to securities, the Board or an inspector may by notice require any person in whose name any securities are registered to state whether or not he is the beneficial owner of those securities and, if he is not the beneficial owner of them or any of them, to furnish the name and address of the person or persons on whose behalf the securities are registered in his name.

(6) In this section "market maker", in relation to securities, means a person who—

(a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing to buy and sell securities of the kind concerned at a price specified by him; and

(b) is recognised as doing so by the Council of the Stock Exchange.

(7) The Board may by regulations provide that—

(a) subsections (2), (3) and (6)(a) above shall have effect as if references to the Stock Exchange were to any recognised investment exchange (within the meaning of the **[**[F4731]Financial Services and Markets Act 2000**]**) or to any of those exchanges specified in the regulations; and

(b) subsection (6)(b) shall have effect as if the reference to the Council of the Stock Exchange were to the investment exchange concerned.

(8) Regulations under subsection (7) above shall apply in relation to transactions effected on or after such day as may be specified in the regulations.

Textual Amendments

F4730 Words in s. 728(1)(5) substituted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 79(2)** (with s. 79(4))

F4731 Words in s. 728(7)(a) substituted (1.12.2001) by Financial Services and Markets Act 2000 (c. 8). s. 431(2), Sch. 20 para. 4(5); S.I. 2001/3538, **art. 2(1)**

Modifications etc. (not altering text)

C727 Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(1)(2)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(3)(4)**
Ss. 710-728 modified (27.7.1993) by 1993 c. 34, **s. 63(8)(10)**
Ss. 710-728 modified (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 176(4)**, 184(3)

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C728 Ss. 710-728 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 11** (with Sch. 13 para. 16, Sch. 15)
C729 Ss. 711-728 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 161(2)(a)** (with s. 161(7))

Marginal Citations
M977 Source—1985 Sch.23 44(1)-(5A); 1986 Sch.17 6

Other transfers of securities

729 Sale and repurchase of securities.

F4732 . . . . . .

Textual Amendments
F4732 S. 729 repealed (with effect in accordance with s. 159(1)(10) of the repealing Act) by Finance Act 1996 (c. 8), s. 159(1), **Sch. 41 Pt. 5(21)**, Note; S.I. 1996/2646, **art. 2**

730 [F4733Transfers of rights to receive distributions in respect of shares]

M978(1) Where in any chargeable period the owner of any [F4734shares] ("the owner") sells or transfers the right to receive any [F4735distribution] payable (whether before or after the sale or transfer) in respect of the [F4734shares] without selling or transferring the [F4734shares], then, for all the purposes of the Tax Acts, that [F4735distribution], whether it would or would not be chargeable to tax apart from the provisions of this section—

(a) shall be [F4736treated as] the income of the owner or, in a case where the owner is not the beneficial owner of the [F4734shares] and some other person ("a beneficiary") is beneficially entitled to the income arising from the [F4734shares], the income of the beneficiary, and

(b) shall be [F4737treated as] the income of the owner or beneficiary for that chargeable period, F4738. . .

(c) F4738 . . . . . .

[F4739(2) This section does not have effect in relation to a sale or transfer if the proceeds of the sale or transfer are chargeable to tax.]

[F4740(2A) F4741 . . . . . .]

[F4742(3) The proceeds of any subsequent sale or other realisation of the right to receive the distribution shall not, for any of the purposes of the Tax Acts, be regarded as the income of the seller or the person on whose behalf the right is otherwise realised.]

(4) Where—

(a) the [F4734shares] are of such a character that the [F4735distribution] payable in respect thereof may be paid without deduction of income tax, and

(b) the owner or beneficiary does not show that the proceeds of any sale or other realisation of the right to receive the [F4735distribution] which is deemed to be his income by virtue of this section have been charged to [F4743income tax under Chapter 13 of Part 4 of ITTOIA 2005 (sales of foreign dividend coupons)],

[F4744then that [F4745distribution] shall be charged to income tax.

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(4A) The income tax chargeable by virtue of subsection (4) above shall, subject to subsection (5) below, be charged on the full amount of the **[**F4746distribution**]** in the year of assessment.

(4B) The person liable for any tax chargeable by virtue of subsection (4) above is the owner or beneficiary, but he shall be entitled to credit for any tax which the **[**F4747distribution**]** is shown to have borne.**]**

(5) **[**F4748But**]**, in any case where, if the **[**F4735distribution**]** had been **[**F4749relevant foreign income**]**, the computation of tax would have been made by reference to the amount received in the United Kingdom, **[**F4750the income tax chargeable by virtue of subsection (4) above**]** shall be computed on the full amount of the sums which have been or will be received in the United Kingdom in the year of assessment or any subsequent year in which the owner remains the owner of the **[**F4734shares**]**.

(6) In relation to corporation tax, subsections (4) and (5) above shall not apply but, subject to the provisions of the Tax Acts about distributions, the owner or beneficiary shall, in respect of any **[**F4735distribution**]** which is deemed to be his income by virtue of this section, be chargeable to corporation tax under Case VI of Schedule D unless he shows that the proceeds of any sale or other realisation of the right to receive that **[**F4735distribution**]** have been charged to tax **[**F4751by virtue of section 18(3B)**]**.

[F4752(7) In this section—

"distribution", in relation to shares in a company,—

(a) has the same meaning as it has in the Corporation Tax Acts (see section 209), but

(b) also includes any amount that would be a distribution if the company paying it were resident in the United Kingdom;

"shares" means shares in a company.**]**

(8) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days), in respect of all **[**F4734shares**]** of which he was the owner at any time during the period specified in the notice, with such particulars as they consider necessary for the purposes of this section F4753. . . .

Textual Amendments

F4733 S. 730 heading substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by virtue of Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(12)**

F4734 Words in s. 730 substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(2)(b)**

F4735 Words in s. 730 substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(2)(a)**

F4736 Words in s. 730(1)(a) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(3)(a)**

F4737 Words in s. 730(1)(b) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(3)(b)**

F4738 S. 730(1)(c) repealed (with effect in accordance with Sch. 7 para. 2(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 2(3)(c), **Sch. 11 Pt. 2(8)**, Note

F4739 S. 730(2) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(4)**

F4740 S. 730(2A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 51**

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F4741 S. 730(2A) repealed (with effect in accordance with Sch. 7 para. 2(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 2(5), **Sch. 11 Pt. 2(8)**, Note

F4742 S. 730(3) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(6)**

F4743 Words in s. 730(4)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(3)(a)** (with Sch. 2)

F4744 Words in s. 730(4) and s. 730(4A)(4B) substituted for words in s. 730(4) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(3)(b)** (with Sch. 2)

F4745 Word in s. 730(4) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(7)**

F4746 Word in s. 730(4A) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(8)**

F4747 Word in s. 730(4B) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(9)**

F4748 Word in s. 730(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(4)(a)** (with Sch. 2)

F4749 Words in s. 730(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(4)(b)** (with Sch. 2)

F4750 Words in s. 730(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 300(4)(c)** (with Sch. 2)

F4751 Words in s. 730(2)(4)(b)(6)(8) substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 23** (with Sch. 7 paras. 33-35)

F4752 S. 730(7) substituted (with effect in accordance with Sch. 7 para. 2(13) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 2(10)**

F4753 Words in s. 730(8) repealed (with effect in accordance with Sch. 7 para. 2(13) of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), Sch. 7 para. 2(11), **Sch. 11 Pt. 2(8)**, Note

Marginal Citations

M978 Source—1970 s.470; 1971 Sch.6 71

[F4754 730A Treatment of price differential on sale and repurchase of securities.

(1) Subject to subsection (8) below, this section applies where—

(a) a person ("the original owner") has transferred any securities to another person ("the interim holder") under an agreement to sell them;

[F4755 (b) the original owner or a person connected with him—

(i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or

(ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises; and]

(c) the sale price and the repurchase price are different.

(2) The difference between the sale price and the repurchase price shall be treated for the purposes of the Tax Acts—

(a) where the repurchase price is more than the sale price, as a payment of interest made by the repurchaser on a deemed loan from the interim holder of an amount equal to the sale price; and

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(b) where the sale price is more than the repurchase price, as a payment of interest made by the interim holder on a deemed loan from the repurchaser of an amount equal to the repurchase price.

(3) Where any amount is deemed under subsection (2) above to be a payment of interest, that payment shall be deemed for the purposes of the Tax Acts to be one that becomes due at the time when the repurchase price becomes due and, accordingly, is treated as paid when that price is paid.

(4) Where any amount is deemed under subsection (2) above to be a payment of interest, the repurchase price shall be treated for the purposes of the Tax Acts (other than **[**F4756the excepted provisions specified in subsection (4A) below**]**) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—

(a) in a case falling within paragraph (a) of that subsection, as reduced by the amount of the deemed payment; and

(b) in a case falling within paragraph (b) of that subsection, as increased by the amount of the deemed payment.

[F4757This subsection is subject to subsection (4B) below.**]**

F4758(4A) **[** The excepted provisions are—

(a) this section,

(b) section 730BB, apart from subsection (7),

(c) section 737A, and

(d) section 737C.

(4B) Where section 730BB(7) has effect (repurchase price to be treated as increased or reduced for certain purposes), subsection (4) above does not have effect for any purpose other than that of determining the amount that falls to be increased or reduced under section 730BB(7).**]**

(5) For the purposes of section 209(2)(d) F4759. . . any amount which is deemed under subsection (2)(a) above to be a payment of interest shall be deemed to be interest in respect of securities issued by the repurchaser and held by the interim holder.

F4760(5A) **[** For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—

(a) the circumstances are as set out in subsection (1) above; and

(b) interest on a deemed loan is deemed by virtue of subsection (2) above to be paid by or to the company;

and references to a relationship to which this section applies, and to a company's being party to such a relationship, shall be construed accordingly.**]**

[F4761**[**F4762(6) Where a company has a relationship to which this section applies—

(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) shall, as respects that company, have effect in relation to the interest deemed by virtue of subsection (2) above to be paid or received by the company under that relationship as it would have effect if it were interest under a loan relationship to which the company is a party,

(b) F4763. . . . . .

and

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(c) the only debits or credits to be brought into account for the purposes of that Chapter by virtue of this subsection in respect of a relationship are those relating to that deemed interest,

and, subject to **[**F4764paragraph (c)**]** above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.**]**

(6A) Any question whether debits or credits brought into account in accordance with subsection (6) above in relation to any company—

(a) are to be brought into account under section 82(2) of the Finance Act 1996 (trading loan relationships), or

(b) are to be treated as non-trading debits or credits,

shall be determined (subject to Schedule 11 to that Act (insurance companies)) according to the extent (if any) to which the company is a party to the repurchase in the course of activities forming an integral part of a trade carried on by the company.**]**

F4765**[** (6B) To the extent that debits or credits fall to be brought into account by a company under **[**F4766section 82(2) of the Finance Act 1996**]** in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of **[**F4767that Act**]** as being party to the relationship for the purposes of a trade carried on by the company.**]**

(7) The Treasury may by regulations provide for any amount which is deemed under subsection (2) above to be received as a payment of interest to be treated, in such circumstances and to such extent as may be described in the regulations, as comprised in income that is eligible for relief from tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(8) Except where regulations under section 737E otherwise provide, this section does not apply if—

(a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or

(b) all of the **[**F4768benefits and risks**]** arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

F4769**[** (8A) In this section references to the sale price are to be construed—

(a) in a case where the securities are bought back by the transferor or a person connected with him in compliance with a requirement imposed in consequence of the exercise of an option acquired under the agreement to sell the securities or any related agreement, as references to what would otherwise be the sale price plus the amount of any consideration given for the option, and

(b) in a case where the securities are so bought back in the exercise of an option so acquired, as references to what would otherwise be the sale price less the amount of any consideration so given,

unless the consideration is brought into account under Schedule 26 to the Finance Act 2002 (derivative contracts).**]**

(9) In this section references to the repurchase price are to be construed—

(a) in cases where section 737A applies, and

(b) in cases where section 737A would apply if it were in force in relation to the securities in question,

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as references to the repurchase price which is or, as the case may be, would be applicable by virtue of section 737C(3)(b), (9) or (11)(c).**]**

Textual Amendments

F4754 Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(1)**

F4755 S. 730A(1)(b) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 5**

F4756 Words in s. 730A(4) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 11(2)**

F4757 Words in s. 730A(4) added (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 11(3)**

F4758 S. 730A(4A)(4B) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 11(4)**

F4759 Words in s. 730A(5) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(2)**, Note

F4760 S. 730(5A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 52(2)**

F4761 S. 730A(6)(6A) substituted for s. 730A(6) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 37** (with Sch. 15)

F4762 S. 730A(6) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 52(3)**

F4763 S. 730A(6)(b) repealed (with effect in accordance with s. 52(3) of the repealing Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), Sch. 10 para. 44(a), **Sch. 42 Pt. 2(6)**, Note 1

F4764 Words in s. 730A(6) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 44(b)**

F4765 S. 730A(6B) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 52(4)**

F4766 Words in s. 730A(6B) substituted (with effect in accordance with Sch. 38 para. 21(3) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 20(a)**

F4767 Words in s. 730A(6B) substituted (with effect in accordance with Sch. 38 para. 21(3) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 20(b)**

F4768 Words in s. 730A(8)(b) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 16**

F4769 S. 730A(8A) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 10**

Modifications etc. (not altering text)

C730 S. 730A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 4

C731 S. 730A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

C732 S. 730A modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 263A** (as inserted (with effect in accordance with s. 80(5) of the 1995 amending Act) by Finance Act 1995 (c. 4), **s. 80(4)**)

C733 S. 730A(1) modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 14

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[F4754 730B Interpretation of section 730A.

(1) For the purposes of section 730A agreements are related if they are entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(2) References in section 730A to buying back securities—

(a) shall include references to buying similar securities; and

(b) in relation to a person connected with the original owner, shall include references to buying securities sold by the original owner or similar securities,

notwithstanding (in each case) that the securities bought have not previously been held by the purchaser; and references in that section to repurchase or to a repurchaser shall be construed accordingly.

(3) In section 730A and this section "securities" has the same meaning as in section 737A.

(4) For the purposes of this section securities are similar if they entitle their holders—

(a) to the same rights against the same persons as to capital, interest and dividends, and

(b) to the same remedies for the enforcement of those rights,

notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(5) Section 839 (connected persons) applies for the purposes of section 730A.**]**

Textual Amendments

F4754 Ss. 730A, 730B inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(1)**

[F4770 730BB Exchange gains and losses on sale and repurchase of securities

(1) For the purposes of the Corporation Tax Acts, a company has a relationship to which this section applies in any case where—

(a) the circumstances are as set out in section 730A(1)(a) and (b);

(b) the company is the repurchaser of the securities or (subject to subsection (11) below) the interim holder;

(c) the conditions in subsection (2) or (3) below are satisfied; and

(d) subsection (10) below does not prevent this section from applying,

and references to a relationship to which this section applies, and to a company's being a party to such a relationship, shall be construed accordingly.

(2) The conditions in this subsection are that—

(a) the sale price and the repurchase price are expressed in a currency other than sterling;

(b) there is a difference between—

(i) the sterling equivalent of the sale price as at the date of the transfer of the securities to the interim holder ("the first sum"); and

(ii) the sterling equivalent of the sale price as at the date they are bought back by the repurchaser ("the second sum"); and

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(c) the case is not one where **[**F4771section 92B or 92C of the Finance Act 1993 (company preparing accounts or operating in currency other than sterling)**]** applies in relation to the company.

(3) The conditions in this subsection are that—

(a) the case is one where **[**F4772section 92B or 92C of the Finance Act 1993 (company preparing accounts or operating in currency other than sterling)**]** applies in relation to the company;

(b) the sale price and the repurchase price are expressed in a currency other than the **[**F4773relevant currency**]**; and

(c) there is a difference between—

(i) the **[**F4774relevant currency**]** equivalent of the sale price as at the date of the transfer of the securities to the interim holder ("the first sum"); and

(ii) the **[**F4774relevant currency**]** equivalent of the sale price as at the date they are bought back by the repurchaser ("the second sum").

F4775(3A) **[** In subsection (3), references to the relevant currency are—

(a) in cases in which section 92B of the Finance Act 1993 applies, to the functional currency (within the meaning of that section), and

(b) in cases in which section 92C of the Finance Act 1993 applies, to the accounts currency (within the meaning of that section).**]**

(4) Where a company has a relationship to which this section applies and—

(a) the company is the repurchaser and the first sum exceeds the second sum; or

(b) the company is the interim holder and the second sum exceeds the first sum,

the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange gain (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.

(5) Where a company has a relationship to which this section applies and—

(a) the company is the repurchaser and the second sum exceeds the first sum; or

(b) the company is the interim holder and the first sum exceeds the second sum,

the amount of the excess shall be treated for the purposes of the Corporation Tax Acts as an exchange loss (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships)) arising to the company from the relationship.

(6) Where an exchange gain or loss is treated by virtue of subsection (4) or (5) above as arising to a company from a relationship to which this section applies—

(a) Chapter 2 of Part 4 of the Finance Act 1996 shall have effect in relation to the exchange gain or loss as it would have effect if it were an exchange gain or loss (as the case may be) arising to the company from a loan relationship to which it is a party; but

(b) the only debits and credits to be brought into account for the purposes of that Chapter by virtue of this section in respect of the relationship to which this section applies are those relating to the exchange gains and losses,

and, subject to paragraph (b) above, references in the Corporation Tax Acts to a loan relationship accordingly include a reference to a relationship to which this section applies.

(7) Where a company has a relationship to which this section applies, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections

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730A, 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—

(a) in a case where an exchange gain arises to the company by virtue of subsection (4)(a) above or an exchange loss arises to the company by virtue of subsection (5)(b) above, as increased by the amount by which the first sum exceeds the second sum, and

(b) in a case where an exchange gain arises to the company by virtue of subsection (4)(b) above or an exchange loss arises to the company by virtue of subsection (5)(a) above, as reduced by the amount by which the second sum exceeds the first sum.

(8) Any question whether debits or credits brought into account in accordance with subsection (6) above in relation to any company—

(a) are to be brought into account under section 82(2) of the Finance Act 1996 (trading loan relationships); or

(b) are to be treated as non-trading debits or credits,

shall be determined (subject to Schedule 11 to that Act (insurance companies)) according to the extent (if any) to which the company is a party to the repurchase in the course of activities forming an integral part of a trade carried on by that company.

(9) To the extent that debits or credits fall to be brought into account by a company under section 82(2) of that Act in the case of a relationship to which this section applies, the company shall be regarded for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as being a party to the relationship for the purposes of a trade carried on by the company.

(10) Except where regulations under section 737E otherwise provide, this section does not apply if—

(a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or

(b) all of the benefits and risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

(11) Where—

(a) the repurchase price is more than the sale price, so that by virtue of section 730A(2)(a) a payment of interest is treated as made by the repurchaser on a deemed loan from the interim holder; but

(b) the payment of interest is treated as made to a person other than the interim holder,

references to the "interim holder" in subsections (1), (4) and (5) above shall be read as references to the person to whom the payment of interest is treated as made.

(12) [F4776]. . . . . .

(13) Expressions used in this section and in section 730A have the same meaning in this section as in that section.**]**

Textual Amendments

F4770 S. 730BB inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 12**

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F4771 Words in s. 730BB(2)(c) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 78(2)**

F4772 Words in s. 730BB(3)(a) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 78(3)(a)**

F4773 Words in s. 730BB(3)(b) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 78(3)(c)**

F4774 Words in s. 730BB(3)(c)(i)(ii) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 78(3)(c)**

F4775 S. 730BB(3A) inserted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 78(4)**

F4776 S. 730BB(12) repealed (with effect in accordance with s. 52(3) of the repealing Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), Sch. 10 para. 78(5), **Sch. 42 Pt. 2(6)**, Note 1

[F4777 730C Exchanges of gilts: traders etc.

F4778 . . . . . .]

Textual Amendments

F4777 S. 730C inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 7**

F4778 S. 730C repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 301, **Sch. 3** (with Sch. 2)

Purchase and sale of securities

731 Application and interpretation of sections 732 to 734.

M979 (1) In this section "the relevant provisions" means sections 732, 733, 734 and this section.

(2) **[**F4779 Subject to subsections (2A) to (10) below**]**, the relevant provisions **[**F4780 apply**]** to cases of a purchase by a person ("the first buyer") of any securities and their subsequent sale by him, the result of the transaction being that interest becoming payable in respect of the securities ("the interest") is receivable by the first buyer.

[F4781 (2A) The relevant provisions do not apply where the first buyer is required under the arrangements for the purchase of the securities to make to the person from whom he purchased the securities, not later than the date on which he subsequently sells the securities, a payment of an amount representative of the interest, or is treated by virtue of section 737A(5) as required to make such a payment.**]**

[F4782 (2B) Subject to subsection (2E) below, where there is a repo agreement in relation to any securities—

(a) neither—

(i) the purchase of the securities by the interim holder from the original owner, nor

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(ii) the repurchase of the securities by the original owner,

shall be a purchase of those securities for the purposes of subsection (2) above; and

(b) neither—

(i) the sale of the securities by the original owner to the interim holder, nor

(ii) the sale by the interim holder under which the securities are bought back by the original owner,

shall be taken for the purposes of subsection (2) above to be a subsequent sale of securities previously purchased by the seller.

(2C) Accordingly, where there is a repo agreement, the securities repurchased by the original owner shall be treated for the purposes of subsection (2) above (to the extent that that would not otherwise be the case) as if they were the same as, and were purchased by the original owner at the same time as, the securities sold by him to the interim holder.

(2D) For the purposes of subsections (2B) and (2C) above there is a repo agreement in relation to any securities if there is an agreement in pursuance of which a person ("the original owner") sells the securities to another ("the interim holder") **[**F4783and the original owner—

(a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement,

(b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises, or

(c) under that agreement or any related agreement, is entitled**]**, in pursuance of any obligation arising on a person's becoming entitled to receive an amount in respect of the redemption of those securities, to receive from the interim holder an amount equal to the amount of the entitlement.

(2E) Subsections (2B) and (2C) above do not apply if—

(a) the agreement or agreements under which the arrangements are made for the sale and repurchase of the securities are not such as would be entered into by persons dealing with each other at arm's length; or

(b) any of the benefits or risks arising from fluctuations, before the securities are repurchased, in the market value of the securities in question accrues to or falls on the interim holder.

(2F) Section 730B applies for the purposes of subsections (2B) to (2E) above as it applies for the purposes of section 730A.**]**

(3) The relevant provisions do not **[**F4784apply**]** where—

(a) the time elapsing between the purchase by the first buyer and his taking steps to dispose of the securities exceeded six months, or

(b) that time exceeded one month and **[**F4785the purchase and sale were each effected at the current market price, and**]** the sale was not effected in pursuance of an agreement or arrangement made before or at the time of the purchase.

F4786 . . . . . .

(4) The reference in subsection (3) above to the first buyer taking steps to dispose of the securities shall be construed—

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(a) if he sold them in the exercise of an option he had acquired, as a reference to his acquisition of the option,

(b) in any other case, as a reference to his selling them.

[F4787(4A) For the purposes of subsection (3) above, where a purchase or sale is effected as a direct result of the exercise of a qualifying option, it shall be treated as effected at the current market price if the terms under which the first buyer acquired the option, or, as the case may be, became subject to it, were arm's length terms.

(4B) For the purposes of subsection (4A) above an option is a "qualifying option" if it would be a traded option or financial option as defined in subsection **[**F4788(8) of section 144 of the 1992 Act**]]** were the reference in paragraph (b) of that subsection to the time of the abandonment or other disposal a reference to the time of exercise.

(4C) In subsection (4A) above the reference to arm's length terms is to terms—

(a) agreed between persons dealing at arm's length, or

(b) not so agreed, but nonetheless such as might reasonably be expected to have been agreed between persons so dealing.

(5) For the purposes of the relevant provisions, a sale of securities similar to, and of the like nominal amount as, securities previously bought ("the original securities") shall be equivalent to a sale of the original securities, and subsection (4) above shall apply accordingly; and where the first buyer bought parcels of similar securities at different times a subsequent sale of any of the securities shall, so far as may be, be related to the last to be bought of the parcels, and then to the last but one, and so on.

(6) A person shall be under no greater liability to tax by virtue of subsection (5) above than he would have been under if instead of selling the similar securities he had sold the original securities.

(7) Where at the time when a trade is, or is deemed to be, set up and commenced **[**F4789, or when a trade is subject to a relevant change,**]** any securities form part of the trading stock belonging to the trade, those securities shall be treated for the purposes of this section—

(a) as having been sold at that time in the open market by the person to whom they belonged immediately before that time, and

(b) as having been purchased at that time in the open market by the person thereafter engaged in carrying on the trade.

[F4790(7A) For the purposes of subsection (7) above a trade is subject to a relevant change—

(a) when there is a change in the persons carrying on the trade which involves all of the persons carrying it on before the change permanently ceasing to carry it on, or

(b) when a company starts to be within the charge to income tax under Chapter 2 of Part 2 of ITTOIA 2005 in respect of the trade.**]**

(8) Subject to subsection (7) above, where there is a change in the persons engaged in carrying on a trade which is not a change on which the trade is deemed to be discontinued, the provisions of this section shall apply in relation to the person so engaged after the change as if anything done to or by his predecessor had been done to or by him.

(9) M980For the purposes of the relevant provisions—

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"interest" includes a qualifying distribution and any dividend which is not a qualifying distribution F4791. . . ;

"person" includes any body of persons, and references to a person entitled to any exemption from tax include, in a case of an exemption expressed to apply to income of a trust or fund, references to the persons entitled to make claims for the granting of that exemption;

"securities" includes stocks and shares, except securities which are securities for the purposes of sections 710 to 728.

[F4792(9A) In applying references in the relevant provisions to interest in relation to a qualifying distribution F4793. . . —

(a) "gross interest" means the qualifying distribution together with the tax credit to which the recipient of the distribution is entitled in respect of it, and

(b) "net interest" means the qualifying distribution exclusive of any such tax credit.

(9B) F4794. . . . . .

(9C) F4794. . . . . .

(9D) F4794. . . . . .**]**

(10) For the purposes of the relevant provisions, securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and for the purposes of this subsection, rights guaranteed by the Treasury shall be treated as rights against the Treasury.

Textual Amendments

F4779 Words in s. 731(2) substituted (with effect in accordance with s. 81(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 81(3)(a)**

F4780 Word in s. 731(2) substituted (with effect in accordance with s. 81(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 81(3)(a)**

F4781 S. 731(2A) inserted (with effect in accordance with s. 81(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 81(2)**

F4782 S. 731(2B)-(2F) inserted (with application in accordance with s. 77(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 77(1)**

F4783 Words in s. 731(2D) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 6**

F4784 Word in s. 731(3) substituted (with effect in accordance with s. 81(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 81(3)(b)**

F4785 Words in s. 731(3)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 36(a)**

F4786 Words in s. 731(3) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 36(b), **Sch. 41 Pt. 5(10)**, Note

F4787 S. 731(4A)(4B)(4C) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 55(1)(2)**

F4788 Words in s. 731(4B) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(40)** (with ss. 60, 101(1), 171, 201(3))

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F4789 Words in s. 731(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 302(a)** (with Sch. 2)
F4790 S. 731(7A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 302(b)** (with Sch. 2)
F4791 S. 731(9): words in definition of "interest" repealed (3.5.1994) by Finance Act 1994 (c. 9), Sch. 16 para. 17(2), **Sch. 26 Pt. 5(16)**
F4792 S. 731(9A)-(9D) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 17(3)**
F4793 Words in s. 731(9A) repealed (with effect in accordance with Sch. 6 para. 14(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch 6 para. 14(2), **Sch. 8 Pt. 2(11)**, Note
F4794 S. 731(9B)-(9D) repealed (with effect in accordance with Sch. 6 para. 14(4) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch 6 para. 14(3), **Sch. 8 Pt. 2(11)**, Note

Modifications etc. (not altering text)
C734 *See* s.343—*company reconstruction without change of ownership.*

Marginal Citations
M979 Source—1970 s.471(1)-(5)
M980 Source—1970 s.471(6); 1973 sch.11 6; 1986 Sch.18 2(1)

732 Dealers in securities.

M981(1) Subject to the provisions of this section, if the first buyer is engaged in carrying on a trade which consists of or comprises dealing in securities, then, in computing for any of the purposes of the Tax Acts the profits arising from or loss sustained in the trade, the price paid by him for the securities shall be reduced by the appropriate amount in respect of the interest, as determined in accordance with section 735.

[F4795(1A) Subsection (1) above shall not apply if the interest receivable by the first buyer falls to be taken into account **[**F4796either—

(a) by virtue of section 366(1) of ITTOIA 2005 in computing profits chargeable to income tax under Chapter 2 of Part 2 of that Act, or

(b) by virtue of section 95(1) of this Act in computing profits chargeable to corporation tax in accordance with the provisions of this Act applicable to Case I or II of Schedule D.**]]**

(2) F4797. . . . . .

[F4798(2A) F4797. . . . . .**]**

(3) F4799. . . . . .

(4) Subsection (1) above shall not apply if the securities are overseas securities bought by the first buyer F4800. . . in the ordinary course of his trade as a dealer in securities and the following conditions are satisfied, namely—

(a) the interest is brought into account in computing for the purposes of the Tax Acts the profits arising from or loss sustained in the trade, and

(b) where credit against tax would fall to be allowed in respect of the interest under section 788 or 790, the first buyer elects that credit shall not be so allowed.

[F4801In this subsection "overseas securities" means securities issued—

(a) by a government or public or local authority of a territory outside the United Kingdom; or

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(b) by any other body of persons not resident in the United Kingdom.**]**

(5) F4802. . . . . .

[F4803(5A) F4802. . . . . .**]**

(6) F4802. . . . . .

[F4804(7) F4802. . . . . .**]**

Textual Amendments

F4795 S. 732(1A) inserted (with effect in accordance with s. 26(8) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 26(2)**

F4796 Words in s. 732(1A) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 303** (with Sch. 2)

F4797 S. 732(2)(2A) repealed (with effect in accordance with s. 26(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 26(3), **Sch. 8 Pt. 2(8)**, Note 2

F4798 S. 732(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 56(1)**

F4799 S. 732(3) repealed (with effect in accordance with s. 159(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(21)**, Note; S.I. 1996/2646, **art. 2**

F4800 Words in s. 732(4) repealed (with effect in accordance with s. 26(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 26(3), **Sch. 8 Pt. 2(8)**, Note 2

F4801 S. 732(4): definition of "overseas securities" substituted (with effect in accordance with s. 26(8) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 26(5)**

F4802 S. 732(5)-(7) repealed (with effect in accordance with s. 26(8) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 26(6)(7), **Sch. 8 Pt. 2(8)**, Note 2

F4803 S. 732(5A) inserted (retrospectively) by Finance Act 1990 (c. 29), **s.53(1)**

F4804 S. 732(7) added by Finance Act 1991 (c. 31, SIF 63:1), **s. 56(2)**

Marginal Citations

M981 Source—1970 s.472; 1982 s.57; 1986 Sch.18 1, 3

733 Persons entitled to exemptions.

M982(1) If the first buyer is entitled under any enactment to an exemption from tax which, apart from this subsection, would extend to the interest, then the exemption shall not extend to an amount equal to the appropriate amount in respect of the interest, as determined in accordance with section 735.

(2) If the first buyer is so entitled and any annual payment is payable by him out of the interest, the annual payment shall be deemed as to the whole thereof to be paid out of profits or gains not brought into charge to income tax, and section 349(1) shall apply accordingly.

Marginal Citations

M982 Source—1970 s.473

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734 Persons other than dealers in securities.

M983(1) If the first buyer carries on a trade not falling within section 732, then in ascertaining whether any or what repayment of income tax is to be made to him under section 380 or 381 by reference to any loss sustained in the trade and the amount of his income for the year of assessment his income for which includes the interest, there shall be left out of account—

(a) the appropriate amount in respect of the interest, as determined in accordance with section 735, and

(b) any tax paid on that amount.

(2) Where the first buyer is a company which does not carry on a trade falling within section 732—

(a) the appropriate amount in respect of the interest, as determined in accordance with section 735(2), and

(b) any tax paid in respect of or deducted from that amount,

shall be disregarded except that, for the purposes of corporation tax on chargeable gains, the appropriate proportion of the net interest receivable by the first buyer as mentioned in section 735(2) shall be treated as if it were a capital distribution within the meaning of section **[**F4805122(5)(b) of the 1992 Act**]** received in respect of the holding of the securities concerned.

(3) In applying references in this section to interest in relation to a qualifying distribution, references to any tax paid on or in respect of an amount shall be construed as references to so much of any related tax credit as is attributable to that amount; and for this purpose "related tax credit", in relation to an amount, means the tax credit to which the recipient of the distribution of which that amount is a proportion is entitled.

Textual Amendments

F4805 Words in s. 734(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(41)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M983 Source—1970 s.474; 1973 Sch.11 7; 1979(C) Sch.7; 1978 s.30(7)

735 Meaning of "appropriate amount in respect of" interest.

M984(1) For the purposes of section 732 the appropriate amount in respect of the interest is the appropriate proportion of the net interest receivable by the first buyer.

(2) For the purposes of sections 733 and 734 the appropriate amount in respect of the interest is the gross amount corresponding with the appropriate proportion of the net interest receivable by the first buyer.

(3) For the purposes of this section the appropriate proportion **[**F4806, in relation to securities listed in the Official List of the Stock Exchange,**]** is the proportion which—

(a) the period beginning with the date on which the securities were **[**F4807, in accordance with announcements made by The Stock Exchange, first to be dealt in without carrying rights to**]** the interest payment last payable before

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the interest receivable by the first buyer, and ending with the day before the day on which the first buyer bought the securities, bears to—

(b) the period beginning with that date and ending with the day before the first date after the purchase by the first buyer on which the securities are **[**F4808, in accordance with such announcements, first to be dealt in without carrying rights to**]** the interest receivable by the first buyer.

(4) Where the interest receivable by the first buyer was the first interest payment payable in respect of the securities, paragraphs (a) and (b) of subsection (3) above shall have effect with the substitution, for references to the date on which the securities were first **[**F4809to be dealt in**]** as mentioned in paragraph (a), of the beginning of the period for which the interest was payable; except that where the capital amount of the securities was not fully paid at the beginning of that period and one or more instalments of capital were paid during that period—

(a) the interest shall be treated as divided into parts, calculated by reference to the amount of the interest attributable to the capital paid at or before the beginning of that period and the amount thereof attributable to each such instalment, and

(b) treating each of those parts as interest payable for that period or, where the part was calculated by reference to any such instalment, as interest payable for the part of that period beginning with the payment of the instalment, there shall be calculated, in accordance with the preceding provisions of this section, the amount constituting the appropriate proportion of each part, and

(c) the appropriate proportion of the interest for the purposes of this section shall be the proportion thereof constituted by the sum of those amounts.

(5) In relation to securities not listed in the **[**F4810Official List of The Stock Exchange**]**, subsection (3) above shall have effect **[**F4811as it has effect in relation to securities which are so listed but**]** with the substitution for the periods therein mentioned of such periods as in the opinion of the Commissioners having jurisdiction in the matter, correspond therewith in the case of the securities in question.

Textual Amendments

F4806 Words in s. 735(3) inserted (with effect in accordance with Sch. 38 para 9(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 9(1)(a)**

F4807 Words in s. 735(3)(a) substituted (with effect in accordance with Sch. 38 para. 9(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 9(1)(b)**

F4808 Words in s. 735(3)(b) substituted (with effect in accordance with Sch. 38 para. 9(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 9(1)(c)**

F4809 Words in s. 735(4) substituted (with effect in accordance with Sch. 38 para, 9(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 9(2)**

F4810 Words in s. 735(5) substituted (with effect in accordance with Sch. 38 para. 9(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 9(3)(a)**

F4811 Words in s. 735(5) inserted (with effect in accordance with Sch. 38 para. 9(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 9(3)(b)**

Marginal Citations

M984 Source—1970 s.475; 1973 Sch.21 7

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Miscellaneous provisions relating to securities

736 Company dealing in securities: distribution materially reducing value of holding.

M985(1) Subsection (2) below applies where a company has, as a dealing company, a holding in another company resident in the United Kingdom (being a body corporate), and—

(a) the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in that company, and

(b) a distribution is, or two or more distributions are, made in respect of the holding, and

(c) the value (at any accounting date or immediately before realisation or appropriation) of any security comprised in the holding is materially reduced below the value of the security at the time when it was acquired, and the whole or any part of this reduction is attributable to any distribution falling within paragraph (b) above;

and in relation to any security comprised in the holding, the company having the holding is in subsection (2) below referred to as "the dealing company" and so much of any reduction in the value of the security as is attributable to any distribution falling within paragraph (b) above is in that subsection referred to as "the relevant reduction".

(2) Where this subsection applies, an amount equal to the relevant reduction in the value of a security comprised in the holding—

(a) shall, if and so long as the security is not realised or appropriated as mentioned below, be added to the value of the security for the purposes of any valuation;

(b) shall be treated, on any realisation of the security in the course of trade, as a trading receipt of the dealing company or, in the event of a partial realisation, shall be so treated to an appropriate extent, and

(c) shall be treated as a trading receipt of the dealing company if the security is appropriated in such circumstances that a profit on the sale of the security would no longer form part of the dealing company's trading profits.

(3) References in this section to a holding in a company refer to a holding of securities by virtue of which the holder may receive distributions made by the company, but so that—

(a) a company's holdings of different classes in another company shall be treated as separate holdings, and

(b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(4) For the purposes of subsection (2) above—

(a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and

(b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class;

and section 839 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words " or to acquire a holding in ".

(5) Where this section applies in relation to a distribution which consists of or includes interest to which section 732 applies, any reduction under that section in the price paid

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for the securities in respect of which the distribution is made shall be adjusted in such manner as seems appropriate to the Board to take account of subsection (2) above.

(6) For the purposes of this section "security" includes a share or other right and a company is a "dealing company" in relation to a holding if a profit on a sale of the holding would be taken into account in computing the company's trading profits.

Modifications etc. (not altering text)
C735 *See* s.237—*disallowance of reliefs in respect of bonus issues etc.*

Marginal Citations
M985 Source—1970 s.476

[F4812 736A Manufactured dividends and interest.

Schedule 23A to this Act shall have effect in relation to certain cases where under a contract or other arrangements for the transfer of shares or other securities a person is required to pay to the other party an amount representative of a dividend or payment of interest on the securities.]

Textual Amendments
F4812 S. 736A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 58(1)** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2(a)**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(a), 4(1))

[F4813 736B Deemed manufactured payments in the case of stock lending arrangements.

(1) This section applies where—

(a) any interest on securities transferred by the lender under a stock lending arrangement is paid, as a consequence of the arrangement, to a person other than the lender; and

(b) no provision is made for securing that the lender receives payments representative of that interest.

(2) Where this section applies, Schedule 23A and the provisions for the time being contained in any regulations under that Schedule shall apply [F4814, subject to subsection (2A) below,] as if—

(a) the borrower were required under the stock lending arrangement to pay the lender an amount representative of the interest mentioned in subsection (1)(a) above;

(b) a payment were made by the borrower in discharge of that requirement; and

(c) that payment were made on the same date as the payment of the interest of which it is representative.

F4815 [(2A) The borrower is not entitled, by virtue of anything in Schedule 23A or any provision of regulations under that Schedule, or otherwise—

(a) to any deduction in computing profits or gains for the purposes of income tax or corporation tax, or

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(b) to any deduction against total income or, as the case may be, total profits,

in respect of any such deemed requirement or payment as is provided for by subsection (2) above.

Where the borrower is a company, an amount may not be surrendered by way of group relief if a deduction in respect of it is prohibited by this subsection.**]**

(3) In this section—

"interest" includes dividends; and

"stock lending arrangement" and "securities" have the same meanings as in section 263B of the 1992 Act.**]**

Textual Amendments

F4813 S. 736B inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 3**; S.I. 1997/991, **art. 2**

F4814 Words in s. 736B(2) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 84(2)**

F4815 S. 736B(2A) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 84(3)**

VALID FROM 19/07/2006

[F4816 736C Deemed interest: cash collateral under stock lending arrangements

(1) This section applies where—

(a) the borrower under a stock lending arrangement is treated under section 736B(2) as paying under that arrangement an amount representative of interest on any securities ("the relevant securities"),

(b) an amount of money ("cash collateral") is payable to or for the benefit of the lender for the purpose of securing the discharge of the requirement to transfer the relevant securities back to the lender,

(c) the stock lending arrangement is designed to produce a return to the borrower which equates, in substance, to the return on an investment of money at interest, and

(d) the main purpose, or one of the main purposes, of the stock lending arrangement is the obtaining of a tax advantage.

(2) Where this section applies—

(a) the Tax Acts are to apply as if the borrower receives an amount of interest payable in respect of the cash collateral, and

(b) the amount of the interest is calculated in accordance with the following provisions of this section (see, in particular, subsections (3) to (7)).

(3) The interest is treated for the purposes of the Tax Acts as if it were received on the date ("the return date") on which the borrower transfers the relevant securities back to the lender.

(4) The interest is treated for the purposes of the Tax Acts as if it were payable in respect of the period ("the interest period")—

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(a) beginning with the date on which the lender transfers the relevant securities to the borrower, and

(b) ending with the return date.

(5) The rate of interest payable in respect of the cash collateral is a rate that is reasonably comparable to the rate that the borrower could obtain by placing the cash collateral on deposit for the interest period.

(6) For the purposes of this section, the amount of the cash collateral on which the interest is payable is taken to be—

(a) in any case where the amount of the cash collateral varies at any time on or before the return date, the highest amount of the cash collateral at any time on or before the return date, and

(b) in any other case, the amount of the cash collateral as at the return date.

(7) The amount of the interest which the borrower is treated as receiving in respect of the cash collateral for the interest period is reduced (but not below nil) by any interest which the borrower actually receives in respect of that collateral for that period.

(8) If the borrower is a person within the charge to income tax, the interest which the borrower is treated as receiving is charged to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest).

(9) If the borrower is a company within the charge to corporation tax—

(a) the interest which the borrower is treated as receiving is treated for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) as payable to it on a money debt,

(b) that money debt is treated for those purposes as a relationship to which section 100 of the Finance Act 1996 applies (money debts etc not arising from the lending of money), and

(c) the credits to be brought into account for those purposes in respect of the interest must be determined using an amortised cost basis of accounting.

(10) The fact that the borrower is treated as receiving an amount of interest is not to be taken as implying that the interest is payable by the lender or any other person.

(11) For the purposes of this section—

"money" includes money expressed in a currency other than sterling,

"stock lending arrangement" and "securities" have the same meanings as in section 263B of the 1992 Act,

"tax advantage" has the meaning given by section 709(1).

(12) For the purposes of this section—

(a) any reference to the transfer of securities back has the same meaning as in section 263B of the 1992 Act (see, in particular, sections 263B(5) and 263C(1) of that Act), but

(b) if it becomes apparent that the borrower will not comply with the requirement to transfer any securities back, the borrower is treated as if he transfers them back on the date on which it becomes so apparent.

(13) For the purposes of this section it does not matter—

(a) whether the cash collateral is payable by the borrower or by any other person,

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(b) whether the cash collateral is payable under the stock lending arrangement or under any other arrangement,

(c) whether collateral in another form is also provided in connection with the stock lending arrangement.

[See section 736D—

F4817(14) (a) for provision treating certain arrangements as stock lending arrangements for the purposes of this section, and

(b) for provision treating certain amounts as cash collateral for those purposes.**]]**

Textual Amendments

F4816 S. 736C inserted (with effect in accordance with Sch. 6 para. 3(2)-(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 3(1)**

F4817 S. 736C(14) inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 4(2)**

VALID FROM 19/07/2006

[F4818736D Quasi-stock lending arrangements and quasi-cash collateral

(1) In this section "quasi-stock lending arrangement" means so much of any arrangements between two or more persons as are not stock lending arrangements, but are arrangements under which—

(a) a person ("the lender") transfers securities to another person ("the borrower"), and

(b) a requirement is imposed on a person to transfer any or all of the securities, or any other property, back to the lender or any other person,

and it does not matter whether the person on whom that requirement is imposed is the borrower or any other person.

(2) In this section "quasi-cash collateral", in relation to any stock lending arrangement or quasi-stock lending arrangement, means—

(a) any money which is payable for a relevant purpose, plus

(b) any other property which is transferable for a relevant purpose.

(3) Money or other property is payable or transferable for a relevant purpose if it is payable or transferable to or for the benefit of—

(a) the lender under the stock lending arrangement or quasi-stock lending arrangement, or

(b) a person connected with that lender,

for the purpose of securing the discharge of the requirement to transfer any or all of the securities, or any other property, back to that lender or any other person.

(4) For the purposes of sections 736B and 736C, a quasi-stock lending arrangement is treated as if it were a stock lending arrangement.

(5) For the purposes of section 736C, in relation to any stock lending arrangement or quasi-stock lending arrangement,—

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(a) quasi-cash collateral is treated as if it were cash collateral, and

(b) the amount of the quasi-cash collateral in relation to the stock lending arrangement or quasi-stock lending arrangement is taken to be the amount of the cash collateral.

(6) If any property other than money is transferable for a relevant purpose, the amount of the quasi-cash collateral so far as relating to that property is determined by reference to its market value.

(7) In any case where—

(a) section 736C applies in relation to a quasi-stock lending arrangement, and

(b) the person for whom the tax advantage was designed to be obtained is a person ("the other person") other than the borrower under that arrangement,

that section has effect as if the other person were the person who receives the amount of interest mentioned in that section.

(8) In any case where section 736C applies in relation to a quasi-stock lending arrangement—

(a) any reference in that section to cash collateral being payable to or for the benefit of the lender includes its being payable to or for the benefit of a person connected with the lender,

(b) the reference in subsection (1)(c) of that section to a return to the borrower includes a return to any other person, and

(c) any reference in that section to the transfer back of the relevant securities by the borrower to the lender includes the transfer back of any or all of the securities, or any other property, by any person to the lender or any other person.

(9) Section 839 (connected persons) applies for the purposes of this section.

(10) In this section—

"money" includes money expressed in a currency other than sterling,

"property" means property in any form,

"stock lending arrangement" and "securities" have the same meaning as in section 263B of the 1992 Act,

"transfer" means a transfer otherwise than by way of sale.**]**

Textual Amendments

F4818 S. 736D inserted (with effect in accordance with Sch. 6 para. 4(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 4(3)**

737 Manufactured dividends: treatment of tax deducted.

F4819 . . . . . .

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Textual Amendments

F4819 S. 737 repealed (with effect in accordance with Sch. 10 para. 16(1), Sch. 18 Pt. 6(10) Notes 3, 6 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 8, **Sch. 18 Pt. 6(10)** (with Sch. 10 para. 16(3)); S.I. 1997/991, **art. 2**

[F4820 737A Sale and repurchase of securities: deemed manufactured payments.

(1) This section applies where on or after the appointed day a person (the transferor) agrees to sell any securities, **[**F4821 and the transferor or a person connected with him—

(a) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or

(b) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises;**]**

but this section does not apply unless **[**F4822 either the conditions set out in subsection (2) below or the conditions set out in subsection (2A) below**]** are fulfilled.

(2) The **[**F4823 first set of conditions referred to in subsection (1) above**]** are that—

(a) as a result of the transaction, a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,

(b) F4824 . . . . . .

(c) there is no requirement under any agreement mentioned in subsection (1) above for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and

(d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account was taken of the fact that the dividend is receivable otherwise than by the transferor.

F4825 (2A) **[** The second set of conditions referred to in subsection (1) above are that—

(a) a dividend which becomes payable in respect of the securities is receivable otherwise than by the transferor,

(b) the transferor or a person connected with him is required under any agreement mentioned in subsection (1) above to make a payment representative of the dividend,

(c) there is no requirement under any such agreement for a person to pay to the transferor on or before the relevant date an amount representative of the dividend, and

(d) it is reasonable to assume that, in arriving at the repurchase price of the securities, account is taken of the circumstances referred to in paragraphs (a) to (c).**]**

(3) For the purposes of **[**F4826 subsections (2) and (2A)**]** above the relevant date is the date when the repurchase price of the securities becomes due.

(4) Where it is a person connected with the transferor who is required to buy back the securities, or who acquires the option to buy them back, references in the following provisions of this section to the transferor shall be construed as references to the connected person.

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(5) Where this section applies, [F4827]. . . Schedule 23A and dividend manufacturing regulations shall apply as if—

(a) the relevant person were required, under the arrangements for the transfer of the securities, to pay to the transferor an amount representative of the dividend mentioned in subsection (2)(a) **[**[F4828]or (2A)(a)**]** above,

(b) a payment were made by that person to the transferor in discharge of that requirement, and

(c) the payment were made on the date when the repurchase price of the securities becomes due.

(6) In subsection (5) above "the relevant person" means—

(a) where subsection (1)(a) above applies, the person from whom the transferor is required to buy back the securities;

(b) where subsection (1)(b) above applies, the person from whom the transferor has the right to buy back the securities;

and in that subsection "dividend manufacturing regulations" means regulations under Schedule 23A (whenever made).**]**

Textual Amendments

F4820 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**

F4821 Words and paras. (a)(b) in s. 737A(1) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 7**

F4822 Words in s. 737A(1) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 2(2)**

F4823 Words in s. 737A(2) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 2(3)**

F4824 S. 737A(2)(b) repealed (with effect in accordance with s. 159(1), Sch. 41 Pt. 5(21) Note 1 of the repealing Act) by Finance Act 1996 (c. 8), s. 159(1), **Sch. 41 Pt. 5(21)**; S.I. 1996/2646, **art. 2**

F4825 S. 737A(2A) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 2(4)**

F4826 Words in s. 737A(3) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 2(5)**

F4827 Words in s. 737A(5) repealed (with effect in accordance with Sch. 18, Pt. 6(10) Notes 3, 4) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4828 Words in s. 737A(5)(a) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 2(6)**

Modifications etc. (not altering text)

C736 S. 737A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 4

C737 S. 737A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

C738 S. 737A(1) modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), **regs. 1**, 14

[[F4820]737B Interpretation of section 737A.

(1) In section 737A and this section "securities" means United Kingdom equities, United Kingdom securities or overseas securities; and—

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(a) where the securities mentioned in section 737A(1) are United Kingdom securities, references in section 737A to a dividend shall be construed as references to a periodical payment of interest;

(b) where the securities mentioned in section 737A(1) are overseas securities, references in section 737A to a dividend shall be construed as references to an overseas dividend.

(2) In this section "United Kingdom equities", "United Kingdom securities", "overseas securities" and "overseas dividend" have the meanings given by paragraph 1(1) of Schedule 23A.

(3) For the purposes of section 737A agreements are related if each is entered into in pursuance of the same arrangement (regardless of the date on which either agreement is entered into).

(4) In section 737A "the repurchase price of the securities" means—

(a) where subsection (1)(a) of that section applies, the amount which, under any agreement mentioned in section 737A(1), the transferor or connected person is required to pay for the securities bought back, or

(b) where subsection (1)(b) of that section applies, the amount which under any such agreement the transferor or connected person is required, if he exercises the option, to pay for the securities bought back.

(5) In section 737A and subsection (4) above references to buying back securities include references to buying similar securities.

(6) For the purposes of subsection (5) above securities are similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred; and "interest" here includes dividends.

(7) For the purposes of section 737A and subsection (4) above—

(a) a person who is connected with the transferor and is required to buy securities sold by the transferor shall be treated as being required to buy the securities back notwithstanding that it was not he who sold them, and

(b) a person who is connected with the transferor and acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back notwithstanding that it was not he who sold them.

(8) Section 839 shall apply for the purposes of section 737A and this section.

(9) In section 737A "the appointed day" means such day as the Treasury may by order appoint, and different days may be appointed in relation to—

(a) United Kingdom equities,

(b) United Kingdom securities, and

(c) overseas securities.**]**

Subordinate Legislation Made

P5 S. 737B(9) power exercised: 1.5.1995 appointed by S.I. 1995/1007, **art. 2**

P6 S. 737B(9) power exercised: 6.11.1996 appointed by S.I. 1996/2645, **art. 2**

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Textual Amendments

F4820 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**

[F4820 737C Deemed manufactured payments: further provisions.

(1) This section applies where section 737A applies.

(2) Subsection (3) below applies where—

(a) the dividend mentioned in section 737A(2)(a) **[**F4829 or (2A)(a)**]** is a dividend on United Kingdom equities, and

(b) by virtue of section 737A(5), F4830 . . . paragraph 2 of Schedule 23A applies, in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (3) below "the deemed manufactured dividend" means that payment.

(3) Where this subsection applies—

(a) the amount of the deemed manufactured dividend shall be taken to be an amount equal to the amount of the dividend mentioned in section 737A(2)(a) **[**F4829 or (2A)(a)**]**;

(b) the repurchase price of the securities shall be treated, for the purposes of **[**F4831 section 730A**]**, as increased by an amount equal to the F4832 . . . amount of the deemed manufactured dividend.

(4) F4833 . . . . . .

(5) F4834 . . . . . .

(6) F4834 . . . . . .

(7) Subsection (8) below applies where—

(a) the dividend mentioned in section 737A(2)(a) **[**F4829 or (2A)(a)**]** is a periodical payment of interest on United Kingdom securities, and

(b) by virtue of section 737A(5), paragraph 3 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made F4835 . . . ;

and in subsection (8) below "the deemed manufactured interest" means the payment referred to in paragraph (b) above.

(8) Where this subsection applies—

[F4836 (a) the amount which by virtue of section 737A(5) is taken to be the gross amount of the deemed manufactured payment for the purposes of paragraph 3 of Schedule 23A shall be taken to be the gross amount of the deemed manufactured interest for the purposes of this section;**]**

(b) any deduction which, by virtue of **[**F4837 that paragraph**]**, is required to be made out of the gross amount of the deemed manufactured interest shall be deemed to have been made.

(9) Where F4838 . . . subsection (8) above applies, the repurchase price of the securities shall be treated, for the purposes of **[**F4831 section 730A**]**, as increased by the gross amount of the deemed manufactured interest.

(10) Subsection (11) below applies where—

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(a) the dividend mentioned in section 737A(2)(a) **[**F4829or (2A)(a)**]** is an overseas dividend, and

(b) by virtue of section 737A(5), paragraph 4 of Schedule 23A applies in relation to the payment which is treated under section 737A(5) as having been made;

and in subsection (11) below "the deemed manufactured overseas dividend" means that payment.

(11) Where this subsection applies—

(a) the gross amount of the deemed manufactured overseas dividend shall be taken to be the amount found under paragraph 4(5)(b) and (c) of Schedule 23A;

(b) any deduction which, by virtue of paragraph 4 of Schedule 23A, is required to be made out of the gross amount of the deemed manufactured overseas dividend shall be deemed to have been made;

(c) the repurchase price of the securities shall be treated, for the purposes of **[**F4831section 730A**]**, as increased by the gross amount of the deemed manufactured overseas dividend.

[F4839(11A) The deemed increase of the repurchase price which is made for the purposes of section 730A by subsection (3)(b), (9) or (11)(c) above shall also have effect—

(a) for all the purposes of the Tax Acts, other than section 737A, and

(b) in cases where section 263A of the 1992 Act does not apply, for the purposes of the 1992 Act,

wherever in consequence of that increase there is for the purposes of section 730A no difference between the sale price and the repurchase price **[**F4840or where that section is prevented from applying by subsection (8) of that section.**]]**

[F4841(11B) **[** F4842. . . . . .**]**

(12) In this section—

(a) "United Kingdom equities", "United Kingdom securities" and "overseas dividend" have the meanings given by paragraph 1(1) of Schedule 23A;

(b) "the repurchase price of the securities" shall be construed in accordance with section 737B(4).**]**

Textual Amendments

F4820 Ss. 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**

F4829 Words in s. 737C inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 3**

F4830 Words in s. 737C(2)(b) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Notes 3, 4 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4831 Words in s. 737C(3)(b)(9)(11)(c) substituted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(3)**

F4832 Word in s. 737C(3)(b) repealed (with effect in accordance with Sch. 38 para. 21(1) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 38 para. 1(a), **Sch. 43 Pt. 3(15)**, Note 1

F4833 S. 737C(4) repealed (with effect in accordance with Sch. 38 para. 21(1) of the repealing Act) by Finance Act 2003 (c. 14), Sch. 38 para. 1(b), **Sch. 43 Pt. 3(15)**, Note 1

F4834 S. 737C(5)(6) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

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F4835 Words in s. 737C(7)(b) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Notes 3, 4 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4836 S. 737C(8)(a) substituted (with effect in accordance with Sch. 10 para. 16(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 11(2)** (with Sch. 10 para. 16(3))

F4837 Words in s. 737C(8)(b) substituted (with effect in accordance with Sch. 10 para. 16(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 11(2)** (with Sch. 10 para. 16(3))

F4838 Words in s. 737C(9) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Notes 3, 4 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4839 S. 737C(11A) inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(3)**

F4840 Words in s. 737C(11A) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 17**

F4841 S. 737C(11B) inserted (with effect in accordance with s. 159(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 159(3)**; S.I. 1996/2646, **art. 2**

F4842 S. 737C(11B) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

Modifications etc. (not altering text)

C739 S. 737C applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), **regs. 1**, 5

C740 S. 737C modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 139(1)(5)**

Supplemental

[F4843 737D Power to provide for manufactured payments to be eligible for relief.

(1) The Treasury may by regulations provide for any manufactured payment made to any person to be treated, in such circumstances and to such extent as may be described in the regulations, as comprised in income of that person that is eligible for relief from tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(2) In this section "manufactured payment" means any F4844 . . . manufactured interest or manufactured overseas dividend, within the meaning of Schedule 23A.]

Textual Amendments

F4843 Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 83(1)**

F4844 Words in s. 737D(2) repealed (with effect in accordance with s. 102(10) of the repealing Act) by Finance Act 1998 (c. 36), s. 102(3), **Sch. 27 Pt. 3(24)**, Note

[F4843 737E [F4845 Power to modify sections 727A, 730A, 730BB and 737A to 737C]

(1) The Treasury may by regulations make provision for all or any of sections 727A, 730A [F4846, 730BB] and 737A to 737C to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where—

(a) the obligation to make the repurchase is not performed or the option to repurchase is not exercised;

(b) provision is made by or under any agreement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;

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(c) provision is made by or under any agreement for any securities to be treated as not included with securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;

(d) provision is made by or under any agreement for the sale price or repurchase price to be determined or varied wholly or partly by reference to fluctuations, occurring in the period after the making of the agreement for the original sale, in the value of securities transferred in pursuance of that sale, or in the value of securities treated as representing those securities; or

(e) provision is made by or under any agreement for any person to be required, in a case where there are any such fluctuations, to make any payment in the course of that period and before the repurchase price becomes due.

(2) The Treasury may by regulations make provision for all or any of sections 727A, 730A **[**F4846, 730BB**]** and 737A to 737C to have effect with modifications in relation to cases where—

(a) arrangements, corresponding to those made in cases involving an arrangement for the sale and repurchase of securities, are made by any agreement, or by one or more related agreements, in relation to securities that are to be redeemed in the period after their sale; and

(b) those arrangements are such that the person making the sale or a person connected with him (instead of being required to repurchase the securities or acquiring an option to do so) is granted rights in respect of the benefits that will accrue from their redemption.

(3) The Treasury may by regulations provide that section 730A **[**F4847or 730BB**]** is to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where there is an agreement relating to the sale or repurchase which is not such as would be entered into by persons dealing with each other at arm's length.

(4) The powers conferred by subsections (1) and (2) above shall be exercisable in relation to section 263A **[**F4848or 263D**]** of the 1992 Act as they are exercisable in relation to section 730A of this Act.

(5) Regulations made for the purposes of this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate.

(6) The supplementary, incidental and consequential provision that may be made by regulations under this section shall include—

(a) in the case of regulations relating to section 730A, provision modifying subsections (3)(b), (9), (11)(c) and (11A) of section 737C; and

(b) in the case of regulations relating to section 263A **[**F4849or 263D**]** of the 1992 Act, provision modifying the operation of that Act in relation to cases where by virtue of the regulations any acquisition or disposal is excluded from those which are to be disregarded for the purposes of capital gains tax.

(7) In this section "modifications" includes exceptions and omissions; and any power under this section to provide for an enactment to have effect with modifications in any case shall include power to provide for it not to apply (if it otherwise would do) in that case.

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(8) References in this section to a case involving an arrangement for the sale and repurchase of securities are references to any case where—

(a) a person makes a sale of any securities under any agreement ("the original sale"); and

[F4850(b) that person or a person connected with him—

(i) is required to buy them back in pursuance of an obligation imposed by, or in consequence of the exercise of an option acquired under, that agreement or any related agreement, or

(ii) acquires an option to buy them back under that agreement or any related agreement which he subsequently exercises.**]**

(9) Section 730B shall apply for the purposes of this section as it applies for the purposes of section 730A.**]**

Textual Amendments

F4843 Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 83(1)**

F4845 S. 737E sidenote substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by virtue of Finance Act 2003 (c. 14), **Sch. 38 para. 13(4)**

F4846 Words in s. 737E(1)(2) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 13(2)**

F4847 Words in s. 737E(3) inserted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 13(3)**

F4848 Words in s. 737E(4) inserted (with effect in accordance with Sch. 24 para. 3(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 3(2)(a)**

F4849 Words in s. 737E(6)(b) inserted (with effect in accordance with Sch. 24 para. 3(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 3(2)(b)**

F4850 S. 737E(8)(b) substituted (with effect in accordance with Sch. 38 para. 21(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 38 para. 8**

738 Power to amend sections 732, 735 and 737.

(1) M986The Board may by regulations provide for all or any of the following—

(a) F4851. . . . . .

(b) F4851. . . . . .

(c) that for section 735(3) and (5) (which refer to the Stock Exchange Daily Official List) there shall be substituted such provisions as the Board think fit to take account of recognised investment exchanges.

Regulations under this subsection shall apply where the subsequent sale is carried out by the first buyer on or after such day as is specified in the regulations.

F4852(2) . . . . . .

(3) F4853. . . . . .

(4) F4853. . . . . .

(5) M987In this section "recognised investment exchange"**[**F4854has the meaning given by section 285(1)(a) of the Financial Services and Markets Act 2000**]**.

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Textual Amendments

F4851 S. 738(1)(a)(b) repealed (with effect in accordance with s. 26 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 8 Pt. 2(7)**, Note 2

F4852 S. 738(2) repealed (with effect as mentioned in s. 58(3) of the repealing Act) by Finance Act 1991 (c. 31, SIF 63:1), ss. 58(2), 123, Sch. 13 para. 4, **Sch. 19 Pt. V**, Note 9; S.I. 1992/1346, **reg. 5**

F4853 S. 738(3)(4) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F4854 Words in s. 738(5) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 43**

Marginal Citations

M986 Source—1986 Sch.18 4

M987 Source—1986 Sch.18 10(2)

CHAPTER III

TRANSFER OF ASSETS ABROAD

739 Prevention of avoidance of income tax.

M988(1) Subject to section 747(4)(b), the following provisions of this section shall have effect for the purpose of preventing the avoiding by individuals ordinarily resident in the United Kingdom of liability to income tax by means of transfers of assets by virtue or in consequence of which, either alone or in conjunction with associated operations, income becomes payable to persons resident or domiciled outside the United Kingdom.

[F4855(1A) Nothing in subsection (1) above shall be taken to imply that the provisions of subsections (2) and (3) below apply only if—

(a) the individual in question was ordinarily resident in the United Kingdom at the time when the transfer was made; or

(b) the avoiding of liability to income tax is the purpose, or one of the purposes, for which the transfer was effected.**]**

(2) Where by virtue or in consequence of any such transfer, either alone or in conjunction with associated operations, such an individual has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a person resident or domiciled outside the United Kingdom which, if it were income of that individual received by him in the United Kingdom, would be chargeable to income tax by deduction or otherwise, that income shall, whether it would or would not have been chargeable to income tax apart from the provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

(3) Where, whether before or after any such transfer, such an individual receives or is entitled to receive any capital sum the payment of which is in any way connected with the transfer or any associated operation, any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a person resident or domiciled outside the United Kingdom shall, whether it would or would not have been chargeable to income tax apart from the

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provisions of this section, be deemed to be income of that individual for all purposes of the Income Tax Acts.

(4) In subsection (3) above "capital sum" means, subject to subsection (5) below—

(a) any sum paid or payable by way of loan or repayment of a loan, and

(b) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

(5) For the purposes of subsection (3) above, there shall be treated as a capital sum which an individual receives or is entitled to receive any sum which a third person receives or is entitled to receive at the individual's direction or by virtue of the assignment by him of his right to receive it.

(6) Income shall not by virtue of subsection (3) above be deemed to be that of an individual for any year of assessment by reason only of his having received a sum by way of loan if that sum has been wholly repaid before the beginning of that year.

Textual Amendments

F4855 S. 739(1A) inserted (with application in accordance with s. 81(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 81(1)**

Modifications etc. (not altering text)

C741 *See* 1989 s.110—*residence of trustees; and* s.111—*residence of personal representatives.*

C742 Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 12** (with Sch. 13 para. 16, Sch. 15)

C743 Ss. 739, 740 modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 459**, 569 (with Sch. 2)

Marginal Citations

M988 Source—1970 s.478(1), (2), (2A), (2B); 1981 s.46(3), (4)

740 Liability of non-transferors.

M989(1) This section has effect where—

(a) by virtue or in consequence of a transfer of assets, either alone or in conjunction with associated operations, income becomes payable to a person resident or domiciled outside the United Kingdom; and

(b) an individual ordinarily resident in the United Kingdom who is not liable to tax under section 739 by reference to the transfer receives a benefit provided out of assets which are available for the purpose by virtue or in consequence of the transfer or of any associated operations.

(2) Subject to the provisions of this section, the amount or value of any such benefit as is mentioned in subsection (1) above, if not otherwise chargeable to income tax in the hands of the recipient, shall—

(a) to the extent to which it falls within the amount of relevant income of years of assessment up to and including the year of assessment in which the benefit is received, be treated for all the purposes of the Income Tax Acts as the income of the individual for that year **[**F4856and be charged to income tax on that individual for that year**]**;

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(b) to the extent to which it is not by virtue of this subsection treated as his income for that year and falls within the amount of relevant income of the next following year of assessment, be treated for those purposes as his income for the next following year **[**F4857and be charged to income tax on him for that year**]**,

and so on for subsequent years, taking the reference in paragraph (b) to the year mentioned in paragraph (a) as a reference to that and any other year before the subsequent year in question.

(3) Subject to subsection (7) below and section 744(1), the relevant income of a year of assessment, in relation to an individual, is any income which arises in that year to a person resident or domiciled outside the United Kingdom and which by virtue or in consequence of the transfer or associated operations referred to in subsection (1) above can directly or indirectly be used for providing a benefit for the individual or for enabling a benefit to be provided for him.

(4) F4858. . . . . .

(5) An individual who is domiciled outside the United Kingdom shall not, in respect of any benefit not received in the United Kingdom, be chargeable to tax under this section by reference to relevant income which is such that if he had received it he would not, by reason of his being so domiciled, have been chargeable to income tax in respect of it **[**F4859; and sections 833 and 834 of ITTOIA 2005 shall apply for the purposes of this subsection as they would apply for the purposes of section 832 (remittance basis) of that Act if the benefit were relevant foreign income.**]**

(6) Where—

(a) the whole or part of the benefit received by an individual in a year of assessment is a capital payment **[**F4860to which section 87 or 89(2) of, or paragraph 8 of Schedule 4C to, the 1992 Act applies**]** (chargeable gains: **[**F4861gains attributed to beneficiaries**]**) (because not falling within the amount of relevant income referred to in paragraph (a) of subsection (2) above); and

(b) chargeable gains are by reason of that payment treated under either of those sections **[**F4862, or that paragraph,**]** as accruing to him in that or a subsequent year,

paragraph (b) of that subsection shall apply in relation to any year of assessment ("a year of charge") after one in which chargeable gains have been so treated as accruing to him as if a part of the amount or value of the benefit corresponding to the amount of those gains had been treated under that subsection as his income for a year of assessment before the year of charge.

(7) This section applies irrespective of when the transfer or associated operations referred to in subsection (1) above took place, but applies only to relevant income arising on or after 10th March 1981.

Textual Amendments

F4856 Words in s. 740(2)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 304(2)(a)** (with Sch. 2)

F4857 Words in s. 740(2)(b) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 304(2)(b)** (with Sch. 2)

F4858 S. 740(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 304(3), **Sch. 3** (with Sch. 2)

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F4859 Words in s. 740(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 304(4)** (with Sch. 2)
F4860 Words in s. 740(6)(a) substituted (with effect in accordance with s. 92(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 26 para. 6(a)**
F4861 Words in 740(6)(a) substituted (with effect in accordance with s. 92(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 26 para. 6(b)**
F4862 Words in 740(6)(b) inserted (with effect in accordance with s. 92(5) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 26 para. 6(c)**

Modifications etc. (not altering text)
C744 *See* 1989 s.110—*residence of trustees; and* s.111—*residence of personal representatives.*
C745 Ss. 739, 740 modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 12** (with Sch. 13 para. 16, Sch. 15)
C746 Ss. 739, 740 modified (6.4.2005 with effect in accordance with s. 883(1) of the modifying Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 459**, 569 (with Sch. 2)
C747 S. 740 applied (with modifications) (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 468** (with Sch. 2)
C748 *See* 1981 s.83(3)—*treatment of capital sums for capital gains tax.*

Marginal Citations
M989 Source—1981 s.45(1)-(6), (9)

741 [F4863 Exemption from sections 739 and 740 (transactions before 5th December 2005)]

[F4864 M990 (1)] Sections 739 and 740 shall not apply if the individual shows in writing or otherwise to the satisfaction of the Board either—

(a) that the purpose of avoiding liability to taxation was not the purpose or one of the purposes for which the transfer or associated operations or any of them were effected; or

(b) that the transfer and any associated operations were bona fide commercial transactions and were not designed for the purpose of avoiding liability to taxation.

The jurisdiction of the Special Commissioners on any appeal shall include jurisdiction to review any relevant decision taken by the Board in exercise of their functions under this section.

[F4865 (2) This section is subject to sections 741B and 741C (application of this section and section 741A etc).]

Textual Amendments
F4863 S. 741 sidenote substituted (5.12.2005) by virtue of Finance Act 2006 (c. 25), **Sch. 7 para. 2(4)(5)**
F4864 S. 741 renumbered as s. 741(1) (5.12.2005) by virtue of Finance Act 2006 (c. 25), **Sch. 7 para. 2(2)(5)**
F4865 S. 741(2) inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 2(3)(5)**

Marginal Citations
M990 Source—1970 s.478(3); 1981 s.45(7)

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[F4866 741A Exemption from sections 739 and 740 (transactions on or after 5th December 2005)

(1) The individual is not liable to income tax by virtue of section 739 or 740 for the year of assessment by reference to the relevant transactions if he satisfies an officer of the Board—

(a) that Condition A is met, or

(b) in a case where Condition A is not met, that Condition B is met.

(2) Condition A is that it would not be reasonable to draw the conclusion, from all the circumstances of the case, that the purpose of avoiding liability to taxation was the purpose, or one of the purposes, for which the relevant transactions or any of them were effected.

(3) Condition B is that—

(a) all the relevant transactions were genuine commercial transactions, and

(b) it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions was more than incidentally designed for the purpose of avoiding liability to taxation.

(4) The intentions and purposes of any person who, whether or not for consideration,—

(a) designs or effects the relevant transactions or any of them, or

(b) provides advice in relation to the relevant transactions or any of them,

are to be taken into account in determining the purposes for which those transactions or any of them were effected.

(5) A relevant transaction is a commercial transaction only if it is effected—

(a) in the course of a trade or business, or

(b) with a view to setting up and commencing a trade or business,

and, in either case, for the purposes of that trade or business.

(6) For that purpose, the making and managing of investments, or the making or managing of investments, is not a trade or business except to the extent that—

(a) the person by whom it is done, and

(b) the person for whom it is done,

are independent persons dealing at arm's length.

(7) In this section—

"commercial transaction" does not include—

(a) a transaction on terms other than those that would have been made between independent persons dealing at arm's length, or

(b) a transaction that would not have been entered into between independent persons dealing at arm's length;

"independent persons" means persons who are not connected with each other (within the meaning given by section 839);

"relevant transactions" means—

(a) the transfer, and

(b) any associated operations;

"revenue" includes taxes, duties and national insurance contributions;

"taxation" includes any revenue for whose collection and management the Commissioners for Her Majesty's Revenue and Customs are responsible.

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(8) Any associated operation that would not (apart from this subsection) fall to be taken into account for the purposes of this section must be taken into account for those purposes if, were it to be so taken into account, the conditions in subsection (1) above would be failed by reference to—

(a) that associated operation, or

(b) that associated operation taken together with the transfer or any one or more other associated operations.

(9) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.

(10) This section is subject to sections 741B and 741C (application of section 741 and this section etc).**]**

Textual Amendments

F4866 S. 741A inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 3**

[F4867 741B Application of sections 741 and 741A

(1) This section makes provision with respect to the application for the year of assessment of—

(a) section 741,

(b) section 741A, or

(c) section 741C,

in the case of the individual and the relevant transactions.

(2) In this section—

"new transaction" means a relevant transaction effected on or after the relevant date;

"old transaction" means a relevant transaction effected before the relevant date;

"the relevant date" means 5th December 2005;

"relevant transactions" means—

(a) the transfer, and

(b) any associated operations.

(3) If all the relevant transactions are old transactions, section 741 is the provision to be applied.

(4) If all the relevant transactions are new transactions, section 741A is the provision to be applied.

(5) If—

(a) any one or more of the relevant transactions are old transactions, and

(b) any one or more of the relevant transactions are new transactions,

section 741C is the provision to be applied.**]**

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Textual Amendments

F4867 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 4**

[F4867 741C Cases where there are both old transactions and new transactions

(1) This section applies by virtue of section 741B if the case falls within subsection (5) of that section.

(2) Sections 739 and 740 do not apply, unless subsection (3) below applies.

(3) This subsection applies if—

(a) the conditions in section 741(1) are failed by reference to the old transactions or any of them, or

(b) the conditions in section 741A(1) are failed by reference to the new transactions or any of them.

(4) Where subsection (3) above applies, the general rule is that sections 739 and 740 apply as they would have applied apart from any exemption by virtue of sections 741 to 741C.

(5) In any case where subsection (3) above applies by virtue only of paragraph (b) of that subsection, the general rule has effect subject to, and in accordance with, the Rules in subsections (6) to (8) below.

(6) Rule 1 is that, for the purposes of section 739(2) or (3), any income arising before the relevant date must not be brought into account as income of the person resident or domiciled outside the United Kingdom.

(7) Rule 2 is that for the purposes of section 740, where—

(a) a benefit is received by the individual in a year of assessment ending after the relevant date, and

(b) relevant income of years of assessment up to and including that year falls to be determined,

the general rule requires years ending before the relevant date to be brought into account as well as years ending after that date.

(8) Rule 3 is that, for the purposes of section 740, a benefit received by the individual in the year 2005-06 is to be left out of account to the extent that, on a time apportionment basis, it fell to be enjoyed in any part of the year that falls before the relevant date.

(9) This section is to be read as one with section 741B.**]**

Textual Amendments

F4867 Ss. 741B, 741C inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 4**

[F4868 741D Section 739: just and reasonable apportionment in certain cases

(1) This section applies where—

(a) an individual is liable to tax by virtue of section 739 for a year of assessment (the "taxable year"), but

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(b) the conditions in subsections (2) to (4) below are met.

(2) Condition 1 is that since the making of the transfer there have been one or more years of assessment when the circumstances were such that, so far as relating to such of the relevant transactions as were effected before the end of the year, the individual—

(a) was not liable to tax by virtue of section 739, or

(b) would not have been liable to tax by virtue of section 739 if there had been any deemed income of his under that section,

because an appropriate exemption applied or, in a case falling within paragraph (b) above, would have applied.

(3) Condition 2 is that the individual is liable to tax under section 739 in the taxable year in consequence of Condition B in section 741A(3) not being met.

(4) Condition 3 is that the income by reference to which the individual is liable to tax for the taxable year is attributable—

(a) partly to relevant transactions by reference to which the appropriate exemption applied for the last exempt year of assessment, and

(b) partly to associated operations not falling within paragraph (a) above ("chargeable operations").

(5) For the purposes of this section, a year of assessment is "exempt" if it is one of the years of assessment mentioned in subsection (2) and there is no earlier year of assessment for which—

(a) the individual was liable to tax by virtue of section 739, or

(b) the individual would have been liable to tax by virtue of section 739, if there had been any deemed income of his under that section.

(6) Where this section applies, the liability of the individual is to be reduced as if it fell to be determined by reference to only so much of the income as appears to an officer of the Board to be justly and reasonably attributable to chargeable operations in all the circumstances of the case.

(7) The facts and matters that may be taken into account in determining for the purposes of subsection (6) above whether income may be regarded as justly and reasonably attributable to chargeable operations include whether, and to what extent, the chargeable operations or any of them directly or indirectly affect any of the following—

(a) the character, description or amount of any income of any person,

(b) any person's power to enjoy any income,

(c) the character, description or amount of any income which a person has power to enjoy.

(8) The jurisdiction of the Special Commissioners on any appeal includes jurisdiction to review any decision taken by an officer of the Board in exercise of the officer's functions under this section.

(9) In this section—

"appropriate exemption" means exemption by virtue of—

(a) paragraph (b) of section 741(1), or

(b) Condition B in section 741A(3);

"relevant transactions" means—

(a) the transfer, and

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(b) any associated operations.**]**

Textual Amendments

F4868 S. 741D inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 5**

742 [F4869 Interpretation of this Chapter]

(1) M991 For the purposes of **[**F4870 this Chapter**]** "an associated operation" means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets transferred or any assets representing, whether directly or indirectly, any of the assets transferred, or to the income arising from any such assets, or to any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets.

[F4871 It is immaterial whether the operation is effected before, after, or at the same time as the transfer.**]**

[F4872 (1A) The income that becomes payable to, or has become income of, a person resident or domiciled outside the United Kingdom that is referred to in section 739(1) or (3) or section 740(1) includes any income which becomes payable to, or has become income of, the person by virtue or in consequence of—

(a) the transfer,

(b) one or more associated operations, or

(c) the transfer and one or more associated operations.

(1B) The income which an individual has power to enjoy, as mentioned in section 739(2), includes any income which he has power to enjoy by virtue or in consequence of—

(a) the transfer,

(b) one or more associated operations, or

(c) the transfer and one or more associated operations.**]**

(2) An individual shall, for the purposes of section 739, be deemed to have power to enjoy income of a person resident or domiciled outside the United Kingdom if—

(a) the income is in fact so dealt with by any person as to be calculated, at some point of time, and whether in the form of income or not, to enure for the benefit of the individual; or

(b) the receipt or accrual of the income operates to increase the value to the individual of any assets held by him or for his benefit; or

(c) the individual receives or is entitled to receive, at any time, any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which directly or indirectly represent that income; or

(d) the individual may, in the event of the exercise or successive exercise of one or more powers, by whomsoever exercisable and whether with or without the consent of any other person, become entitled to the beneficial enjoyment of the income; or

(e) the individual is able in any manner whatsoever, and whether directly or indirectly, to control the application of the income.

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(3) In determining whether an individual has power to enjoy income within the meaning of subsection (2) above—

(a) regard shall be had to the substantial result and effect of the transfer and any associated operations, and

(b) all benefits which may at any time accrue to the individual (whether or not he has rights at law or in equity in or to those benefits) as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) [M992]Subsection (5) below applies where a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls would, at the end of the interest period, have been treated under section 714(2) as receiving annual profits or gains or annual profits or gains of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period.

(5) Sections 739 to 741 shall have effect as if the amount which the person would be treated as receiving or the additional amount (as the case may be) were income becoming payable to him; and, accordingly, any reference in those sections to income of (or payable or arising to) such a person shall be read as including a reference to such an amount.

(6) Where income of a person resident or domiciled outside the United Kingdom throughout any chargeable period in which an interest period (or part of it) falls consists of interest—

(a) which falls due at the end of the interest period, and

(b) which would have been treated under section 714(5) as reduced by an allowance or an allowance of a greater amount if he had been resident or domiciled in the United Kingdom during a part of each such chargeable period,

then for the purposes of sections 739 to 741, the interest shall be treated as being reduced by the amount of the allowance or by the additional amount (as the case may be).

(7) In subsections (4) to (6) above "interest period" has the meaning given by section 711.

(8) [M993]For the purposes of sections 739 to 741, any body corporate incorporated outside the United Kingdom [F4873]. . . shall be treated as if it were resident outside the United Kingdom whether it is so resident or not.

(9) For the purposes of sections 739 to 741—

(a) a reference to an individual shall be deemed to include the **[**[F4874]spouse or civil partner**]** of the individual;

(b) "assets" includes property or rights of any kind and "transfer", in relation to rights, includes the creation of those rights;

(c) "benefit" includes a payment of any kind;

(d) *references to income of a person resident or domiciled outside the United Kingdom shall, where the amount of the income of a company for any year or period has been apportioned under section* 423*,include references to so much of the income of the company for that year or period as is equal to the amount so apportioned to that person, and that amount shall be treated as increased by such proportion of itself as corresponds to the rate of advance corporation*

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tax applicable to a distribution made at the end of the accounting period to which the apportionment relates[F4875],

(e) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligations of any other person to whom, those assets, that income or those accumulations are or have been transferred.

(10) *Any amount which by virtue of subsection* (9)(d)*above is treated as the income of any person for the purposes of sections* 739*to* 741*shall also be treated for those purposes as payable to that person*[F4875].

Textual Amendments

F4869 S. 742 sidenote substituted (5.12.2005) by virtue of Finance Act 2006 (c. 25), **Sch. 7 para. 6(5)(6)**

F4870 Words in s. 742(1) substituted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 6(2)(6)**

F4871 Words in s. 742(1) inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 6(3)(6)**

F4872 S. 742(1A)(1B) inserted (5.12.2005) by Finance Act 2006 (c. 25), **Sch. 7 para. 6(4)(6)**

F4873 Words in s. 742(8) repealed (with effect in accordance with s. 251(3)(a) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(3), **Sch. 26 Pt. 8(1)**, Note

F4874 Words in s. 742(9)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 97

F4875 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

Marginal Citations

M991 Source—1970 s.478(4)-(6); 1981 ss.45(7), 46(5)

M992 Source—1985 Sch. 23 39

M993 Source—1970 s.478(7)-(9); 1972 Sch.24 27; 1981 s.46(6)

743 Supplemental provisions.

M994(1) Income tax at the basic rate **[**F4876, the lower rate or the **[**F4877dividend**]** ordinary rate**]** shall not be charged by virtue of section 739 in respect of **[**F4878any income to the extent that it has borne tax at that rate**]** by deduction or otherwise but, subject to that, **[**F4877income to which section 739 applies shall be charged to income tax.**]**

[F4879(1ZA) The charge to income tax under subsection (1) above operates on income falling within subsection (1A) below by treating the income as if it were income to which section 1A applies by virtue of subsection (2)(b) of that section.**]**

[F4880(1A) Income falls within this subsection if it is—

[F4881(a) income chargeable under Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.);

(b) income chargeable under Chapter 4 of that Part (dividends from non-UK resident companies);

(c) income chargeable under Chapter 5 of that Part (stock dividends from UK resident companies);

(d) income chargeable under Chapter 6 of that Part (release of loan to participator in close company); or

(e) a relevant foreign distribution chargeable under Chapter 8 of Part 5 of that Act (income not otherwise charged).**]]**

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[F4882(1B) In subsection (1A) "relevant foreign distribution" means any distribution of a company not resident in the United Kingdom which—

(a) is not chargeable under Chapter 4 of Part 4 of ITTOIA 2005, but

(b) would be chargeable under Chapter 3 of that Part if the company were resident in the United Kingdom.**]**

(2) In computing the liability to income tax of an individual chargeable by virtue of section 739, the same deductions and reliefs shall be allowed as would have been allowed if the income deemed to be his by virtue of that section had actually been received by him.

(3) An individual who is domiciled outside the United Kingdom shall not be chargeable to tax in respect of any income deemed to be his by virtue of that section if he would not, by reason of his being so domiciled, have been chargeable to tax in respect of it if it had in fact been his income.

(4) Where an individual has been charged to income tax on any income deemed to be his by virtue of section 739 and that income is subsequently received by him, it shall be deemed not to form part of his income again for the purposes of the Income Tax Acts.

(5) In any case where an individual has for the purposes of that section power to enjoy income of a person abroad by reason of his receiving any such benefit as is referred to in section 742(2)(c), then notwithstanding anything in subsection (1) above, the individual shall be chargeable to income tax by virtue of section 739 for the year of assessment in which the benefit is received on the whole of the amount or value of that benefit except in so far as it is shown that the benefit derives directly or indirectly from income on which he has already been charged to tax for that or a previous year of assessment.

Textual Amendments

F4876 Words in s. 743(1) substituted (with effect in accordance with Sch. 4 para. 20(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 20(2)(a)**

F4877 Words in s. 743(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(2)** (with Sch. 2)

F4878 Words in s. 743(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 20(b)**

F4879 S. 743(1ZA) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(3)** (with Sch. 2)

F4880 S. 743(1A) inserted (with effect in accordance with Sch. 4 para. 20(4) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 20(3)**

F4881 S. 743(1A)(a)-(e) substituted for s. 743(1A)(a)-(g) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(4)** (with Sch. 2)

F4882 S. 743(1B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 305(5)** (with Sch. 2)

Modifications etc. (not altering text)

C749 *See* 1970(M) s.31(3)—*appeals to go to Special Commissioners.*

Marginal Citations

M994 Source—1970 s.480; 1971 Sch.6 72; 1981 s.46(7)

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744 No duplication of charge.

M995(1) No amount of income shall be taken into account more than once in charging tax under the provisions of sections 739 and 740; and where there is a choice as to the persons in relation to whom any amount of income can be so taken into account—

(a) it shall be so taken into account in relation to such of them, and if more than one in such proportions respectively, as appears to the Board to be just and reasonable; and

(b) the jurisdiction of the Special Commissioners on any appeal against an assessment charging tax under those provisions shall include jurisdiction to review any relevant decision taken by the Board under this subsection.

(2) In subsection (1) above references to an amount of income taken into account in charging tax are—

(a) in the case of tax which under section 739 is charged on income, to the amount of that income;

(b) in the case of tax charged under that section by virtue of section 743(5), to an amount of the income out of which the benefit is provided equal to the amount or value of the benefit charged;

(c) in the case of tax charged under section 740, to the amount of relevant income taken into account under subsection (2) of that section in charging the benefit.

Marginal Citations
M995 Source—1981 s.46(1), (2)

745 Power to obtain information.

M996(1) The Board may by notice require any person to furnish them within such time as they may direct (not being less than 28 days) with such particulars as they think necessary for the purposes of this Chapter.

(2) The particulars which a person must furnish under this section, if he is required by such a notice so to do, include particulars—

(a) as to transactions with respect to which he is or was acting on behalf of others;

(b) as to transactions which in the opinion of the Board it is proper that they should investigate for the purposes of this Chapter notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under this Chapter; and

(c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions of a description specified in the notice.

(3) Notwithstanding anything in subsection (2) above, a solicitor shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in a transaction by reason only that he has given professional advice to a client in connection with that transaction, and shall not, in relation to anything done by him on behalf of his client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of the client and also—

(a) in the case of anything done by the solicitor in connection with the transfer of any asset by or to an individual ordinarily resident in the United Kingdom

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to or by any such body corporate as is mentioned in subsection (4) below, or in connection with any associated operation in relation to any such transfer, the names and addresses of the transferor and the transferee or of the persons concerned in the associated operations, as the case may be;

(b) in the case of anything done by the solicitor in connection with the formation or management of any such body corporate as is mentioned in subsection (4) below, the name and address of the body corporate;

(c) in the case of anything done by the solicitor in connection with the creation, or with the execution of the trusts, of any settlement by virtue or in consequence of which income becomes payable to a person resident or domiciled outside the United Kingdom, the names and addresses of the settlor and of that person.

(4) The bodies corporate mentioned in subsection (3) above are bodies corporate resident or incorporated outside the United Kingdom [F4883]. . . which are, or if resident in the United Kingdom would be, close companies, but not **[**[F4884]companies whose business consists wholly or mainly of the carrying on of a trade or trades.**]**

(5) Nothing in this section shall impose on any bank the obligation to furnish any particulars of any ordinary banking transactions between the bank and a customer carried out in the ordinary course of banking business, unless the bank has acted or is acting on behalf of the customer in connection with the formation or management of any such body corporate as is mentioned in subsection (4) above or in connection with the creation, or with the execution of the trusts, of any such settlement as is mentioned in subsection (3)(c) above.

[[F4885](5A) In this section "bank" has the meaning given by section 840A.**]**

(6) In this section "settlement" and "settlor" have the meanings given by **[**[F4886]section 620 of ITTOIA 2005**]**.

Textual Amendments

F4883 Words in s. 745(4) repealed (partly retrospective to 30.11.1993 and otherwise with effect in accordance with s. 251(3)(a) of the repealing Act) by Finance Act 1994 (c. 9), s. 251(1)(3), **Sch. 16 Pt. 8(1)**, Note

F4884 1989 s.107*and* Sch.12 para.17.*Previously*
"trading companies (as defined in paragraph 7 of Schedule 19)".

F4885 S. 745(5A) inserted (with application in accordance with Sch. 37 para. 9 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(1)(2)(c)**

F4886 Words in s. 745(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 306** (with Sch. 2)

Modifications etc. (not altering text)

C750 *See*—1981 s.84—s.745*to have effect for* 1981 ss.80 to 82 (*capital gains of non-resident settlements*).1984 Sch.14 para.15(2)—s.745*to have effect for* 1984 Sch.14 para.15(1)*as for* s.745,*but references to* Part XVII Ch.III*to be construed as references to* 1984 s.70*and* Sch.14.

C751 S. 745(2)-(5) applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 98(2)**, 289 (with ss. 60, 101(1), 171, 201(3))

C752 *See* S.I. 1989 No. 1343 (N.I.14) Art.10(2)*and* Sch.1 para.38(3)*for construction in the case of a solicitor who is an officer or employee of a recognised body.*

Marginal Citations

M996 Source—1970 s.481; 1972 Sch.24 28; 1981 s.45(8)

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746 Persons resident in the Republic of Ireland.

[F4887(1)**]** M997In relation to amounts which by virtue of **[**F4888the lease premium rules**]** would, in the case of a person resident in the Republic of Ireland and not resident in the United Kingdom, be included in his income if he were not resident in the Republic of Ireland, sections 739, 742(1) to (3), 743 and 745 shall apply—

(a) as if his income included those amounts; and

(b) as if references to an individual included references to any person (and so that in accordance with section 9 those sections then apply for corporation tax as well as for income tax);

but section 741 shall not apply in any such case.

[F4889(2) Corporation tax chargeable by virtue of subsection (1)(b) above shall be charged under Case VI of Schedule D.

(3) In this section "the lease premium rules" means any provision of sections 277 to 285 of ITTOIA 2005 or sections 34 to 36 of this Act.**]**

Textual Amendments

F4887 S. 746 renumbered as s. 746(1) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 307(2)** (with Sch. 2)

F4888 Words in s. 746(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 307(3)** (with Sch. 2)

F4889 S. 746(2)(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 307(4)** (with Sch. 2)

Marginal Citations

M997 Source—1970 s.479.

CHAPTER IV

CONTROLLED FOREIGN COMPANIES

Modifications etc. (not altering text)

C753 Pt. XVII Ch. IV (ss. 747-756) modified (27.7.1993) by 1993 c. 34, **s. 119(3)**

C754 Pt. 17 Ch. 4 modified (10.6.1999) by The Non-resident Companies (General Insurance Business) Regulations 1999 (S.I. 1999/1408), **regs. 3-6**

C755 Pt. 17 Ch. 4 modified (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 45(5)(6)**

747 Imputation of chargeable profits and creditable tax of controlled foreign companies

M998(1) If F4890. . . in any accounting period a company—

(a) is resident outside the United Kingdom, and

(b) is controlled by persons resident in the United Kingdom, and

(c) is subject to a lower level of taxation in the territory in which it is resident,

F4891. . . the provisions of this Chapter shall apply in relation to that accounting period.

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[F4892(1A) A company which would not, apart from this subsection, fall to be regarded as controlled by persons resident in the United Kingdom shall be taken for the purposes of this Chapter to be so controlled if—

(a) there are two persons who, taken together, control the company;

(b) one of those persons is resident in the United Kingdom and is a person in whose case the 40 per cent test in section 755D(3) is satisfied; and

(c) the other is a person in whose case the 40 per cent test in section 755D(4) is satisfied.**]**

[F4893(1B) In determining, for the purposes of any provision of this Chapter except subsection (1)(a) above, whether a company is a person resident in the United Kingdom, section 249 of the Finance Act 1994 (under which a company is treated as non-resident if it is so treated for double taxation relief purposes) shall be disregarded.**]**

(2) A company which falls within paragraphs (a) to (c) of subsection (1) above is in this Chapter referred to as a "controlled foreign company".

(3) **[**F4894Subject to section 748, where**]** the provisions of this Chapter apply in relation to an accounting period of a controlled foreign company, the chargeable profits of that company for that period and its creditable tax (if any) for that period shall each be apportioned in accordance with section 752 among the persons (whether resident in the United Kingdom or not) who had an interest in that company at any time during that accounting period.

(4) Where, on such an apportionment of a controlled foreign company's chargeable profits for an accounting period as is referred to in subsection (3) above, an amount of those profits is apportioned to a company resident in the United Kingdom then, subject to subsection (5) below—

(a) a sum equal to corporation tax at the appropriate rate on that apportioned amount of profits, less the portion of the controlled foreign company's creditable tax for that period (if any) which is apportioned to the resident company, shall be **[**F4895chargeable on**]** the resident company as if it were an amount of corporation tax chargeable on that company; and

(b) if, apart from this paragraph, section 739 would deem any sum forming part of the company's chargeable profits for that accounting period to be the income of an individual for the purposes of the Income Tax Acts, that section shall not apply to such portion of that sum as corresponds to the portion of those chargeable profits which is apportioned to companies which are resident in the United Kingdom and which, by virtue of paragraph (a) above, have a liability to tax in respect thereof;

and for the purposes of paragraph (a) above "the appropriate rate" means the rate of corporation tax applicable to profits of that accounting period of the resident company in which ends the accounting period of the controlled foreign company **[**F4896which is mentioned in subsection (1) above**]** or, if there is more than one such rate, the average rate over the whole of that accounting period of the resident company.

[F4897(4A) F4898. . . . . .

(4B) F4898. . . . . .**]**

(5) Tax shall not, by virtue of subsection (4) above, be **[**F4899chargeable on**]** a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—

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(a) the amount of the controlled foreign company's chargeable profits for the accounting period in question which is apportioned to the resident company, and

(b) any amounts of those chargeable profits which are apportioned to persons who are connected or associated with the resident company,

is at least **[**F4900 25 per cent.**]** of the total of those chargeable profits.

(6) In relation to a company resident outside the United Kingdom—

(a) any reference in this Chapter to its chargeable profits for an accounting period is a reference to the amount which, on the assumptions in Schedule 24, would be the amount of the total profits of the company for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable; and

(b) any reference in this Chapter to profits does not include a reference to chargeable gains but otherwise (except as provided by paragraph (a) above) has the same meaning as it has for the purposes of corporation tax.

Textual Amendments

F4890 Words in s. 747(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 1(2)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F4891 Words in s. 747(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 1(2)(b), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F4892 S. 747(1A) inserted (21.3.2000) by Finance Act 2000 (c. 17), Sch. 31 paras. 3, **9(1)**

F4893 S. 747(1B) inserted (1.4.2002) by Finance Act 2002 (c. 23), **s. 90(1)(2)(a)** (with s. 90(2)(b))

F4894 Words in s. 747(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(3)**; S.I. 1998/3173, **art. 2**

F4895 Words in s. 747(4)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(4)(a)**; S.I. 1998/3173, **art. 2**

F4896 Words in s. 747(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(4)(b)**; S.I. 1998/3173, **art. 2**

F4897 S. 747(4A)(4B) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 3**

F4898 S. 747(4A)(4B) repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(6)**, Note

F4899 Words in s. 747(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(5)(a)**; S.I. 1998/3173, **art. 2**

F4900 Words in s. 747(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 1(5)(b)**; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

C756 S. 747 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 54(1)**

C757 S. 747 modified (with effect in accordance with Sch. 29 Pt. 14 of the modifying Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 116**

C758 S. 747A(4)(a) restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **2(2)**; S.I. 2003/1282, **art. 2**

Marginal Citations

M998 Source—1984 s.82

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[F4901 747A Special rule for computing chargeable profits.

F4902 . . . . . .]

Textual Amendments

F4901 S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 2**

F4902 S. 747A repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 24(1), **Sch. 11 Pt. 2(6)**, Note

748 [F4903 Cases where section 747(3) does not apply.]

[F4904 M999 (1) No apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company if—]

(a) in respect of that period the company pursues, within the meaning of Part 1 of Schedule 25, an acceptable distribution policy; or

(b) throughout that period the company is, within the meaning of Part II of that Schedule, engaged in exempt activities; or

(c) the public quotation condition set out in Part III of that Schedule is fulfilled with respect to that period; or

(d) the chargeable profits of the accounting period do not exceed [F4905 £50,000] or, if the accounting period is less than 12 months, a proportionately reduced amount;[F4906 or

(e) as respects the accounting period, the company is, within the meaning of regulations made by the Board for the purposes of this paragraph, resident in a territory specified in the regulations and satisfies—

(i) such conditions with respect to its income or gains as may be so specified; and

(ii) such other conditions (if any) as may be so specified.]

[F4907 (1A) Regulations under paragraph (e) of subsection (1) above may—

(a) make different provision for different cases or with respect to different territories;

(b) make provision having effect in relation to accounting periods of controlled foreign companies ending not more than one year before the date on which the regulations are made; and

(c) contain such supplementary, incidental, consequential and transitional provision as the Board may think fit.]

(2) F4908 . . . . . .

(3) Notwithstanding that none of paragraphs (a) to [F4909 (e)] of subsection (1) above applies to an accounting period of a controlled foreign company, [F4910 no apportionment under section 747(3) falls to be made as regards that accounting period if it is the case that]—

(a) in so far as any of the transactions the results of which are reflected in the profits arising in that accounting period, [F4911 or any two or more transactions taken together, the results of at least one of which are so reflected,] achieved a reduction in United Kingdom tax, either the reduction so achieved was minimal or it was not the main purpose or one of the main purposes of that

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transaction or, as the case may be, of those transactions taken together to achieve that reduction, and

(b) it was not the main reason or, as the case may be, one of the main reasons for the company's existence in that accounting period to achieve a reduction in United Kingdom tax by a diversion of profits from the United Kingdom,

and Part IV of Schedule 25 shall have effect with respect to the preceding provisions of this subsection.

[F4912(4) F4913. . . . . .

(5) F4913. . . . . .]

[F4914(6) This section is subject to section 748A.]

Textual Amendments

F4903 S. 748 sidenote substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(9)**; S.I. 1998/3173, **art. 2**

F4904 Words in s. 748(1) substituted (with effect in accordance with Sch. 17 para 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(2)**; S.I. 1998/3173, **art. 2**

F4905 Words in s. 748(1)(d) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(3)**; S.I. 1998/3173, **art. 2**

F4906 S. 748(1)(e) and preceding word inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(4)**; S.I. 1998/3173, **art. 2**

F4907 S. 748(1A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(5)**; S.I. 1998/3173, **art. 2**

F4908 S. 748(2) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(27)**; S.I. 1998/3173, **art. 2**

F4909 Word in s. 748(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(7)**; S.I. 1998/3173, **art. 2**

F4910 Words in s. 748(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 3(8)**; S.I. 1998/3173, **art. 2**

F4911 Words in s. 748(3)(a) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 2**

F4912 S. 748(4)(5) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 4**

F4913 S. 748(4)(5) repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(6)**, Note

F4914 S. 748(6) inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 89(1)**

Marginal Citations

M999 Source—1984 s.83

VALID FROM 19/07/2011

[F4915748ZAExclusion of small profits exemptions

(1) Nothing in section 748(1)(da) prevents an apportionment falling to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company ("X") if condition A, B or C is met.

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(2) Condition A is that at any time before the end of the relevant accounting period a scheme is entered into and—

(a) in the absence of this subsection, in consequence of the scheme, section 748(1)(da) would apply to prevent an apportionment falling to be made as regards the relevant accounting period of X, and

(b) the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to secure that section 748(1)(da) prevents an apportionment falling to be made as regards that period, or that period and one or more other accounting periods of X.

(3) Condition B is that at any time before the end of the relevant accounting period a scheme is entered into and—

(a) in consequence of the scheme profits are shifted to X from another company ("Y"),

(b) the main purpose or one of the main purposes of any party to the scheme in entering into the scheme is to ensure that section 748(1)(da) prevents an apportionment falling to be made as regards the chargeable profits of one or more controlled foreign companies for one or more accounting periods, and

(c) the relevant accounting period of X falls wholly or partly within that accounting period or those accounting periods.

(4) For the purposes of subsection (3), profits are shifted to X from Y if it is reasonable to suppose that in the absence of the scheme, and any similar scheme, the whole or a part of the income which is reflected in X's profits would have been reflected in Y's profits.

(5) Condition C is that, in determining X's chargeable profits for the relevant accounting period—

(a) **[**[F4916]section 418(5) of CTA 2009 (loan relationships involving connected debtor and creditor where debits exceed credits) has effect so as to treat X, for the purposes of Part 5 of that Act, as bringing into account for that period credits in respect of a loan relationship, or**]**

(b) Part 21B of CTA 2010 (group mismatch schemes) has effect so as to exclude an amount from being brought into account as a debit or credit for the purposes of Part 5 of CTA 2009 (loan relationships) or Part 7 of that Act (derivative contracts).

(6) For the purposes of this section—

"apportionment" means an apportionment under section 747(3);

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions.**]**

Textual Amendments

F4915 S. 748ZA inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 5**

F4916 S. 748ZA(5)(a) omitted (with effect in accordance with Sch. 5 paras. 6(3), 7(3)(4) of the repealing Act) by Finance Act 2011 (c. 11), **Sch. 5 para. 7(2)(a)**

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[F4917748A Territorial exclusions from exemption under section 748

(1) Nothing in section 748 prevents an apportionment under section 747(3) falling to be made as regards an accounting period of a controlled foreign company if the company—

(a) is a company incorporated in a territory to which this section applies as respects that accounting period; or

(b) is at any time in that accounting period liable to tax in such a territory by reason of domicile, residence or place of management; or

(c) at any time in that accounting period carries on business through a **[**F4918permanent establishment**]** in such a territory.

(2) The condition in subsection (1)(c) above is not satisfied as regards an accounting period of a controlled foreign company if the business carried on by the company in that period through **[**F4918permanent establishments**]** in territories to which this section applies, taken as a whole, is only a minimal part of the whole of the business carried on by the company in that period.

(3) The territories to which this section applies as respects an accounting period of a controlled foreign company are those specified as such in regulations made by the Treasury.

(4) Regulations under subsection (3) above—

(a) may make different provision for different cases or with respect to different territories; and

(b) may contain such incidental, supplemental, consequential or transitional provision as the Treasury may think fit.

(5) A statutory instrument containing regulations under subsection (3) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.**]**

Textual Amendments

F4917 S. 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 89(2)**

F4918 Words in s. 748A(1)(c)(2) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

[F4919749 Residence.

(1) Subject to subsections (2) to (4) and (6) below, in any accounting period in which a company is resident outside the United Kingdom, it shall be regarded for the purposes of this Chapter as resident in that territory in which, throughout that period, it is liable to tax by reason of domicile, residence or place of management.

(2) If, in the case of any company,—

(a) there are in any accounting period two or more territories falling within subsection (1) above, and

(b) no election or designation made under paragraph (d) or (e) of subsection (3) below in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to that accounting period,

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subsection (3) below shall apply with respect to that company and that accounting period.

(3) Where this subsection applies, the company shall in that accounting period be regarded for the purposes of this Chapter as resident in only one of those territories, namely—

(a) if, throughout the accounting period, the company's place of effective management is situated in one of those territories only, in that territory;

(b) if, throughout the accounting period, the company's place of effective management is situated in two or more of those territories, in that one of them in which, at the end of the accounting period, the greater amount of the company's assets is situated;

(c) if neither paragraph (a) nor paragraph (b) above applies, in that one of the territories falling within subsection (1) above in which, at the end of the accounting period, the greater amount of the company's assets is situated;

(d) if—

(i) paragraph (a) above does not apply, and

(ii) neither paragraph (b) nor paragraph (c) above produces one, and only one, of those territories,

in that one of them (if any) which is specified in an election made in relation to that accounting period by any one or more persons who together have a majority assessable interest in the company in that accounting period; and

(e) if, in a case falling within paragraph (d) above, the time by which any election under that paragraph in relation to that accounting period must be made in accordance with section 749A(3)(b) expires without such an election having been made, in that one of those territories which the Board justly and reasonably designates in relation to that accounting period.

(4) If, in the case of any company,—

(a) there are in any accounting period two or more territories falling within subsection (1) above, and

(b) an election or designation made under paragraph (d) or (e) of subsection (3) above in relation to an earlier accounting period of the company has effect by virtue of section 749A(1) in relation to the accounting period mentioned in paragraph (a) above,

the company shall in that accounting period be regarded for the purposes of this Chapter as resident in that one of those territories which is the subject of the election or designation.

(5) If, in the case of any company, there is in any accounting period no territory falling within subsection (1) above, then, for the purposes of this Chapter, it shall be conclusively presumed that the company is in that accounting period resident in a territory in which it is subject to a lower level of taxation.

(6) In any case where it becomes necessary for the purposes of subsection (3) above to determine in which of two or more territories the greater amount of a company's assets is situated at the end of an accounting period—

(a) account shall be taken only of those assets which, immediately before the end of that period, are situated in those territories; and

(b) the amount of them shall be determined by reference to their market value at that time.

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(7) This section is without prejudice to the provision that may be made in regulations under section 748(1)(e).

(8) For the purposes of this section, one or more persons together have a "majority assessable interest" in a controlled foreign company in an accounting period of the company if—

(a) each of them has an assessable interest in the company in that accounting period; and

(b) it is likely that, were an apportionment of the chargeable profits of the company for that accounting period made under section 747(3), the aggregate of the amounts which would be apportioned to them is greater than 50 per cent. of the aggregate of the amounts which would be apportioned to all the persons who have an assessable interest in the company in that accounting period.

(9) For the purposes of subsection (8) above, a person has an "assessable interest" in a controlled foreign company in an accounting period of the company if he is one of the persons who it is likely would be chargeable to tax under section 747(4)(a) on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3).**]**

Textual Amendments

F4919 Ss. 749-749B substituted for s. 749 (with effect in accordance with Sch.17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 4**; S.I. 1998/3173, **art. 2**

[F4920 749A Elections and designations under section 749: supplementary provisions.

(1) An election under paragraph (d) or a designation under paragraph (e) of section 749(3) shall have effect in relation to—

(a) the accounting period in relation to which it is made ("the original accounting period"), and

(b) each successive accounting period of the controlled foreign company in question which precedes the next one in which the eligible territories are different,

and shall so have effect notwithstanding any change in the persons who have interests in the company or any change in the interests which those persons have in the company.

(2) For the purposes of subsection (1)(b) above, an accounting period of the controlled foreign company is one in which the eligible territories are different if in the case of that accounting period—

(a) at least one of the two or more territories which fell within subsection (1) of section 749 in the original accounting period does not fall within that subsection; or

(b) some other territory also falls within that subsection.

(3) Any election under section 749(3)(d)—

(a) must be made by notice given to an officer of the Board;

(b) must be made no later than twelve months after the end of the controlled foreign company's accounting period in relation to which it is made;

(c) must state, as respects each of the persons making it, the percentage of the chargeable profits and creditable tax (if any) of the controlled foreign

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company for that accounting period which it is likely would be apportioned to him on an apportionment under section 747(3) if one were made;

(d) must be signed by the persons making it; and

(e) is irrevocable.

(4) Nothing in—

(a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to an election under section 749(3)(d).

(5) A designation under section 749(3)(e) is irrevocable.

(6) Where the Board make a designation under section 749(3)(e), notice of the making of the designation shall be given to every company resident in the United Kingdom which appears to the Board to have had an assessable interest in the controlled foreign company at any time during the accounting period of the controlled foreign company in relation to which the designation is made.

(7) A notice under subsection (6) above shall specify—

(a) the date on which the designation was made;

(b) the controlled foreign company to which the designation relates;

(c) the accounting period of the controlled foreign company in relation to which the designation is made; and

(d) the territory designated.

(8) Subsection (9) of section 749 has effect for the purposes of subsection (6) above as it has effect for the purposes of subsection (8) of that section.**]**

Textual Amendments

F4920 Ss. 749-749B substituted for s. 749 (with effect in accordance with Sch.17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 4**; S.I. 1998/3173, **art. 2**

[F4920 749B Interests in companies.

(1) For the purposes of this Chapter, the following persons have an interest in a company—

(a) any person who possesses, or is entitled to acquire, share capital or voting rights in the company;

(b) any person who possesses, or is entitled to acquire, a right to receive or participate in distributions of the company;

(c) any person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for his benefit; and

(d) any other person who, either alone or together with other persons, has control of the company.

(2) Rights which a person has as a loan creditor of a company do not constitute an interest in the company for the purposes of this Chapter.

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(3) For the purposes of subsection (1)(b) above, the definition of "distribution" in Part VI shall be construed without any limitation to companies resident in the United Kingdom.

(4) References in subsection (1) above to being entitled to do anything apply where a person—

(a) is presently entitled to do it at a future date, or

(b) will at a future date be entitled to do it;

but a person whose entitlement to secure that any income or assets of the company will be applied as mentioned in paragraph (c) of that subsection is contingent upon a default of the company or any other person under any agreement shall not be treated as falling within that paragraph unless the default has occurred.

(5) Where a company has an interest in another company and a third person has, or two or more persons together have, an interest in the first company (as in a case where one company has a shareholding in a controlled foreign company and the first company is controlled by a third company or by two or more persons together) subsections (6) and (7) below apply.

(6) Where this subsection applies, the person who has, or each of the persons who together have, the interest in the first company shall be regarded for the purposes of this Chapter as thereby having an interest in the second company.

(7) In any case where this subsection applies, in construing references in this Chapter to one person having the same interest as another, the person or, as the case may be, each of the persons who together have, the interest in the first company shall be treated as having, to the extent of that person's interest in that company, the same interest as the first company has in the second company.

(8) Where two or more persons jointly have an interest in a company otherwise than in a fiduciary or representative capacity, they shall be treated for the purposes of this Chapter as having the interest in equal shares.**]**

Textual Amendments

F4920 Ss. 749-749B substituted for s. 749 (with effect in accordance with Sch.17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 4**; S.I. 1998/3173, **art. 2**

750 Territories with a lower level of taxation.

M1000(1) Without prejudice to **[**F4921subsection (5)**]** of section 749, a company which, by virtue of **[**F4922any of subsections (1) to (4)**]** of that section, is to be regarded as resident in a particular territory outside the United Kingdom shall be considered to be subject to a lower level of taxation in that territory if **[**F4923, after giving effect to subsections (1A) and (1B) below,**]** the amount of tax ("the local tax") which is paid under the law of that territory in respect of the profits of the company which arise in any accounting period is less than **[**F4924three-quarters**]** of the corresponding United Kingdom tax on those profits.

[F4925(1A) If in the case of that accounting period there is any income, or any income and any expenditure, of the company—

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(a) which is brought into account in determining the profits of the company in respect of which tax is paid under the law of that territory, but

(b) which does not also fall to be brought into account in determining the chargeable profits of the company,

the local tax shall be treated for the purposes of this Chapter as reduced to what it would have been had that income and any such expenditure not been so brought into account.

(1B) If—

(a) under the law of that territory any tax ("the company's tax") falls to be paid by the company in respect of profits of the company arising in that accounting period,

(b) under that law, any repayment of tax, or any payment in respect of a credit for tax, is made to a person other than the company, and

(c) that payment or repayment is directly or indirectly in respect of the company's tax,

the local tax shall be treated for the purposes of this Chapter as reduced (or further reduced) by the amount of that payment or repayment.**]**

(2) For the purposes of this Chapter, the amount of the corresponding United Kingdom tax on the profits arising in an accounting period of a company resident outside the United Kingdom is the amount of corporation tax which, on the assumptions set out in Schedule 24 and subject to subsection (3) below, would be chargeable in respect of the chargeable profits of the company for that accounting period.

(3) In determining the amount of corporation tax which, in accordance with subsection (2) above, would be chargeable in respect of the chargeable profits of an accounting period of a company resident outside the United Kingdom—

[F4926(a) it shall be assumed for the purposes of Schedule 24 that an apportionment under section 747(3) falls to be made as regards that period; and**]**

(b) there shall be disregarded so much of any relief from corporation tax in respect of income as would be attributable to the local tax and would fall to be given by virtue of any provision of Part XVIII F4927. . . ; and

(c) there shall be deducted from what would otherwise be the amount of that corporation tax—

(i) any amount which (on the assumptions set out in Schedule 24) would fall to be set off against corporation tax by virtue of section 7(2); and

(ii) any amount of income tax or corporation tax actually charged in respect of any of those chargeable profits.

(4) The references in subsection (3)(c) above to an amount falling to be set off or an amount actually charged do not include so much of any such amount as has been or falls to be repaid to the company whether on the making of a claim or otherwise.

[F4928(5) F4929. . . . . .

(6) F4929. . . . . .

(7) F4929. . . . . .

(8) F4929. . . . . .**]**

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Textual Amendments

F4921 Words in s. 750(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 5(2)(a)**; S.I. 1998/3173, **art. 2**

F4922 Words in s. 750(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 5(2)(b)**; S.I. 1998/3173, **art. 2**

F4923 Words in s. 750(1) inserted (with effect in accordance with s. 44(4)-(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 44(2)**

F4924 Words in s. 750(1) substituted (27.7.1993 with application in relation to accounting periods beginning on or after 16.3.1993) by 1993 c. 34, **s. 119(1)(2)**

F4925 S. 750(1A)(1B) inserted (with effect in accordance with s. 44(4)-(6) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 44(3)**

F4926 S. 750(3)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 5(3)**; S.I. 1998/3173, **art. 2**

F4927 Words in s. 750(3)(b) repealed (with effect in accordance with Sch. 30 of the repealing Act) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(13)**, Note

F4928 S. 750(5)-(8) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 5**

F4929 S. 750(5)-(8) repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(6)**, Note

Marginal Citations

M1006 Source—1984 s.85

[F4930 750A Deemed lower level of taxation: designer rate tax provisions.

(1) Where—

(a) in any accounting period a company is to be regarded by virtue of any of subsections (1) to (4) of section 749 as resident in a particular territory outside the United Kingdom, and

(b) within the meaning of section 750(1), the local tax in respect of the profits arising to the company in that accounting period is equal to or greater than three-quarters of the corresponding United Kingdom tax on those profits, but

(c) that local tax is determined under designer rate tax provisions,

the company shall be taken for the purposes of this Chapter to be subject to a lower level of taxation in that territory in that accounting period.

(2) In subsection (1) above "designer rate tax provisions" means provisions—

(a) which appear to the Board to be designed to enable companies to exercise significant control over the amount of tax which they pay; and

(b) which are specified in regulations made by the Board.

(3) Regulations under subsection (2) above—

(a) may make different provision for different cases or with respect to different territories; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) The first regulations under subsection (2) above may make provision having effect in relation to accounting periods beginning not more than fifteen months before the date on which the regulations are made.]

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Textual Amendments

F4930 S. 750A inserted (with effect in accordance with Sch. 31 para. 9(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 3**

751 Accounting periods and creditable tax

M1001(1) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall begin—

(a) whenever the company comes under the control of **[**F4931persons**]** resident in the United Kingdom;

(b) whenever the company F4932. . . commences to carry on business **[**F4933unless an accounting period of the company has previously begun as respects which an apportionment under section 747(3) falls or has fallen to be made**]**; and

(c) whenever an accounting period of the company ends without the company then ceasing either to carry on business or to have any source of income whatsoever.

(2) For the purposes of this Chapter, an accounting period of a company resident outside the United Kingdom shall end if and at the time when—

(a) the company ceases to be under the control of persons resident in the United Kingdom; or

(b) the company becomes, or ceases to be, liable to tax in a territory; or

[F4934(bb) F4935. . . . . .**]**

(c) the company ceases to have any source of income whatsoever;

and for the purposes of paragraph (b) above "liable to tax" means liable to tax by reason of domicile, residence or place of management.

(3) Without prejudice to subsections (1) and (2) above, subsections (3), (5) and (7) of section 12 shall apply for the purposes of this Chapter as they apply for the purposes of corporation tax, but with the omission of so much of those provisions as relates to a company coming or ceasing to be within the charge to corporation tax.

(4) Where it appears to the Board that the beginning or end of any accounting period of a company resident outside the United Kingdom is uncertain, **[**F4936the Board may by notice**]** specify as an accounting period of the company such period, not exceeding 12 months, as appears to the Board to be appropriate, and that period shall be treated for the purposes of this Chapter as an accounting period of the company unless **[**F4937the notice**]** is subsequently amended under subsection (5) below.

(5) If, on further facts coming to the knowledge of the Board after the **[**F4938giving of a notice under subsection (4) above**]**, it appears to the Board that any accounting period specified in the **[**F4939notice**]** is not the true accounting period, the Board shall amend the **[**F4939notice**]** so as to specify the true period.

[F4940(5A) Any notice under subsection (4) above, and notice of any amendment of such a notice under subsection (5) above, shall be given to every person who has an assessable interest (as defined in section 749(9)) in the company in the accounting period in question.**]**

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(6) In this Chapter, in relation to an accounting period of a controlled foreign company **[**[F4941]as regards which an apportionment under section 747(3) falls to be made**]**, the creditable tax means the aggregate of—

(a) the amount of any relief from corporation tax in respect of income which (on the assumptions set out in Schedule 24 and assuming the company to be liable for corporation tax on the chargeable profits of that accounting period) would fall to be given to the company by virtue of any provision of Part XVIII in respect of foreign tax attributable to any income which is brought into account in determining those chargeable profits; and

(b) any amount which (on those assumptions) would fall to be set off against corporation tax on those chargeable profits by virtue of section 7(2); and

(c) the amount of any income tax or corporation tax actually charged in respect of the chargeable profits of that accounting period, less any of that tax which has been or falls to be repaid to the company, whether on the making of a claim or otherwise.

Textual Amendments

F4931 1990 s.89*and* Sch.14 para.9 (*correction of errors*)*—deemed always to have had effect. Previously* "the persons".

F4932 Words in s. 751(1)(b) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 6(2)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F4933 Words in s. 751(1)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(2)(b)**; S.I. 1998/3173, **art. 2**

F4934 1990 s.67(2), (4)*on and after* 20*March* 1990.

F4935 S. 751(2)(bb) repealed (retrospective to 30.11.1993) by Finance Act 1994 (c. 9), s. 251(1)(4), **Sch. 26 Pt. 8**, Note

F4936 Words in s. 751(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by virtue of Finance Act 1998 (c. 36), **Sch. 17 para. 6(3)(a)**; S.I. 1998/3173, **art. 2**

F4937 Words in s. 751(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by virtue of Finance Act 1998 (c. 36), **Sch. 17 para. 6(3)(b)**; S.I. 1998/3173, **art. 2**

F4938 Words in s. 751(5) substituted (with effect in accordance with Sch. 17 para. 37 of amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(4)(a)**; S.I. 1998/3173, **art. 2**

F4939 Words in s. 751(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(4)(b)**; S.I. 1998/3173, **art. 2**

F4940 S. 751(5A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(5)**; S.I. 1998/3173, **art. 2**

F4941 Words in s. 751(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 6(6)**; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

C759 S. 751(1)-(5A) applied (6.4.2007 with effect in accordance with s. 1034(1) of the affecting Act) by Income Tax Act 2007 (c. 3), **s. 725(3)** (with Sch. 2)

Marginal Citations

M1001 Source—1984 s.86

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VALID FROM 19/07/2007

751A Reduction in chargeable profits for certain activities of EEA business establishments

(1) This section applies if—

(a) an apportionment under section 747(3) falls to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,

(b) throughout that period the controlled foreign company has a business establishment in an EEA territory,

(c) throughout that period there are individuals who work for the controlled foreign company in that territory, and

(d) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period to be reduced by an amount ("the specified amount") specified in the application (including to nil).

(3) If the Commissioners grant the application—

(a) those chargeable profits are treated as reduced by the specified amount, and

(b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in those chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

(4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the amount (if any) equal to so much of those chargeable profits as can reasonably be regarded as representing the net economic value which—

(a) arises to the appropriate body of persons (taken as a whole), and

(b) is created directly by qualifying work.

(5) For the purposes of subsection (4) "net economic value" does not include any value which derives directly or indirectly from the reduction or elimination of any liability of any person to any tax or duty imposed under the law of any territory.

(6) For the purposes of subsection (4) "the appropriate body of persons" means—

(a) if the controlled foreign company is not a member of a group of companies, the controlled foreign company and the persons who have an interest in it at any time in the relevant accounting period, and

(b) if the controlled foreign company is a member of a group of companies, all the persons falling within paragraph (a) and any other person who is a member of that group of companies,

and for the purposes of this subsection "group of companies" means a company and any other companies of which it has control.

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(7) For the purposes of subsection (4) "qualifying work" means work which—

(a) is done in any EEA territory in which the controlled foreign company has a business establishment throughout the relevant accounting period, and

(b) is done in that territory by individuals working for the controlled foreign company there.

(8) Any reference in this section to a business establishment of a controlled foreign company in an EEA territory is to be construed in accordance with paragraph 7 of Schedule 25 (but as if the reference in that paragraph to the territory in which the company is resident were to the EEA territory).

(9) For the purposes of this section individuals are not to be regarded as working for a company in any territory unless—

(a) they are employed by the company in the territory, or

(b) they are otherwise directed by the company to perform duties on its behalf in the territory.

VALID FROM 21/07/2009

[F4942 751A Reduction in chargeable profits for certain financing income

(1) This section applies if—

(a) an apportionment under section 747(3) falls to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,

(b) the chargeable profits of the controlled foreign company for the relevant accounting period would, apart from this section, include an amount of income in respect of a payment made by another company ("the payer"),

(c) the amount that the payer brings into account for the purposes of corporation tax in respect of the payment is reduced (in part or in full) by virtue of Part 3 of Schedule 15 to FA 2009 (tax treatment of financing costs and income), and

(d) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in the relevant accounting period.

(2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period ("the chargeable profits") to be reduced by an amount ("the specified amount") specified in the application (including to nil).

(3) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced by the specified amount, and

(b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

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(4) The Commissioners may grant the application only if they are satisfied that the specified amount does not exceed the relevant amount.

(5) In subsection (4) "the relevant amount" means the amount (if any) by which it is just and reasonable that the chargeable profits should be treated as reduced, having regard to the effect of Parts 3 and 4 of Schedule 15 to FA 2009 on amounts brought into account for the purposes of corporation tax by the payer, or any other company.**]**

Textual Amendments

F4942 S. 751AA inserted (with effect in accordance with Sch. 16 para. 25 of the amending Act) by Finance Act 2009 (c. 10), **Sch. 16 para. 23**

VALID FROM 19/07/2011

[F4943 751AB Reduction in chargeable profits: failure to qualify for exemptions

(1) This section applies if—

(a) an apportionment under section 747(3) would fall to be made as regards an accounting period ("the relevant accounting period") of a controlled foreign company,

(b) but for a relevant failure, section 748(1)(ba) or (bb) would have prevented such an apportionment, and

(c) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) "Relevant failure" means—

(a) in the case of section 748(1)(ba), one or both of the following—

(i) a failure to satisfy the requirement of paragraph 12E of Schedule 25 (requirement as to company's UK connection) in circumstances where the requirement would be satisfied if the reference in sub-paragraph (3)(a) of that paragraph to 10% were a reference to 50%, and

(ii) a failure to satisfy the requirement of paragraph 12F of that Schedule (finance income and relevant IP income) in circumstances where the relevant IP income of the controlled foreign company for the accounting period does not exceed 5% of the company's gross income for that period, and

(b) in the case of section 748(1)(bb), a failure to satisfy the requirement of paragraph 12M of that Schedule (finance income).

(3) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for the relevant accounting period ("the chargeable profits") to be reduced to an amount specified in the application ("the specified amount").

The specified amount may be nil.

(4) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced to the specified amount, and

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(b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

(5) The Commissioners may grant the application only if—

(a) they are satisfied that the specified amount is not less than the relevant amount, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AC.

(6) "The relevant amount" means—

(a) if the relevant failure is within subsection (2)(a), the sum of—

(i) the excess finance and IP income (if any) for the relevant accounting period, and

(ii) in a case where there is a failure specified in subsection (2)(a)(i), so much (if any) of the net chargeable profits for that period as are not excluded by subsection (8), and

(b) if the relevant failure is within subsection (2)(b)—

(i) the amount (if any) by which the controlled foreign company's finance income for the relevant accounting period exceeds 5% of its gross income for that period, or

(ii) if that amount is a negligible amount, nil.

(7) "The excess finance and IP income" for the relevant accounting period means—

(a) the amount (if any) by which the total of the controlled foreign company's finance income and relevant IP income for that period exceeds 5% of its gross income for that period, or

(b) if that amount is a negligible amount, nil.

(8) Net chargeable profits are excluded by this subsection if, and to the extent that, they can reasonably be regarded—

(a) as representing the net economic value which—

(i) arises to the appropriate body of persons (taken as a whole), and

(ii) is created directly by qualifying work, or

(b) as not being wholly or partly attributable, directly or indirectly, to transactions with persons within the charge to United Kingdom tax.

(9) In subsection (8)(a) "qualifying work" means work which—

(a) is done in the territory in which the controlled foreign company is resident, and

(b) is done in that territory by individuals working for the controlled foreign company there.

(10) A transaction with a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there is within subsection (8)(b) only if the transaction is attributable to activities carried on through that establishment.

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(11) For the purposes of subsections (8) and (9)—

(a) section 751A(5), (6) and (9) applies as it applies for the purposes of the equivalent provisions of section 751A, and

(b) paragraph 5(2) to (5) of Schedule 25 (residence of controlled foreign company) applies as it applies in relation to Part 2 of that Schedule.

(12) In this section—

"finance income" has the meaning given by paragraph 12F(3) of Schedule 25 (with references to C read as references to the controlled foreign company);

"relevant IP income" has the meaning given by paragraph 12F(4) of that Schedule;

"net chargeable profits" means chargeable profits excluding so much of those profits as is directly attributable to the finance income or relevant IP income of the controlled foreign company;

"UK-connected gross income" has the same meaning as in paragraph 12E of Schedule 25;

"United Kingdom tax" means corporation tax or income tax;

and paragraph 12G of that Schedule (gross income) applies for the purposes of this section as it applies for the purposes of Part 2A of that Schedule (with references to C read as references to the controlled foreign company).**]**

Textual Amendments

F4943 S. 751AB inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 2**

VALID FROM 19/07/2011

[F4944 751AC Reduction in chargeable profits following an exempt period

(1) This section applies if—

(a) an exempt period in relation to a controlled foreign company ends in accordance with paragraph 15F(2) of Schedule 25 (time exempt period ends if there is an early termination event), other than by reason of an early termination event within paragraph 15F(3)(b),

(b) an accounting period ("the relevant accounting period") of the company ends after that exempt period but before the time the exempt period would have ended had paragraph 15F(2) of that Schedule not applied,

(c) an apportionment under section 747(3) would fall to be made as regards the relevant accounting period, and

(d) a company resident in the United Kingdom ("the UK resident company") has a relevant interest in the controlled foreign company in that period.

(2) The UK resident company may make an application to the Commissioners for Her Majesty's Revenue and Customs for the chargeable profits of the controlled foreign company for that accounting period ("the chargeable profits") to be reduced to an amount ("the specified amount") specified in the application (which may be nil).

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(3) If the Commissioners grant the application—

(a) the chargeable profits are treated as reduced to the specified amount, and

(b) the controlled foreign company's creditable tax (if any) for that period is treated as reduced by so much of that tax as, on a just and reasonable basis, relates to the reduction in the chargeable profits,

for the purpose of applying section 747(3) to (5) for determining the sum (if any) chargeable on the UK resident company under section 747(4)(a) (but for no other purpose).

(4) The Commissioners may grant the application only if—

(a) they are satisfied that the specified amount is not less than the relevant amount, and

(b) they have not previously granted an application made by the UK resident company in respect of the relevant accounting period under section 751A or 751AB.

(5) "The relevant amount" means the amount (if any) equal to so much of the chargeable profits as it is just and reasonable to regard as referable to—

(a) the relevant transaction which triggered the end of the exempt period, or

(b) any later relevant transaction occurring before the time the exempt period would have ended had paragraph 15F(2) of Schedule 25 not applied.

(6) "Relevant transaction" has the meaning given by paragraph 15E of Schedule 25 (and it does not matter if the transaction occurs pursuant to an agreement entered into by the controlled foreign company before the relevant time (within the meaning of paragraph 15G of that Schedule)).**]**

Textual Amendments

F4944 S. 751AC inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 7**

VALID FROM 19/07/2007

751B Section 751A: supplementary

(1) An application by a company under section 751A—

(a) must be made in such form as the HMRC Commissioners may determine,

(b) must be accompanied by such documents (or copies of documents) in the company's possession or power as those Commissioners may reasonably require for the purpose of determining whether to grant the application, and

(c) must contain such information as those Commissioners may reasonably require for that purpose.

(2) An application by a company under section 751A—

(a) may be made at any time on or before the filing date (within the meaning of Schedule 18 to the Finance Act 1998) for the relevant company tax return of the company, and

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(b) may be amended or withdrawn at any time before the application is determined by those Commissioners.

(3) If an application by a company under section 751A is granted after the company has delivered its relevant company tax return, it has 30 days beginning with the day on which the application is granted in which to amend that return to give effect to section 751A.

(4) The time limits otherwise applicable to an amendment of a company tax return do not prevent an amendment being made under subsection (3).

(5) If the HMRC Commissioners refuse an application by a company under section 751A, the company may appeal to the Special Commissioners against the refusal.

(6) Notice of an appeal must be given in writing to the HMRC Commissioners within 30 days after the application is refused.

(7) On an appeal—

(a) if the Special Commissioners are satisfied that the relevant amount is a different amount from the amount specified in the application, they must direct the HMRC Commissioners to grant the application as if the amount specified in it were that different amount,

(b) if the Special Commissioners are satisfied that the relevant amount is the amount specified in the application, they must direct the HMRC Commissioners to grant the application, and

(c) in any other case, the Special Commissioners must confirm the refusal.

(8) For the purposes of subsection (7) "the relevant amount" means the amount (if any) equal to so much of the chargeable profits mentioned in subsection (4) of section 751A as can reasonably be regarded as representing the value mentioned in that subsection.

(9) Part 5 of the Management Act (appeals against assessments to tax), apart from section 50, applies in relation to an appeal under this section as it applies in relation to an appeal against an assessment to tax.

(10) In this section "relevant company tax return", in relation to a company, means the return for the accounting period for which—

(a) any sum is chargeable on the company under section 747(4)(a), or

(b) any sum would be so chargeable but for section 751A,

in respect of the chargeable profits of the controlled foreign company for the accounting period mentioned in section 751A(1).

(11) In this section "the HMRC Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

[F4945 752 Apportionment of chargeable profits and creditable tax

(1) This section applies in any case where an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company.

(2) Where—

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(a) the persons who have relevant interests in the controlled foreign company at any time in the relevant accounting period have those interests by virtue only of directly or indirectly holding ordinary shares of the company,

(b) each of those persons satisfies the condition that he is either—

(i) resident in the United Kingdom throughout that accounting period, or

(ii) resident in the United Kingdom at no time in that accounting period, and

(c) no company which has an intermediate interest in the controlled foreign company at any time in the relevant accounting period has that interest otherwise than by virtue of directly or indirectly holding ordinary shares of the controlled foreign company,

subsection (3) below shall apply.

(3) Where this subsection applies, the apportionment of the controlled foreign company's chargeable profits and creditable tax (if any) for the relevant accounting period shall be made among the persons who have relevant interests in the company at any time in that period in direct proportion to the percentage of the issued ordinary shares of the controlled foreign company which, in accordance with section 752B, each of those relevant interests represents.

(4) Where subsection (3) above does not apply, the apportionment of the controlled foreign company's chargeable profits and creditable tax (if any) for the relevant accounting period shall be made on a just and reasonable basis among the persons who have relevant interests in the company at any time in that period.**]**

Textual Amendments

F4945 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

[F4946 752A Relevant interests.

(1) This section has effect for the purpose of determining for the purposes of this Chapter who has a relevant interest in a controlled foreign company at any time; and references in this Chapter to relevant interests shall be construed accordingly.

(2) A UK resident company which has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (3) below otherwise provides.

(3) A UK resident company which has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if it has the interest by virtue of having a direct or indirect interest in another UK resident company.

(4) A related person who has a direct or indirect interest in a controlled foreign company has a relevant interest in the company by virtue of that interest unless subsection (5) or (6) below otherwise provides.

(5) A related person who has an indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest if he has the interest by virtue of having a direct or indirect interest in—

(a) a UK resident company; or

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(b) another related person.

(6) A related person who has a direct or indirect interest in a controlled foreign company does not have a relevant interest in the company by virtue of that interest to the extent that a UK resident company—

(a) has the whole or any part of the same interest indirectly, by virtue of having a direct or indirect interest in the related person, and

(b) by virtue of that indirect interest in the controlled foreign company, has a relevant interest in the company by virtue of subsection (2) above.

(7) A person who—

(a) has a direct interest in a controlled foreign company, but

(b) does not by virtue of subsections (2) to (6) above have a relevant interest in the company by virtue of that interest,

has a relevant interest in the company by virtue of that interest unless subsection (8) below otherwise provides.

(8) A person does not by virtue of subsection (7) above have a relevant interest in a controlled foreign company by virtue of having a direct interest in the company to the extent that another person—

(a) has the whole or any part of the same interest indirectly, and

(b) by virtue of that indirect interest, has a relevant interest in the company by virtue of subsections (2) to (6) above.

(9) No person has a relevant interest in a controlled foreign company otherwise than as provided by subsections (2) to (8) above.

(10) In this section—

"related person" means a person who—

(a) is not a UK resident company, but

(b) is connected or associated with a UK resident company which has by virtue of subsection (2) above a relevant interest in the controlled foreign company in question;

"UK resident company" means a company resident in the United Kingdom.**]**

Textual Amendments

F4946 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

[F4946 752B Section 752(3): the percentage of shares which a relevant interest represents.

(1) For the purposes of section 752(3) above, where a person has a relevant interest in a controlled foreign company by virtue of indirectly holding issued ordinary shares of the company, the percentage of the issued ordinary shares of the company which the relevant interest represents is equal to—

$$P \times S$$

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where—

P is the product of the appropriate fractions of that person and each of the share-linked companies through which he indirectly holds the shares in question, other than the lowest share-linked company; and

S is the percentage of issued ordinary shares of the controlled foreign company which is held directly by the lowest share-linked company.

(2) In subsection (1) above and this subsection—

"the appropriate fraction", in the case of a person who directly holds ordinary shares of a share-linked company, means that fraction of the issued ordinary shares of that company which his holding represents;

"the lowest share-linked company", in relation to a person who indirectly holds ordinary shares of a controlled foreign company, means the share-linked company which directly holds the shares in question;

"share-linked company" means a company which is share-linked to the controlled foreign company in question.

(3) Where a person has different indirect holdings of shares of the controlled foreign company (as in a case where different shares are held through different companies which are share-linked to the controlled foreign company)—

(a) subsection (1) above shall apply separately in relation to the different holdings with any necessary modifications; and

(b) for the purposes of section 752(3) above the percentage of the issued ordinary shares of the company which the relevant interest represents is the aggregate of the percentages resulting from those separate applications.

(4) Where, for the purposes of subsection (3) of section 752, the percentage of the issued ordinary shares of the controlled foreign company which a person directly or indirectly holds varies during the relevant accounting period, he shall be treated for the purposes of that subsection as holding throughout that period that percentage of the issued ordinary shares of the company which is equal to the sum of the relevant percentages for each holding period in the relevant accounting period.

(5) For the purposes of subsection (4) above—

"holding period", in the case of any person, means a part of the relevant accounting period during which the percentage of the issued ordinary shares of the controlled foreign company which the person holds (whether directly or indirectly) remains the same;

"the relevant percentage", in the case of a holding period, means the percentage equal to—

$$\frac{P \times H}{A}$$

where—

P is the percentage of the issued ordinary shares of the controlled foreign company which the person in question directly or indirectly holds in the holding period, as calculated in accordance with subsections (1) to (3) above so far as applicable;

H is the number of days in the holding period; and

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A is the number of days in the relevant accounting period.**]**

Textual Amendments

F4946 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

[F4946 752C Interpretation of apportionment provisions.

(1) In this section "the relevant provisions" means sections 752 to 752B and this section.

(2) For the purposes of the relevant provisions—

(a) a person has a direct interest in a company if (and only if) he has an interest in the company otherwise than by virtue of having an interest in another company;

(b) a person has an indirect interest in a company if (and only if) he has an interest in the company by virtue of having an interest in another company;

(c) a person indirectly holds shares of a controlled foreign company if (and only if) he directly holds ordinary shares of a company which is share-linked to the controlled foreign company.

(3) For the purposes of the relevant provisions, a company is "share-linked" to a controlled foreign company if it has an interest in the controlled foreign company only by virtue of directly holding ordinary shares—

(a) of the controlled foreign company, or

(b) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) above, or

(c) of the controlled foreign company or of one or more companies which are share-linked to the controlled foreign company by virtue of paragraph (a) or (b) above,

and so on.

(4) For the purposes of the relevant provisions, a company ("company A") has an intermediate interest in a controlled foreign company if (and only if)—

(a) it has a direct or indirect interest in the controlled foreign company; and

(b) one or more other persons have relevant interests in the controlled foreign company by virtue of having a direct or indirect interest in company A.

(5) Any interest or shares held by a nominee or bare trustee shall be treated for the purposes of the relevant provisions as held by the person or persons for whom the nominee or bare trustee holds the interest or shares.

(6) Where—

(a) an interest in a controlled foreign company is held in a fiduciary or representative capacity, and

(b) subsection (5) above does not apply, but

(c) there are one or more identifiable beneficiaries,

the interest shall be treated for the purposes of the relevant provisions as held by that beneficiary or, as the case may be, as apportioned on a just and reasonable basis among those beneficiaries.

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(7) In the relevant provisions—

"bare trustee" means a person acting as trustee—

(a) for a person absolutely entitled as against the trustee; or

(b) for any person who would be so entitled but for being a minor or otherwise under a disability; or

(c) for two or more persons who are or would, but for all or any of them being a minor or otherwise under a disability, be jointly so entitled;

"ordinary shares", in the case of any company, means shares of a single class, however described, which is the only class of shares issued by the company;

"the relevant accounting period" means the accounting period mentioned in section 752(1);

"share" includes a reference to a fraction of a share.**]**

Textual Amendments

F4946 Ss. 752-752C substituted for s. 752 (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 7**; S.I. 1998/3173, **art. 2**

753 Notices and appeals.

F4947 . . . . . .

Textual Amendments

F4947 S. 753 repealed (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), Sch. 17 para. 8, **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

754 Assessment, recovery and postponement of tax.

M1002(1) Subject to the following provisions of this section, the provisions of section 747(4)(a) relating to **[**F4948the charging**]** of a sum as if it were an amount of corporation tax shall be taken as applying, subject to the provisions of the Taxes Acts, and to any necessary modifications, all enactments applying generally to corporation tax, including **[**F4949those relating to company tax returns,**]** those relating to the assessing, collecting and receiving of corporation tax, those conferring or regulating a right of appeal and those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.

[F4950(1A) Accordingly (but without prejudice to subsection (1) above) the Management Act shall have effect as if—

(a) any reference to corporation tax included a reference to a sum chargeable under section 747(4)(a) as if it were an amount of corporation tax; and

(b) any reference to profits of a company included a reference to an amount of chargeable profits of a controlled foreign company which falls to be apportioned to a company under section 747(3).**]**

[F4951(2) For the purposes of the Taxes Acts, any sum chargeable on a company under section 747(4)(a) is chargeable for the accounting period of the company in which

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ends that one of the controlled foreign company's accounting periods the chargeable profits of which give rise to that sum.**]**

[F4952(2A) Where—

(a) an apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company, and

(b) the apportionment falls to be made in accordance with section 752(4) on a just and reasonable basis, and

(c) a company tax return is made or amended using for the apportionment a particular basis adopted by the company making the return,

the Board may determine that another basis is to be used for the apportionment.

(2B) For the purposes of subsection (2A) above, the Board may by notice require the company making the return—

(a) to produce to them such documents in the company's power or possession, and

(b) to provide them with such information, in such form,

as they may reasonably require for the purpose of determining the basis which is to be used for making the apportionment.

(2C) The provisions of paragraphs 27 to 29 of Schedule 18 to the Finance Act 1998 (notice to produce documents etc for the purposes of enquiry: supplementary provisions and penalty) shall apply in relation to a notice under subsection (2B) above.

(2D) Once the Board have determined under subsection (2A) above the basis to be used for the apportionment, matters shall proceed as if that were the only basis allowed by the Tax Acts.

(2E) A determination under subsection (2A) above may be questioned on an appeal against an amendment, made under paragraph 30 or 34(2) of Schedule 18 to the Finance Act 1998, of the company's company tax return, but only on the ground that the basis of apportionment determined by the Board is not just and reasonable.**]**

[F4953(3) Where any appeal—

(a) under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company tax return, or

(b) under paragraph 48 of that Schedule against a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule),

involves any question concerning the application of this Chapter in relation to any particular person, that appeal shall be to the Special Commissioners.

(3A) Where—

(a) any such question as is mentioned in subsection (3) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them, and

(b) the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned,

subsection (3B) below shall apply.

(3B) Where this subsection applies—

(a) each of the persons whose liability under this Chapter in respect of the controlled foreign company concerned is likely to be affected by the resolution

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of the question shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;

(b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and

(c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.**]**

(4) **[F4954**. . . . . .

(5) Schedule 26 shall have effect with respect to the reliefs which may be claimed by a company resident in the United Kingdom which has a liability for tax in respect of an amount of chargeable profits; and no reliefs other than those provided for by that Schedule shall be allowed against any such liability.

(6) In any case where—

(a) the whole or any part of the tax **[**[F4955]chargeable**]** on a company ("the **[**[F4955]chargeable**]** company") by virtue of section **[**[F4956]747(4)(a)**]** is not paid before the date on which it is due and payable in accordance with this Act or, as the case may be, the Management Act; and

(b) the Board serve a notice of liability to tax under this subsection on another company ("the responsible company") which is resident in the United Kingdom and holds or has held (whether directly or indirectly) **[**[F4957]the whole or any part of**]** the same interest in the controlled foreign company as is or was held by the **[**[F4955]chargeable**]** company,

[[F4958]the whole or, as the case may be, the corresponding part of**]** the tax **[**[F4955]chargeable**]** on the **[**[F4955]chargeable**]** company or, as the case may be, so much of it as remains unpaid shall be payable by the responsible company upon service of the notice.

(7) Where a notice of liability is served under subsection (6) above—

(a) **[**[F4959]the whole, or (as the case may be) the corresponding part, of**]** any interest due on the tax **[**[F4960]chargeable**]** on the **[**[F4960]chargeable**]** company and not paid; and

(b) any interest accruing due on that tax after the date of service,

shall be payable by the responsible company **[**[F4961](so far as referable to tax payable by the responsible company by virtue of the notice)**]**.

(8) In any case where—

(a) a notice of liability is served on the responsible company under subsection (6) above, and

(b) the relevant tax and any interest payable by the responsible company under subsection (7) above is not paid by that company before the expiry of the period of three months beginning on the date of service of the notice,

that tax and interest may, without prejudice to the right of recovery from the responsible company, be recovered from the **[**[F4962]chargeable**]** company.

(9) In this section "the Taxes Acts" has the same meaning as in the Management Act.

Textual Amendments

F4948 Words in s. 754(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(2)(a)**; S.I. 1998/3173, **art. 2**

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F4949 Words in s. 754(1) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(2)(b)**; S.I. 1998/3173, **art. 2**

F4950 S. 754(1A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(3)**; S.I. 1998/3173, **art. 2**

F4951 S. 754(2) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(4)**; S.I. 1998/3173, **art. 2**

F4952 S. 754(2A)-(2E) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(5)**; S.I. 1998/3173, **art. 2**

F4953 S. 754(3)-(3B) substituted for s. 754(3) (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(6)**; S.I. 1998/3173, **art. 2**

F4954 S. 754(4) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 9(7), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F4955 Words in s. 754(6) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(a)**; S.I. 1998/3173, **art. 2**

F4956 Words in s. 754(6)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(b)**; S.I. 1998/3173, **art. 2**

F4957 Words in s. 754(6)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(c)**; S.I. 1998/3173, **art. 2**

F4958 Words in s. 754(6) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(8)(d)**; S.I. 1998/3173, **art. 2**

F4959 Words in s. 754(7)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(9)(a)**; S.I. 1998/3173, **art. 2**

F4960 Words in s. 754(7)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(9)(b)**; S.I. 1998/3173, **art. 2**

F4961 Words in s. 754(7)(b) added (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(9)(c)**; S.I. 1998/3173, **art. 2**

F4962 Word in s. 754(8) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 9(10)**; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

C760 *See* 1970(M) s.55(1)(g)*and* (6A).

Marginal Citations

M1002 Source—1984 s.89(1)-(4), (7)-(11)

[F4963 754A Returns where it is not established whether acceptable distribution policy applies.

(1) This section applies where—

(a) a company resident in the United Kingdom ("the UK company") has an interest in a controlled foreign company at any time during an accounting period of the controlled foreign company;

(b) the UK company delivers a company tax return; and

(c) at the time when the UK company delivers the company tax return, it is not established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period.

(2) If the UK company is of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company pursues such a policy.

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(3) If the UK company is not of the opinion that the controlled foreign company is likely to pursue an acceptable distribution policy in relation to the accounting period, the UK company shall make the company tax return on the basis that the accounting period of the controlled foreign company is one in relation to which the controlled foreign company does not pursue such a policy.

(4) In any case where—

(a) the UK company acts in pursuance of subsection (2) above, but

(b) it becomes established that the controlled foreign company has not pursued an acceptable distribution policy in relation to the accounting period,

the UK company shall amend the company tax return on the basis that the accounting period is not one in relation to which the controlled foreign company pursues an acceptable distribution policy.

(5) In any case where—

(a) the UK company acts in pursuance of subsection (3) above, but

(b) it becomes established that the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period,

the UK company shall amend the company tax return on the basis that the accounting period is one in relation to which the controlled foreign company pursues an acceptable distribution policy.

(6) Any amendment required to be made to the company tax return by virtue of subsection (4) or (5) above ("an ADP amendment") shall be made by the UK company before the expiration of the period of 30 days next following the end of the period allowed for establishing an ADP in relation to the accounting period of the controlled foreign company.

(7) Subject to subsection (8) below, the making of any ADP amendment is subject to, and must be in accordance with, the other provisions of the Corporation Tax Acts as they apply for the purposes of this Chapter.

(8) The time limits otherwise applicable to amendment of a company tax return do not apply to an ADP amendment.

(9) A company which fails to make an ADP amendment required by subsection (4) above within the time allowed for doing so shall be liable to a tax-related penalty under paragraph 20 of Schedule 18 to the Finance Act 1998 (penalty, not exceeding amount of tax understated, for incorrect or uncorrected return).

(10) For the purposes of this section, if it has not previously been established whether or not the controlled foreign company has pursued an acceptable distribution policy in relation to the accounting period, it shall be taken to be established immediately after the end of the period allowed for establishing an ADP in relation to that accounting period.

(11) In this section, "the period allowed for establishing an ADP" means, in relation to an accounting period of a controlled foreign company, the period ending with the expiration of—

(a) subject to paragraph (b) below, the period of eighteen months next following the end of the accounting period; or

(b) if the Board have, in the case of the accounting period, allowed further time under paragraph 2(1)(b) of Schedule 25, the further time so allowed.

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(12) In this section any reference to a controlled foreign company pursuing an acceptable distribution policy in relation to an accounting period shall be construed in accordance with Part I of Schedule 25.**]**

Textual Amendments

F4963 S. 754A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 10**; S.I. 1998/3173, **art. 2**

[F4964 754B Determinations requiring the sanction of the Board.

(1) This section has effect where a determination requiring the Board's sanction is made for any of the following purposes, that is to say—

(a) the giving of a closure notice; or

(b) the making of a discovery assessment.

(2) If the closure notice or, as the case may be, notice of the discovery assessment is given to any person without—

(a) the determination, so far as it is taken into account in the closure notice or the discovery assessment, having been approved by the Board, or

(b) notification of the Board's approval having been served on that person at or before the time of the giving of the notice,

the closure notice or, as the case may be, the discovery assessment shall be deemed to have been given or made (and in the case of an assessment notified) in the terms (if any) in which it would have been given or made had that determination not been taken into account.

(3) A notification under subsection (2)(b) above—

(a) must be in writing;

(b) must state that the Board have given their approval on the basis that—

(i) an amount of chargeable profits, and

(ii) an amount of creditable tax (which may be nil),

for the accounting period of the controlled foreign company in question fall to be apportioned under section 747(3) to the person in question;

(c) must state the amounts mentioned in sub-paragraphs (i) and (ii) of paragraph (b) above; and

(d) subject to paragraphs (a) to (c) above, may be in such form as the Board may determine.

(4) For the purposes of this section, the Board's approval of a determination requiring their sanction—

(a) must be given specifically in relation to the case in question and must apply to the amount determined; but

(b) subject to that, may be given by the Board (either before or after the making of the determination) in any such form or manner as they may determine.

(5) In this section references to a determination requiring the Board's sanction are references (subject to subsection (6) below) to any determination of the amount of chargeable profits or creditable tax for an accounting period of a controlled foreign company which falls to be apportioned to a particular person under section 747(3).

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(6) For the purposes of this section, a determination shall be taken, in relation to a closure notice or a discovery assessment, not to be a determination requiring the Board's sanction if—

(a) an agreement about the relevant amounts has been made between an officer of the Board and the person in whose case it is made;

(b) that agreement is in force at the time of the giving of the closure notice or, as the case may be, notice of the assessment; and

(c) the matters to which the agreement relates include the amount determined.

(7) In paragraph (a) of subsection (6) above, "the relevant amounts" means—

(a) the amount of chargeable profits, and

(b) the amount of creditable tax (which may be nil),

for the accounting period of the controlled foreign company in question which fall to be apportioned under section 747(3) to the person mentioned in that paragraph.

(8) For the purposes of subsection (6) above an agreement made between an officer of the Board and any person ("the taxpayer") in relation to any matter shall be taken to be in force at any time if, and only if—

(a) the agreement is one which has been made or confirmed in writing;

(b) that time is after the end of the period of thirty days beginning—

(i) in the case of an agreement made in writing, with the day of the making of the agreement, and

(ii) in any other case, with the day of the agreement's confirmation in writing; and

(c) the taxpayer has not, before the end of that period of thirty days, served a notice on an officer of the Board stating that he is repudiating or resiling from the agreement.

(9) The references in subsection (8) above to the confirmation in writing of an agreement are references to the service on the taxpayer by an officer of the Board of a notice—

(a) stating that the agreement has been made; and

(b) setting out the terms of the agreement.

(10) The matters that may be questioned on so much of any appeal by virtue of any provision of the Management Act or Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters) as relates to a determination the making of which has been approved by the Board for the purposes of this section shall not include the Board's approval, except to the extent that the grounds for questioning the approval are the same as the grounds for questioning the determination itself.

(11) In this section—

"closure notice" means a notice under paragraph 32 of Schedule 18 to the Finance Act 1998 (completion of enquiry and statement of conclusions);

"discovery assessment" means a discovery assessment or discovery determination under paragraph 41 of that Schedule (including an assessment by virtue of paragraph 52 of that Schedule).**]**

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Textual Amendments

F4964 S. 754B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 11**; S.I. 1998/3173, **art. 2**

755 Information relating to controlled foreign companies

F4965 . . . . . .

Textual Amendments

F4965 S. 755 repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 12, **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

[F4966 755A Treatment of chargeable profits and creditable tax apportioned to company carrying on life assurance business.

(1) This section applies in any case where—

(a) an amount ("the apportioned profit") of a controlled foreign company's chargeable profits for an accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");

(b) the UK company carries on life assurance business in that one of its accounting periods ("the relevant accounting period") in which ends the accounting period of the controlled foreign company; and

(c) the property or rights which represent the UK company's relevant interest in the controlled foreign company constitute to any extent assets of the UK company's **[**F4967 long-term insurance fund**]**.

(2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business.

(3) Where this subsection applies, the "appropriate rate" for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 in relation to the policy holders' part of any BLAGAB apportioned profit shall be—

(a) if a single rate of tax under section **[**F4968 88(1)**]** of the M1003 Finance Act 1989 (lower corporation tax rate on certain insurance company profits) is applicable in relation to the relevant accounting period, that rate; or

(b) if more than one such rate of tax is applicable in relation to the relevant accounting period, the average of those rates over the whole of that period.

(4) Where this subsection applies, the "appropriate rate" for the purposes of section 747(4)(a) and paragraph 1 of Schedule 26 shall be nil in relation to so much of the apportioned profit as is referable to—

(a) pension business,

(b) life reinsurance business, or

(c) overseas life assurance business,

carried on by the UK company.

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(5) If, in the case of the relevant accounting period, the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, the "appropriate rate" for the purposes of—

(a) section 747(4)(a), and

(b) paragraph 1 of Schedule 26,

shall be nil in relation to so much of the apportioned profit as is referable to the UK company's relevant interest so far as represented by assets of its **[**F4967long-term insurance fund**]**.

(6) If, in the case of the relevant accounting period,—

(a) the UK company is not charged to tax under Case I of Schedule D in respect of its profits from life assurance business,

(b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company, and

(c) the apportioned profit is to any extent referable to a category of business specified in paragraphs (a) to (c) of subsection (4) above,

so much of the creditable tax so apportioned as is attributable to the apportioned profit so far as so referable shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

(7) If, in the case of the relevant accounting period,—

(a) the UK company is charged to tax under Case I of Schedule D in respect of its profits from life assurance business, and

(b) any creditable tax of the controlled foreign company falls to be apportioned to the UK company,

so much of the creditable tax so apportioned as is attributable to so much of the apportioned profit as is referable to the UK company's relevant interest so far as represented by assets of the UK company's **[**F4967long-term insurance fund**]** shall be left out of account for the purposes of this Chapter, other than section 747(3) and this section, and shall be treated as extinguished.

(8) Any set off under paragraph 1 or 2 of Schedule 26 against the UK company's liability to tax under section 747(4)(a) in respect of the apportioned profit shall be made against only so much of that liability as is attributable to the eligible part of the apportioned profit.

(9) Accordingly, in the application of paragraph 2 of Schedule 26 in relation to the apportioned profit, in the definition of "the relevant maximum" in sub-paragraph (3)—

(a) the reference to the liability to tax referred to in sub-paragraph (1) of that paragraph shall be taken as a reference to only so much of that liability as is attributable to the eligible part of the apportioned profit; and

(b) in paragraph (a), for the amount there described there shall be substituted a reference to the eligible part of the apportioned profit.

(10) For the purposes of this section, the "eligible part" of the apportioned profit is any BLAGAB apportioned profit, other than the policy holders' part.

[F4969(11) For the purposes of this section the policy holders' part of any BLAGAB apportioned profit is—

(a) where subsection (11A) below applies, the whole of that profit, and

(b) in any other case, the relevant fraction (within the meaning of subsection (11B) below) of that profit.

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(11A) This subsection applies if—

(a) the UK company's life assurance business is mutual business,

(b) the policy holders' share of the UK company's relevant profits for the relevant accounting period is equal to all those profits, or

(c) the policy holders' share of the UK company's relevant profits for the relevant accounting period is more than its BLAGAB profits for that period.

(11B) The relevant fraction for the purposes of subsection (11)(b) above is the fraction arrived at by dividing—

(a) the policy holders' share of the UK company's relevant profits for the relevant accounting period, by

(b) the UK company's BLAGAB profits for that period.

(11C) In subsections (11A) and (11B) above—

(a) references to the policy holders' share of the UK company's share of the relevant profits are to be construed in accordance with sections 88(3) and 89 of the Finance Act 1989, and

(b) references to the UK company's BLAGAB profits are to be construed in accordance with section 89(1B) of that Act.**]**

(12) In this section—

"BLAGAB apportioned profit" means so much of the apportioned profit as is referable to basic life assurance and general annuity business carried on by the UK company;

"**[**F4967long-term insurance fund**]**" has the meaning given by section 431(2).

(13) For the purposes of this section, the part of the apportioned profit which is referable to—

(a) pension business,

(b) life reinsurance business,

(c) overseas life assurance business, or

(d) basic life assurance and general annuity business,

carried on by the UK company is the part which would have been so referable under section 432A had the apportioned profit been a dividend paid to the UK company at the end of the accounting period mentioned in subsection (1)(a) above in respect of the property or rights which represent the UK company's relevant interest in the controlled foreign company.

(14) For the purposes of this section, any attribution of creditable tax to a particular part of the apportioned profit shall be made in the proportion which that part of the apportioned profit bears to the whole of the apportioned profit.**]**

Textual Amendments

F4966 S. 755A inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 13**; S.I. 1998/3173, **art. 2**

F4967 Words in s. 755A(1)(c)(5)(7)(12) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(j)**

F4968 Words in s. 755A(3) substituted (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 13(8)**

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F4969 S. 755A(11)-(11C) substituted for s. 755A(11) (with effect in accordance with Sch. 33 para. 13(11) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 13(9)**

Modifications etc. (not altering text)

C761 S. 755A modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1**, 5, 18

C762 S. 755A modified by the Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30B** (as inserted (13.10.1999) by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 1999 (S.I. 1999/2636), **regs. 1**, 4; and as that reg. 30B is amended by S.I. 2004/822, **regs. 1**, 24)

C763 S. 755A modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 16; S.I. 2004/3369, **art. 2(1)**

C764 S. 755A modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 22 (as amended by S.I. 2007/2134, **regs. 1(1)(2)**, 21)

Marginal Citations

M1003 1989 c. 26.

[F4970 755B Amendment of return where general insurance business of foreign company accounted for on non-annual basis.

(1) This section applies where—

(a) a controlled foreign company carries on general insurance business in an accounting period;

(b) an amount of the company's chargeable profits, and an amount of its creditable tax (if any), for that accounting period falls to be apportioned under section 747(3) to a company resident in the United Kingdom ("the UK company");

(c) the UK company delivers a company tax return for that one of its accounting periods in which the controlled foreign company's accounting period ends; and

(d) in making or amending the return, the UK company has regard to accounts of the controlled foreign company drawn up using a method falling within subsection (2) below.

(2) The methods which fall within this subsection are—

(a) the method described in paragraph 52 of Schedule 9A to the M1004 Companies Act 1985 (which provides for a technical provision to be made in the accounts which is later replaced by a provision for estimated claims outstanding); and

(b) any method which would have fallen within paragraph (a) above, had final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of that Schedule, taken place, and been required to take place, no later than the end of the year referred to in that sub-paragraph as the third year following the underwriting year.

(3) Where this section applies—

(a) the UK company may make any amendments of its company tax return arising from the replacement of the technical provision in the controlled foreign company's accounts at any time within twelve months from the date on which the provision was replaced; and

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(b) notice of intention to enquire into the return under paragraph 24 of Schedule 18 to the Finance Act 1998 may be given at any time up to two years from that date (or at any later time in accordance with the general rule in sub-paragraph (3) of that paragraph).

(4) If, in a case where this section applies, the accounts of the controlled foreign company are drawn up using a method falling within paragraph (b) of subsection (2) above—

(a) the controlled foreign company, and

(b) any person with an interest in the controlled foreign company,

shall be treated for the purposes of this section as if final replacement of the technical provision, as described in sub-paragraph (4) of paragraph 52 of Schedule 9A to the [M1005]Companies Act 1985, had taken place at, and been required to take place no later than, the end of the year referred to in that sub-paragraph as the third year following the underwriting year.

(5) Regulations under section 755C may make provision with respect to the determination of the amount of the provision by which the technical provision is to be treated as replaced in cases falling within subsection (4) above.

[[F4971](6) In this section "general insurance business" means business which consists of the effecting or carrying out of contracts which fall within Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.**]]**

Textual Amendments

F4970 S. 755B inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 14**; S.I. 1998/3173, **art. 2**

F4971 S. 755B(6) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 44**

Marginal Citations

M1004 1985 c. 6.

M1005 1985 c. 6.

[[F4972]755C Application of Chapter where general insurance business of foreign company accounted for on non-annual basis.

(1) The Treasury may by regulations provide for the provisions of this Chapter to have effect with prescribed modifications in any case where a non-resident company—

(a) carries on general insurance business; and

(b) draws up accounts relating to that business using a method falling within subsection (2) of section 755B.

(2) Regulations under subsection (1) above may—

(a) make different provision for different cases;

(b) make provision having effect in relation to accounting periods of non-resident companies ending not more than one year before the date on which the regulations are made; and

(c) contain such supplementary, incidental, consequential and transitional provision as the Treasury may think fit.

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(3) In this section—

"general insurance business" has the same meaning as in section 755B;

"non-resident company" means a company resident outside the United Kingdom;

"prescribed" means prescribed in regulations under this section.**]**

Textual Amendments

F4972 S. 755C inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 15**; S.I. 1998/3173, **art. 2**

[F4973 755D "Control" and the two "40 per cent" tests.

(1) For the purposes of this Chapter "control", in relation to a company, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to the company or any other company, or

(b) by virtue of any powers conferred by the articles of association or other document regulating the company or any other company,

that the affairs of the company are conducted in accordance with his wishes.

(2) Where two or more persons, taken together, have the power mentioned in subsection (1) above, they shall be taken for the purposes of this Chapter to control the company.

(3) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing at least 40 per cent of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(4) The 40 per cent test in this subsection is satisfied in the case of one of two persons who, taken together, control a company if that one of them has interests, rights and powers representing—

(a) at least 40 per cent, but

(b) not more than 55 per cent,

of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the company.

(5) For the purposes of this Chapter any question—

(a) whether a company is controlled by a person, or by two or more persons taken together, or

(b) whether, in the case of any company, the applicable 40 per cent test is satisfied in the case of each of two persons who, taken together, control the company,

shall be determined after attributing to each of the persons all the rights and powers mentioned in subsection (6) below that are not already attributed to that person for the purposes of subsections (1) to (4) above.

(6) The rights and powers referred to in subsection (5) above are—

(a) rights and powers which the person is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;

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(b) rights and powers of other persons, to the extent that they are rights or powers falling within subsection (7) below;

(c) if the person is resident in the United Kingdom, rights and powers of any person who is resident in the United Kingdom and connected with the person; and

(d) if the person is resident in the United Kingdom, rights and powers which for the purposes of subsection (5) above would be attributed to a person who is resident in the United Kingdom and connected with the person (a "UK connected person") if the UK connected person were himself the person.

(7) Rights and powers fall within this subsection to the extent that they—

(a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—

(i) on behalf of the person;

(ii) under the direction of the person; or

(iii) for the benefit of the person; and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(8) In subsections (6)(b) to (d) and (7) above, the references to a person's rights and powers include references to any rights or powers which he either—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

(9) In paragraph (d) of subsection (6) above, the reference to rights and powers which would be attributed to a UK connected person if he were the person includes a reference to rights and powers which, by applying that paragraph wherever one person resident in the United Kingdom is connected with another person, would be so attributed to him through a number of persons each of whom is resident in the United Kingdom and connected with at least one of the others.

(10) In determining for the purposes of this section whether one person is connected with another in relation to a company, subsection (7) of section 839 shall be disregarded.

(11) References in this section—

(a) to rights and powers of a person, or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.**]**

Textual Amendments

F4973 S. 755D inserted (with effect in accordance with Sch. 31 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 4(1)**

756 Interpretation and construction of Chapter IV.

M1006(1) In this Chapter—

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[F4974“company tax return” means a return required to be made under Schedule 18 to the Finance Act 1998;**]**

“trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades.

(2) For the purposes of this Chapter—

(a) section 839 applies; and

(b) subsection (10) of section 783 applies as it applies for the purposes of that section.

(3) The following provisions of Part XI apply for the purposes of this Chapter as they apply for the purposes of that Part—

(a) F4975. . . . . .

(b) section 417(7) to (9);

F4976. . . . . ..

Textual Amendments

F4974 S. 756(1): definition of "company tax return" inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 16**; S.I. 1998/3173, **art. 2**

F4975 S. 756(3)(a) repealed (with effect in accordance with Sch. 31 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(2)(a), **Sch. 40 Pt. 2(14)**, Note

F4976 Words in s. 756(3) repealed (with effect in accordance with Sch. 31 para. 9(3) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 4(2)(b), **Sch. 40 Pt. 2(14)**, Note

Marginal Citations

M1006 Source—1984 s.91

CHAPTER V

OFFSHORE FUNDS

*I*F4977*Meaning of offshore fund*

Textual Amendments

F4977 Ss. 756A-756C and preceding cross-headings inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 3** (with Sch. 26 para. 17)

756A General definition of offshore fund

(1) In this Chapter references to an offshore fund are to a collective investment scheme constituted by—

(a) a company that is resident outside the United Kingdom, or

(b) a unit trust scheme the trustees of which are not resident in the United Kingdom, or

(c) arrangements not falling within paragraph (a) or (b) taking effect by virtue of the law of a territory outside the United Kingdom and which under that law

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create rights in the nature of co-ownership (without restricting that expression to its meaning in the law of any part of the United Kingdom).

(2) Subsection (1) has effect subject to—

section 756B (treatment of umbrella funds), and

section 756C (treatment of funds comprising more than one class of interest).

(3) In this section "collective investment scheme" has the meaning given by section 235 of the Financial Services and Markets Act 2000.

Treatment of umbrella funds

756B Treatment of umbrella funds

(1) In this Chapter, an "umbrella fund" means an offshore fund—

(a) which provides arrangements for separate pooling of the contributions of the participants and the profits or income out of which payments are made to them; and

(b) under which the participants are entitled to exchange rights in one pool for rights in another;

and references in this Chapter to a part of an umbrella fund are to such of the arrangements as relate to a separate pool.

(2) For the purposes of this Chapter (except subsection (1))—

(a) each part of an umbrella fund shall be regarded as a separate offshore fund, and

(b) the umbrella fund as a whole shall not be regarded as an offshore fund.

(3) In this Chapter, in relation to a part of an umbrella fund—

(a) a reference to the assets of an offshore fund is to such of the assets of the umbrella fund as under the arrangements form part of the separate pool to which that part of the umbrella fund relates;

(b) a reference to the income of an offshore fund is to the income arising from those assets;

(c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest in that separate pool; and

(d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the umbrella fund being a non-qualifying fund.

Modifications etc. (not altering text)

C765 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 489** (with Sch. 2 Pts. 1, 2)

Treatment of funds comprising more than one class of interest

756C Treatment of funds comprising more than one class of interest

(1) For the purposes of this Chapter where there is more than one class of interest in an offshore fund (the "main fund")—

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(a) each class of interest shall be regarded as a separate offshore fund, and

(b) the main fund shall not be regarded as an offshore fund.

(2) In this section, references to a class of interest in an offshore fund do not include—

(a) a part of an umbrella fund which is regarded as an offshore fund by virtue of section 756B, or

(b) a class of interest in an offshore fund which by virtue of section 759(5), (6) or (8) is not a material interest in the fund.

(3) In this Chapter, in relation to a class of interest in an offshore fund—

(a) a reference to the assets of an offshore fund is to the assets of the main fund;

(b) a reference to the income of an offshore fund is to such of the income of the main fund as is attributable to interests of that class under the arrangements constituting the main fund;

(c) a reference to a person having an interest in an offshore fund is to a person for the time being having an interest of that class; and

(d) a reference to an offshore fund being a non-qualifying fund shall be read in relation to times before the coming into force of this section as a reference to the main fund being a non-qualifying fund.**]**

Modifications etc. (not altering text)

C766 Ss. 756A-756C applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 489** (with Sch. 2 Pts. 1, 2)

Material interests in non-qualifying offshore funds

757 Disposal of material interests in non-qualifying offshore funds

M1007(1) This Chapter applies to a disposal by any person of an asset if—

(a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which is or has at any material time been a non-qualifying offshore fund; or

(b) at the time of the disposal, the asset constitutes an interest in a company resident in the United Kingdom or in a unit trust scheme, the trustees of which are at that time resident in the United Kingdom and at a material time after 31st December 1984 **[**F4978the interest was a material interest in a non-qualifying offshore fund**]**;

and for the purpose of determining whether the asset disposed of falls within paragraph (b) above, section **[**F4979127 of the 1992**]** Act (equation of original shares and new holding) shall have effect as it has effect for the purposes of that Act.

(2) M1008Subject to the following provisions of this section and section 758, there is a disposal of an asset for the purposes of this Chapter if there would be such a disposal for the purposes of the **[**F49791992**]** Act.

(3) Notwithstanding anything in paragraph (b) of subsection (1) of section **[**F497962 of the 1992**]** Act (general provisions applicable on death: no deemed disposal by the deceased) where a person dies and the assets of which he was competent to dispose include an asset which is or has at any time been a material interest in a non-qualifying offshore fund, then, for the purposes of this Chapter, other than section 758—

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(a) immediately before the acquisition referred to in paragraph (a) of that subsection, that interest shall be deemed to be disposed of by the deceased for such a consideration as is mentioned in that subsection; but

(b) nothing in this subsection affects the determination, in accordance with subsection (1) above, of the question whether that deemed disposal is one to which this Chapter applies.

(4) Subject to subsection (3) above, section **[**F4979 62 of the 1992**]** Act applies for the purposes of this Chapter as it applies for the purposes of that Act, and the reference in that subsection to the assets of which a deceased person was competent to dispose shall be construed in accordance with subsection (10) of that section.

[F4980 (5) Section 135 of the 1992 Act (exchange of securities for those in another company treated as not involving a disposal) does not apply for the purposes of this Chapter **[**F4981 to the extent that—

(a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and

(b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.**]**

In a case where that section would apply apart from this subsection, the exchange in question **[**F4982 (of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund)**]** shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the exchange.

(6) Section 136 of the 1992 Act (scheme of reconstruction involving issue of securities treated as exchange not involving disposal) does not apply for the purposes of this Chapter **[**F4983 to the extent that—

(a) the interest in the entity that is company A for the purposes of that section that is exchanged is or was at a material time an interest in a non-qualifying offshore fund, and

(b) the interest in the entity that is company B for those purposes that is exchanged is not an interest in such a fund.**]**

In a case where that section would apply apart from this subsection, the deemed exchange in question **[**F4984 (of interests in or of an entity that are or were at a material time interests in a non-qualifying offshore fund)**]** shall for the purposes of this Chapter constitute a disposal of interests in the offshore fund for a consideration equal to their market value at the time of the deemed exchange.**]**

(7) For the purposes of this section—

(a) a material time, in relation to the disposal of an asset, is **[**F4985 any time on or after**]** the earliest date on which any relevant consideration was given for the acquisition of the asset or, if that date is earlier than 1st January 1984, any time on or after 1st January 1984; and

(b) "relevant consideration" means consideration which, assuming the application to the disposal of **[**F4979 Chapter III of Part II of the 1992**]** Act, would fall to be taken into account in determining the amount of the gain or loss accruing on the disposal, whether that consideration was given by or on behalf of the person making the disposal or by or on behalf of a predecessor in

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title of his whose acquisition cost represents, directly or indirectly, the whole or any part of the acquisition cost of the person making the disposal.

Textual Amendments

F4978 Words in s. 757(1)(b) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(2)**

F4979 Words in s. 757(1)-(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(43)** (with ss. 60, 101(1), 171, 201(3))

F4980 S. 757(5)(6) substituted (with effect in accordance with Sch. 9 paras. 7, 8(1) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(5)**

F4981 Words in s. 757(5) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(3)(a)**

F4982 Words in s. 757(5) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(3)(b)**

F4983 Words in s. 757(6) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(4)(a)**

F4984 Words in s. 757(6) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 4(4)(b)**

F4985 1990 s.89*and* Sch.14 para.10 (*correction of errors*)—*deemed always to have had effect.*

Modifications etc. (not altering text)

C767 S. 757 modified (24.2.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 10 para. 7** (with Sch. 10 para. 10); S.I. 2003/120, art. 2, **Sch.** (with arts. 3, 4 (as amended by S.I. 2003/333, **art. 14**))

Marginal Citations

M1007 Source—1984 s.92(1), (7)

M1008 Source—1984 s.92(2)-(6), (8)

758 Offshore funds operating equalisation arrangements

M1009(1) For the purposes of this Chapter, an offshore fund operates equalisation arrangements if, and at a time when, arrangements are in existence which have the result that where—

(a) a person acquires by way of initial purchase a material interest in the fund at some time during a period relevant to the arrangements; and

(b) the fund makes a distribution for a period which begins before the date of his acquisition of that interest;

the amount of that distribution which is paid to him (assuming him still to retain that interest) will include a payment of capital which is debited to an account maintained under the arrangements ("the equalisation account") and which is determined by reference to the income which had accrued to the fund at the date of his acquisition.

(2) For the purposes of this section, a person acquires an interest in an offshore fund by way of initial purchase if—

(a) his acquisition is by way of subscription for or allotment of new shares, units or other interests issued or created by the fund; or

(b) his acquisition is by way of direct purchase from the persons concerned with the management of the fund and their sale to him is made in their capacity as managers of the fund.

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(3) Without prejudice to section 757(1), this Chapter applies, subject to the following provisions of this section, to a disposal by any person of an asset if—

(a) at the time of the disposal, the asset constitutes a material interest in an offshore fund which at that time is operating equalisation arrangements; and

(b) the fund is not and has not at any material time (within the meaning of section 757(7)) been a non-qualifying offshore fund; and

(c) the proceeds of the disposal do not fall to be taken into account as a trading receipt.

(4) This Chapter does not, by virtue of subsection (3) above, apply to a disposal if—

(a) it takes place during such a period as is mentioned in subsection (1)(a) above; and

(b) throughout so much of that period as precedes the disposal, the income of the offshore fund concerned has been of such a nature as is referred to in paragraph 3(1) of Schedule 27.

(5) An event which, apart from section **[**F4986127 of the 1992**]** Act (reorganisations etc.), would constitute a disposal of an asset shall constitute such a disposal for the purpose of determining whether, by virtue of subsection (3) above, there is a disposal to which this Chapter applies.

(6) The reference in subsection (5) above to section **[**F4986127 of the 1992**]** Act includes a reference to that section as applied by **[**F4987any provision of Chapter 2 of Part 4 of that Act**]**.

[F4988(7) The Treasury may make provision by regulations as to the application of the provisions of this section in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.

(8) Regulations under subsection (7) may—

(a) make different provision for different cases, and

(b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.**]**

Textual Amendments

F4986 Words in s. 758(5)(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(44)** (with ss. 60, 101(1), 171, 201(3))

F4987 Words in s. 758(6) substituted (with effect in accordance with Sch. 9 paras. 7, 8(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(6)**

F4988 S. 758(7)(8) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 5**

Modifications etc. (not altering text)

C768 S. 758 applied (with modifications) (22.10.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Offshore Funds Regulations 2004 (S.I. 2004/2572), **regs. 1(1)**, 3

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Marginal Citations

M1009 Source—1984 s.93

759 Material interests in offshore funds

M1010(1) F4989 . . . . . .

[F4990(1A) F4989 . . . . . .]

(2) Subject to the following provisions of this section, a person's interest in [F4991an offshore fund] is a material interest if, at the time when he acquired the interest, it could reasonably be expected that, at some time during the period of seven years beginning at the time of his acquisition, he would be able to realise the value of the interest (whether by transfer, surrender or in any other manner).

(3) For the purposes of subsection (2) above, a person is at any time able to realise the value of an interest if at that time he can realise an amount which is reasonably approximate to that portion which the interest represents (directly or indirectly) of the market value at that time of [F4992the assets of the fund].

(4) For the purposes of subsections (2) and (3) above—

(a) a person is able to realise a particular amount if he is able to obtain that amount either in money or in the form of assets to the value of that amount; and

(b) if at any time an interest in an offshore fund has a market value which is substantially greater than the portion which the interest represents, as mentioned in subsection (3) above, of the market value at that time of the assets concerned, the ability to realise such a market value of the interest shall not be regarded as an ability to realise such an amount as is referred to in that subsection.

(5) An interest in [F4993an offshore fund] is not a material interest if—

(a) it is an interest in respect of any loan capital or debt issued or incurred for money which, in the ordinary course of a business of banking, is lent by a person carrying on that business; or

(b) it is a right arising under a policy of insurance.

(6) Shares in a company [F4994that is not resident in the United Kingdom](an "overseas company") do not constitute a material interest [F4995in an offshore fund] if—

(a) the shares are held by a company and the holding of them is necessary or desirable for the maintenance and development of a trade carried on by the company or a company associated with it; and

(b) the shares confer at least 10 per cent. of the total voting rights in the overseas company and a right, in the event of a winding-up, to at least 10 per cent. of the assets of that company remaining after the discharge of all liabilities having priority over the shares; and

(c) not more than ten persons hold shares in the overseas company and all the shares in that company confer both voting rights and a right to participate in the assets on a winding-up; and

(d) at the time of its acquisition of the shares, the company had such a reasonable expectation as is referred to in subsection (2) above by reason only of the existence of—

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(i) an arrangement under which, at some time within the period of seven years beginning at the time of acquisition, that company may require the other participators to purchase its shares; or

(ii) provisions of either an agreement between the participators or the constitution of the overseas company under which the company will be wound up within a period which is, or is reasonably expected to be, shorter than the period referred to in subsection (2) above; or

(iii) both such an arrangement and such provisions;

and in this paragraph "participators" means the persons holding shares falling within paragraph (c) above.

(7) For the purposes of subsection (6)(a) above, a company is associated with another company if one of them has control of the other within the meaning of section 416 or both of them are under the control, within the meaning of that section, of the same person or persons.

(8) An interest in a company **[**F4994that is not resident in the United Kingdom**]** is not a material interest **[**F4995in an offshore fund**]** at any time when the following conditions are satisfied, namely—

(a) that the holder of the interest has the right to have the company wound up; and

(b) that, in the event of a winding up, the holder is, by virtue of the interest and any other interest which he then holds in the same capacity, entitled to more than 50 per cent. of the assets remaining after the discharge of all liabilities having priority over the interest or interests concerned.

(9) The market value of any asset for the purposes of this Chapter shall be determined in like manner as it would be determined for the purposes of the **[**F4996**1992]** Act except that, in the case of an interest in an offshore fund for which there are separate published buying and selling prices, section **[**F4996272(5)**]** of that Act (meaning of "market value" in relation to rights of unit holders in a unit trust scheme) shall apply with any necessary modifications for determining the market value of the interest for the purposes of this Chapter.

Textual Amendments

F4989 S. 759(1)(1A) repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 6(2), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

F4990 S. 759(1A) inserted (with application in accordance with s. 134(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 134(3)**

F4991 Words in s. 759(2) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 6(3)** (with Sch. 26 para. 17)

F4992 Words in s. 759(3) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 6(4)** (with Sch. 26 para. 17)

F4993 Words in s. 759(5) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 6(5)** (with Sch. 26 para. 17)

F4994 Words in s. 759(6)(8) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 6(6)(a)** (with Sch. 26 para. 17)

F4995 Words in s. 759(6)(8) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 6(6)(b)** (with Sch. 26 para. 17)

F4996 Words in s. 759(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(45)** (with ss. 60, 101(1), 171, 201(3))

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Marginal Citations

M1010 Source—1984 s.94

760 Non-qualifying offshore funds

M1011 (1) For the purposes of this Chapter, an offshore fund is a non-qualifying fund except during an account period of the fund in respect of which the fund is certified by the Board as a distributing fund.

(2) An offshore fund shall not be certified as a distributing fund in respect of any account period unless, with respect to that period, the fund pursues a full distribution policy, within the meaning of Part I of Schedule 27.

(3) Subject to Part II of that Schedule, an offshore fund shall not be certified as a distributing fund in respect of any account period if, at any time in that period—

(a) more than 5 per cent. by value of the assets of the fund consists of interests in other offshore funds; F4997 . . .

(b) F4997 . . . . . .

(c) F4997 . . . . . .

(d) F4997 . . . . . .

(4) F4998 . . . . . .

(5) F4998 . . . . . .

(6) F4998 . . . . . .

(7) F4998 . . . . . .

(8) For the purposes of this Chapter, an account period of an offshore fund shall begin—

(a) whenever the fund begins to carry on its activities; and

(b) whenever an account period of the fund ends without the fund then ceasing to carry on its activities.

(9) For the purposes of this Chapter, an account period of an offshore fund shall end on the first occurrence of any of the following—

(a) the expiration of 12 months from the beginning of the period;

(b) an accounting date of the fund or, if there is a period for which the fund does not make up accounts, the end of that period; and

(c) the fund ceasing to carry on its activities.

(10) For the purposes of this Chapter—

(a) an account period of an offshore fund which is a company **[**F4999 that is not resident in the United Kingdom**]** shall end if, and at the time when, the company ceases to be resident outside the United Kingdom; and

(b) an account period of an offshore fund which is a unit trust scheme **[**F5000 of which the trustees are not resident in the United Kingdom**]** shall end if, and at the time when, the trustees of the scheme become resident in the United Kingdom.

[F5001 (10A) For the purposes of this Chapter, in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

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(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C,

references to an account period of the offshore fund are to an account period of the umbrella fund or the main fund (as the case may be).**]**

(11) The provisions of Part III of Schedule 27 shall have effect with respect to the procedure for and in connection with the certification of an offshore fund as a distributing fund, and the supplementary provisions in Part IV of that Schedule shall have effect.

Textual Amendments

F4997 S. 760(3)(b)-(d) and preceding word repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 13(2), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

F4998 S. 760(4)-(7) repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 13(3), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

F4999 Words in s. 760(10)(a) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 7(2)(a)** (with Sch. 26 para. 17)

F5000 Words in s. 760(10)(b) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 7(2)(b)** (with Sch. 26 para. 17)

F5001 S. 760(10A) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 7(3)** (with Sch. 26 para. 17)

Modifications etc. (not altering text)

C769 S. 760 modified (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 26 para. 17**

Marginal Citations

M1011 Source—1984 s.95

Charge to tax of offshore income gains

761 Charge to income tax or corporation tax of offshore income gain.

M1012(1) If a disposal to which this Chapter applies gives rise in accordance with section 758 **[**F5002or Schedule**]** 28 to an offshore income gain, then, subject to the provisions of this section, the amount **[**F5003of that gain—

(a) shall be treated for all the purposes of the Tax Acts as income arising at the time of the disposal to the person making the disposal, and

(b) shall be charged—

(i) to income tax for the year of assessment in which the disposal is made, or

(ii) to corporation tax as a profit or gain under Case VI of Schedule D for the accounting period in which the disposal is made.**]**

[F5004(1A) The income tax charged by virtue of subsection (1)(b)(i) above shall be charged on the full amount of the income treated as arising in the year of assessment.**]**

(2) Subject to subsection (3) below, **[**F5005sections 2(1), 10 and 10B**]****[**F5006of the 1992 Act**]** (persons chargeable to tax in respect of chargeable gains) and **[**F5007section 11(2A)(c)**]** shall have effect in relation to income tax or corporation tax in respect of offshore

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income gains as they have effect in relation to capital gains tax or corporation tax in respect of chargeable gains.

(3) In the application of **[**F5008sections 10 and 10B**][**F5006of the 1992 Act**]** in accordance with subsection (2) above, paragraphs (a) and (b) of **[**F5009subsection (1) of section 10**]** (which define the assets on the disposal of which chargeable gains are taxable) shall have effect with the omission of the words "situated in the United Kingdom and"**[**F5010 and paragraphs (a) and (b) of subsection (1) of section 10B (which make similar provision in relation to corporation tax) shall have effect with the omission of the words "situated in the United Kingdom and"**]**.

F5011(4) . . . . . .

(5) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, section **[**F5006 12 of the 1992 Act**]** (which provides for taxation on a remittance basis) shall have effect in relation to income tax chargeable by virtue of subsection (1) above on an offshore income gain as it has effect in relation to capital gains tax in respect of gains accruing to such individuals from the disposal of assets situated outside the United Kingdom.

(6) A charity shall be exempt from tax in respect of an offshore income gain if the gain is applicable and applied for charitable purposes; but if property held on charitable trusts ceases to be subject to charitable trusts and that property represents directly or indirectly an offshore income gain, the trustees shall be treated as if they had disposed of and immediately reacquired that property for a consideration equal to its market value, any gain (calculated in accordance with Schedule 28) accruing being treated as an offshore income gain not accruing to a charity.

In this subsection "charity" has the same meaning as in section 506 and "market value" has the same meaning as in the **[**F5006 1992**]** Act.

(7) In any case where—

(a) a disposal to which this Chapter applies is a disposal of settled property, within the meaning of the **[**F5006 1992**]** Act, and

(b) for the purposes of the **[**F5006 1992**]** Act, the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom,

subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.

Textual Amendments

F5002 1990 s.89*and* Sch.14 para.11 (*correction of errors)—deemed always to have had effect. Previously* "and Schedule."

F5003 Words in s. 761(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 308(2)** (with Sch. 2)

F5004 S. 761(1A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 308(3)** (with Sch. 2)

F5005 Words in s. 761(2) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(1)(a)(i)**

F5006 Words in s. 761(2)(3)(5)(6)(7)(a)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(47)** (with ss. 60, 101(1), 171, 201(3))

F5007 Words in s. 761(2) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(1)(a)(ii)**

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F5008 Words in s. 761(3) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(1)(b)(i)**
F5009 Words in s. 761(3) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(1)(b)(ii)**
F5010 Words in s. 761(3) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(1)(b)(iii)**
F5011 S. 761(4) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch.12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

Marginal Citations
M1012 Source—1984 s.96; 1987 Sch.15 16(1)

762 Offshore income gains accruing to persons resident or domiciled abroad.

M1013(1) Section **[**F5012 13 of the 1992 Act**]** (chargeable gains accruing to certain non-resident companies) shall have effect in relation to offshore income gains subject to the following modifications—

(a) for any reference to a chargeable gain there shall be substituted a reference to an offshore income gain;

(b) for the reference in subsection (7) to capital gains tax there shall be substituted a reference to income tax or corporation tax; and

(c) paragraphs (b) and (c) of subsection (5) and subsection (8) shall be omitted.

(2) Subject to subsections (3) and (4) below, sections **[**F5012 87 to 90 and 96 to 98 of the 1992 Act**]** (gains of non-resident settlements) shall have effect in relation to offshore income gains subject to the following modifications—

(a) for any reference to chargeable gains, other than the reference in section **[**F5012 87(6)**]**, there shall be substituted a reference to offshore income gains;

(b) **[**F5012 in section 87(2) of the 1992 Act for the words "tax under section 2(2)"**]** there shall be substituted the words " income tax by virtue of section 761 of the Taxes Act ";

(c) in section **[**F5012 87(7)**]** the reference to tax shall be construed as a reference to income tax or corporation tax; and

(d) sections **[**F5012 87(10) and 97(6)**]** shall be omitted.

(3) In section **[**F5012 87(6) of the 1992 Act**]**, both as it applies apart from subsection (2) above and as applied by subsection (2) above, the reference to chargeable gains shall be construed as including a reference to offshore income gains.

(4) If, in any year of assessment—

(a) under subsection (3) of section **[**F5012 87 of the 1992 Act**]**, as it applies apart from subsection (2) above, a chargeable gain falls to be attributed to a beneficiary, and

(b) under that subsection, as applied by subsection (2) above, an offshore income gain also falls to be attributed to him,

subsection (4) of that section (gains attributed in proportion to capital payments received) shall have effect as if it required offshore income gains to be attributed before chargeable gains.

(5) Subject to subsection (6) below, for the purpose of determining whether an individual ordinarily resident in the United Kingdom has a liability for income tax in respect of an offshore income gain which arises on a disposal to which this Chapter applies where the disposal is made by a person resident or domiciled outside the United Kingdom—

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(a) sections 739 and 740 shall apply as if the offshore income gain arising to the person resident or domiciled outside the United Kingdom constituted income becoming payable to him, and

(b) any reference in those sections to income of (or payable or arising to) such a person accordingly includes a reference to the offshore income gain arising to him by reason of the disposal to which this Chapter applies.

(6) To the extent that an offshore income gain is treated, by virtue of subsection (1) or subsection (2) above, as having accrued to any person resident or ordinarily resident in the United Kingdom, that gain shall not be deemed to be the income of any individual for the purposes of section 739 or 740 **[**F5013above**]** or any provision of **[**F5014Chapter 5 of Part 5 of ITTOIA 2005**]**.

Textual Amendments

F5012 Words in s. 762(1)-(4) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(48)** (with ss. 60, 101(1), 171, 201(3))

F5013 Word in s. 762(6) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 309(a)** (with Sch. 2)

F5014 Words in s. 762(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 309(b)** (with Sch. 2)

Marginal Citations

M1013 Source—1984 s.97

VALID FROM 21/07/2008

[F5015**762ZA Offshore income gains: application of transfer of assets abroad provisions**

(1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) applies in relation to an offshore income gain arising to a person resident or domiciled outside the United Kingdom as if the offshore income gain were income becoming payable to the person.

(2) Income treated as arising under that Chapter by virtue of subsection (1) is regarded as "foreign" for the purposes of section 726, 730 or 735 of that Act.

(3) Subsection (1) does not apply in relation to an offshore income gain if (and to the extent that) it is treated, by virtue of section 762(1), as arising to a person resident or ordinarily resident in the United Kingdom.

(4) The following provisions apply if section 762(2) applies in relation to an offshore income gain ("the relevant offshore income gain").

(5) If—

(a) by virtue of section 762(3) an offshore income gain is treated as arising in a tax year to a person resident or ordinarily resident in the United Kingdom, and

(b) it is so treated by reason of the relevant offshore income gain (or part of it),

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for that and subsequent tax years subsection (1) does not apply in relation to the relevant offshore income gain (or that part).

(6) If, by virtue of subsection (1) as it applies in relation to the relevant offshore income gain, income is treated under Chapter 2 of Part 13 of ITA 2007 as arising in a tax year, reduce (with effect from the following tax year) the OIG amount in question by the amount of the income.**]**

Textual Amendments

F5015 Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 94**

VALID FROM 21/07/2008

[F5015 762ZB Income treated as arising under section 761(1): remittance basis

(1) This section applies to income treated as arising under section 761(1) to an individual in a tax year if—

(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual for that year, and

(b) the individual is not domiciled in the United Kingdom in that year.

(2) Treat the income as relevant foreign income of the individual.

(3) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis)—

(a) treat any consideration obtained on the disposal of the asset as deriving from the income, and

(b) unless the consideration so obtained is of an amount equal to the market value of the asset, treat the asset as deriving from the income.

(4) In subsection (3)—

(a) "the asset" means the asset the disposal of which causes the income to be treated as arising, and

(b) "the disposal" means the disposal mentioned in paragraph (a).**]**

Textual Amendments

F5015 Ss. 762ZA, 762ZB inserted (with effect in accordance with Sch. 7 para. 98 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 94**

[F5016 762A Exchange of interests of different classes

(1) This section applies where—

(a) classes of interest in an offshore fund (the "main fund") are treated as separate offshore funds under section 756C; and

(b) as the result of—

(i) a reorganisation within the meaning of section 126 of the 1992 Act, or

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(ii) a conversion of securities within the meaning of section 132 of that Act,

a person exchanges an interest of one class (A) in the main fund for an interest of another class (B) in that fund.

(2) Where—

(a) the interest of class A—

(i) is at the time of the exchange an interest in a non-qualifying offshore fund, or

(ii) has been an interest in such a fund at any material time, and

(b) the interest of class B is at the time of the exchange an interest in a fund which is certified by the Board as a distributing offshore fund,

section 127 of the 1992 Act (equation of original shares and new holding) shall not prevent the exchange constituting a disposal for the purposes of this Chapter.

(3) Any such disposal shall be treated as a disposal for a consideration equal to the market value of the rights at the time of the exchange.

(4) In this section—

"class of interest" has the same meaning as in section 756C(1);

"material time" has the same meaning as in section 757.**]**

Textual Amendments

F5016 S. 762A inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 15(1)** (with Sch. 26 para. 17)

763 Deduction of offshore income gain in determining capital gain.

M1014 (1) The provisions of this section apply where a disposal to which this Chapter applies gives rise to an offshore income gain; and, if that disposal also constitutes the disposal of the interest concerned for the purposes of the **[**F5017 1992**]** Act, then that disposal is in the following provisions of this section referred to as **[**F5017 the 1992 Act disposal**]**.

(2) So far as relates to an offshore income gain which arises on a material disposal (within the meaning of Part I of Schedule 28), subsections (3) and (4) below shall have effect in relation to **[**F5017 the 1992 Act disposal**]** in substitution for section **[**F5017 37(1)**]** of that Act (deduction of consideration chargeable to tax on income).

(3) Subject to the following provisions of this section, in the **[**F5017 computation of the gain**]** accruing on **[**F5017 the 1992 Act disposal**]**, a sum equal to the offshore income gain shall be deducted from the sum which would otherwise constitute the amount or value of the consideration for the disposal.

(4) Where **[**F5017 the 1992 Act disposal**]** is of such a nature that, by virtue of section **[**F5017 42**]** of that Act (part disposals) an apportionment falls to be made of certain expenditure, no deduction shall be made by virtue of subsection (3) above in determining, for the purposes of the fraction in subsection (2) of that section, the amount or value of the consideration for the disposal.

(5) If **[**F5017 the 1992 Act disposal**]** forms part of a transfer to which section **[**F5017 162**]** of that Act applies (roll-over relief on transfer of business in exchange wholly or partly

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for shares) then, for the purposes of subsection (4) of that section (determination of the amount of the deduction from the gain on the old assets) "B" in the fraction in that subsection (the value of the whole of the consideration received by the transferor in exchange for the business) shall be taken to be what it would be if the value of the consideration other than shares so received by the transferor were reduced by a sum equal to the offshore income gain.

(6) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of **[**F5018section 757(5) or (6)**]** or 758(5), the **[**F5017**1992]** Act shall have effect as if an amount equal to the offshore income gain to which the disposal gives rise were given (by the person making the exchange concerned) as consideration for the new holding, within the meaning of section **[**F5017**128]** of that Act (consideration given or received for new holding on a reorganisation).

[F5019(6A) Where the disposal to which this Chapter applies constitutes such a disposal by virtue of section 762A (exchange of interests of different classes), the 1992 Act shall have effect as if an amount equal to the offshore income gain to which that disposal gives rise were given (by the person making the exchange) as consideration for the new holding (within the meaning of section 128 of that Act (consideration given or received for new holding on a reorganisation)).**]**

(7) In any case where—

(a) a disposal to which this Chapter applies by virtue of subsection (3) of section 758 is made otherwise than to the offshore fund concerned or the persons referred to in subsection (2)(b) of that section; and

(b) subsequently, a distribution which is referable to the asset disposed of is paid either to the person who made the disposal or to a person connected with him; and

(c) the disposal gives rise (in accordance with Part II of Schedule 28) to an offshore income gain;

then, for the purposes of the Tax Acts, the amount of the first distribution falling within paragraph (b) above shall be taken to be reduced or, as the case may be, extinguished by deducting therefrom an amount equal to the offshore income gain referred to in paragraph (c) above and, if that amount exceeds the amount of that first distribution, the balance shall be set against the second and, where necessary, any later distribution falling within paragraph (b) above, until the balance is exhausted.

(8) Section 839 shall apply for the purposes of subsection (7)(b) above.

Textual Amendments

F5017 Words in s. 763(1)-(6) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(49)** (with ss. 60, 101(1), 171, 201(3))

F5018 Words in s. 763(6) substituted (with retrospective effect in accordance with Sch. 26 para. 16(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 16(1)** (with Sch. 26 para. 17)

F5019 S. 763(6A) inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 15(2)** (with Sch. 26 para. 17)

Marginal Citations

M1014 Source—1984 s.98

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764 Offshore income gains of trustees.

M1015Income arising in a year of assessment by virtue of section 761(1) to trustees shall be chargeable to income tax **[**F5020at the rate applicable to trusts**]** for that year.

Textual Amendments

F5020 Words in s. 764 substituted (27.7.1993 with effect for the year 1993-1994 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.13, **25(1)**

Marginal Citations

M1015 Source—1984 s.100(1)

CHAPTER VI

MISCELLANEOUS

Migration etc. of company

765 Migration etc. of companies.

M1016(1) Subject to the provisions of this section **[**F5021and section 765A**]**, all transactions of the following classes shall be unlawful unless carried out with the consent of the Treasury, that is to say—

(a) *for a body corporate resident in the United Kingdom to cease to be so resident; or*

(b) *for the trade or business or any part of the trade or business of a body corporate so resident to be transferred from that body corporate to a person not so resident; or*

F5022(c) for a body corporate **[**F5023resident in the United Kingdom**]** to cause or permit a body corporate not so resident over which it has control to create or issue any shares or debentures; or

(d) except for the purpose of enabling a person to be qualified to act as a director, for a body corporate so resident to transfer to any person, or cause or permit to be transferred to any person, any shares or debentures of a body corporate not so resident over which it has control, being shares or debentures which it owns or in which it has an interest.

(2) Nothing in subsection (1)(c) above shall apply to the giving to the bankers of the body corporate not resident in the United Kingdom of any security for the payment of any sum due or to become due from it to them by reason of any transaction entered into with it by them in the ordinary course of their business as bankers.

(3) Nothing in subsection (1)(c) above shall apply to the giving by the body corporate not resident in the United Kingdom to an insurance company of any security for the payment of any sum due or to become due from that body corporate to that company by reason of any transaction entered into with that body corporate by that company in the ordinary course of that company's business by way of investment of its funds.

(4) Any consent granted by the Treasury under this section—

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(a) may be given either specially (that is to say, so as to apply only to specified transactions of or relating to a specified body corporate) or generally (that is to say, so as not only so to apply); and

(b) may, if given generally, be revoked by the Treasury; and

(c) may in any case be absolute or conditional; and

(d) shall be published in such a way as to give any person entitled to the benefit of it an adequate opportunity of getting to know of it, unless in the opinion of the Treasury publication is not necessary for that purpose.

Textual Amendments

F5021 1990 s.68(1), (4)*in relation to transactions carried out on or after* 1*July* 1990.

F5022 *Repealed by* 1988(F) ss.105(6), 148*and* Sch.14 Part IV*from* 15*March* 1988.*And see* 1988(F) ss.61, 130-132*and* Sch.7*for new requirements for companies from* 15*March* 1988.

F5023 1988(F) s.105(6)*from* 15*March* 1988.*Previously*
"so resident".

Modifications etc. (not altering text)

C770 *Provisions of this section employed in* 1988(F) ss.105, 130*and* Sch.7.

Marginal Citations

M1016 Source—1970 s.482(1)-(4)

[F5024 765A Movements of capital between residents of member States.

(1) Section 765(1) shall not apply to a transaction which is a movement of capital to which Article 1 of the M1017 Directive of the Council of the European Communities dated 24th June 1988 No. 88/361/EEC applies.

(2) Where if that Article did not apply to it a transaction would be unlawful under section 765(1), the body corporate in question (that is to say, the body corporate resident in the United Kingdom) shall—

(a) give to the Board within six months of the carrying out of the transaction such information relating to the transaction, or to persons connected with the transaction, as regulations made by the Board may require, and

(b) where notice is given to the body corporate by the Board, give to the Board within such period as is prescribed by regulations made by the Board (or such longer period as the Board may in the case allow) such further particulars relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.]

Textual Amendments

F5024 S. 765A inserted (with effect in accordance with s. 68(4) of the amending Act) by Finance Act 1990 (c. 29), **s. 68(2)**

Marginal Citations

M1017 O.J. No. L178/5

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766 Offences under section 765.

(1) [M1018]Any person who, whether within or outside the United Kingdom, does or is a party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, something which is unlawful under section 765(1) shall be guilty of an offence under this section.

(2) In any proceedings in respect of such an offence against a director of the body corporate in question (that is to say, the body corporate which is or was resident in the United Kingdom) or against any person who was purporting to act in that capacity—

(a) it shall be presumed that he was a party to every act of that body corporate unless he proves that it was done without his consent or connivance; and

(b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in or would amount to or result in, something which is unlawful under section 765(1) was to his knowledge such an act.

(3) [M1019]Any person who is guilty of an offence under this section shall be liable on conviction on indictment—

(a) to imprisonment for not more than two years or to a fine, or to both; or

(b) where the person in question is a body corporate which is or was resident in the United Kingdom, to a fine not exceeding an amount equal to three times the corporation tax, capital gains tax and income tax paid or payable which is attributable to the income, profits or gains (including chargeable gains) arising in the 36 months immediately preceding the commission of the offence, or £10,000, whichever is the greater;

and proceedings in respect of such an offence alleged to have been committed by a person may be taken before the appropriate court in the United Kingdom having jurisdiction in the place where that person is for the time being.

(4) [M1020]No proceedings for an offence under this section shall be instituted, in England or Wales, except by or with the consent of the Attorney General, or in Northern Ireland, except by or with the consent of the Attorney General for Northern Ireland.

Marginal Citations

M1018 Source—1970 s.482(5)
M1019 Source—1970 s.482(6)
M1020 Source—1970 s.482(11)

767 Interpretation and commencement of sections 765 and 766.

(1) *[M1021]A body corporate shall be deemed for the purposes of sections* 765*and* 766*to be resident or not to be resident in the United Kingdom according as the central management and control of its trade or business is or is not exercised in the United Kingdom.*

(2) *If it is shown that it has been established as between the Crown and a body corporate for any income tax or corporation tax purpose that the body corporate was resident or ordinarily resident in the United Kingdom for any year of assessment or other period, it shall be presumed, except so far as the contrary is proved, that that body corporate was resident in the United Kingdom for the purposes of sections* 765*and* 766*at the*

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beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.

(3) [M1022]*Where the functions of a body corporate consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purposes of this section and sections* 765*and* 766*to be a business carried on by the body corporate.*

(4) *Notwithstanding anything in the preceding provisions of this section or in sections* 765*and* 766*,in no event shall a mere transfer of assets by a body corporate not resulting in a substantial change in the character or extent of the trade or business of that body corporate be treated for the purposes of sections* 765*and* 766*as a transfer of part of its trade or business*[F5025].

(5) In this section and in sections 765 and 766—

"share", "debenture" and "director" have, in relation to any body corporate, the meanings respectively assigned to them by Part XXVI of the [M1023]Companies Act 1985 in relation to a company;

"control" (except in the expression "central management and control") has, in relation to a body corporate, the meaning given by section 840;

"transfer", in relation to shares or debentures, includes a transfer of any beneficial interest therein;

"insurance company" means a body corporate lawfully carrying on business as an insurer, whether in the United Kingdom or elsewhere; and

"funds" in relation to an insurance company means the funds held by it in connection with that business;

and a body corporate shall not be deemed for the purposes of this section and sections 765*and* 766*to cease to be resident in the United Kingdom by reason only that it ceases to exist*[F5026].

(6) [M1024]This section and sections 765 and 766 shall come into force on 6th April 1988 to the exclusion of section 482 of the 1970 Act (which is re-enacted by those sections); but any offence committed before 6th April 1988 shall not be punishable under section 766 and neither this subsection nor any other provision of this Act shall prevent any such offence from being punishable as if this Act had not been passed.

Textual Amendments

F5025 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*from* 15*March* 1988*subject to* 1988(F) s.105(6).

F5026 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*from* 15*March* 1988*subject to* 1988(F) s.105(6).

Marginal Citations

M1021 Source—1970 s.482(7)

M1022 Source—1970 s.482(8)-(10)

M1023 1985 c. 6.

M1024 Source—1970 s.482(12)

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Change in ownership of company

767A Change in company ownership: corporation tax.

(1) Where it appears to the Board that—

(a) there has been a change in the ownership of a company ("the tax-payer company"),

(b) any corporation tax assessed on the tax-payer company for an accounting period beginning before the change remains unpaid at any time after the relevant date, and

(c) any of the three conditions mentioned below is fulfilled,

any person mentioned in subsection (2) below may be assessed by the Board and charged (in the name of the tax-payer company) to an amount of corporation tax in accordance with this section.

(2) The persons are—

(a) any person who at any time during the relevant period before the change in the ownership of the tax-payer company had control of it;

(b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before that change.

(3) In subsection (2) above, "the relevant period" means—

(a) the period of three years before the change in the ownership of the tax-payer company; or

(b) if during the period of three years before that change ("the later change") there was a change in the ownership of the tax-payer company ("the earlier change"), the period elapsing between the earlier change and the later change.

(4) The first condition is that—

(a) at any time during the period of three years before the change in the ownership of the tax-payer company the activities of a trade or business of that company cease or the scale of those activities become small or negligible; and

(b) there is no significant revival of those activities before that change occurs.

(5) The second condition is that at any time after the change in the ownership of the tax-payer company, but under arrangements made before that change, the activities of a trade or business of that company cease or the scale of those activities become small or negligible.

(6) The third condition is that—

(a) at any time during the period of six years beginning three years before the change in the ownership of the tax-payer company there is a major change in the nature or conduct of a trade or business of that company;

(b) there is a transfer or there are transfers of assets of the tax-payer company to a person mentioned in subsection (7) below or to any person under arrangements which enable any of those assets or any assets representing those assets to be transferred to a person mentioned in subsection (7) below;

(c) that transfer occurs or those transfers occur during the period of three years before the change in the ownership of the tax-payer company or after that change but under arrangements made before that change; and

(d) the major change mentioned in paragraph (a) above is attributable to that transfer or those transfers.

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(7) The persons are—

(a) any person mentioned in subsection (2)(a) above; and

(b) any person connected with him.

(8) The amount of tax charged in an assessment made under this section must not exceed the amount of the tax which, at the time of that assessment, remains unpaid by the tax-payer company.

(9) For the purposes of this section the relevant date is the date six months from the date on which the corporation tax is assessed as mentioned in subsection (1)(b) above.

(10) Any assessment made under this section shall not be out of time if made within three years from the date on which the liability of the tax-payer company to corporation tax for the accounting period mentioned in subsection (1)(b) above is finally determined.

Modifications etc. (not altering text)

C771 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

[F5027 767A Change in company ownership: postponed corporation tax.

(1) Where it appears to the Board that—

(a) there has been a change in the ownership of a company ("the transferred company"),

(b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,

(c) that tax remains unpaid at any time more than six months after it was assessed, and

(d) the condition set out in subsection (2) below is fulfilled,

any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.

(2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—

(a) the terms of any transactions entered into in connection with the change, and

(b) the other circumstances of the change and of any such transactions,

that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.

(3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—

(a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or

(b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,

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would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).

(4) The persons mentioned in subsection (1) above are—

(a) any person who at any time during the relevant period had control of the transferred company;

(b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.

(5) In subsection (4) above, "the relevant period" means—

(a) the period of three years before the change in the ownership of the transferred company; or

(b) if during the period of three years before that change ("the later change") there was a change in the ownership of the transferred company ("the earlier change"), the period elapsing between the earlier change and the later change.

(6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—

(a) it is the transaction, or one of the transactions, by which that change is effected; or

(b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.

(7) For the purposes of this section—

(a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;

(b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and

(c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—

(i) would not have been entered into independently of the other or others; or

(ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

(8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any compnay (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—

(a) has control of the transferred company;

(b) is a company of which the transferred company has control; or

(c) is a company under the control of the same person or persons as the transferred company.

(9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.

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(10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.**]**

Textual Amendments

F5027 S. 767AA inserted (with effect in accordance with s. 114(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 114(1)**

Modifications etc. (not altering text)

C772 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

767B Change of company ownership: supplementary.

(1) In relation to corporation tax assessed under section 767A—

(a) section 86 of the Management Act (interest on overdue tax), in so far as it has effect in relation to accounting periods ending on or before 30th September 1993, and

(b) section 87A of that Act (corresponding provision for corporation tax due for accounting periods ending after that date),

shall have effect as if the references in section 86 to the reckonable date and in section 87A to the date when the tax becomes due and payable were, respectively, references to the date which is the reckonable date in relation to the tax-payer company and the date when the tax became due and payable by the tax-payer company.

[F5028(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).**]**

(2) A payment in pursuance of an assessment under section 767A **[**F5029or 767AA**]** shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes; but any person making such a payment shall be entitled to recover an amount equal to the payment from the tax-payer company **[**F5030or the transferred company or associated company (as the case may be)**]**.

(3) In subsection (2) above the reference to a payment in pursuance of an assessment includes a reference to a payment of interest under section 86 or 87A of the Management Act (as they have effect by virtue of subsection (1) above).

(4) For the purposes of **[**F5031sections 767A, 767AA and 767C**]**, "control", in relation to a company, shall be construed in accordance with section 416 as modified by subsections (5) and (6) below.

(5) In subsection (2)(a) for "the greater part of" there shall be substituted "50 per cent. of".

(6) For subsection (3) there shall be substituted—

(") Where two or more persons together satisfy any of the conditions in subsection (2) above and do so by reason of having acted together to put themselves in a position

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where they will in fact satisfy the condition in question, each of those persons shall be treated as having control of the company."

(7) In section 767A(6) "a major change in the nature or conduct of a trade or business" includes any change mentioned in any of paragraphs (a) to (d) of section 245(4); and also includes a change falling within any of those paragraphs which is achieved gradually as the result of a series of transfers.

(8) In section 767A(6) "transfer", in relation to an asset, includes any disposal, letting or hiring of it, and any grant or transfer of any right, interest or licence in or over it, or the giving of any business facilities with respect to it.

(9) Section 839 shall apply for the purposes of section 767A(7).

(10) Subsection (9) of section 768 shall apply for the purposes of **[**F5032sections 767A and 767AA**]** as it applies for the purposes of section 768.

Textual Amendments

F5028 S. 767B(1A) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(1)**

F5029 Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(2)(a)**

F5030 Words in s. 767B(2) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(2)(b)**

F5031 Words in s. 767B(4) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(3)**

F5032 Words in s. 767B(10) substituted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(4)**

Modifications etc. (not altering text)

C773 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

[F5033**767C Change in company ownership: information.**

(1) This section applies where it appears to the Board that—

(a) there has been a change in the ownership of a company ("the subject company"); and

(b) in connection with that change a person ("the seller") may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.

(2) The Board may by notice require any person to supply to them—

(a) any document in the person's possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or

(b) any particulars which appear to them to be so relevant.

(3) Those matters are—

(a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and

(b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become

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liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.

(4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.

(5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.

(6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.

(7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.

(8) In relation to any notice under subsection (2) above—

(a) subsection (4) of section 20B of the [M1025]Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and

(b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;

and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.

(9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—

(a) has control of the subject company;

(b) is a company of which the subject company has control; or

(c) is a company under the control of the same person or persons as the subject company.

(10) In this section "document" means anything in which information of any description is recorded.**]**

Textual Amendments

F5033 S. 767C inserted (with effect in accordance with s. 115(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 115(1)**

Modifications etc. (not altering text)

C774 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

Marginal Citations

M1025 1970 c. 9.

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768 Change in ownership of company: disallowance of trading losses.

M1026(1) If—

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393 by setting a loss incurred by the company in an accounting period beginning before the change of ownership against any income or other profits of an accounting period ending after the change of ownership.

(2) In applying this section to the accounting period in which the change of ownership occurs, the part ending with the change of ownership, and the part after, shall be treated as two separate accounting periods, and the profits or losses of the accounting period shall be apportioned to the two parts.

(3) The apportionment under subsection (2) above shall be on a time basis according to the respective lengths of those parts except that if it appears that that method would work unreasonably or unjustly such other method shall be used as appears just and reasonable.

(4) In subsection (1) above "major change in the nature or conduct of a trade" includes—

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or

(b) a major change in customers, outlets or markets of the trade;

and this section applies even if the change is the result of a gradual process which began outside the period of three years mentioned in subsection (1)(a) above.

(5) In relation to any relief available under section 343 to a successor company, subsection (1) above shall apply as if any loss sustained by a predecessor company had been sustained by a successor company and as if the references to a trade included references to the trade as carried on by a predecessor company.

(6) Where relief in respect of a company's losses has been restricted under this section then, notwithstanding **[**F5034section 577(3) of the Capital Allowances Act**]**, in applying the provisions of that Act about balancing charges to the company by reference to any event after the change of ownership of the company, any allowance or deduction falling to be made in taxing the company's trade for any chargeable period before the change of ownership shall be disregarded unless the profits or gains of that chargeable period or of any subsequent chargeable period before the change of ownership were sufficient to give effect to the allowance or deduction.

(7) In applying subsection (6) above it shall be assumed that any profits or gains are applied in giving effect to any such allowance or deduction in preference to being set off against any loss which is not attributable to such an allowance or deduction.

(8) Where the operation of this section depends on circumstances or events at a time after the change of ownership (but not more than three years after), an assessment to give effect to the provisions of this section shall not be out of time if made within six years from that time, or the latest of those times.

(9) Any person in whose name any shares, stock or securities of a company are registered shall, if required by notice by an inspector given for the purposes of this section, state

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whether or not he is the beneficial owner of those shares or securities and, if not the beneficial owner of those shares or securities of any of them, shall furnish the name and address of the person or persons on whose behalf those shares, stock or securities are registered in his name.

Textual Amendments

F5034 Words in s. 768(6) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 55**

Modifications etc. (not altering text)

C775 Ss. 768, 768D modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 11**; S.I. 2005/1444, art. 2(1), **Sch. 1**

C776 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C777 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

C778 *See* s.245—*calculation etc. of* ACT*on change of ownership.*

Marginal Citations

M1026 Source—1970 s.483(1)-(7)

[768A F5035 Change in ownership: disallowance of carry back of trading losses.

(1) In any case where—

(a) within any period of three years there is both a change in the ownership of a company and (either earlier or later in that period, or at the same time) a major change in the nature or conduct of a trade carried on by the company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, there is a change in the ownership of the company,

no relief shall be given under section 393A(1) by setting a loss incurred by the company in an accounting period ending after the change in ownership against any profits of an accounting period beginning before the change in ownership.

(2) Subsections (2) to (4), (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

(3) This section applies in relation to changes in ownership occurring on or after 14th June 1991.**]**

Textual Amendments

F5035 S. 768A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 20(1)**

Modifications etc. (not altering text)

C779 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

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[F5037768B F5036Change in ownership of company with investment business: deductions generally]

(1) This section applies where there is a change in the ownership of **[**F5038a company with investment business**]** and—

(a) after the change there is a significant increase in the amount of the company's capital; or

(b) within the period of six years beginning three years before the change there is a major change in the nature or conduct of the business carried on by the company; or

(c) the change in the ownership occurs at any time after the scale of the activities in the business carried on by the company has become small or negligible and before any considerable revival of the business.

(2) For the purposes of subsection (1)(a) above, whether there is a significant increase in the amount of a company's capital after a change in the ownership of the company shall be determined in accordance with the provisions of Part I of Schedule 28A.

(3) In paragraph (b) of subsection (1) above "major change in the nature or conduct of a business" includes a major change in the nature of the investments held by the company, even if the change is the result of a gradual process which began before the period of six years mentioned in that paragraph.

(4) For the purposes of this section—

(a) the accounting period of the company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;

(b) those parts shall be treated as two separate accounting periods; and

(c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.

(5) In Schedule 28A—

(a) Part II shall have effect for identifying the amounts in issue for the accounting period being divided; and

(b) Part III shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.

(6) Any sums which—

(a) **[**F5039are, or are treated as, expenses of management referable to the accounting period**]** being divided, and

(b) under Part III of Schedule 28A are apportioned to either part of that period,

shall be treated for the purposes of section 75 **[**F5040expenses of management referable to that part**]**.

(7) Any charges which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of sections 338 and 75 as paid in that part.

(8) Any allowances which under Part III of Schedule 28A are apportioned to either part of the accounting period being divided shall be treated for the purposes of **[**F5041section 253 of the Capital Allowances Act**]** and section **[**F5042**]**75(7)**]** as falling to be made in that part.

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(9) In computing the total profits of the company for an accounting period ending after the change in the ownership, no deduction shall be made under section 75 by reference to—

(a) **[**F5043expenses of management deductible**]** or allowances falling to be made for an accounting period beginning before the change; or

(b) charges paid in such an accounting period.

[F5044(10) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits **[**F5045and non-trading deficits**]** to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the company's loan relationships **[**F5046(including debits so brought into account by virtue of paragraph 14(3)of Schedule 26 to the Finance Act 2002)**]**.**]**

(12) Subject to the modification in subsection (13) below, subsections (6) to (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

(13) The modification is that in subsection (6) of section 768 for the words "relief in respect of a company's losses has been restricted" there shall be substituted "deductions from a company's total profits **[**F5047, or the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in the case of a company in respect of its loan relationships **[**F5048(or its derivative contracts by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)**]**,**]** have been restricted."

(14) In this section **[**F5049"company with investment business"**]** has the same meaning as in Part IV.**]**

Textual Amendments

F5036 S. 768B sidenote substituted (with effect in accordance with ss. 42-44 of the amending Act) by virtue of Finance Act 2004 (c. 12), **Sch. 6 para. 3(7)**

F5037 Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 2**

F5038 Words in s. 768B(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(2)**

F5039 Words in s. 768B(6)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(3)(a)**

F5040 Words in s. 768B(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(3)(b)**

F5041 Words in s. 768B(8) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 56**

F5042 Words in s. 768B(8) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(4)**

F5043 Words in s. 768B(9)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(5)**

F5044 S. 768B(10) substituted for s. 768B(10)(11) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 39(1)** (with Sch. 15)

F5045 Words in s. 768B(10) inserted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(1)**

F5046 Words in s. 768B(10) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 9(a)** (with Sch. 28)

F5047 Words in s. 768B(13) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 39(2)** (with Sch. 15)

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F5048 Words in s. 768B(13) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 9(b)** (with Sch. 28)

F5049 Words in s. 768B(14) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 3(6)**

Modifications etc. (not altering text)

C780 Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**

C781 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C782 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

[F5037 768D Deductions: asset transferred within group.

(1) This section applies where—

(a) there is a change in the ownership of **[**F5050 a company with investment business**]** ("the relevant company");

(b) none of paragraphs (a) to (c) of section 768B(1) applies;

(c) after the change in the ownership the relevant company acquires an asset from another company in circumstances such that section 171(1) of the 1992 Act applies to the acquisition; and

(d) a chargeable gain ("a relevant gain") accrues to the relevant company on a disposal of the asset within the period of three years beginning with the change in the ownership.

(2) For the purposes of subsection (1)(d) above an asset acquired by the relevant company as mentioned in subsection (1)(c) above shall be treated as the same as an asset owned at a later time by that company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold and the first asset was a leasehold and the lessee has acquired the reversion.

(3) For the purposes of this section—

(a) the accounting period of the relevant company in which the change in the ownership occurs shall be divided into two parts, the first the part ending with the change, the second the part after;

(b) those parts shall be treated as two separate accounting periods; and

(c) the amounts in issue for the accounting period being divided shall be apportioned to those parts.

(4) In Schedule 28A—

(a) Part V shall have effect for identifying the amounts in issue for the accounting period being divided; and

(b) Part VI shall have effect for the purpose of apportioning those amounts to the parts of that accounting period.

(5) Subsections (6) to (8) of section 768B shall apply in relation to the relevant company as they apply in relation to the company mentioned in subsection (1) of that section except that any reference in those subsections to Part III of Schedule 28A shall be read as a reference to Part VI of that Schedule.

(6) Subsections (7) and (9) below apply only where, in accordance with the relevant provisions of the 1992 Act and Part VI of Schedule 28A, an amount is included in

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respect of chargeable gains in the total profits for the accounting period of the relevant company in which the relevant gain accrues.

(7) In computing the total profits of the relevant company for the accounting period in which the relevant gain accrues, no deduction shall be made under section 75 by reference to—

(a) **[**F5051expenses of management deductible**]** or allowances falling to be made for an accounting period of the relevant company beginning before the change in ownership, or

(b) charges paid in such an accounting period,

from an amount of the total profits equal to the amount which represents the relevant gain.

(8) For the purposes of this section, the amount of the total profits for an accounting period which represents the relevant gain is—

(a) where the amount of the relevant gain does not exceed the amount which is included in respect of chargeable gains for that period, an amount equal to the amount of the relevant gain;

(b) where the amount of the relevant gain exceeds the amount which is included in respect of chargeable gains for that period, the amount so included.

[F5052(9) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits **[**F5053and non-trading deficits**]** to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of the relevant company's loan relationships **[**F5054(including debits so brought into account by virtue of paragraph 14(3) of Schedule 26 to the Finance Act 2002)**]**.**]**

(11) Subsections (8) and (9) of section 768 shall apply for the purposes of this section as they apply for the purposes of that section.

(12) In this section—

"the relevant provisions of the 1992 Act" means section 8(1) of and Schedule 7A to that Act; and

[F5055"company with investment business" has the same meaning as in Part 4.**]**

[F5056(13) This section applies in relation to an asset to which Schedule 29 to the Finance Act 2002 applies (intangible fixed assets), with the following adaptations—

(a) for the reference to section 171(1) of the 1992 Act substitute a reference to paragraph 55 of that Schedule;

(b) for any reference to a chargeable gain under that Act substitute a reference to a chargeable realisation gain within the meaning of that Schedule that is a credit within paragraph 34(1)(a) of that Schedule (non-trading credits);

(c) for any reference to a disposal of the asset substitute a reference to its realisation within the meaning of that Schedule;

(d) for the reference to the relevant provisions of the 1992 Act substitute a reference to Part 6 of that Schedule.**]]**

Textual Amendments

F5037 Ss. 768B, 768C inserted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 2**

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F5050 Words in s. 768C(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(2)**

F5051 Words in s. 768C(7)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(3)**

F5052 S. 768C(9) substituted for s. 768C(9)(10) (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 40** (with Sch. 15)

F5053 Words in s. 768C(9) inserted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(2)**

F5054 Words in s. 768C(9) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 10** (with Sch. 28)

F5055 S. 768C(12): definition substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 4(4)**

F5056 S. 768C(13) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(2)**

Modifications etc. (not altering text)

C783 Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**

C784 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C785 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

[F5057 768D Change in ownership of company carrying on property business.

(1) This section applies where there is a change in the ownership of a company carrying on a Schedule A business and—

(a) in the case of **[**F5058 a company with investment business**]**, either—

(i) paragraph (a), (b) or (c) of section 768B(1) applies, or

(ii) section 768C applies;

(b) in the case of a company which is not **[**F5059 a company with investment business**]**, paragraph (a) or (b) of section 768(1) applies.

(2) Where this section applies the following provisions have effect to prevent relief being given under section 392A by setting a Schedule A loss incurred by the company before the change of ownership against profits arising after the change.

(3) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.

(4) The profits or losses of the period in which the change occurs are apportioned to those two periods—

(a) in the case of **[**F5060 a company with investment business**]**—

(i) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts II and III of Schedule 28A, or

(ii) where section 768C applies, in accordance with Parts V and VI of that Schedule, and

(b) in the case of a company which is not **[**F5061 a company with investment business**]**, according to the length of the periods,

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.

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(5) Relief under section 392A(1) against total profits of the same accounting period is available only in relation to each of those periods considered separately.

(6) A loss made in any accounting period beginning before the change of ownership may not be set off under section 392A(2) against, or deducted by virtue of section 392A(3) from—

(a) in the case of—

(i) **[**F5062a company with investment business**]** where paragraph (a), (b) or (c) of section 768B(1) applies, or

(ii) a company which is not **[**F5062a company with investment business**]**,

profits of an accounting period ending after the change of ownership;

(b) in the case of **[**F5062a company with investment business**]** where section 768C applies, from so much of those profits as represents the relevant gain within the meaning of that section.

(7) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.

(8) In this section—

(a) any reference to a case where paragraph (a) or (b) of section 768(1) applies includes the case where that paragraph would apply if the reference there to a trade carried on by the company were to a Schedule A business carried on by it;

[F5063(b) "company with investment business" has the same meaning as in Part 4.**]**

(9) The provisions of this section apply in relation to an overseas property business as they apply in relation to a Schedule A business.**]**

Textual Amendments

F5057 S. 768D inserted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 31** (with Sch. 5 para. 73)

F5058 Words in s. 768D(1)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(2)(a)**

F5059 Words in s. 768D(1)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(2)(b)**

F5060 Words in s. 768D(4)(a) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(3)(a)**

F5061 Words in s. 768D(4)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(3)(b)**

F5062 Words in s. 768D(6) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(4)**

F5063 S. 768D(8)(b) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 5(5)**

Modifications etc. (not altering text)

C786 Ss. 768, 768D modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), **Sch. 10 para. 11**; S.I. 2005/1444, art. 2(1), **Sch. 1**

C787 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

C788 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

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[F5064 768E Change in ownership of company with unused non-trading loss on intangible fixed assets

(1) Where there is a change in the ownership of **[**F5065a company with investment business**]** and either—

(a) paragraph (a), (b) or (c) of section 768B(1) applies, or

(b) section 768C applies,

the following provisions have effect to prevent relief being given under paragraph 35 of Schedule 29 to the Finance Act 2002 by setting a non-trading loss on intangible fixed assets incurred by the company before the change of ownership against profits arising after the change.

(2) The accounting period in which the change of ownership occurs is treated for that purpose as two separate accounting periods, the first ending with the change and the second consisting of the remainder of the period.

(3) The profits or losses of the period in which the change occurs are apportioned to those two periods—

(a) where paragraph (a), (b) or (c) of section 768B(1) applies, in accordance with Parts 2 and 3 of Schedule 28A, or

(b) where section 768C applies, in accordance with Parts 5 and 6 of that Schedule,

unless in any case the specified method of apportionment would work unjustly or unreasonably in which case such other method shall be used as appears just and reasonable.

(4) Relief under paragraph 35 of Schedule 29 to the Finance Act 2002 against total profits of the same accounting period is available only in relation to each of those periods considered separately.

(5) A loss made in any accounting period beginning before the change of ownership may not be set off under paragraph 35(3) of Schedule 29 to the Finance Act 2002 against—

(a) in a case where paragraph (a), (b) or (c) of section 768B(1) applies, profits of an accounting period ending after the change of ownership;

(b) in a case where section 768C applies, so much of those profits as represents the relevant gain within the meaning of that section.

(6) Subsections (8) and (9) of section 768 (time limits for assessment; information powers) apply for the purposes of this section as they apply for the purposes of that section.

(7) In this section **[**F5066"company with investment business"**]** has the same meaning as in Part 4.**]**

Textual Amendments

F5064 S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(3)**

F5065 Words in s. 768E(1) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 6(2)**

F5066 Words in s. 768E(7) substituted (with effect in accordance with ss. 42-44 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 6 para. 6(3)**

Modifications etc. (not altering text)

C789 Ss. 767A-768E: The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), **reg. 36** to be construed as one (6.4.2006) with these sections, by virtue of that reg.

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C790 Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

769 Rules for ascertaining change in ownership of company.

M1027(1) For the purposes of **[**F5067sections 767A, **[**F5068767AA, 767C,**]** 768, 768A, 768B **[**F5069, 768C and 768D**]]** there is a change in the ownership of a company—

(a) if a single person acquires more than half the ordinary share capital of the company; or

(b) if two or more persons each acquire a holding of 5 per cent. or more of the ordinary share capital of the company, and those holdings together amount to more than half the ordinary share capital of the company; or

(c) if two or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than half the ordinary share capital of the company, but disregarding a holding of less than 5 per cent. unless it is an addition to an existing holding and the two holdings together amount to 5 per cent. or more of the ordinary share capital of the company.

(2) In applying subsection (1) above—

(a) the circumstances at any two points of time with not more than three years between may be compared, and a holder at the later time may be regarded as having acquired whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;

(b) to allow for any issue of shares or other reorganisation of capital, the comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired a percentage holding equal to the increase;

(c) to decide for the purposes of subsection (1)(b) or (c) above if any person has acquired a holding of at least 5 per cent., or a holding which makes at least 5 per cent. when added to an existing holding, acquisitions by, and holdings of, two or more persons who are connected persons within the meaning of section 839 shall be aggregated as if they were acquisitions by, and holdings of, one and the same person;

(d) any acquisition of shares under the will or on the intestacy of a deceased person **[**F5070, and any gift of shares which**]** is unsolicited and made without regard to the provisions of **[**F5071sections 767A, **[**F5072767AA,**]** 768, 768A, 768B **[**F5069, 768C and 768D**]]**, F5073. . . shall be left out of account.

[F5074(2A) Where—

(a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, and

(b) because of that fact ownership of the ordinary share capital may not be an appropriate test of whether there has been a change in the ownership of the company,

then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A **[**F5075, 767AA or 767C**]**, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other kind of special power may be taken into account instead of ordinary share capital.**]**

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(3) Where, because persons, whether company members or not, possess extraordinary rights or powers under the articles of association or under any other document regulating the company, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the persons for whose benefit the losses may ultimately enure, then, in considering whether there has been a change in the ownership of the company for the purposes of section 768 **[**F5076, 768A or 768D**]**, holdings of all kinds of share capital, including preference shares, or of any particular category of share capital, or voting power or any other special kind of power, may be taken into account instead of ordinary share capital.

[F5077(3A) Subsection (3) above shall apply for the purposes of sections 768B and 768C as if the reference to the benefit of losses were a reference to the benefit of deductions.**]**

(4) Where **[**F5078section 768, 768A, 768B **[**F5079, 768C or 768D**]]** has operated to restrict relief by reference to a change of ownership taking place at any time, no transaction or circumstances before that time shall be taken into account in determining whether there is any subsequent change of ownership.

(5) A change in the ownership of a company shall be disregarded for the purposes of **[**F5080sections 767A, **[**F5068767AA, 767C,**]** 768, 768A, 768B **[**F5069, 768C and 768D**]]** if—

(a) immediately before the change the company is the 75 per cent. subsidiary of another company, and

(b) (although there is a change in the direct ownership of the company) that other company continues after the change to own the first-mentioned company as a 75 per cent. subsidiary.

[F5081(6) If there is a change in the ownership of a company, including a change occurring by virtue of the application of this subsection but not a change which is to be disregarded under subsection (5) above, then—

(a) in a case falling within subsection (1)(a) above, the person mentioned in subsection (1)(a) shall be taken for the purposes of this section to acquire at the time of the change any relevant assets owned by the company;

(b) in a case falling within subsection (1)(b) above but not within subsection (1)(a) above, each of the persons mentioned in subsection (1)(b) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company; and

(c) in any other case, each of the persons mentioned in paragraph (c) of subsection (1) above (other than any whose holding is disregarded under that paragraph) shall be taken for the purposes of this section to acquire at the time of the change the appropriate proportion of any relevant assets owned by the company.

(6A) In subsection (6) above—

"the appropriate proportion", in relation to one of two or more persons mentioned in subsection (1)(b) or (c) above, means a proportion corresponding to the proportion which the percentage of the ordinary share capital acquired by him bears to the percentage of that capital acquired by all those persons taken together; and

"relevant assets", in relation to a company, means—

(a) any ordinary share capital of another company, and

(b) any property or rights which under subsection (3) above may be taken into account instead of ordinary share capital of another company.

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(6B) Notwithstanding that at any time a company ("the subsidiary company") is a 75 per cent. subsidiary of another company ("the parent company") it shall not be treated at that time as such a subsidiary for the purposes of this section unless, additionally, at that time—

(a) the parent company would be beneficially entitled to not less than 75 per cent. of any profits available for distribution to equity holders of the subsidiary company; and

(b) the parent company would be beneficially entitled to not less than 75 per cent. of any assets of the subsidiary company available for distribution to its equity holders on a winding-up.

(6C) Schedule 18 shall apply for the purposes of subsection (6B) above as it applies for the purposes of section 413(7).**]**

(7) For the purposes of this section—

(a) references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly;

(b) *a company shall be deemed to be a* 75*per cent. subsidiary of another company if and so long as not less than three-quarters of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies*[F5082];

(c) *the amount of ordinary share capital of one company owned by a second company through another company or other companies or partly directly and partly through another company or other companies, shall be determined in accordance with subsections* (5)*to* (10)*of section* 838;*and*

[F5083](d) "shares" includes stock.

(8) If any acquisition of ordinary share capital or other property or rights taken into account in determining that there has been a change of ownership of a company was made in pursuance of a contract of sale or option or other contract, or the acquisition was made by a person holding such a contract, then the time when the change in the ownership of the company took place shall be determined as if the acquisition had been made when the contract was made with the holder or when the benefit of it was assigned to him so that, in the case of a person exercising an option to purchase shares, he shall be regarded as having purchased the shares when he acquired the option.

[[F5084](9) Subsection (8) above shall not apply in relation to section 767A **[**[F5075], 767AA or 767C**]**.**]**

Textual Amendments

F5067 Words in s. 769(1) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(2)**

F5068 Word in s. 769(1)(5) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(5)(a)**

F5069 Words in s. 769(1)(2)(d)(5) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 32(a)** (with Sch. 5 para. 73)

F5070 Words in s. 769(2)(d) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 37(a)**

F5071 Words in s. 769(2)(d) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(2)**

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F5072 Word in s. 769(2)(d) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(5)(b)**
F5073 Words in s. 769(2)(d) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 37(b), **Sch. 41 Pt. 5(10)**, Note
F5074 S. 769(2A) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 135(4)**
F5075 Words in s. 769(2A)(9) inserted (with effect in accordance with s. 116(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 116(5)(c)**
F5076 Words in s. 769(3) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 32(b)** (with Sch. 5 para. 73)
F5077 S. 769(3A) inserted (with application in accordance with Sch. 26 para. 5 of the amending Act)) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(3)**
F5078 Words in s. 769(4) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(4)**
F5079 Words in s. 769(4) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 32(c)** (with Sch. 5 para. 73)
F5080 Words in s. 769(5) substituted (with application in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 4(2)**
F5081 S. 769(6)-(6C) substituted (*in relation to change of ownership occurring on or after* 14*March* 1989) by Finance Act 1989 (c. 26, SIF 63:1), **s. 100(2)**.
F5082 *Repealed by* 1989 ss.100(3), 187*and* Sch.17 Part IV*where the change of ownership of a company would be treated as occurring on or after* 14*March* 1989.
F5083 *Repealed by* 1989 ss.100(3), 187*and* Sch.17 Part IV*where the change of ownership of a company would be treated as occurring on or after* 14*March* 1989.
F5084 S. 769(9) inserted (with effect in accordance with s. 135(6) of the amending Act) by Finance Act 1994 (c. 9), **s. 135(5)**

Modifications etc. (not altering text)
C791 *See* s.245—*calculation etc. of* ACT*on change of ownership.*

Marginal Citations
M1027 Source—1970 s.484

Transactions between associated persons

[F5085 770A Provision not at arm's length.

Schedule 28AA (which deals with provision made or imposed otherwise than at arm's length) shall have effect.]

Textual Amendments
F5085 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 108(1)**; S.I. 1998/3173, **art. 2**

F5085 770 Sales etc. at an undervalue or overvalue.

. . . . . .

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Textual Amendments

F5085 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 108(1)**; S.I. 1998/3173, **art. 2**

F5085 771 Transactions by petroleum companies.

. . . . . .

Textual Amendments

F5085 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 108(1)**; S.I. 1998/3173, **art. 2**

F5085 772 Information for purposes of section 770, and appeals.

. . . . . .

Textual Amendments

F5085 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 108(1)**; S.I. 1998/3173, **art. 2**

F5085 773 Interpretation of sections 770 and 771.

. . . . . .

Textual Amendments

F5085 S. 770A substituted for ss. 770-773 (with effect in accordance with s. 108(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 108(1)**; S.I. 1998/3173, **art. 2**

774 Transactions between dealing company and associated company.

M1028 (1) Subject to the provisions of this section, where—

(a) a dealing company becomes entitled to a deduction, in computing the profits or gains of the company for tax purposes for any period, in respect of the depreciation in the value of any right subsisting against an associated company, being a non-dealing company; or

(b) a dealing company makes any payment to such an associated company, being a payment in respect of which the dealing company is entitled to a deduction in computing its profits or gains for tax purposes for any period;

and the depreciation or payment is not brought into account in computing the profits or gains of the non-dealing company, that company shall be deemed to have received on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable **[**F5086 to tax**]** in respect thereof **[**F5087 (in the case of corporation tax, under Case VI of Schedule D)**]**.

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(2) Where the non-dealing company is carrying on a trade, the income referred to in subsection (1) above shall, if the company so elects, not be so chargeable but shall be deemed to have been a receipt of the trade, or, if the company is carrying on more than one trade, to have been a receipt of such one of the trades as the company may choose.

(3) Where the non-dealing company is carrying on, or was formed to carry on a trade, then if—

(a) either—

(i) the right subsisting against it was a right to the repayment of moneys lent for meeting expenditure which has proved (in whole or in part) abortive, or

(ii) the payment to the company was made for meeting such expenditure, and

(b) that expenditure is such that the company is not entitled in respect of it to any allowance or deduction in computing losses or gains,

subsection (1) above shall not apply in so far as the expenditure proved abortive.

(4) For the purposes of this section—

(a) "company" includes any body corporate;

(b) "dealing company" means a company dealing in securities, land or buildings and includes any company whose profits on the sale of securities, land or buildings are part of its trading profits;

(c) "non-dealing company" means any company which is not a dealing company;

(d) two or more companies shall be treated as associated companies if one has control of the other or others, or any person has control of both or all of them;

(e) references to a company ("the first company") having control of another company ("the second company") shall be construed as references to the first company having control of the second company either by itself or in conjunction with any person having control over the first company, and "control" has the meaning given by section 840;

(f) "securities" includes shares and stock.

(5) Where it appears to the Board that by reason of any transaction or transactions a person may by virtue of this section have incurred any liability to tax, the Board may by notice served on him require him, within such time not less than 28 days as may be specified in the notice, to furnish information in his possession with respect to the transaction or any of the transactions, being information as to matters, specified in the notice, which are relevant to the question whether he has incurred any such liability to tax.

Textual Amendments

F5086 Words in s. 774(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 310(a)** (with Sch. 2)

F5087 Words in s. 774(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 310(b)** (with Sch. 2)

Marginal Citations

M1028 Source—1970 s.486

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VALID FROM 19/07/2006

I[F5088] Factoring of income receipts etc

Textual Amendments

F5088 Ss. 774A-774G and preceding cross-heading inserted (with effect in accordance with Sch. 6 para. 6(2)-(7) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 6 para. 6(1)**

774A Meaning of "structured finance arrangement" for purposes of s.774B

(1) For the purposes of section 774B an arrangement is a structured finance arrangement in relation to a person ("the borrower") if the following condition is met in relation to the borrower.

(2) The condition is that—

(a) under the arrangement the borrower receives from another person ("the lender") any money or other asset ("the advance") in any period,

(b) in accordance with generally accepted accounting practice the accounts of the borrower for that period record a financial liability in respect of the advance,

(c) the borrower, or a person connected with the borrower, makes a disposal of an asset ("the security") under the arrangement to or for the benefit of the lender or a person connected with the lender,

(d) the lender, or a person connected with the lender, is entitled under the arrangement to payments in respect of the security, and

(e) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower.

(3) For the purposes of this section, in any case where the borrower is a partnership, references to the accounts of the borrower include the accounts of any member of the partnership.

(4) For the purposes of this section and section 774B—

(a) references to a person connected with the borrower do not include the lender, and

(b) references to a person connected with the lender do not include the borrower.

774B Disregard of intended effects of arrangement involving disposals of assets

(1) If—

(a) an arrangement is a structured finance arrangement in relation to a person ("the borrower"), and

(b) the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)),

the arrangement is not to have that effect.

(2) If the borrower is a person other than a partnership, the relevant effect is that—

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(a) an amount of income on which the borrower, or a person connected with the borrower, would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of the borrower, or of a person connected with the borrower, is not so brought into account, or

(c) the borrower, or a person connected with the borrower, becomes entitled to an income deduction.

(3) If the borrower is a partnership, the relevant effect is that—

(a) an amount of income on which a member of the partnership would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a member of the partnership is not so brought into account, or

(c) a member of the partnership becomes entitled to an income deduction.

(4) If—

(a) a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a person within the charge to income tax, and

(b) in accordance with generally accepted accounting practice the accounts of the person record an amount as a finance charge in respect of the advance,

that person may treat the amount for income tax purposes as interest payable on a loan.

(5) If a person in relation to whom the structured finance arrangement would otherwise have had the relevant effect is a company within the charge to corporation tax—

(a) the advance is to be treated, in relation to the company, for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 as a money debt owed by the company,

(b) the arrangement is to be treated, in relation to the company, for the purposes of that Chapter as a loan relationship of the company (as a debtor relationship), and

(c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the company as a finance charge in respect of the advance is to be treated as interest payable under that relationship.

(6) For the purposes of this section, in any case where the borrower is a partnership,—

(a) references to accounts include the accounts of the partnership, and

(b) any deemed interest is treated as payable by the partnership (whether or not the finance charge is recorded in the accounts of the partnership).

(7) For the purpose of determining when any deemed interest in respect of the advance is paid—

(a) the payments mentioned in section 774A(2)(d) are treated as consisting of amounts for repaying the advance and amounts (“the interest elements”) in respect of interest on the advance, and

(b) the interest elements of those payments are treated as paid when those payments are paid,

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and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

(8) In this section "deemed interest" means any amount which is treated as interest as a result of subsection (4) or (5).

(9) This section is subject to the exceptions contained in section 774E.

774C Meaning of "structured finance arrangement" for purposes of s.774D

(1) For the purposes of section 774D an arrangement is a structured finance arrangement in relation to a partnership ("the borrower partnership") if condition A or B is met in relation to the borrower partnership.

(2) Condition A is that—

(a) a person ("the transferor partner") disposes of an asset ("the security") under the arrangement to the borrower partnership,

(b) the transferor partner is a member of the borrower partnership immediately after the disposal (whether or not a member immediately before the disposal),

(c) under the arrangement the borrower partnership receives from another person ("the lender") any money or other asset ("the advance") in any period,

(d) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,

(e) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender (see subsection (6)),

(f) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and

(g) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(3) For the purposes of condition A, references to the accounts of the borrower partnership include the accounts of the transferor partner.

(4) Condition B is that—

(a) the borrower partnership holds an asset ("the security") as a partnership asset at any time before the arrangement is made,

(b) under the arrangement the borrower partnership receives from another person ("the lender") any money or other asset ("the advance") in any period,

(c) in accordance with generally accepted accounting practice the accounts of the borrower partnership for that period record a financial liability in respect of the advance,

(d) there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender,

(e) under the arrangement the share of the lender or person connected with the lender in the profits of the borrower partnership is determined by reference (wholly or partly) to payments in respect of the security, and

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(f) in accordance with generally accepted accounting practice those payments reduce the amount of the financial liability in respect of the advance recorded in the accounts of the borrower partnership.

(5) For the purposes of condition B, references to the accounts of the borrower partnership include the accounts of any person who is a member of the partnership immediately before the arrangement is made.

(6) For the purposes of this section and section 774D there is a relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender if directly or indirectly in consequence of, or otherwise in connection with, the arrangement—

(a) the lender, or a person connected with the lender, becomes a member of the borrower partnership at any time, or

(b) there is at any time a change in the share of a member of the borrower partnership in the profits of the borrower partnership in a case where that member is the lender or a person connected with the lender.

(7) For the purposes of subsection (6)(b) the reference to a person connected with the lender includes a person who at any time becomes connected with the lender directly or indirectly in consequence of, or otherwise in connection with, the arrangement.

774D Disregard of intended effects of arrangement involving change in relation to a partnership

(1) This section applies if—

(a) an arrangement is a structured finance arrangement in relation to a partnership ("the borrower partnership"), and

(b) any relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender would (disregarding this section) have had the following effect.

(2) The effect is that—

(a) an amount of income on which a relevant member of the borrower partnership would otherwise have been charged to tax is not so charged,

(b) an amount which would otherwise have been brought into account in calculating for tax purposes any income of a relevant member of the borrower partnership is not so brought into account, or

(c) a relevant member of the borrower partnership becomes entitled to an income deduction.

(3) In this section "relevant member of the borrower partnership" means—

(a) in any case where condition A in section 774C is met in relation to the arrangement, the transferor partner, and

(b) in any case where condition B in that section is met in relation to the arrangement, any person other than the lender who is a member of the borrower partnership immediately before the time at which the relevant change in relation to the membership of the borrower partnership involving the lender or a person connected with the lender occurs.

(4) Part 9 of ITTOIA 2005 and section 114 above are to have effect in relation to any relevant member of the borrower partnership as if the relevant change in relation

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to the membership of the borrower partnership involving the lender or a person connected with the lender had not occurred.

Accordingly, the structured finance arrangement is not to have the effect mentioned in subsection (2).

(5) The following provisions of this section confer relief from tax the availability of which depends on which of the conditions in section 774C is met in relation to the arrangement.

(6) In any case where condition A in section 774C is met, if—

(a) the transferor partner is a person within the charge to income tax, and

(b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,

the transferor partner may treat the amount for income tax purposes as interest payable by the transferor partner on a loan.

(7) In any case where condition A in that section is met, if the transferor partner is a company within the charge to corporation tax—

(a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by the borrower partnership,

(b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and

(c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the company under that transaction.

(8) For the purposes of subsections (6) and (7), references to the accounts of the borrower partnership include the accounts of the transferor partner.

(9) In any case where condition B in section 774C is met, if—

(a) a relevant member of the borrower partnership is a person within the charge to income tax, and

(b) in accordance with generally accepted accounting practice the accounts of the borrower partnership record an amount as a finance charge in respect of the advance,

the relevant partner may treat the amount for income tax purposes as interest payable by the borrower partnership on a loan.

(10) In any case where condition B in that section is met, if a relevant member of the borrower partnership is a company within the charge to corporation tax—

(a) the advance is to be treated, in relation to the company, for the purposes of paragraph 19 of Schedule 9 to the Finance Act 1996 (and the other provisions of Chapter 2 of Part 4 of that Act) as a money debt owed by that partnership,

(b) the arrangement is to be treated, in relation to the company, as a transaction for the lending of money from which that debt is treated as arising for those purposes, and

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(c) any amount which, in accordance with generally accepted accounting practice, is recorded in the accounts of the borrower partnership as a finance charge in respect of the advance is to be treated as interest payable by the borrower partnership under that transaction.

(11) For the purposes of subsections (9) and (10), references to the accounts of the borrower partnership include the accounts of any relevant member of the borrower partnership.

(12) For the purpose of determining when any deemed interest in respect of the advance is paid—

(a) the payments mentioned in section 774C(2)(f) or (4)(e) are treated as consisting of amounts for repaying the advance and amounts ("the interest elements") in respect of interest on the advance, and

(b) the interest elements of those payments are treated as paid when those payments are paid,

and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

(13) In this section "deemed interest" means any amount which is treated as interest as a result of any of subsections (6) to (10).

(14) This section is subject to the exceptions contained in section 774E.

774E Sections 774B and 774D: exceptions

(1) Section 774B or 774D does not apply if the whole of the advance under the structured finance arrangement—

(a) is charged to tax on a relevant person (see subsection (7)) as an amount of income,

(b) is brought into account in calculating for tax purposes any income of a relevant person, or

(c) is brought into account for the purposes of any provision of the Capital Allowances Act as a disposal receipt, or proceeds from a balancing event or disposal event, of a relevant person.

For the purposes of this subsection the effect of section 785A (rent factoring of leases of plant or machinery) is to be disregarded.

(2) Subsection (1)(c) is not to be taken as met in any case where—

(a) the receipt or proceeds gives rise to a balancing charge, and

(b) the amount of the balancing charge is limited by any provision of the Capital Allowances Act.

(3) Section 774B or 774D does not apply if, at all times, the whole of the advance under the structured finance arrangement—

(a) is a debtor relationship of a relevant person for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships), or

(b) would be a debtor relationship of a relevant person for those purposes if that person were a company within the charge to corporation tax.

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For the purposes of this subsection references to a debtor relationship do not include a relationship to which section 100 of the Finance Act 1996 (money debts etc not arising from the lending of money) applies.

(4) Section 774B or 774D does not apply in so far as the structured finance arrangement is an arrangement in relation to which—

(a) section 263A of the 1992 Act (agreements for sale and repurchase of securities) applies,

(b) paragraph 15 of Schedule 9 to the Finance Act 1996 (repo transactions and stock-lending) applies, or

(c) Chapter 5 of Part 2 of the Finance Act 2005 (alternative finance arrangements) has effect.

(5) Section 774B or 774D does not apply in so far as—

(a) the security under the structured finance arrangement is plant or machinery which is the subject of a sale and finance leaseback, or

(b) the structured finance arrangement is an arrangement in relation to which sections 228B to 228D of the Capital Allowances Act apply with the modifications contained in section 228F of that Act (lease and finance leaseback).

(6) For the purposes of subsection (5)(a), whether plant or machinery is the subject of a sale and finance leaseback is determined in accordance with section 221 of the Capital Allowances Act.

But, in applying that section, it is to be assumed that the words "and which are not a long funding lease in the case of the lessor" were omitted from section 219(1)(b) of that Act (meaning of "finance lease").

(7) For the purposes of this section a "relevant person" means—

(a) if section 774B applies, a person in relation to whom the structured finance arrangement would (but for that section) otherwise have had the relevant effect (within the meaning of that section), and

(b) if section 774D applies, a relevant member of the borrower partnership (within the meaning of that section).

774F Sections 774B and 774D: power to provide further exceptions

(1) The Treasury may make regulations prescribing other circumstances in which section 774B or 774D is not to apply in relation to a structured finance arrangement.

(2) Any regulations under subsection (1) may make provision amending section 774E.

(3) The power to make regulations under subsection (1) includes—

(a) power to make provision having effect in relation to times before the making of the regulations (but not times earlier than 6th June 2006),

(b) power to make different provision for different cases or different purposes, and

(c) power to make incidental, supplemental, consequential or transitional provision and savings.

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774G Sections 774A to 774D: minor definitions etc

(1) For the purposes of sections 774A to 774D "arrangement" includes any agreement or understanding (whether or not legally enforceable).

(2) For the purposes of sections 774A to 774D "income deduction" means—

(a) a deduction in calculating any income for tax purposes, or

(b) a deduction against total income or total profits.

(3) For the purposes of sections 774A to 774D—

(a) references to a person's receiving any asset include the person's obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it,

(b) references to a disposal of an asset include anything which constitutes a disposal of the asset for the purposes of the 1992 Act,

(c) references to payments in respect of any asset include obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it.

(4) For the purposes of sections 774A to 774D, section 839 (connected persons) applies.

(5) For the purposes of sections 774A to 774D references to the accounts of any person who is a company include the consolidated group accounts of a group of companies of which it is a member.

(6) If any person does not draw up accounts in accordance with generally accepted accounting practice, sections 774A to 774D apply as if the accounts had been drawn up by the person in accordance with that practice.

(7) Sections 277 to 281 of ITTOIA 2005 and section 34 above (lease premiums) are not to apply in relation to a premium paid in respect of a grant of a lease where the grant constitutes a disposal of an asset for the purposes of section 774A(2)(c) or 774C(2)(a).**]**

Other provisions

775 Sale by individual of income derived from his personal activities.

M1029(1) Subject to subsection (7) below, this section has effect where—

(a) transactions or arrangements are effected or made to exploit the earning capacity of an individual in any occupation by putting some other person in a position to enjoy all or any part of the profits or gains or other income, or of the receipts, derived from the individual's activities in that occupation, or anything derived directly or indirectly from any such income or receipts; and

(b) as part of, or in connection with, or in consequence of, the transactions or arrangements any capital amount is obtained by the individual for himself or for any other person; and

(c) the main object or one of the main objects of the transactions was the avoidance or reduction of liability to income tax.

(2) Any such capital amount shall for all the purposes of the Income Tax Acts be treated as being earned income of the individual which arises when the capital amount is receivable F5089. . . .

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[F5090(2A) Any such earned income shall be charged to income tax on the individual and the tax so charged shall be charged on the full amount of the earned income treated as arising in the year of assessment.**]**

(3) In this section—

(a) references to any occupation are references to any activities of any of the kinds pursued in any profession or vocation, irrespective of whether the individual is engaged in a profession or vocation, or is employed by or holds office under some other person; and

(b) references in subsection (1) above to income or receipts include references to payments for any description of copyright or licence or franchise or other right deriving its value from the activities, including past activities, of the individual.

(4) This section shall not apply to a capital amount obtained from the disposal—

(a) of assets (including any goodwill) of a profession or vocation, or of a share in a partnership which is carrying on a profession or vocation, or

(b) of shares in a company,

in so far as the value of what is disposed of, at the time of disposal, is attributable to the value of the profession or vocation as a going concern, or as the case may be to the value of the company's business, as a going concern.

(5) If the value of the profession, vocation or business as a going concern is derived to a material extent from prospective income or receipts derived directly or indirectly from the individual's activities in the occupation, and for which, when all capital amounts are disregarded, the individual will not have received full consideration, whether as a partner in a partnership or as an employee or otherwise, subsection (4) above shall not exempt the part of the capital amount so derived.

(6) In subsections (4) and (5) above references to the company's business include references to the business of any other company in which it holds shares directly or indirectly.

(7) Where on any occasion an individual obtains a capital amount consisting of any property or right which derives substantially the whole of its value from the activities of the individual, or (as in the case where the individual acquires a stock option and subsequently exercises the stock option) there are two or more occasions on which an individual obtains a capital amount consisting of any such property or right, then—

(a) tax under this section shall not be charged on any such occasion, but

(b) without prejudice to the generality of the provisions of this section or section 777, tax under this section shall be charged on the occasion when the capital amount, or any such capital amount, is sold or otherwise realised, and shall be so charged by reference to the proceeds of sale or the realised value.

(8) For the purposes of subsection (1)(b) above the cases where an individual obtains any capital amount for some other person include cases where the individual has put some other person in a position to receive the capital amount by providing that other person with something of value derived, directly or indirectly, from the individual's activities in the occupation.

(9) This section shall apply to all persons, whether resident in the United Kingdom or not, if the occupation of the individual is carried on wholly or partly in the United Kingdom.

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Textual Amendments

F5089 Words in s. 775(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 311(2), **Sch. 3** (with Sch. 2)

F5090 S. 775(2A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 311(3)** (with Sch. 2)

Marginal Citations

M1029 Source—1970 s.487(1)-(7)

[F5091 775A Transfers of rights to receive annual payments

(1) This section applies in any case where—

(a) a person sells or transfers the right to receive an annual payment to which this section applies (see subsection (4)), and

(b) the consideration (if any) for the sale or transfer would not, apart from this section, be chargeable to tax.

(2) In any such case, tax is charged—

(a) in the case of income tax, under this section; or

(b) in the case of corporation tax, under Case III of Schedule D.

(3) Where this section applies—

(a) the tax is charged on an amount equal to the market value of the right to receive the annual payment;

(b) the tax is charged for the chargeable period in which the sale or transfer takes place;

(c) the person liable for the tax is the person who sells or transfers the right to the annual payment.

(4) This section applies to any annual payment other than—

(a) an annual payment under a life annuity;

(b) an annual payment under a pension annuity;

(c) an annual payment to which section 347A applies (annual payments that are not charges on income);

(d) an annual payment in respect of which, by virtue of section 727 of ITTOIA 2005 (payments by individuals arising in UK), no liability to income tax arises under Part 5 of that Act.

(5) This section applies in relation to part of an annual payment as it applies in relation to the whole of an annual payment.

(6) For the purposes of this section, a sale or transfer of all rights under an agreement for annual payments, or under an annuity, is a sale or transfer of the rights to each individual payment under the agreement or annuity.

(7) In this section—

"life annuity" means—

(a) a life annuity, as defined in section 657(1); or

(b) a life annuity, as defined in section 473(2) of ITTOIA 2005;

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"pension annuity" means an annuity which is pension income within the meaning of Part 9 of ITEPA 2003 (see section 566(2) of that Act).**]**

Textual Amendments

F5091 S. 775A inserted (with effect in accordance with Sch. 7 para. 4(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 4(1)**

776 Transactions in land: taxation of capital gains.

M1030(1) This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.

(2) This section applies wherever—

(a) land, or any property deriving its value from land, is acquired with the sole or main object of realising a gain from disposing of the land; or

(b) land is held as trading stock; or

(c) land is developed with the sole or main object of realising a gain from disposing of the land when developed;

and any gain of a capital nature is obtained from the disposal of the land—

(i) by the person acquiring, holding or developing the land, or by any connected person, or

(ii) where any arrangement or scheme is effected as respects the land which enables a gain to be realised by any indirect method, or by any series of transactions, by any person who is a party to, or concerned in, the arrangement or scheme;

and this subsection applies whether any such person obtains the gain for himself or for any other person.

(3) Where this section applies, the whole of any such gain shall for all the purposes of the Tax Acts be treated—

(a) as being income which arises when the gain is realised F5092. . . ; and

(b) subject to the following provisions of this section, as being income of the person by whom the gain is realised.

[F5093(3A) The gain treated as income shall be charged—

(a) to income tax for the year of assessment in which the gain is realised, or

(b) to corporation tax as profits or gains under Case VI of Schedule D for the accounting period in which the gain is realised.

(3B) The income tax charged by virtue of subsection (3A)(a) shall be charged on the full amount of the income treated as arising in the year of assessment; and the person liable for any tax so charged is the person whose income it is.**]**

(4) For the purposes of this section—

(a) land is disposed of if, by any one or more transactions, or by any arrangement or scheme, whether concerning the land or property deriving its value from the land, the property in the land, or control over the land, is effectually disposed of; and

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(b) references in subsection (2) above to the acquisition or development of property with the sole or main object of realising the gain from disposing of the land shall be construed accordingly.

(5) For those purposes—

(a) where, whether by a premature sale or otherwise, a person directly or indirectly transmits the opportunity of making a gain to another person, that other person's gain is obtained for him by the first-mentioned person; and

(b) any number of transactions may be regarded as constituting a single arrangement or scheme if a common purpose can be discerned in them, or if there is other sufficient evidence of a common purpose.

(6) For the purposes of this section, such method of computing a gain shall be adopted as is just and reasonable in the circumstances, taking into account the value of what is obtained for disposing of the land, and allowing only such expenses as are attributable to the land disposed of; and in applying this subsection—

(a) where a freehold is acquired and the reversion is retained on disposal, account may be taken of the way in which the **[**F5094profits**]** under **[**F5095Part 2 of ITTOIA 2005 or**]** Case I of Schedule D of a person dealing in land are computed in such a case; or

(b) account may be taken of the adjustments to be made in computing such **[**F5094profits**]** under **[**F5096section 158 of ITTOIA 2005 or (as the case may be) subsections (2) and (3) of section 99 above**]**.

In the application of this subsection to Scotland, "freehold" means the **[**F5097interest**]** of the owner, and "reversion" means the interest of the landlord in property subject to a lease.

(7) Subsection (2)(c) above shall not apply to so much of any gain as is fairly attributable to the period, if any, before the intention to develop the land was formed, and which would not fall under paragraph (a) or (b) of that subsection; and in applying this subsection account shall be taken of the treatment under **[**F5098Part 2 of ITTOIA 2005 or**]** Case I of Schedule D of a person who appropriates land as trading stock.

(8) If all or any part of the gain accruing to any person is derived from value, or an opportunity of realising a gain, provided directly or indirectly by some other person, whether or not put at the disposal of the first-mentioned person, subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of that other person for the person by whom the gain was realised.

(9) This section shall not apply to a gain accruing to an individual which by virtue of sections **[**F5099222 to 226 of the 1992**]** Act (private residences) is exempt from capital gains tax, or which would be so exempt but for the provisions of section **[**F5099224(3)**]** of that Act (residences acquired partly with a view to making a gain).

(10) Where—

(a) there is a disposal of shares in—

(i) a company which holds land as trading stock; or

(ii) a company which owns directly or indirectly 90 per cent. or more of the ordinary share capital of another company which holds land as trading stock; and

(b) all the land so held is disposed of—

(i) in the normal course of its trade by the company which held it, and

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(ii) so as to procure that all opportunity of profit in respect of the land arises to that company,

then this section shall not by virtue of subsection (2)(i) above apply to any gain to the holder of shares as being a gain on property deriving value from that land (but without prejudice to any liability under subsection (2)(ii) above).

(11) Where a person who considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that person has obtained from the disposal of land, or which he would obtain from a proposed disposal of land, supplies to the inspector to whom he makes his return of income written particulars showing how the gain has arisen or would arise—

(a) the inspector shall, within 30 days from his receipt of the particulars, notify that person whether or not he is satisfied that, in the circumstances as described in the particulars, the gain will not, or would not, be chargeable to tax on that person under this section; and

(b) if the inspector notifies that person that he is so satisfied, the gain shall not be chargeable on that person under this section.

(12) If the particulars given under this section with respect to the gain are not such as to make full and accurate disclosure of all facts and considerations relating thereto which are material to be known to the inspector, any notification given by the inspector under subsection (11) above shall be void.

(13) In this section—

(a) references to the land include references to all or any part of the land, and "land" includes buildings, and any estate or interest in land or buildings;

(b) references to property deriving its value from land include—

(i) any shareholding in a company, or any partnership interest, or any interest in settled property, deriving its value directly or indirectly from land, and

(ii) any option, consent or embargo affecting the disposition of land;

and for the purposes of this section any question whether a person is connected with another shall be determined in accordance with section 839.

(14) This section shall apply to all persons, whether resident in the United Kingdom or not, if all or any part of the land in question is situated in the United Kingdom.

Textual Amendments

F5092 Words in s. 776(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 312(2), **Sch. 3** (with Sch. 2)

F5093 S. 776(3A)(3B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 312(3)** (with Sch. 2)

F5094 Words in s. 776(6)(a)(b) substituted (31.7.1998) by Finance Act 1998 (c. 6), s. 46(3)(a), **Sch. 7 para. 1**

F5095 Words in s. 776(6)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 312(4)(a)** (with Sch. 2)

F5096 Words in s. 776(6)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 312(4)(b)** (with Sch. 2)

F5097 Word in s. 776(6) substituted (S.) (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), **Sch. 12 para. 50(4)**; S.S.I. 2003/456, **art. 2**

F5098 Words in s. 776(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 312(5)** (with Sch. 2)

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F5099 Words in s. 776(9) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(50)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1030 Source—1970 s.488; 1979(C) Sch.7

777 Provisions supplementary to sections 775 and 776.

M1031 (1) This section has effect to supplement sections 775 and 776, and those sections and this section are together referred to as the relevant provisions.

(2) In applying the relevant provisions account shall be taken of any method, however indirect, by which—

(a) any property or right is transferred or transmitted; or

(b) the value of any property or right is enhanced or diminished;

and accordingly the occasion of the transfer or transmission of any property or right, however indirect, and the occasion when the value of any property or right is enhanced, may be an occasion when, under sections 775 and 776, tax becomes chargeable.

(3) Subsection (2) above applies in particular—

(a) to sales, contracts and other transactions made otherwise than for full consideration or for more than full consideration; and

(b) to any method by which any property or right, or the control of any property or right, is transferred or transmitted by assigning share capital or other rights in a company or any partnership or interest in settled property; and

(c) to the creation of any option or consent or embargo affecting the disposition of any property or right, and to the consideration given for the option, or for the giving of the consent or the release of the embargo; and

(d) to the disposal of any property or right on the winding up, dissolution or termination of any company, partnership or trust.

(4) In ascertaining for the purposes of the relevant provisions the intentions of any person, the objects and powers of any company, partners or trustees, as set out in any memorandum, articles of association or other document, shall not be conclusive.

(5) In order to ascertain whether and to what extent the value of any property or right is derived from any other property or right, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust shall be attributed to the shareholders, partners or beneficiaries at each stage in such manner as is appropriate in the circumstances.

(6) In applying the relevant provisions—

(a) any expenditure or receipt or consideration or other amount may be apportioned by such method as is just and reasonable in the circumstances;

(b) all such valuations shall be made as are appropriate to give effect to sections 775 and 776.

(7) For the purposes of the relevant provisions (and in particular for the purpose of the reference in section 775 to an individual putting some other person in a position to enjoy income or receipts) partners, or the trustees of settled property, or personal

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representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives.

(8) Where a person is assessed to tax under the relevant provisions in respect of consideration receivable by another person—

(a) he shall be entitled to recover from that other person any part of that tax which he has paid; and

(b) if any part of that tax remains unpaid at the expiration of six months from the date when it became due and payable, it shall be recoverable from that other person as though he were the person assessed, but without prejudice to the right to recover it from the person actually assessed;

and for the purposes of paragraph (a) above the Board or an inspector shall on request furnish a certificate specifying the amount of income in respect of which tax has been paid, and the amount of tax so paid; and the certificate shall be conclusive evidence of any facts stated in it.

For the purposes of this subsection any income which a person is treated as having by virtue of sections 775 and 776 shall, subject to section 833(3), be treated as the highest part of his income.

(9) If it appears to the Board that any person entitled to any consideration or other amount taxable under sections 775 and 776 is not resident in the United Kingdom, the Board may direct that section 349(1) shall apply to any payment forming part of that amount as if it were an annual payment charged with tax under **[**F5100Chapter 7 of Part 5 of ITTOIA 2005 (annual payments not otherwise charged) or**]** Case III of Schedule D, but without prejudice to the final determination of the liability of that person, including any liability under subsection (8)(b) above.

(10) Sections 775 and 776 have effect subject to **[**F5101Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor)**]** and to any other provision of the Tax Acts deeming income to belong to a particular person.

(11) Where under section 776(2)(c) any person is charged to tax on the realisation of a gain, and the computation of the gain proceeded on the footing that the land or some other property was appropriated at any time as trading stock, that land or other property shall be treated on that footing also for the purposes of section **[**F5102161 of the 1992**]** Act (property becoming or ceasing to be stock in trade).

(12) Where under section 775(1)(b) or 776(8) the person charged to tax is a person other than the person for whom the capital amount was obtained or the person by whom the gain was realised, and the tax has been paid, then, for the purposes of sections **[**F510237 and 39 of the 1992**]** Act (profits taxable as income excluded from tax on capital gains), the person for whom the capital amount was obtained or the person by whom the gain was realised shall be regarded as having been charged to that tax.

(13) For the purposes of the relevant provisions—

"capital amount" means any amount, in money or money's worth, which, apart from the sections 775 and 776, does not fall to be included in any computation of income for purposes of the Tax Acts, and other expressions including the word "capital" shall be construed accordingly;

"company" includes any body corporate; and

"share" includes stock;

and any amount in money or money's worth shall not be regarded as having become receivable by some person until that person can effectively enjoy or dispose of it.

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Textual Amendments

F5100 Words in s. 777(9) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 313(2)** (with Sch. 2)

F5101 Words in s. 777(10) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 313(3)** (with Sch. 2)

F5102 Words in s. 777(11)(12) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(51)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1031 Source—1970 s.489; 1979(C) Sch.7

778 Power to obtain information.

M1032 (1) The Board or an inspector may by notice require any person to furnish them within such time as the Board or the inspector may direct (not being less than 30 days) with such particulars as the Board or the inspector think necessary for the purposes of sections 775 and 776.

(2) The particulars which a person must furnish under this section, if he is required by a notice from the Board or the inspector so to do, include particulars—

(a) as to transactions or arrangements with respect to which he is or was acting on behalf of others;

(b) as to transactions or arrangements which in the opinion of the Board or the inspector should properly be investigated for the purposes of sections 775 and 776 notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under those sections; and

(c) as to whether the person to whom the notice is given has taken or is taking any, and if so what, part in any, and if so what, transactions or arrangements of a description specified in the notice.

(3) Notwithstanding anything in subsection (2) above, a solicitor—

(a) shall not be deemed for the purposes of paragraph (c) of that subsection to have taken part in any transaction or arrangement by reason only that he has given professional advice to a client in connection with the transaction or arrangement, and

(b) shall not, in relation to anything done by him on behalf of a client, be compellable under this section, except with the consent of his client, to do more than state that he is or was acting on behalf of a client, and give the name and address of his client.

Modifications etc. (not altering text)

C792 *See* S.I.1989 No.1343 (N.I.14) Sch.1 para.38(3)*for construction in the case of a solicitor who is an officer or employee of a recognised body.*

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M1032 Source—1970 s.490

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779 Sale and leaseback: limitation on tax reliefs.

M1033(1) If land or any estate or interest in land is transferred from one person to another and—

(a) as a result of a lease of the land or any part of the land granted at that time or subsequently by the transferee to the transferor, or

(b) as a result of any other transaction or series of transactions affecting the land or any estate or interest in the land,

the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to pay any rent under a lease of the land or any part of the land, this section shall apply to all rent due under the lease from the transferor, or from any person who is associated with the transferor.

(2) If—

(a) land or any estate or interest in land is transferred from one person to another, and

(b) as a result of any transaction or series of transactions affecting the land or any estate or interest in the land, the transferor, or any person who is associated with the transferor, becomes liable at the time of the transfer or subsequently to make any payment (other than rent under a lease) for which any relevant tax relief is available, being a payment by way of rentcharge on the land or any part of the land or a payment in any other way connected with the land,

then this section shall apply to all such payments under the rentcharge or other transaction due from the transferor, or from any person who is associated with the transferor.

(3) The references in subsections (1) and (2) above to the transfer of an estate or interest in land include references to—

(a) the granting of a lease or any other transaction involving the creation of a new estate or interest in the land;

(b) the transfer of the lessee's interest under a lease by surrender or forfeiture of the lease; and

(c) any transaction or series of transactions affecting land or an estate or interest in land, such that some person is the owner, or one of the owners, before and after the carrying out of the transaction or transactions, but another person becomes or ceases to become one of the owners;

and in relation to any such transaction or series of transactions any person who is an owner before the carrying out of the transaction or transactions, and is not the sole owner thereafter, shall be regarded for the purposes of this section as a transferor.

(4) A deduction by way of any relevant tax relief, being a deduction in respect of rent or of any other payment to which this section applies, shall not exceed the commercial rent for the period for which the rent or other payment is made of the land in respect of which that payment is made.

(5) If—

(a) under subsection (4) above part of a payment which would otherwise be allowable as a deduction by way of any relevant tax relief is not so allowable, and

(b) one or more subsequent payments are made by the transferor, or a person who is associated with the transferor, under the lease or other transaction,

that part of the first-mentioned payment may be carried forward and treated for the purposes of any such deduction by way of tax relief as if it were made at the time

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when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(6) For the purposes of subsection (4) above—

(a) if more than one payment is made for the same period the payments shall be taken together;

(b) if payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;

(c) the preceding references to payments include references to parts of payments which under subsection (5) above are treated as if made at a time subsequent to that at which they were made, and to the extent that a part of a payment so carried forward under that subsection is not so allowable as a deduction by way of tax relief, it may again be carried forward under that subsection;

(d) so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant shall be excluded, and in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of assets may be overridden.

(7) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment was made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).

(8) For the purposes of making a comparison under subsection (4) above between a payment consisting of rent under a lease ("the actual lease"), or such payments taken together, and the commercial rent of the land, "commercial rent" shall mean the rent which might be expected to be paid under a lease of the land negotiated in the open market at the time when the actual lease was created, being a lease which is of the same duration as the actual lease, which is, as respects liability for maintenance and repairs, subject to the terms and conditions of the actual lease and which provides for rent payable at uniform intervals and—

(a) at a uniform rate, or

(b) if the rent payable under the actual lease is rent at a progressive rate (and such that the amount of rent payable for any year is never less than the amount payable for any previous year), a rent which progresses by gradations proportionate to those provided by the actual lease.

(9) For the purpose of making a comparison under subsection (4) above between a payment which does not consist of rent under a lease (or such a payment taken together with other payments) and the commercial rent of the land, "commercial rent" shall mean the rent which might be expected to be paid under a tenant's repairing lease negotiated in the open market at the time when the transaction was effected under which the payment or payments became due, being—

(a) where the period over which payments are to be made under that transaction is not less than 200 years, or the obligation to make such payments is perpetual, a lease for 200 years; and

(b) where that period is less than 200 years, a lease which is of the same duration as that period.

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(10) In this section references to rent under a lease include references to

[F5103(a)**]** rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 **[**F5104or under section 37A**]** or under section 87 **[**F5105or 87A**]** treated, for any purpose, as paying in respect of land comprised in the lease, **[**F5106and

(b) expenses which the tenant under the lease is treated as incurring in respect of the land subject to the lease under sections 61 to 67 or 292 to 297 of ITTOIA 2005,**]**

and such rent shall be treated for the purposes of this section as having been paid from day to day as it has become due **[**F5107and such expenses shall be treated for those purposes as having been paid as soon as they have been incurred.**]**

(11) For the purposes of this section the following persons shall be deemed to be associated with one another, that is—

(a) the transferor in any such transaction as is described in subsection (1) or (2) above, and the transferor in another such transaction, if those two persons are acting in concert, or if the two transactions are in any way reciprocal, and any person who is an associate of either of those associated transferors;

(b) any two or more bodies corporate participating in, or incorporated for the purposes of, a scheme for the reconstruction of any body or bodies corporate or for the amalgamation of any two or more bodies corporate;

(c) any persons who are associates as defined in section 783(10).

(12) In this section—

"asset" means any description of property or rights other than land or an interest in land;

"lease" includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined; and in relation to such land, expressions in this section relating to interests in land and their disposition shall be construed accordingly;

"rent" includes any payment made under a lease; and

"tenant's repairing lease" means a lease where the lessee is under an obligation to maintain and repair the whole, or substantially the whole, of the premises comprised in the lease.

(13) For the purposes of this section the following are deductions by way of relevant tax relief, that is to say—

(a) a deduction in computing profits or gains chargeable under Schedule A F5108 . . . ;

[F5109(aa) a deduction in calculating the profits of a UK property business;**]**

(b) a deduction in computing **[**F5110profits**]** or losses of a trade, profession or vocation for the purposes of tax;

(c) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section F5111 . . . 396;

[F5112(ca) a deduction in computing profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 836B applies, or in computing any loss for which relief is allowable under section 392;**]**

(d) **[**F5113a deduction**]** under section 75 or 76;

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(e) **[**[F5114]a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses)**]** or allowable in computing losses in an employment for tax purposes;

(f) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(14) This section shall not apply if the transfer described in subsection (1) or (2) above was on or before 14th April 1964.

Textual Amendments

F5103 Words in s. 779(10) renumbered as s. 779(10)(a) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(2)(a)** (with Sch. 2)

F5104 Words in s. 779(10)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(2)(b)** (with Sch. 2)

F5105 Words in s. 779(10)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(2)(c)** (with Sch. 2)

F5106 S. 779(10)(b) and preceding word inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(2)(d)** (with Sch. 2)

F5107 Words in s. 779(10) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(2)(e)** (with Sch. 2)

F5108 Words in s. 779(13)(a) repealed (with effect in accordance with s. 39(4)(5) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 6 para. 27, **Sch. 29 Pt. 8(1)**, Note

F5109 S. 779(13)(aa) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(3)(a)** (with Sch. 2)

F5110 Words in s. 779(13)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F5111 Words in s. 779(13)(c) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 314(3)(b), **Sch. 3** (with Sch. 2)

F5112 S. 779(13)(ca) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 314(3)(c)** (with Sch. 2)

F5113 Words in s. 779(13)(d) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 32(2)

F5114 Words in s. 779(13)(e) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 101** (with Sch. 7)

Modifications etc. (not altering text)

C793 S. 779 restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 23**

C794 S. 779 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 22** (with s. 43(6))

C795 S. 779 excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), **Sch. 33 para. 13(1)**; S.I. 1999/3434, **art. 2**

C796 S. 779(1)(2) excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 24(8)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C797 S. 779(1)(2) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 10**

Marginal Citations

M1033 Source—1970 s.491

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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780 Sale and leaseback: taxation of consideration received.

M1034(1) If, in any case where a person ("the lessee") who is a lessee of land under a lease having not more than 50 years to run ("the original lease") is entitled in respect of the rent under the lease to a deduction by way of tax relief which is a relevant tax relief for the purposes of section 779—

(a) the lessee assigns the original lease to another person, or surrenders it to his landlord, for a consideration which apart from this section would not be taxable otherwise than as capital in the hands of the lessee, and

(b) there is granted or assigned to the lessee another lease ("the new lease") of or including the whole or any part of the land which was the subject of the original lease for a term not exceeding 15 years;

then, subject to the following provisions of this section, the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply in relation to the rent under the new lease, and for the purposes of the Tax Acts a proportion of the consideration received by the lessee shall be treated not as a capital receipt but in accordance with subsection (3) below.

(2) For the purposes of this section—

(a) if the aggregate of the rent payable under the new lease in respect of any rental period ending on a date falling before the 15th anniversary of the date on which the term of the new lease begins is greater than the aggregate of the rent payable under the new lease in respect of the period of equal duration beginning on the day following that date, then unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (b) below, that term shall be treated as ending on that date;

(b) if under the terms of the new lease—

(i) the lessor of the lessee has power to determine the new lease at a time before the expiry of the term for which it was granted, or

(ii) the lessee has power to vary his obligations under the new lease so as to reduce the rent which he would otherwise have to pay or in any other manner beneficial to him,

then, unless the term of the new lease would be treated as ending on an earlier date by virtue of paragraph (a) above, that term shall be treated as ending on the earliest date with effect from which, in exercise of that power, the lessor or the lessee could determine the new lease or, as the case may be, the lessee could so vary his obligations;

and in any case where a rentcharge payable by the lessee is secured on the whole or any part of the property which is the subject of the new lease, the rent payable under the new lease shall be treated for the purposes of paragraphs (a) and (b) above as equal to the aggregate of the rentcharge and the rent payable under the terms of that lease.

(3) Subject to the following provisions of this section, the proportion of the consideration received by the lessee as mentioned in subsection (1) above, or of any instalment of that consideration, which for the purposes of the Tax Acts is to be treated not as a capital receipt but in accordance with this subsection shall be determined by the formula—

$$\frac{16 - N}{15}$$

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where N is the term of the new lease expressed in years or, if that term is less than a year, where N is 1; and that proportion shall be treated for the purposes of the Tax Acts—

(a) as a receipt of a trade, profession or vocation, if the rent payable by the lessee under the new lease is allowable as a deduction in computing **[**F5115profits**]** or losses of a trade, profession or vocation for the purposes of tax and if the consideration is received by the lessee in the course of that trade, profession or vocation; and

(b) in any other case, as **[**F5116an amount chargeable to tax in accordance with subsection (3A)**]**.

[F5117(3A) The amount shall be charged—

(a) to income tax, or

(b) to corporation tax as a profit or gain under Case VI of Schedule D.

(3B) The income tax charged by virtue of subsection (3A)(a) above shall be charged on the full amount of the proportion of the consideration concerned arising in the year of assessment; and the person liable for any tax so charged is the lessee.**]**

(4) In any case where the property which is the subject of the new lease does not include the whole of the property which was the subject of the original lease, the consideration received by the lessee shall be treated for the purposes of subsection (3) above as reduced to that portion of the consideration which is reasonably attributable to such part of the property which was the subject of the original lease as consists of, or is included in, the property which is the subject of the new lease.

(5) *Schedule* 2*shall have effect for the purposes of giving relief, on a claim being made in that behalf, from any increase in an individual's liability to income tax which is attributable to any amount being treated, by virtue of subsection* (3)*above, as an income receipt for a single year of assessment rather than as a series of such receipts during the term of the new lease; and in the application of that Schedule by virtue of this subsection for the definitions of "chargeable sum" and "relevant period" there shall be substituted the following definitions—*

> *" "chargeable sum" means the amount in respect of which, by virtue of subsection* (3)*above, the claimant is chargeable to income tax for the year of assessment;"*
>
> *" "relevant period", in relation to any chargeable sum, means the term of the new lease."*

(6) Where by agreement with his landlord, the lessee varies the terms of the original lease in such a manner that, in return for such a consideration as is specified in subsection (1)(a) above, the lessee undertakes to pay, during a period ending not later than 15 years after the date on which the consideration, or if the consideration is paid in instalments, the last such instalment, is paid to the lessee, a rent greater than that payable under the original lease, he shall be treated for the purposes of this section—

(a) as having surrendered the original lease for that consideration, and

(b) as having been granted a new lease for a term not exceeding 15 years but otherwise on the terms of the original lease as so varied.

(7) References in this section to the lessee (other than in subsection (1)(a) above) include references to a person who is a partner or associate of the lessee or an associate of a

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partner of the lessee; and for the purposes of this section the expression "associate" shall be construed in accordance with 783(10).

(8) Subject to subsection (7) above, expressions used in this section have the meanings assigned to them by section 24, and in subsection (2)(a) above "rental period" means a period in respect of which a payment of rent falls to be made, and for the purposes of that subsection, in a case where the rental period is a quarter or a month, each such period shall be treated as of equal duration.

(9) The preceding provisions of this section shall not apply if the lessee had, before 22nd June 1971, a right enforceable at law or in equity to the grant of the new lease, but in any case where, apart from this subsection, those provisions would apply, no part of the rent paid under the new lease shall be treated as a payment of capital, and the provisions of this Act providing for deductions or allowances by way of tax relief in respect of payments of rent shall apply accordingly.

Textual Amendments

F5115 Words in s. 780(3)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F5116 Words in s. 780(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 315(2)** (with Sch. 2)

F5117 S. 780(3A)(3B) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 315(3)** (with Sch. 2)

Modifications etc. (not altering text)

C798 S. 780 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 23** (with s. 43)

Marginal Citations

M1034 Source—1972 s.80

781 Assets leased to traders and others.

M1035(1) Subject to section 782, where—

(a) a deduction by way of tax relief which is one of the kinds listed in subsection (4) below is allowable in respect of a payment made under a lease of an asset of any description, and

(b) before, at or after the time when the payment is made, either—

(i) the person who made the payment has obtained or obtains a capital sum in respect of the lessee's interest in the lease, or

(ii) the lessor's interest in the lease, or any other interest in the asset, has belonged to an associate of the person who made the payment, and that associate has obtained a capital sum in respect of that interest,

the person obtaining that sum shall be charged **[**F5118to tax (in the case of corporation tax, under Case VI of Schedule D) for the chargeable period in which the sum is obtained**]** on an amount equal to the amount of the payment in respect of which tax relief is so allowed.

(2) A person shall not be assessed to tax under subsection (1) above on any amount to the extent to which it exceeds the capital sum by reference to which he is so assessed.

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(3) Subsection (1) above shall not apply to payments under a lease created on or before 14th April 1964.

(4) The kinds of deductions by way of tax relief to which subsection (1) above applies are as follows—

(a) a deduction in computing **[**F5119profits**]** or losses of a trade, profession or vocation for the purposes of tax;

[F5120(ab) a deduction in computing profits or other income or gains chargeable to income tax under or by virtue of any provision to which section 836B applies, or in computing any loss for which relief is allowable under section 392;**]**

(b) a deduction in computing profits or gains chargeable under Case VI of Schedule D, or in computing any loss for which relief is allowable under section F5121. . . 396;

(c) **[**F5122a deduction**]** under section 75 or 76;

(d) **[**F5123a deduction from earnings allowed under section 336 of ITEPA 2003 (expenses)**]** or allowable in computing losses in an employment for tax purposes;

(e) a deduction allowable for tax purposes in computing profits or gains or losses arising from woodlands.

(5) Where—

(a) the deduction by way of tax relief mentioned in subsection (1)(a) above is a deduction in computing, for income tax purposes, profits or gains or losses of a trade, profession or vocation, or arising from woodlands, and

(b) any part of the payments made under the lease by the person obtaining the capital sum is a payment in respect of which a deduction is not allowed for the reason that the whole or any part of the period in which the payment would fall to be allowed is not a period on the **[**F5119profits**]** of which income tax falls to be computed in respect of the trade, profession or vocation,

for the reference in subsection (2) above to the amount of the capital sum there shall be substituted a reference to that amount after deducting the amount of the payment in respect of which a deduction is not allowed for that reason.

(6) So far as in respect of a capital sum any part of a payment allowed as a deduction by way of tax relief of a kind to which this section applies is taken into account in making an assessment under subsection (1) above, that part of the payment shall be left out of account in determining whether any and if so what amount should be assessed by reference to any other capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.

(7) There shall be made all such adjustments of tax, whether by way of making assessments or by repayment of tax, as are required after the making of any such payment as is described in subsection (1) above to give effect to the charge under that subsection in respect of a sum obtained before the making of the payment.

(8) Notwithstanding anything in the Tax Acts limiting the time within which an assessment may be made or a claim for relief may be admitted any such adjustment may be made, by making an assessment or otherwise, at any time **[**F5124within the period specified in subsection (8A) below**]**.

[F5125(8A) The period mentioned in subsection (8) above is—

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(a) in the case of adjustments with respect to income tax, the period ending with the fifth anniversary of the 31st January next following the year of assessment in which the payment was made;

(b) in the case of adjustments with respect to corporation tax, the period of six years beginning at the end of the accounting period in which the payment was made.**]**

(9) This section shall not apply if the capital sum obtained in respect of the lessee's interest in a lease constituting a hire-purchase agreement for machinery or plant is a sum which is required to be brought into account as the whole or part of the disposal value of the machinery or plant under **[**[F5126]section 68 of the Capital Allowances Act**]**.

Textual Amendments

F5118 Words in s. 781(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 316(2)** (with Sch. 2)

F5119 Words in s. 781(4)(a)(5)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F5120 S. 781(4)(ab) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 316(3)** (with Sch. 2)

F5121 Words in s. 781(4)(b) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 316(4), **Sch. 3** (with Sch. 2)

F5122 Words in s. 781(4)(c) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 33(2)

F5123 Words in s. 781(4)(d) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 102** (with Sch. 7)

F5124 Words in s. 781(8) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 21(2)**

F5125 S. 781(8A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 21(3)**

F5126 Words in s. 781(9) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 57**

Modifications etc. (not altering text)

C799 S. 781 modified (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)-(4)**

C800 S. 781 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(6)**

C801 S. 781 modified (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(1)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C802 S. 781 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(1)**

C803 S. 781 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(1)** (with s. 43)

C804 S. 781 excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), **Sch. 33 para. 13(2)**; S.I. 1999/3434, **art. 2**

C805 S. 781 modified (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), Sch. 10 paras. 8, **20**; S.I. 2005/1444, art. 2(1), **Sch. 1**

C806 *See* 1979(C) s.106*and* Sch.3 para.9—*amounts charged under* s.781*to be excluded in computing capital gains.*

Marginal Citations

M1035 Source—1970 s.492 (1)-(5), (7)-(9); 1971 Sch.8 16(7)

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782 Leased assets: special cases.

M1036(1) This section shall apply, and section 781 shall not apply, to payments—

(a) which are allowable by way of deductions in computing the **[**F5127profits**]** or losses of a trade, and

(b) which are made under a lease of an asset which at any time before the creation of the lease was used for the purposes—

(i) of that trade; or

(ii) of another trade carried on by the person who at that time or later was carrying on the first-mentioned trade;

and when so used was owned by the person carrying on the trade in which it was being used.

(2) Subject to the following provisions of this section, the deduction allowable in computing the **[**F5127profits**]** or losses of the trade for the purposes of tax as respects any such payment shall not exceed the commercial rent of the asset for the period for which the payment was made.

(3) If under subsection (2) above part of a payment which would otherwise be allowable as a deduction is not so allowable, and one or more subsequent payments are made by the same person under the same lease, that part of the first-mentioned payment may be carried forward and treated for the purposes of computing the **[**F5127profits**]** or losses of the trade for the purposes of tax as if it were made at the time when the next of those subsequent payments was made, and so made for the period for which that subsequent payment was made.

(4) For the purposes of subsection (2) above—

(a) if more than one payment is made for the same period the payments shall be taken together;

(b) if the payments are made for periods which overlap, the payments shall be apportioned, and the apportioned payments which belong to the common part of the overlapping periods shall be taken together;

(c) the preceding references to payments include references to parts of payments which under subsection (3) above are treated as if made at a time subsequent to that at which they were made;

and to the extent that a part of a payment carried forward under subsection (3) above is not allowable as a deduction it may again be carried forward under that subsection.

(5) A payment made for a period all of which falls more than one year after the payment is made shall be treated for the purposes of this section as made for that period of one year beginning with the date on which the payment is made, and a payment for a period part of which falls after the end of that year shall be treated for those purposes as if a corresponding part of the payment was made for that year (and no part for any later period).

(6) For the purpose of making a comparison under subsection (2) above between a payment, or payments taken together, and the commercial rent of the asset, "commercial rent" shall mean the rent which might at the relevant time be expected to be paid under a lease of the asset for the remainder of the anticipated normal working life of the asset, being a rent payable at uniform intervals and at a uniform rate which would afford a reasonable return for its market value at the relevant time, having regard to the terms and conditions of the lease; and in this subsection—

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"anticipated normal working life" means, in the case of any asset, the period which might be expected, when the asset is first put into use, to be going to elapse before it is finally put out of use as being unfit for further use, it being assumed that the asset is going to be used in the normal manner and to the normal extent, and is going to be so used throughout that period; and

"the relevant time" means the time when the lease was created under which the payment was made with which the commercial rent is to be compared.

(7) If the asset is used at the same time partly for the purposes of the trade and partly for other purposes the commercial rent as defined in subsection (6) above shall be determined by reference to what would be paid for such a partial use of the asset.

(8) This section shall not apply in relation to payments made under a lease created on or before 14th April 1964.

(9) In this section references to the person carrying on a trade are references to the person carrying on the trade for the time being, and where at any time a person succeeds to a trade which until that time was carried on by another person, and by virtue of **[**[F5128]section 18 of ITTOIA 2005 or section 337(1) above (companies beginning or ceasing to carry on trade)**]** the trade is to be treated as discontinued, the trade shall, nonetheless, be treated as the same trade for the purposes of this section.

(10) In this section references to a trade include references to a profession or vocation.

Textual Amendments

F5127 Words in s. 782(1)(a)(2)(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F5128 Words in s. 782(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 317** (with Sch. 2)

Modifications etc. (not altering text)

C807 S. 782 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(5)**

C808 S. 782 excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 18(2)** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C809 S. 782 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(2)**

C810 S. 782 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(2)** (with s. 43)

C811 S. 782 excluded (12.1.2000) by Greater London Authority Act 1999 (c. 29), s. 425(2), **Sch. 33 para. 13(1)**; S.I. 1999/3434, **art. 2**

Marginal Citations

M1036 Source—1970 s.493; 1971 Sch.8 16(8)

783 Leased assets: supplemental.

[M1037](1) References in section 781 to a sum obtained in respect of the lessee's interest in a lease of an asset, or in respect of any other interest in an asset include—

(a) in the case of a lessee's interest, references to sums representing the consideration in money or money's worth obtained on a surrender of the rights to the lessor, or on an assignment of the lease, or on creating a sublease or any other interest out of the lease; and

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(b) references to any insurance moneys payable in respect of the asset, so far as payable to the owner of the interest in the asset.

(2) Such references also include references to sums representing money or money's worth obtained by the person entitled to the interest by a transaction or series of transactions disposing of the asset, or of an interest in the asset, and in particular transactions which comprise arrangements under which the rights of the lessee under a lease of the asset are merged in any way with the rights of the lessor, or with any other rights as respects the asset, so far as the money or money's worth so obtained is attributable to the rights of the lessee under the lease.

(3) References in section 781 to sums obtained in respect of any interest in an asset include references to money or money's worth so obtained in any transaction (including a transaction of the kind described in subsection (1) or (2) above) by way of consideration received by a person who is an associate of the person entitled to the interest in the asset.

(4) If an interest in the asset is disposed of by any person to a person who is his associate, the person disposing of the interest shall (unless in fact he obtains a greater sum) be treated for the purposes of section 781 as having obtained in respect of the interest—

(a) the value of the interest in the open market; or

(b) the value of the interest to the person to whom it is, in effect, transferred;

whichever is the greater.

(5) For the purposes of subsections (3) and (4) above a disposition may be direct or indirect and may be effected by any such transaction as is described in subsection (2) above.

(6) For the purposes of sections 781 and 784 and this section any sum obtained by any persons carrying on a trade, profession or vocation in partnership in respect of an interest in an asset which is and continues to be used for the purposes of the trade, profession or vocation shall be regarded as apportionable between them in the shares in which they are then entitled to the profits of the trade, profession or vocation.

(7) Subject to subsection (6) above, for those purposes a sum obtained by persons jointly entitled to an interest in an asset shall be apportionable according to their respective interests in the rights.

(8) For those purposes, any payment in respect of which a deduction is allowable by way of tax relief which is made by persons carrying on a trade, profession or vocation in partnership shall be apportioned in such manner as may be just.

(9) Where under this section any sum or payment falls to be apportioned and, at the time of the apportionment, it appears that it is material as respects the liability to tax (for whatever period) of two or more persons, any question which arises as to the manner in which the sum or payment is to be apportioned shall be determined, for the purposes of tax of all those persons—

(a) in a case where the same body of General Commissioners have jurisdiction with respect to all those persons, by those Commissioners unless all those persons agree that it shall be determined by the Special Commissioners;

(b) in a case where different bodies of Commissioners have jurisdiction with respect to those persons, by such of those bodies as the Board may direct unless all those persons agree that it shall be determined by the Special Commissioners; and

(c) in any other case, by the Special Commissioners;

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and any such Commissioners shall determine the question in like manner as if it were an appeal, except that all those persons shall be entitled to appear and be heard by the Commissioners who are to make the determination or to make representations to them in writing.

(10) For the purposes of this section and in construing the expressions "associate" and "associated" in section 781 and this section, the following persons shall be deemed to be associated with each other, that is to say—

(a) any individual and that individual's **[**[F5129]spouse or civil partner**]**, and any relative, or **[**[F5129]spouse or civil partner**]** of a relative, of that individual or that individual's **[**[F5129]spouse or civil partner**]** ("relative" meaning, for this purpose, brother, sister, ancestor or lineal descendant);

(b) any person in his capacity of trustee of a settlement and any individual who in relation to the settlement is a settlor, and any person associated with that individual ("settlement" and "settlor" having, for this purpose, the meanings given by **[**[F5130]section 620 of ITTOIA 2005**]**);

(c) any person and a body of persons of which that person, or persons associated with him, or that person and persons associated with him, has or have control;

(d) any two or more bodies of persons associated with the same person by virtue of paragraph (c) above;

(e) in relation to a disposal by joint owners, the joint owners and any person associated with any of them.

(11) In subsection (10) above "body of persons" includes a partnership and "control" has the meaning given by section 840.

Textual Amendments

F5129 Words in s. 783(10)(a) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 98

F5130 Words in s. 783(10)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 318** (with Sch. 2)

Modifications etc. (not altering text)

C812 S. 783(2) restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(2)**

C813 S. 783(4) excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)(a)(3)**

C814 S. 783(4) excluded (8.6.2005) by Railways Act 2005 (c. 14), s. 60(2), Sch. 10 paras. 8(2), **20(2)**; S.I. 2005/1444, art. 2(1), **Sch. 1**

C815 S. 783(4) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), Sch. 13 paras. 16(2), **25(2)**

C816 *See*—s.756—s.783(11)*applied for purposes of* Part XVII Ch.IV (*controlled foreign companies*),s.798(10)—s.783(11)*applied for purposes of* s.798 (*interest on certain overseas loans*).

Marginal Citations

M1037 Source—1970 s.494

784 Leased assets subject to hire-purchase agreements.

(1) [M1038]In the application of section 781 to a lease which constitutes a hire-purchase agreement, for the reference in subsection (2) of that section to the amount of the capital sum there shall, where that capital sum was obtained in respect of the lessee's interest in the lease constituting the hire-purchase agreement, be substituted references

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to the amount of the capital sum (adjusted, if necessary, under subsection (5) of that section) after deducting any capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest.

(2) In subsection (1) above "capital expenditure which was incurred by the person obtaining the capital sum in providing the lessee's interest" means—

(a) so much of any payment made under the lease by the person obtaining the capital sum (or, where the capital sum was obtained by the personal representatives of a deceased person, so made by that deceased person) as is not a payment in respect of which a deduction is allowable by way of tax relief which is one of the kinds listed in subsection (4) of section 781, plus

(b) where the lessee's interest was assigned to the person obtaining the capital sum, any capital payment made by that person as consideration for the assignment.

(3) If the amount to be deducted in pursuance of subsection (1) above exceeds the amount of the capital sum from which it is to be deducted, no charge shall arise under section 781(1) in respect of the capital sum.

(4) If the capital sum represents the consideration for part only of the lessee's interest in the lease which constitutes a hire-purchase agreement, the amount to be deducted under subsection (1) above shall be such proportion of the capital expenditure which is still unallowed as is reasonable having regard to the degree to which the capital expenditure has contributed to the value of what is disposed of in return for the capital sum.

(5) If more than one capital sum is, or is to be regarded as, obtained by the same person in respect of the lessee's interest in the lease which constitutes a hire-purchase agreement, then, so far as in respect of one of those capital sums any deduction is made in respect of capital expenditure in pursuance of subsection (1) above that capital expenditure shall be left out of account in applying subsections (1) and (3) above to any other such capital sum; and the order in which this subsection is applied shall be the order in which the capital sums are obtained.

(6) [M1039]In this section—

"hire-purchase agreement" means an agreement, other than a conditional sale agreement, under which—

(a) goods are bailed or, in Scotland, hired in return for periodical payments by the person to whom they are bailed or hired, and

(b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs—

(i) the exercise of an option to purchase by that person;

(ii) the doing of any other specified act by any party to the agreement;

(iii) the happening of any other specified event; and

"conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

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Marginal Citations

M1038 Source—1970 s.495

M1039 Source—Consumer Credit Act 1974 Sch.4 29

785 Meaning of "asset", "capital sum" and "lease" for purposes of sections 781 to 784.

In sections 781 to 784—

"asset" means any description of property or rights other than land or an interest in land;

"capital sum" means any sum of money, or any money's worth, except so far as it or any part of it is to be treated for the purposes of tax as a receipt to be taken into account in computing the **[**F5131profits**]** or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable **[**F5132to income tax under or by virtue of any provision to which section 836B applies or to corporation tax**]** under Case VI of Schedule D; and

"lease", in relation to an asset, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, an asset, and includes, in particular, any agreement or arrangement all or any of the payments under which represent instalments of, or payments towards, a purchase price.

Textual Amendments

F5131 Words in s. 785 substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F5132 S. 785: words in definition of "capital sum" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 319** (with Sch. 2)

VALID FROM 19/07/2006

[F5133785ZA Restrictions on use of losses: leasing partnerships

(1) This section applies for corporation tax purposes if—

(a) a company carries on a business in respect of which the company is within the charge to corporation tax,

(b) the company carries on the business in partnership with other persons in an accounting period of the partnership,

(c) the business ("the leasing business") is, on any day in that period, a business of leasing plant or machinery,

(d) the company incurs a loss in its notional business in any accounting period comprised (wholly or partly) in the accounting period of the partnership, and

(e) the interest of the company in the leasing business during the accounting period of the partnership is not determined on an allowable basis (see subsections (2) to (4)).

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(2) The interest of the company in the leasing business during the accounting period of the partnership is determined on an allowable basis if (and only if) the following condition is met.

(3) The condition is met if, for the purposes of section 114(2),—

(a) the company's share in the profits or loss of the leasing business for that period is determined wholly by reference to a single percentage, and

(b) the company's share in any relevant capital allowances for that period is determined wholly by reference to the same percentage.

(4) For the purposes of this condition "profits" does not include chargeable gains.

(5) The following restrictions apply in respect of so much of the loss incurred by the company in its notional business as derives from any relevant capital allowances ("the restricted part of the loss").

(6) Apart from by way of set off against any relevant leasing income, relief is not to be given to the company under any relevant loss relief provision in respect of the restricted part of the loss.

(7) If the leasing business is a trade, relief is not to be given to the company under section 393A(1) in respect of the restricted part of the loss.

(8) The restricted part of the loss is not available for set off by way of group relief in accordance with section 403.

(9) For the purpose of determining how much of a loss derives from any relevant capital allowances, the loss is to be calculated on the basis that any relevant capital allowances are the final amounts to be deducted.**]**

Textual Amendments

F5133 Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 83(2)**

VALID FROM 19/07/2006

[F5133 785ZB Section 785ZA: definitions

(1) This section applies for the purposes of section 785ZA.

(2) "Business of leasing plant or machinery" has the same meaning as in Part 3 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc).

(3) "Lease" has the same meaning as in section 785A.

(4) "Notional business", in relation to a company, means the business—

(a) from which the company's share in the profits or loss of the leasing business is treated under section 114(2) as deriving for the purposes of the charge to corporation tax, and

(b) which is treated under that provision as carried on alone by the company for those purposes.

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(5) "Plant or machinery" has the same meaning as in Part 2 of the Capital Allowances Act.

(6) "Relevant capital allowance" means an allowance under Part 2 of the Capital Allowances Act in respect of expenditure incurred on the provision of plant or machinery wholly or partly for the purposes of the leasing business.

(7) "Relevant leasing income" means any income of the company's notional business deriving from any lease—

(a) which is a lease of plant or machinery, and

(b) which was entered into before the end of the accounting period of the company in which the loss in its notional business was incurred.

(8) "Relevant loss relief provision" means any of the following provisions—

(a) section 392A (Schedule A losses),

(b) section 392B (losses from overseas property businesses),

(c) section 393 (trade losses),

(d) section 396 (Case VI losses).**]**

Textual Amendments

F5133 Ss. 785ZA, 785ZB inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 83(2)**

[F5134 785A Rent factoring of leases of plant or machinery

(1) This section applies in any case where the following conditions are satisfied—

(a) a person (call him "P") is entitled to receive rentals under a lease of plant or machinery,

(b) the rentals, so far as receivable by him, fall to be brought into account as income for the purpose of calculating his tax liability,

(c) P enters into arrangements for the transfer of his right to receive some or all of the rentals to another person,

(d) apart from this section, some or all of the amount or value of the consideration for the transfer ("the relevant portion of the consideration") would fall to be brought into account neither—

(i) as income, nor

(ii) as a capital allowances disposal receipt,

for the purpose of calculating P's tax liability.

(2) In any such case, the relevant portion of the consideration—

(a) shall be treated for tax purposes as income of P,

(b) shall be taxable as rentals receivable by P under the lease (apart from any transfer of his right to receive some or all of the rentals), and

(c) shall be brought into account in a period of account to the extent that it is receivable in that period of account.

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(3) Any reference to the transfer from P to another person of a right to receive rentals includes a reference to any arrangement under which rental ceases to form part of the receipts taken into account as income for the purposes of calculating P's tax liability.

(4) Where P is a partnership, any reference in this section to calculating P's tax liability includes a reference to calculating the tax liability of the partners, notwithstanding that the partnership has legal personality.

(5) A partnership has legal personality for the purposes of subsection (4) above if it is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

(6) In this section—

"capital allowances disposal receipt" means a disposal receipt within the meaning of Part 2 of the Capital Allowances Act 2001 (see section 60 of that Act);

"lease" includes an underlease, sublease, tenancy or licence and an agreement for any of those things;

"tax liability" means liability to income tax or corporation tax.**]**

Textual Amendments

F5134 S. 785A inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 2004 (c. 12), **s. 135(1)**

VALID FROM 21/07/2008

[F5135 785B Plant and machinery leases: capital receipts to be treated as income

(1) This section applies if—

(a) there is an unconditional obligation, under a lease of plant or machinery or a relevant arrangement, to make a relevant capital payment (at any time), or

(b) a relevant capital payment is made under such a lease or arrangement otherwise than in pursuance of such an obligation.

(2) The lessor is treated for corporation tax purposes as receiving income attributable to the lease of an amount equal to the amount of the capital payment.

(3) The income is treated—

(a) if subsection (1)(a) applies, as income for the period of account in which there is first an obligation of the kind mentioned there, and

(b) if subsection (1)(b) applies, as income for the period of account in which the payment is made.**]**

Textual Amendments

F5135 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

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VALID FROM 21/07/2008

[F5135 785C Section 785B: interpretation

(1) The expressions used in section 785B and this section are to be interpreted as follows.

(2) "Capital payment" means any payment except one which, if made to the lessor—

(a) would fall to be included in a calculation of the lessor's income for corporation tax purposes, or

(b) would fall to be included in such a calculation but for section 502B (rental earnings under long funding finance lease).

(3) "Lease" includes—

(a) a licence, and

(b) the letting of a ship or aircraft on charter or the letting of any other asset on hire,

and "lessor" and "lessee" are to be read accordingly.

(4) "Lease of plant or machinery" includes a lease of plant or machinery and other property but does not include—

(a) a lease where the income attributable to the lease received by the lessor (if any) would be chargeable to tax under Schedule A, or

(b) a lease of plant or machinery where the lessor has incurred what would (but for section 34A of the Capital Allowances Act) be qualifying expenditure (within the meaning of Part 2 of that Act) on the plant or machinery.

(5) "Relevant arrangement" means any agreement or arrangement relating to a lease of plant or machinery, including one made before the lease is entered into or after it has ended (and, accordingly, "lessor" and lessee" include prospective and former lessors and lessees).

(6) A capital payment, in relation to a lease or relevant arrangement, is "relevant" if condition A or B is met (but this is subject to subsection (9)).

(7) Condition A is that the capital payment is payable (or paid), directly or indirectly, by (or on behalf of) the lessee to (or on behalf of) the lessor in connection with—

(a) the grant, assignment, novation or termination of the lease, or

(b) any provision of the lease or relevant arrangement (including the variation or waiver of any such provision).

(8) Condition B is that rentals payable under the lease are less than (or payable later than) they might reasonably be expected to be if there were no obligation to make the capital payment (and the capital payment were not made).

(9) A capital payment is not "relevant" if or to the extent that—

(a) the capital payment reduces (or would but for section 536 of the Capital Allowances Act reduce) the amount of expenditure incurred by the lessor for the purposes of the Capital Allowances Act in respect of the plant or machinery in question,

(b) the capital payment is compensation for loss resulting from damage to, or damage caused by, the plant or machinery in question, or

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(c) the capital payment would fall (or falls) to be brought into account by the lessor as a disposal receipt within the meaning of Part 2 of the Capital Allowances Act (see section 60(1) of that Act).

(10) References to payment include the provision of value by any means other than the making of a payment, and accordingly—

(a) references to the making of a payment include the passing of value (by any other means), and

(b) references to the amount of the payment include the value passed.**]**

Textual Amendments

F5135 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

[F5135 785B Section 785B: lease of plant and machinery and other property

(1) This section applies if section 785B applies in relation to a lease of plant or machinery and other property (see section 785C(4)).

(2) The relevant capital payment is to be apportioned, on a just and reasonable basis, between—

(a) the plant and machinery, and

(b) the other property.

(3) If the income (if any) received by the lessor that is attributable to any of the plant or machinery is chargeable to tax under Schedule A, treat that plant or machinery as falling within subsection (2)(b) (and not subsection (2)(a)).

(4) Section 785B(2) has effect as if the reference to the amount of the capital payment were to such amount as is apportioned under subsection (2) in respect of the plant or machinery within subsection (2)(a).**]**

Textual Amendments

F5135 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

VALID FROM 21/07/2008

[F5135 785C Section 785B: expectation that relevant capital payment will not be paid

(1) This section applies for corporation tax purposes if—

(a) section 785B applies by virtue of subsection (1)(a) of that section, and

(b) at any time, the lessor reasonably expects that the relevant capital payment will not be paid (or will not be paid in full).

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(2) For the purposes of calculating the profits of the lessor, a deduction is allowed for the period of account which includes that time.

(3) The amount of the deduction is equal to the amount reasonably expected not to be paid.

(4) No other deduction is allowed in respect of the matters mentioned in subsection (1).**]**

Textual Amendments

F5135 Ss. 785B-785E inserted (with effect in accordance with Sch. 20 para. 1(2) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 20 para. 1(1)** (with transitional modifications in Sch. 20 para. 1(3))

786 Transactions associated with loans or credit.

M1040 (1) This section applies as respects any transaction effected with reference to the lending of money or the giving of credit, or the varying of the terms on which money is lent or credit is given, or which is effected with a view to enabling or facilitating any such arrangement concerning the lending of money or the giving of credit.

(2) Subsection (1) above has effect whether the transaction is effected between the lender or creditor and the borrower or debtor, or between either of them and a person connected with the other or between a person connected with one and a person connected with the other.

(3) If the transaction provides for the payment of any **[**F5136 relevant annual payment**]**, the payment shall be treated for all the purposes of the Tax Acts as if it were a payment of annual interest.

[F5137 (3A) In subsection (3) "relevant annual payment" means a payment which is not interest but is—

(a) an annuity or other annual payment falling within Part 5 of ITTOIA 2005 and chargeable to income tax otherwise than as relevant foreign income; or

(b) an annuity or other annual payment chargeable to corporation tax under Case III of Schedule D.**]**

(4) F5138 . . . . . .

(5) If under the transaction a person assigns, surrenders or otherwise agrees to waive or forego income arising from any property (without a sale or transfer of the property) then, without prejudice to the liability of any other person, **[**F5139 he shall be chargeable—

(a) to income tax, or

(b) to corporation tax under Case VI of Schedule D,

on a sum**]** equal to the amount of income assigned, surrendered, waived or foregone.

[F5140 (5A) Income tax charged by virtue of subsection (5)(a) above shall be charged on the full amount of the income assigned, surrendered, waived or forgone in the year of assessment.**]**

(6) If credit is given for the purchase price of any property, and the rights attaching to the property are such that, during the subsistence of the debt, the purchaser's rights to income from the property are suspended or restricted, he shall be treated for the

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purposes of subsection (5) above as if he had surrendered a right to income of an amount equivalent to the income which he has in effect foregone by obtaining the credit.

(7) The amount of any income payable subject to deduction of income tax shall be taken for the purposes of subsection (5) above as the amount before deduction of tax.

(8) References in this section to connected persons shall be construed in accordance with section 839.

Textual Amendments

F5136 Words in s. 786(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 320(2)** (with Sch. 2)

F5137 S. 786(3A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 320(3)** (with Sch. 2)

F5138 S. 786(4) repealed (with effect in accordance with s. 159(1) of the repealing Act) by Finance Act 1996 (c. 8), s. 159(1), **Sch. 41 Pt. 5(21)**, Note 1; S.I. 1996/2646, **art. 2**

F5139 Words in s. 786(5) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 320(4)** (with Sch. 2)

F5140 S. 786(5A) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 320(5)** (with Sch. 2)

Marginal Citations

M1040 Source—1970 s.496

787 Restriction of relief for payments of interest.

M1041 (1) Relief shall not be given to any person under any provision of the Tax Acts in respect of any payment of interest if a scheme has been effected or arrangements have been made (whether before or after the time when the payment is made) such that the sole or main benefit that might be expected to accrue to that person from the transaction under which the interest is paid was the obtaining of a reduction in tax liability by means of any such relief.

[F5141 (1A) This section has effect in relation to Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) but taking the reference in subsection (1) above to giving relief to any person in respect of any payment of interest as including a reference to the bringing into account by any person in accordance with that Chapter of any debit in respect of interest (whether a payment or not); and other references in this section to relief shall be construed accordingly.**]**

(2) In this section "relief" means relief by way of deduction in computing profits or gains or deduction or set off against income or total profits.

[F5142 (3) Where the relief is claimed by virtue of section 403—

(a) in respect of a deficit to which section 83 of the Finance Act 1996 applies (non-trading deficit on loan relationships), or

(b) in respect of trading losses, in a case where in computing those losses debits in respect of loan relationships are treated under section 82(2)(b) of that Act as expenses of the trade which are deductible in computing the profits of the trade,

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any question under this section as to what benefit might be expected to accrue from the transaction in question shall be determined by reference to the claimant company and the surrendering company taken together.**]**

Textual Amendments

F5141 S. 787(1A) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 53(2)**

F5142 S. 787(3) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 53(3)**

Modifications etc. (not altering text)

C817 S. 787 extended (with effect in accordance with s. 56 of the affecting Act) by Finance Act 2005 (c. 7), **Sch. 2 para. 8**

Marginal Citations

M1041 Source—1976 s.38

PART XVIII

DOUBLE TAXATION RELIEF

Modifications etc. (not altering text)

C818 Pt. 18 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 20 para. 10** (as amended by Finance Act 1995 (c. 4), **s. 122(4)(5)**) (with Sch. 20 para. 12(2)(a))

C819 Pt. 18 applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 87**

C820 Pt. 18 modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 107(5)**

C821 Pt. 18 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12E(5)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(1)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 1 para. 16**)

C822 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 30E(5)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(1) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(1)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 1 para. 19**)

C823 Pt. 18 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12C(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 8**)

C824 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 30C(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 10**)

C825 Pt. 18 applied by Finance Act 2002 (c. 23), **Sch. 29 para. 87A(3)** (as substituted (29.11.2007 with effect in accordance with regs. 1(2), 3(2) of the amending S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 2 para. 12**)

C826 Pt. 18 applied by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 140H(3)**, 140I(3), 140J(3) (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 1**)

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C827 Pt. 18 applied by Finance Act 1996 (c. 8), Sch. 9 paras. 12H(3), **12I(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 2**)

C828 Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 26 paras. 30G(3), **30H(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 4**)

C829 Pt. 18 applied by Finance Act 2002 (c. 23), Sch. 29 paras. 85B(3), **85C(3)** (as inserted (29.11.2007 with effect in accordance with regs. 1(2), 3(3) of the amending S.I. (as amended by S.I. 2008/1579, **reg. 4(2)**)) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), **Sch. 3 para. 5**)

C830 Pt. 18: power to amend conferred (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 533(2)(3)** (with Sch. 2 Pts. 1, 2)

C831 Pt. 18 modified (with effect in accordance with s. 56(3) of the modifying Act) by Finance Act 2009 (c. 10), **s. 56(1)**

[F5143]CHAPTER I

THE PRINCIPAL RELIEFS

Textual Amendments

F5143 Pt. 18 Chs. 1, 2 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(1)**, 289 (with ss. 60, 101(1), 171, 201(3))

788 Relief by agreement with other [F5144territories].

[M1042](1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been **[**[F5145]made in relation to any territory**]** outside the United Kingdom with a view to affording relief from double taxation in relation to—

(a) income tax,

(b) corporation tax in respect of income or chargeable gains, and

(c) any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements should have effect, then those arrangements shall have effect in accordance with subsection (3) below.

(2) Without prejudice to the generality of subsection (1) above, if it appears to Her Majesty to be appropriate, the arrangements specified in an Order in Council under this section may include provisions with respect to the exchange of information **[**[F5146]foreseeably relevant to the administration or enforcement of**]** the domestic laws of the United Kingdom and the laws of the territory to which the arrangements relate concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and where arrangements do include any such provisions, the declaration in the Order in Council shall state that fact.

(3) Subject to the provisions of this Part, the arrangements shall, notwithstanding anything in any enactment, have effect in relation to income tax and corporation tax in so far as they provide—

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(a) for relief from income tax, or from corporation tax in respect of income or chargeable gains; or

(b) for charging the income arising from sources, or chargeable gains accruing on the disposal of assets, in the United Kingdom to persons not resident in the United Kingdom; or

(c) for determining the income or chargeable gains to be attributed—

(i) to persons not resident in the United Kingdom and their agencies, branches or establishments in the United Kingdom; or

(ii) to persons resident in the United Kingdom who have special relationships with persons not so resident; or

(d) for conferring on persons not resident in the United Kingdom the right to a tax credit under **[**F5147section 397(1) of ITTOIA 2005**]** in respect of qualifying distributions made to them by companies which are so resident.

(4) The provisions of Chapter II of this Part shall apply where arrangements which have effect by virtue of this section provide that tax payable under the laws of the territory concerned shall be allowed as a credit against tax payable in the United Kingdom.

(5) For the purposes of this section and, subject to section 795(3), Chapter II of this Part in its application to relief under this section, any amount of tax which would have been payable under the law of a territory outside the United Kingdom but for a relief to which this subsection applies given under the law of that territory shall be treated as having been payable; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

This subsection applies—

(a) to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside the United Kingdom, being a relief with respect to which provision is made in the arrangements in question for double taxation relief; **F5148**. . .

(b) **F5148** . . . . . .

[F5149Relief does not fall to be given in accordance with section 801 by virtue of this subsection unless the arrangements in question make express provision for such relief (but this paragraph is without prejudice to section 790(10B)).**]**

(6) Except in the case of a claim for an allowance by way of credit in accordance with Chapter II of this Part, a claim for relief under subsection (3)(a) above shall be made to the Board.

(7) Where—

(a) under any arrangements which have effect by virtue of this section, relief may be given, either in the United Kingdom or in the territory **[**F5150in relation to**]** which the arrangements are made, in respect of any income or chargeable gains, and

(b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gains is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given under the arrangements,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gains is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gains are, entrusted to any

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person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gains, and, in the case of an assessment **[**F5151to corporation tax**]** in respect of income, may be assessed under Case VI of Schedule D.

(8) Any arrangements to which effect is given under this section may include provision for relief from tax for periods before the passing of this Act, or before the making of the arrangements, and provisions as to income or chargeable gains which is or are not subject to double taxation, and the preceding provisions of this section shall have effect accordingly.

(9) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(10) Before any Order in Council proposed to be made under this section is submitted to Her Majesty in Council, a draft of the Order shall be laid before the House of Commons, and the Order shall not be so submitted unless an Address is presented to Her Majesty by that House praying that the Order be made.

Textual Amendments

F5144 Word in s. 788 sidenote substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(b)**

F5145 Words in s. 788(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(1)**

F5146 Words in s. 788(2) substituted (10.7.2003) by Finance Act 2003 (c. 14), **s. 198(1)(2)**

F5147 Words in s. 788(3)(d) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 321(2)** (with Sch. 2)

F5148 Words in s. 788(5) repealed (1.4.2000) by Finance Act 2000 (c. 17), Sch. 30 para. 1, **Sch. 40 Pt. 2(13)**, Note

F5149 Words in s. 788(5) inserted (with effect in accordance with Sch. 30 para. 2(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 2(1)**

F5150 Words in s. 788(7)(a) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5151 Words in s. 788(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 321(3)** (with Sch. 2)

Modifications etc. (not altering text)

C832 *See*—1970 ss.267, 273, 273A*and* 276(groups)—*disapplication of those provisions in the case of companies treated as resident outside the U.K. by virtue of* s.788.1989 s.115—*calculation of tax credit for non-resident on gross amount of distribution.*1990 s.32(8)—*application of* s.788*to assets held by employee share ownership trusts.*
S. 788 modified (27.7.1993) by 1993 c. 34, **s. 194(1)**

C833 S. 788 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 57**

Marginal Citations

M1042 Source—1970 s.497(1)-(8); 1972 ss.98(2), 100(1); 1976 s.50(2); 1987 s.70(1)

789 Arrangements made under old law.

M1043(1) Notwithstanding section 793(2), any arrangements made in relation to the profits tax under section 347 of the M1044Income Tax Act 1952 or any earlier enactment corresponding to that section shall, except in so far as arrangements made after

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the passing of the [M1045]Finance Act 1965 provide otherwise, have effect in relation to corporation tax and income and gains chargeable to corporation tax as they are expressed to have effect in relation to the profits tax and profits chargeable to the profits tax, with the substitution of accounting periods for chargeable accounting periods (and not as they had effect in relation to income tax).

(2) In so far as any arrangements made before 30th March 1971 provide for the exemption of any income from surtax they shall have effect, unless otherwise modified by subsequent arrangements, as if they provided for that income **[**[F5152]—

(a) to bear income tax at the basic rate or, where that income is income to which section 1A applies, at the lower rate; and

(b)**]** to be disregarded for the purpose of computing total income, except in so far as the computation affects the matters mentioned in section 835(5).

(3) Any reference in the Tax Acts (including this Part) to arrangements under or by virtue of section 788 includes a reference to arrangements having effect by virtue of this section.

Textual Amendments

F5152 Words in s. 789(2) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 21**

Marginal Citations

M1043 Source—1970 s.497(9), (10); 1971 sch.6 74; 1972 s.100(1)

M1044 1952 c.10.

M1045 1965 c. 25.

790 Unilateral relief.

(1) [M1046]To the extent appearing from the following provisions of this section, relief from income tax and corporation tax in respect of income and chargeable gains shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing that tax as a credit against income tax or corporation tax, notwithstanding that there are not for the time being in force any arrangements under section 788 providing for such relief.

(2) Relief under subsection (1) above is referred to in this Part as "unilateral relief".

(3) [M1047]Unilateral relief shall be such relief as would fall to be given under Chapter II of this Part if arrangements **[**[F5153]in relation to**]** the territory in question containing the provisions specified in subsections (4) to **[**[F5154](10C)**]** below were in force by virtue of section 788, but subject to any particular provision made with respect to unilateral relief in that Chapter; and any expression in that Chapter which imports a reference to relief under arrangements for the time being having effect by virtue of that section shall be deemed to import also a reference to unilateral relief.

(4) [M1048]Credit for tax paid under the law of the territory outside the United Kingdom and computed by reference to income arising or any chargeable gain accruing in that territory shall be allowed against any United Kingdom income tax or corporation tax computed by reference to that income or gain (profits from, or remuneration for, personal or professional services performed in that territory being deemed for this purpose to be income arising in that territory).

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(5) Subsection (4) above shall have effect subject to the following modifications, that is to say—

(a) where the territory is the Isle of Man or any of the Channel Islands, the limitation to income or gains arising in the territory shall not apply;

(b) where arrangements **[**F5153in relation to**]** the territory are for the time being in force by virtue of section 788, credit for tax paid under the law of the territory shall not be allowed by virtue of subsection (4) above in the case of any income or gains if any credit for that tax is allowable under those arrangements in respect of that income or those gains; and

(c) credit shall not be allowed by virtue of subsection (4) above for overseas tax on a dividend paid by a company resident in the territory unless—

(i) the overseas tax is directly charged on the dividend, whether by charge to tax, deduction of tax at source or otherwise, and the whole of it represents tax which neither the company nor the recipient would have borne if the dividend had not been paid; or

(ii) the dividend is paid to a company within subsection (6) below; or

(iii) the dividend is paid to a company to which section 802(1) applies and is a dividend of the kind described in that subsection.

(6) M1049Where a dividend paid by a company resident in the territory is paid to a **[**F5155company falling within subsection (6A) below**]** which either directly or indirectly controls, or is a subsidiary of a company which directly or indirectly controls—

(a) not less than 10 per cent. of the voting power in the company paying the dividend; or

(b) less than 10 per cent. of the voting power in the company paying the dividend if—

(i) it has been reduced below that percentage on or after 1st April 1972; or

(ii) it has been acquired on or after that date in exchange for voting power in another company in respect of which relief under this subsection by virtue of paragraph (a) above was due prior to the exchange;

and the company receiving the dividend shows that the conditions specified in subsection (7) below are satisfied;

any tax in respect of its profits paid under the law of the territory by the company paying the dividend shall be taken into account in considering whether any, and if so what, credit is to be allowed in respect of the dividend.

In this subsection references to one company being a subsidiary of another are to be construed in accordance with section 792(2).

[F5156(6A) A company falls within this subsection if—

(a) it is resident in the United Kingdom; or

(b) it is resident outside the United Kingdom but the dividend mentioned in subsection (6) above forms part of the profits of a **[**F5157permanent establishment**]** of the company's in the United Kingdom.**]**

(7) The conditions referred to in subsection (6)(b) above are as follows—

(a) that the reduction below the 10 per cent. limit (and any further reduction) or, as the case may be, the exchange (and any reduction thereafter) could not have been prevented by any reasonable endeavours on the part of the company

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receiving the dividend and was due to a cause or causes not reasonably foreseeable by it when control of the relevant voting power was acquired; and

(b) no reasonable endeavours on the part of that company could have restored or, as the case may be, increased the voting power to not less than 10 per cent.

(8) In subsection (7) above references to the company receiving the dividend include references—

(a) to any company of which it is a subsidiary within the meaning of section 792(2); and

(b) where prior to the reduction or exchange the voting power in question was controlled otherwise than directly by the company receiving the dividend, to each other company relevant for determining whether that voting power was controlled as required by subsection (6)(a) above.

(9) In subsection (7) above "the relevant voting power" means the voting power by virtue of which relief was due under subsection (6)(a) above prior to the reduction or exchange or, where control of the whole of that voting power was not acquired at the same time, that part of the voting power of which control was last acquired.

(10) In any case in which relief in respect of a dividend is due by virtue of subsection (6)(b) above, there shall be taken into account, as if it were tax payable under the law of the territory in which the company paying the dividend is resident, any tax that would be so taken into account under section 801 if the company paying the dividend and the company receiving it were related to each other within the meaning of section 801(5).

[F5158(10A) In any case where—

(a) under the law of the territory outside the United Kingdom, an amount of tax ("the spared tax") would, but for a relief, have been payable by a company resident in that territory ("company A") in respect of any of its profits,

(b) company A pays a dividend out of those profits to another company resident in that territory ("company B"),

(c) company B, out of profits which consist of or include the whole or part of that dividend, pays a dividend to a company resident in the United Kingdom ("company C"), and

(d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, under arrangements made **[**F5153in relation to**]** the territory outside the United Kingdom and having effect by virtue of section 788, to a relief to which subsection (5) of that section applies in respect of the spared tax,

subsection (10B) below shall apply.

(10B) In any case falling within subsection (10A) above, the spared tax shall be taken into account for the purposes of—

(a) the other provisions of this section, and

(b) subject to section 795(3), Chapter II of this Part in its application to relief under this section in relation to the dividend paid to company C,

as if it had been payable and paid; and references in this section and that Chapter to double taxation, to tax payable or chargeable, or to tax not chargeable directly or by deduction shall be construed accordingly.

(10C) Except as provided by subsection (10B) above, in relation to any dividend paid—

(a) to a company resident in the United Kingdom,

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(b) by a company resident in the territory outside the United Kingdom,

credit by virtue of section 801 does not fall to be given by virtue of this section in respect of tax which would have been payable under the law of that or any other territory outside the United Kingdom but for a relief (notwithstanding any arrangements made **[**F5153in relation to**]** that or any other territory outside the United Kingdom which have effect by virtue of section 788 and provide for a relief to which subsection (5) of that section applies).**]**

(11) M1050Where—

(a) unilateral relief may by given in respect of any income or chargeable gain, and

(b) it appears that the assessment to income tax or corporation tax made in respect of the income or chargeable gain is not made in respect of the full amount thereof, or is incorrect having regard to the credit, if any, which falls to be given by way of unilateral relief,

any such assessments may be made as are necessary to ensure that the total amount of the income or chargeable gain is assessed, and the proper credit, if any, is given in respect thereof, and, where the income is, or the chargeable gain is, entrusted to any person in the United Kingdom for payment, any such assessment may be made on the recipient of the income or gain, and, in the case of an assessment **[**F5159to corporation tax**]** in respect of income, may be assessed under Case VI of Schedule D.

(12) In this section and in Chapter II of this Part in its application to unilateral relief, references to tax payable or paid under the law of a territory outside the United Kingdom include only references—

(a) to taxes which are charged on income and which correspond to United Kingdom income tax, and

(b) to taxes which are charged on income or chargeable gains and which correspond to United Kingdom corporation tax;

but for this purpose tax under the law of any such territory shall not be treated as not corresponding to income tax or corporation tax by reason only that it is payable under the law of a province, state or other part of a country, or is levied by or on behalf of a municipality or other local body.

Textual Amendments

F5153 Words in s. 790(3)(5)(b)(10A)(d)(10C) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5154 Words in s. 790(3) substituted (with effect in accordance with Sch. 30 para. 3(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 3(2)**

F5155 Words in s. 790(6) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(2)**

F5156 S. 790(6A) inserted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(3)**

F5157 Words in s. 790(6A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F5158 S. 790(10A)-(10C) inserted (with effect in accordance with Sch. 30 para. 3(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 3(3)**

F5159 Words in s. 790(11) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 322** (with Sch. 2)

Modifications etc. (not altering text)

C834 S. 790 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 57**

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M1046 Source—1970 s.498(1); 1972 s.100(1)
M1047 Source—1970 s.498(2)
M1048 Source—1970 s.498(3); 1972 s.100(1)
M1049 Source—1970 s.498(4); 1971 s.26(3); 1972 s.83(1)-(5)
M1050 Source—1970 s.498(5), (6); 1972 s.100(1)

791 Power to make regulations for carrying out section 788.

M1051 The Board may from time to time make regulations generally for carrying out the provisions of section 788 or any arrangements having effect thereunder, and may in particular by those regulations provide—

(a) for securing that relief from taxation imposed by the laws of the territory to which any such arrangements relate does not enure for the benefit of persons not entitled to such relief; and

(b) for authorising, in cases where tax deductible from any payment has, in order to comply with any such arrangements, not been deducted, and it is discovered that the arrangements did not apply to that payment, the recovery of the tax by assessment on the person entitled to the payment or by deduction from subsequent payments.

Modifications etc. (not altering text)

C835 *For regulations see* Part III Vol.5

Marginal Citations

M1051 Source—1970 s.517

CHAPTER II

RULES GOVERNING RELIEF BY WAY OF CREDIT

Modifications etc. (not altering text)

C836 Pt. 18 Chs. 1, 2 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(1)**, 289 (with ss. 60, 101(1), 171, 201(3))

General

792 Interpretation of credit code.

M1052 (1) In this Chapter, except where the context otherwise requires—

"arrangements" means any arrangements having effect by virtue of section 788;

"foreign tax" means, in relation to any territory, arrangements **[**F5160 in relation to**]** which have effect by virtue of section 788, any tax chargeable under the laws of that territory for which credit may be allowed under the

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arrangements **[**[F5161](other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004)**]**;

"the United Kingdom taxes" means income tax and corporation tax;

"underlying tax" means, in relation to any dividend, tax which is not chargeable in respect of that dividend directly or by deduction; and

"unilateral relief" means relief under section 790.

(2) For the purposes of this Chapter one company is a subsidiary of another if the other company controls, directly or indirectly, not less than 50 per cent. of the voting power in the first company.

(3) Any reference in this Chapter to foreign tax shall be construed in relation to credit to be allowed under any arrangements as a reference only to tax chargeable under the laws of the territory **[**[F5160]in relation to**]** which the arrangements were made.

Textual Amendments

F5160 Words in s. 792(1)(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5161 S. 792(1): words in definition of "foreign tax" inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 115(1)**

Modifications etc. (not altering text)

C837 S. 792 applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Marginal Citations

M1052 Source—1970 s.500

793 Reduction of United Kingdom taxes by amount of credit due.

[M1053](1) Subject to the provisions of this Chapter, where under any arrangements credit is to be allowed against any of the United Kingdom taxes chargeable in respect of any income or chargeable gain, the amount of the United Kingdom taxes so chargeable shall be reduced by the amount of the credit.

(2) Nothing in subsection (1) above authorises the allowance of credit against any United Kingdom tax against which credit is not allowable under the arrangements.

Modifications etc. (not altering text)

C838 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Marginal Citations

M1053 Source—1970 s.501; 1972 s.100 (1).

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[F5162 793A No double relief etc.

(1) Where relief in respect of an amount of tax that would otherwise be payable under the law of a territory outside the United Kingdom may be allowed—

(a) under arrangements made [F5163 in relation to] that territory, or

(b) under the law of that territory in consequence of any such arrangements,

credit may not be allowed in respect of that tax, whether the relief has been used or not.

(2) Where, under arrangements having effect by virtue of section 788, credit may be allowed in respect of an amount of tax, credit by way of unilateral relief may not be allowed in respect of that tax.

(3) Where arrangements made [F5163 in relation to] a territory outside the United Kingdom contain express provision to the effect that relief by way of credit shall not be given under the arrangements in cases or circumstances specified or described in the arrangements, then neither shall credit by way of unilateral relief be allowed in those cases or circumstances.]

Textual Amendments

F5162 S. 793A inserted (with effect in accordance with Sch. 30 para. 5(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 5(1)**

F5163 Words in s. 793A(1)(a)(3) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

Modifications etc. (not altering text)

C839 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

794 Requirement as to residence.

M1054 (1) Subject to subsection (2) below, credit shall not be allowed under any arrangements against any of the United Kingdom taxes for any chargeable period unless the person in respect of whose income or chargeable gains the United Kingdom tax is chargeable is resident in the United Kingdom for that period.

(2) Credit may be allowed by way of unilateral relief—

(a) for tax paid under the law of the Isle of Man or any of the Channel Islands, if the person in question is, for the chargeable period in question, resident either in the United Kingdom or in the Isle of Man or any of the Channel Islands, as the case may be;

(b) for tax paid under the law of any territory and computed by reference to income from an office or employment the duties of which are performed wholly or mainly in that territory, against [F5164 income tax on employment income] and computed by reference to that income, if the person in question is for the year of assessment in question resident either in the United Kingdom or that territory; and

[F5165 (bb) for tax paid under the law of any territory outside the United Kingdom in respect of the income or chargeable gains of a branch or agency in the United Kingdom of a person who is not resident in the United Kingdom, where the following conditions are fulfilled, namely—

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(i) that the territory under whose law the tax was paid is not one in which the person is liable to tax by reason of domicile, residence or place of management; and

(ii) that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a person resident in the United Kingdom and the income or gains in question had been income or gains of that person.**]**

(c) F5166 . . . . . .

Textual Amendments

F5164 Words in s. 794(2)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 103** (with Sch. 7)

F5165 S. 794(2)(bb) inserted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(5)**

F5166 S. 794(2)(c) repealed (with effect in accordance with Sch. 30 para. 4(14) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(6), **Sch. 40 Pt. 2(13)**

Modifications etc. (not altering text)

C840 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

C841 S. 794(2)(bb) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations

M1054 Source—1970 s.502; 1982 s.67; 1972 s.100(1).

795 Computation of income subject to foreign tax.

M1055 (1) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income and income tax is payable by reference to the amount received in the United Kingdom, the amount received shall be treated for the purposes of income tax as increased by **[**F5167—

(a)**]** the amount of the foreign tax in respect of the income, including in the case of a dividend any underlying tax which under the arrangements is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend **[**F5168, and

(b) the amount of any special withholding tax levied in respect of the income.**]**

(2) Where credit for foreign tax falls under any arrangements to be allowed in respect of any income or gain and subsection (1) above does not apply, then, in computing the amount of the income or gain for the purposes of income tax or corporation tax—

(a) no deduction shall be made for foreign tax **[**F5169or special withholding tax**]**, whether in respect of the same or any other income or gain; and

(b) the amount of the income shall, in the case of a dividend, be treated as increased by—

[F5170(i)**]** any underlying tax which, under the arrangements, is to be taken into account in considering whether any and if so what credit is to be allowed in respect of the dividend **[**F5171, and

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(ii) any underlying tax which, by virtue of section 799(1)(b) or section 799(1B)(b), does not fall to be so taken into account**]**.

(3) The amount of any income or gain shall not be treated as increased under this section by reference to any foreign tax which, although not payable, falls to be taken into account for the purposes of section 788(5).

[F5172(3A) The amount of any income or gain shall not be increased under subsection (2)(b)(i) above by so much of any underlying tax—

(a) as represents an increase under section 801(4B); or

(b) as represents relievable underlying tax (within the meaning of sections 806A to 806J) arising in respect of another dividend and treated as underlying tax under those sections.**]**

[F5173(4) Subsections (2) and (3) above have effect for the purposes of corporation tax notwithstanding anything in **[**F5174—

(a)**]** section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act) **[**F5175; or

(b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).**]]**

[F5176(5) In this section—

(a) "special withholding tax" has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and

(b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.**]**

Textual Amendments

F5167 Words in s. 795(1) renumbered as s. 795(1)(a) (22.7.2004) by virtue of Finance Act 2004 (c. 12), **s. 112(2)**

F5168 S. 795(1)(b) and preceding word inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 112(2)**

F5169 Words in s. 795(2)(a) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 112(3)**

F5170 Words in s. 795(2)(b) renumbered as s. 795(2)(b)(i) (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by virtue of Finance Act 2001 (c. 9), **Sch. 27 para. 1(2)**

F5171 S. 795(2)(b)(ii) and preceding word inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 1(2)**

F5172 S. 795(3A) inserted (with effect in accordance with Sch. 27 para. 1(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 1(3)**

F5173 S. 795(4) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 41** (with Sch. 15)

F5174 Words in s. 795(4) renumbered as s. 795(4)(a) (24.7.2002) by virtue of Finance Act 2002 (c. 23), **Sch. 30 para. 5(2)**

F5175 S. 795(4)(b) and preceding word inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(2)**

F5176 S. 795(5) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 112(4)**

Modifications etc. (not altering text)

C842 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

C843 S. 795(1)(b) modified by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 277(1A)-(1C)** (as inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 112(6)**)

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Marginal Citations

M1055 Source—1970 s.503; 1972 s.100(1); 1987 Sch.15 2(18)

[F5177 795A Limits on credit: minimisation of the foreign tax.

(1) The amount of credit for foreign tax which, under any arrangements, is to be allowed against tax in respect of any income or chargeable gain shall not exceed the credit which would be allowed had all reasonable steps been taken—

(a) under the law of the territory concerned, and

(b) under any arrangements made **[**F5178 in relation to**]** that territory,

to minimise the amount of tax payable in that territory.

(2) The steps mentioned in subsection (1) above include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances; and

(b) making elections for tax purposes.

(3) For the purposes of subsection (1) above, any question as to the steps which it would have been reasonable for a person to take shall be determined on the basis of what the person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom.**]**

Textual Amendments

F5177 S. 795A inserted (with effect in accordance with Sch. 30 para. 6(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 6(1)**

F5178 Words in s. 795A(1)(b) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

Modifications etc. (not altering text)

C844 Ss. 793-795A applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

796 Limits on credit: income tax.

M1056 (1) The amount of the credit for foreign tax which, under any arrangements, is to be allowed to a person against income tax for any year of assessment shall not exceed the difference between the amounts of income tax which would be borne by him for the year (no credit being allowed for foreign tax **[**F5179 but allowing for the making of any other income tax reduction under the Income Tax Acts**]**)—

(a) if he were charged to tax on his total income for the year, computed in accordance with section 795; and

(b) if he were charged to tax on the same income, computed in the same way, but excluding the income in respect of which the credit is to be allowed.

(2) Where credit for foreign tax is to be allowed in respect of income from more than one source, subsection (1) above shall be applied successively to the income from each source, but so that on each successive application, paragraph (a) shall apply to the total income exclusive of the income to which the subsection has already been applied.

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(3) Without prejudice to subsections (1) and (2) above, the total credit for foreign tax to be allowed to a person against income tax for any year of assessment under all arrangements having effect by virtue of section 788 shall not exceed the total income tax payable by him for that year of assessment, less any income tax which he is entitled to charge against any other person.

Textual Amendments

F5179 Words in s. 796(1) inserted (with effect in accordance with s. 77(7) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 8 para. 12**

Marginal Citations

M1056 Source—1970 s.504

797 Limits on credit: corporation tax.

M1057(1) The amount of the credit for foreign tax which under any arrangements is to be allowed against corporation tax in respect of any income or chargeable gain ("the relevant income or gain") shall not exceed the corporation tax attributable to the relevant income or gain, determined in accordance with **[**F5180the following provisions of this section**]** below.

(2) M1058Subject to **[**F5181subsections (2A) and (3)**]** below, the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit under this Part) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues ("the relevant accounting period").

[F5182(2A) The provisions of section 11AA (profits attributable to permanent establishment), and of any regulations made under that section, apply, with the necessary modifications, in determining for the purposes of this section how much of the chargeable profits of a company resident in the United Kingdom is attributable to a permanent establishment of the company outside the United Kingdom.**]**

(3) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management **[**F5183expenses payable (within the meaning of section 76(1))**]** or other amounts which can be deducted from or set against or treated as reducing profits of more than one description—

(a) the company may for the purposes of this section allocate the deduction in such amounts and to such of its profits for that period as it thinks fit; and

(b) the amount of the relevant income or gain shall be treated for the purposes of subsection (2) above as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.

[F5184(3A) Where, in a case to which section 797A does not apply, a company has a non-trading deficit on its loan relationships for the relevant accounting period, then for the purposes of subsection (3) above that deficit shall be treated, to the extent that it is an amount to which a claim under—

(a) subsection (2)(a) of section 83 of the Finance Act 1996 (deficit set against current year profits), or

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(b) paragraph 4(2) of Schedule 11 to that Act (set-off of deficits in the case of insurance companies),

relates, as an amount that can in that period be set against profits of any description but can be allocated in accordance with subsection (3) above only to the profits against which it is set off in pursuance of the claim.

(3B) For the purposes of subsection (3) above, where—

(a) section 797A does not apply in the case of any company, and

(b) any amount is carried forward to the relevant accounting period in pursuance of **[**F5185subsection (3A) of**]** section 83 of the Finance Act 1996 F5186. . . ,

then that amount must be allocated to non-trading profits of the company for that period (so far as they are sufficient for the purpose) and cannot be allocated to any other profits.**]**

(4) F5187. . . . . .

(5) F5187. . . . . .

[F5188(6) In this section "non-trading profits" has the same meaning as in paragraph 4 of Schedule 8 to the Finance Act 1996.**]**

Textual Amendments

F5180 Words in s. 797(1) substituted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 154(2)**

F5181 Words in s. 797(2) substituted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 154(3)**

F5182 S. 797(2A) inserted (with effect in accordance with s. 154(5) of the amending Act) by Finance Act 2003 (c. 14), **s. 154(4)**

F5183 Words in s. 797(3) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 34(2)

F5184 S. 797(3A)(3B) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 42(1)** (with Sch. 15)

F5185 Words in s. 797(3B)(b) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 54**

F5186 Words in s. 797(3B)(b) repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(a)(4), **Sch. 27 Pt. 3(17)**, Note

F5187 S. 797(4)(5) repealed (with effect in accordance with Sch. 3 para. 35(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 35(2), **Sch. 27 Pt. 3(2)**, Note

F5188 S. 797(6) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 42(2)** (with Sch. 15)

Modifications etc. (not altering text)

C845 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Marginal Citations

M1057 Source—1970 s.505; 1972 s.100(1), (3); 1984 s.53(1)

M1058 Source—1972 s.100(4)-(6A); 1984 s.53(1); 1986 s.49; 1987 (No.2) s.77

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[F5191 797A Foreign tax on [F5189 items giving rise to] a non-trading credit [F5190: loan relationships].

(1) This section applies for the purposes of any arrangements where, in the case of any company—

(a) any non-trading credit relating to an **[**F5192 item**]** is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) for any accounting period ("the applicable accounting period"); and

(b) there is in respect of **[**F5193 that item**]** an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that interest.

(2) It shall be assumed that tax chargeable under paragraph (a) of Case III of Schedule D on the profits and gains arising for the applicable accounting period from the company's loan relationships falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect (subject to subsection (7) below) as if—

(a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description; and

(b) different parts of that amount might be set against different profits.

(4) For the purposes of this section, the adjusted amount of a company's non-trading debits for any accounting period is the amount equal, in the case of that company, to the aggregate of the non-trading debits given for that period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) less the aggregate of the amounts specified in subsection (5) below.

(5) Those amounts are—

(a) so much of any non-trading deficit for the applicable accounting period as is an amount to which a claim under subsection **[**F5194(2)(c)**]** of section 83 of the Finance Act 1996 or paragraph 4(3) of Schedule 11 to that Act **[**F5195(deficit carried back and set against profits)**]** relates; **[**F5196and**]**

[F5197(aa) so much of any non-trading deficit for that period as is surrendered as group relief by virtue of section 403 of the Taxes Act 1988; and**]**

(b) so much of any non-trading deficit for that period as falls to be carried forward to a subsequent period in accordance with subsection **[**F5198(3A)**]** of that section or paragraph 4(4) of that Schedule; F5199. . .

(c) F5199. . . . . .

[F5200F5201. . . . . **]**

(6) Section 797(3) shall have effect as if any amount **[**F5202carried forward to the applicable accounting period **[**F5203under section 83(3A)**]** of that Act**]** were an amount capable of being allocated only to any non-trading profits of the company.

(7) Where—

(a) the company has a non-trading deficit for the applicable accounting period,

(b) the amount of that deficit exceeds the aggregate of the amounts specified in subsection (5) above, and

(c) in pursuance of a claim under—

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(i) subsection (2)(a) of section 83 of the Finance Act 1996 (deficit set against current year profits), or

(ii) paragraph 4(2) of Schedule 11 to that Act (set-off of deficits in the case of insurance companies),

the excess falls to be set off against profits of any description,

section 797(3) shall have effect as if non-trading debits of the company which in aggregate are equal to the amount of the excess were required to be allocated to the profits against which they are set off in pursuance of the claim.

[F5204F5205 . . . . . .**]**

(8) In this section "non-trading profits" has the same meaning as in paragraph 4 of Schedule 8 to the Finance Act 1996.**]**

Textual Amendments

F5189 Word in s. 797A sidenote substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(3)**

F5190 Words in s. 797A sidenote added (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(3)**

F5191 S. 797A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 43** (with Sch. 15)

F5192 Word in s. 797A(1)(a) substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(2)(a)**

F5193 Words in s. 797A(1)(b) substituted (with effect in accordance with Sch. 30 para. 7(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 7(2)(b)**

F5194 Words in s. 797A(5)(a) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(a)(i)**

F5195 Words in s. 797A(5)(a) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(a)(ii)**

F5196 Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(b)(4)**

F5197 S. 797A(5)(aa) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(b)**

F5198 Word in s. 797A(5)(b) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(2)(c)**

F5199 S. 797A(5)(c) and preceding word repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(2)(b)(4), **Sch. 27 Pt. 3(17)**, Note

F5200 Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(c)(4)**

F5201 Words in s. 797A(5) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(12)**, Note

F5202 Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(d)(4)**

F5203 Words in s. 797A(6) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 55(3)**

F5204 Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(e)(4)**

F5205 Words in s. 797A(7) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(12)**, Note

Modifications etc. (not altering text)

C846 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

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[F5206 797B Foreign tax on items giving rise to a non-trading credit: intangible fixed assets

(1) This section applies for the purposes of any arrangements where, in the case of a company—

(a) a non-trading credit relating to an item is brought into account for the purposes of Schedule 29 to the Finance Act 2002 (intangible fixed assets) for an accounting period ("the applicable accounting period"), and

(b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax computed by reference to that item.

(2) It shall be assumed that tax chargeable under Case VI of Schedule D on the profits and gains arising for the applicable accounting period from the company's intangible fixed assets falls to be computed on the actual amount of its non-trading credits for that period, and without any deduction in respect of non-trading debits.

(3) Section 797(3) shall have effect as if—

(a) there were for the applicable accounting period an amount equal to the adjusted amount of the non-trading debits falling to be brought into account by being set against profits of the company for that period of any description, and

(b) different parts of that amount might be set against different profits.

(4) For this purpose the adjusted amount of a company's non-trading debits for an accounting period is given by:

$$\text{TotalDebits} - \text{AmountCarriedForward}$$

where—

Total Debits is the aggregate amount of the company's non-trading debits for that accounting period under Schedule 29 to the Finance Act 2002 (intangible fixed assets), and

Amount Carried Forward is the amount (if any) carried forward to the next accounting period of the company under paragraph 35(3) of that Schedule (carry-forward of non-trading loss in respect of which no claim is made for it to be set against total profits of current period).**]**

Textual Amendments

F5206 S. 797B inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(4)**

Modifications etc. (not altering text)

C847 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

[F5207 798 Section 796: trade income

(1) This section has effect in relation to the application of section 796(1) to the allowance of credit for foreign tax against income tax in respect of trade income.

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(2) In making the computations required by section 796(1)(a) and (b) there shall be deducted from the amount of the income in respect of which the credit is to be allowed deductions, charges or expenses which would be allowable in a computation of the taxpayer's liability in respect of that income.

(3) The reference in subsection (2) to allowable deductions, charges or expenses includes a reference to a reasonable apportionment of allowable deductions or expenses which relate partly to the income and partly to other matters.

(4) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 796(1)—

(a) royalty income arising in different jurisdictions (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as a single item of income, and

(b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.

(5) In this section "trade income" means income chargeable to tax under—

(a) Chapter 2 or 18 of Part 2 of ITTOIA 2005 (trade profits and post-cessation receipts),

(b) Chapter 3 or 10 of Part 3 of ITTOIA 2005 (profits of property businesses and post-cessation receipts), or

(c) Chapter 11 of Part 3 of ITTOIA 2005 (overseas property income).**]**

Textual Amendments

F5207 Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(1)**

Modifications etc. (not altering text)

C848 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

[F5208[F5209[Section 797: trade income

(1) This section has effect in relation to the application of section 797(1) to the allowance of credit for foreign tax against corporation tax in respect of trade income.

(2) The reference in section 797(1) to the relevant income or gain shall be treated as referring only to income arising or gains accruing out of the transaction, arrangement or asset in connection with which the credit for foreign tax arises.

(3) In determining for the purposes of section 797(1) the amount of corporation tax attributable to any income or gain, there shall be taken into account—

(a) deductions or expenses which would be allowable in the computation of the taxpayer's liability,

(b) a reasonable apportionment of allowable deductions or expenses which relate partly to the transaction, arrangement or asset from which the income or gain arises and partly to other matters, and

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(c) expenses of a company connected (within the meaning given by section 839) with the taxpayer, in so far as reasonably attributable to the income or gain.

(4) In this section and section 798B "trade income" means—

(a) income or profits chargeable to tax under Case I, II or V of Schedule D,

(b) profits of a Schedule A business computed in same way as the profits of a trade in accordance with section 21A of ICTA,

(c) sums charged to tax under Case VI of Schedule D in accordance with section 104 of ICTA, and

(d) any other income or profits which by a provision of ICTA is chargeable to tax under, or computed in accordance with, Case I of Schedule D;

but this section shall not apply in relation to income to which section 804C below applies.**]]**

Textual Amendments

F5208 S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 104**

F5209 Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(1)**

Modifications etc. (not altering text)

C849 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

[F5210[F5211Section 798A: special cases

(1) Where—

(a) a credit for foreign tax arises in connection with an asset, and

(b) the asset is in a hedging relationship with a derivative contract,

in the application of section 798A(2) the reference to the income arising out of the asset shall be taken as a reference to the income arising out of the asset and the derivative contract taken together (but taking account of the income or loss from the derivative contract only in so far as reasonably attributable to the hedging relationship).

(2) For the purposes of subsection (1)(b) an asset is in a hedging relationship with a derivative contract if—

(a) the asset is acquired as a hedge of risk in connection with the contract, or

(b) the contract is entered into as a hedge of risk in connection with the asset;

and if an asset or a contract is wholly or partly designated as a hedge for the purposes of a person's accounts, that shall be conclusive for the purpose of this subsection.

(3) Where royalties (as defined in arrangements having effect by virtue of section 788) are paid in respect of an asset in more than one jurisdiction outside the United Kingdom, for the purposes of section 798A(2)—

(a) royalty income arising in more than one jurisdiction (other than the United Kingdom) in a year of assessment in respect of that asset shall be treated as income arising from a single transaction, arrangement or asset, and

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(b) credits available for foreign tax in respect of the royalty income shall be aggregated accordingly.

(4) If a person ("A") carrying on a trade giving rise to trade income enters into a scheme or arrangement with another person ("B") a main purpose of which is to alter the effect of section 798A in relation to A, income received in pursuance of the scheme or arrangement shall be treated for the purposes of section 798A as trade income of B (and not as income of A).

(5) Where—

(a) transactions, arrangements or assets are treated by a taxpayer as a series or group (the "portfolio"),

(b) a number of credits for foreign tax arise in respect of the portfolio, and

(c) either—

(i) it is not reasonably practicable to prepare a separate computation of income or gain for the purposes of section 798A(2) in respect of each transaction, arrangement or asset, or

(ii) a separate computation of income or gain in respect of each transaction, arrangement or asset for the purposes of section 798A(2) would not, compared with an aggregated computation, make a material difference to the amount of credit for foreign tax which is allowable,

the income or gains arising from the portfolio, or part of the portfolio, may be aggregated and apportioned for the purposes of section 798A(2) in a fair and reasonable manner.**]]**

Textual Amendments

F5210 S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 105**

F5211 Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(1)**

Modifications etc. (not altering text)

C850 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

[F5212 798C Disallowed credit: use as deduction

(1) This section applies where the application of section 796(1) or 797(1) prevents an amount of credit for foreign tax from being allowable against income tax or corporation tax.

(2) The amount of disallowed credit may be taken into account as a deduction in computing the taxpayer's liability for income tax or corporation tax, but only in so far as it does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid (for which purpose payment of the foreign tax is to be taken into account, despite section 795(2)).**]**

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Textual Amendments

F5212 Ss. 798-798C substituted for ss. 798-798B (with effect in accordance with s. 86(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(1)**

Modifications etc. (not altering text)

C851 Ss. 797-798C applied (31.12.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **reg. 4**

Tax underlying dividends

799 Computation of underlying tax.

M1059(1) Where in the case of any dividend arrangements provide for underlying tax to be taken into account in considering whether any and if so what credit is to be allowed against the United Kingdom taxes in respect of the dividend, the tax to be taken into account by virtue of that provision shall be so much of the foreign tax borne on the relevant profits by the body corporate paying the dividend as—

[F5213(a)**]** is properly attributable to the proportion of the relevant profits represented by the dividend**[**F5214, and

(b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below.**]**

[F5215**[**F5216(1A) The formula is—

$$(D + U) \times \mathrm{M}\%$$

where—

D is the amount of the dividend;

U is the amount of underlying tax that would fall to be taken into account as mentioned in subsection (1) above, apart from paragraph (b) of that subsection; and

M% is the maximum relievable rate;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid.**]]**

[F5217(1B) Where, under any arrangements, a company makes a claim for an allowance by way of credit in accordance with this Chapter—

(a) the claim may be so framed as to exclude such amounts of underlying tax as may be specified for the purpose in the claim; and

(b) any amounts of underlying tax so excluded shall be left out of account for the purposes of this section.**]**

(2) Where under the foreign tax law the dividend has been increased for tax purposes by an amount to be set off against the recipient's own tax under that law or, to the extent that it exceeds his own tax thereunder, paid to him, then, from the amount of

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the underlying tax to be taken into account under subsection (1) above there is to be subtracted the amount of that increase.

[F5218(2A) No underlying tax shall be taken into account under subsection (1) above in the case of a dividend if, under the law of any territory outside the United Kingdom, a deduction is allowed to a resident of that territory in respect of an amount determined by reference to the dividend.**]**

(3) For the purposes of subsection (1) above the relevant profits, subject to subsection (4) below, are—

(a) if the dividend is paid for a specified period, the profits of that period; **[**F5219and**]**

(b) F5220. . . . . .

(c) if the dividend is **[**F5221not paid for a specified period**]**, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable.

(4) If, in a case falling under paragraph (a) or (c) of subsection (3) above, the total dividend exceeds the profits available for distribution of the period mentioned in that paragraph the relevant profits shall be the profits of that period plus so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant profits for the purposes of this section or section 506 of the 1970 Act) as is equal to the excess; and for the purposes of this subsection the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

[F5222(5) For the purposes of paragraphs (a) and (c) of subsection (3) above, "profits", in the case of any period, means the profits available for distribution.

(6) In subsections (4) and (5) above, "profits available for distribution" means, in the case of any company, the profits available for distribution as shown in accounts relating to the company—

(a) drawn up in accordance with the law of the company's home State, and

(b) making no provision for reserves, bad debts **[**F5223, impairment losses**]** or contingencies other than such as is required to be made under that law.

(7) In this section, "home State", in the case of any company, means the country or territory under whose law the company is incorporated or formed.**]**

Textual Amendments

F5213 Words in s. 799(1) renumbered as s. 799(1)(a) (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 8(2)**

F5214 S. 799(1)(b) and preceding word inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 8(2)**

F5215 S. 799(1A) inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 8(3)**

F5216 S. 799(1A) substituted (with effect in accordance with Sch. 27 para. 2(4)(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 2(2)**

F5217 S. 799(1B) inserted (with effect in accordance with Sch. 27 para. 2(4)(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 2(3)**

F5218 S. 799(2A) inserted (with effect in accordance with s. 85(2) of the amending Act) by Finance Act 2005 (c. 7), **s. 85(1)**

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F5219 Word at the end of s. 799(3)(a) inserted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 8(4)(a)**

F5220 S. 799(3)(b) repealed (with effect in accordance with Sch. 30 para. 8(5)(6) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 8(4)(b), **Sch. 40 Pt. 2(13)**, Note

F5221 Words in s. 799(3)(c) substituted (with effect in accordance with Sch. 30 para. 8(5)(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 8(4)(c)**

F5222 S. 799(5)-(7) added (with effect in accordance with Sch. 30 para. 9(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 9(2)**

F5223 Words in s. 799(6)(b) inserted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 7**

Marginal Citations

M1059 Source—1970 s.506; 1976 s.50(3)

800 Dividends paid between related companies but not covered by arrangements.

F5224 . . . . . .

Textual Amendments

F5224 S. 800 repealed (with effect in accordance with Sch. 30 para. 10(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 10(1), **Sch. 40 Pt. 2(13)**, Note

801 Dividends paid between related companies: relief for U.K. and third country taxes.

M1060 (1) Where a company resident outside the United Kingdom ("the overseas company") pays a dividend to a **[**F5225 company falling within subsection (1A) below ("the relevant company")**]** and the overseas company is related **[**F5226to the relevant company**]**, then for the purpose of allowing credit under any arrangements against corporation tax in respect of the dividend, there shall be taken into account, as if it were tax payable under the law of the territory in which the overseas company is resident—

(a) any United Kingdom income tax or corporation tax payable by the overseas company in respect of its profits; and

(b) any tax which, under the law of any other territory, is payable by the overseas company in respect of its profits.

[F5227(1A) A company falls within this subsection if—

(a) it is resident in the United Kingdom; or

(b) it is resident outside the United Kingdom but the dividend mentioned in subsection (1) above forms part of the profits of a **[**F5228permanent establishment**]** of the company's in the United Kingdom.**]**

(2) Where the overseas company has received a dividend from a third company and the third company is related to the overseas company, then, **[**F5229subject to subsection (4)**]** below, there shall be treated for the purposes of subsection (1) above as tax paid by the overseas company in respect of its profits any underlying tax payable by the third company, to the extent that it would be taken into account under this Part if the dividend had been paid by a company resident outside the United Kingdom to a company resident in the United Kingdom and arrangements had provided for underlying tax to be taken into account.

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[F5230(2A) Section 799(1)(b) applies for the purposes of subsection (2) above only—

(a) if the overseas company and the third company are not resident in the same territory; or

[F5231(aa) if the overseas company is an ADP controlled foreign company as respects any of its accounting periods and the dividend mentioned in subsection (1) above is an ADP dividend of that company (in which case see also subsection (2B)); or**]**

(b) in such other cases as may be prescribed by regulations made by the Treasury.**]**

[F5232(2B) In any case falling within subsection (2A)(aa) above, section 799(1)(b) applies for the purposes of subsection (2) above as if for section 799(1A) there were substituted—

"(1A) The formula is—

$$\frac{D}{1-X} \times X$$

where—

D is the amount of the dividend; and

X is the maximum relievable rate, expressed as a decimal fraction;

and for the purposes of this subsection the maximum relievable rate is the rate of corporation tax in force when the dividend was paid.".**]**

(3) Where the third company has received a dividend from a fourth company and the fourth company is related to the third company, then, subject to subsection (4) below, tax payable by the fourth company shall similarly be treated for the purposes of subsection (2) above as tax paid by the third company; and so on for successive companies each of which is related to the one before.

(4) Subsections (2) and (3) above are subject to the following limitations—

(a) no tax shall be taken into account in respect of a dividend paid by a company resident in the United Kingdom except United Kingdom corporation tax and any tax for which that company is entitled to credit under this Part; and

(b) no tax shall be taken into account in respect of a dividend paid by a company resident outside the United Kingdom to another such company unless it could have been taken into account under the other provisions of this Part had the other company been resident in the United Kingdom.

[F5233(4A) F5234. . . . . .

(4B) F5234. . . . . .

(4C) F5234. . . . . .

(4D) F5234. . . . . .**]**

(5) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

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not less than 10 per cent. of the voting power in the first-mentioned company.

[F5235(5A) For the purposes of subsections (2) and (3) above (including any determination of the extent to which underlying tax paid by the third, fourth or subsequent company in question would be taken into account under this Part if the conditions specified for the purpose in subsection (2) above were satisfied) a company is also related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10% of the ordinary share capital of the first-mentioned company.**]**

[F5236(6) For the purposes of this section—

(a) a controlled foreign company is an "ADP controlled foreign company" as respects any of its accounting periods if, by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as respects that accounting period;

(b) an "ADP dividend" of a controlled foreign company is a dividend by virtue of which the controlled foreign company is an ADP controlled foreign company as respects any of its accounting periods.

(7) In this section—

"accounting period", in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17 (see section 751);

"controlled foreign company" has the same meaning as in Chapter 4 of Part 17 (see section 747(2)).**]**

Textual Amendments

F5225 Words in s. 801(1) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(8)(a)**

F5226 Words in s. 801(1) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(8)(b)**

F5227 S. 801(1A) inserted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(9)**

F5228 Words in s. 801(1A)(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F5229 Words in s. 801(2) substituted (with effect in accordance with s. 91(8) of the amending Act) by Finance Act 2005 (c. 7), **s. 91(5)**

F5230 S. 801(2A) inserted (with effect in accordance with Sch. 30 para. 11(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 11(2)**

F5231 S. 801(2A)(aa) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 89(2)**

F5232 S. 801(2B) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 89(3)**

F5233 S. 801(4A)-(4D) inserted (with effect in accordance with Sch. 27 para. 3(4)(5) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 3(3)**

F5234 S. 801(4A)-(4D) repealed (with effect in accordance with s. 91(8) of the repealing Act) by Finance Act 2005 (c. 7), s. 91(6), **Sch. 11 Pt. 2(9)**, Note

F5235 S. 801(5A) inserted (with effect in accordance with s. 43(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 43(2)**

F5236 S. 801(6)(7) inserted (with effect in accordance with s. 89(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 89(4)**

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Marginal Citations

M1060 Source—1970 s.508; 1971 s.26(2)

[F5237 801A Restriction of relief for underlying tax.

(1) This section applies where—

(a) **[**F5238 a company ("the claimant company")**]** makes a claim for an allowance by way of credit in accordance with this Part;

(b) the claim relates to underlying tax on a dividend paid to that company by a company resident outside the United Kingdom ("the overseas company");

(c) that underlying tax is or includes an amount in respect of tax ("the high rate tax") payable by—

(i) the overseas company, or

(ii) such a third, fourth or successive company as is mentioned in section 801,

at a rate in excess of the relievable rate; and

(d) the whole or any part of the amount in respect of the high rate tax which is or is included in the underlying tax would not be, or be included in, that underlying tax but for the existence of, or for there having been, an avoidance scheme.

(2) Where this section applies, the amount of the credit to which **[**F5239 the claimant company**]** is entitled on the claim shall be determined as if the high rate tax had been tax at the relievable rate, instead of at a rate in excess of that rate.

(3) For the purposes of this section tax shall be taken to be payable at a rate in excess of the relievable rate if, and to the extent that, the amount of that tax exceeds the amount that would represent tax on the relevant profits at the relievable rate.

(4) In subsection (3) above "the relevant profits", in relation to any tax, means the profits of the overseas company or, as the case may be, of the third, fourth or successive company which, for the purposes of this Part, are taken to bear that tax.

(5) In this section "the relievable rate" means the rate of corporation tax in force when the dividend mentioned in subsection (1)(b) above was paid.

(6) In this section "an avoidance scheme" means any scheme or arrangement which—

(a) falls within subsection (7) below; and

(b) is a scheme or arrangement the purpose, or one of the main purposes, of which is to have an amount of underlying tax taken into account on a claim for an allowance by way of credit in accordance with this Part.

(7) A scheme or arrangement falls within this subsection if the parties to it include both—

(a) **[**F5239 the claimant company**]**, a company related to that company or a person connected with **[**F5239 the claimant company**]**; and

(b) a person who was not under the control of **[**F5239 the claimant company**]** at any time before the doing of anything as part of, or in pursuance of, the scheme or arrangement.

(8) In this section "arrangement" means an arrangement of any kind, whether in writing or not.

(9) Section 839 (meaning of "connected persons") applies for the purposes of this section.

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(10) Subsection (5) of section 801 (meaning of "related company") shall apply for the purposes of this section as it applies for the purposes of that section.

(11) For the purposes of this section a person who is a party to a scheme or arrangement shall be taken to have been under the control of **[**F5239the claimant company**]** at all the following times, namely—

(a) any time when that company would have been taken (in accordance with section 416) to have had control of that person for the purposes of Part XI;

(b) any time when that company would have been so taken if that section applied (with the necessary modifications) in the case of partnerships and unincorporated associations as it applies in the case of companies; and

(c) any time when that person acted in relation to that scheme or arrangement, or any proposal for it, either directly or indirectly under the direction of that company.**]**

Textual Amendments

F5237 S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), **s. 90(1)**

F5238 Words in s. 801A(1)(a) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(11)**

F5239 Words in s. 801A(2)(7)(11) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(12)**

[F5240**801B Dividends paid out of transferred profits.**

(1) This section applies where—

(a) a company ("company A") resident outside the United Kingdom has paid tax under the law of a territory outside the United Kingdom in respect of any of its profits;

(b) some or all of those profits become profits of another company resident outside the United Kingdom ("company B") otherwise than by virtue of the payment of a dividend to company B; and

(c) company B pays a dividend out of those profits to another company ("company C"), wherever resident.

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid—

(a) by any company resident outside the United Kingdom (whether or not company B),

(b) to a company resident in the United Kingdom,

as if company B had paid the tax paid by company A in respect of those profits of company A which have become profits of company B as mentioned in subsection (1)(b) above.

(3) But the amount of relief under this Part which is allowable to a company resident in the United Kingdom shall not exceed the amount which would have been allowable to that company had those profits become profits of company B by virtue of the payment of a dividend by company A to company B.**]**

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Textual Amendments

F5240 S. 801B inserted (with effect in accordance with Sch. 30 para. 12(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 12(1)**

[F5241 801C Separate streaming of dividend so far as representing an ADP dividend of a CFC.

(1) This section applies in any case where—

(a) by virtue only of section 748(1)(a), no apportionment under section 747(3) falls to be made as regards an accounting period of a controlled foreign company; and

(b) one or more of the dividends paid by the controlled foreign company by virtue of which the condition in paragraph (a) above is satisfied are dividends falling within subsection (2) below.

(2) A dividend falls within this subsection if, for the purposes of Part I of Schedule 25, the whole or any part of it falls to be treated by virtue of paragraph 4 of that Schedule as paid by the controlled foreign company to a United Kingdom resident.

(3) If, in a case where this section applies,—

(a) an initial dividend is paid to a company resident outside the United Kingdom, and

(b) that company, or any other company which is related to it, pays an intermediate dividend which for the purposes of paragraph 4 of Schedule 25 to any extent represents that initial dividend,

subsection (4) below shall have effect in relation to the UK recipient concerned.

(4) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to that UK recipient—

(a) that, instead of the intermediate dividend, the dividends described in subsection (5) below had been paid and the circumstances had been as described in subsection (6) or (7) below, as the case may be; and

(b) that any tax paid under the law of any territory in respect of the intermediate dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(5) The dividends mentioned in subsection (4)(a) above are—

(a) as respects each of the initial dividends which are, for the purposes of paragraph 4 of Schedule 25, to any extent represented by the intermediate dividend, a separate dividend (an "ADP dividend") representing, and of an amount equal to, so much of that initial dividend as is for those purposes represented by the intermediate dividend; and

(b) a further separate dividend (a "residual dividend") representing, and of an amount equal to, the remainder (if any) of the intermediate dividend.

(6) As respects each of the ADP dividends, the intermediate company is to be treated as if it were a separate company whose distributable profits are of a constitution corresponding to, and an amount equal to, that of the ADP dividend.

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(7) As respects the residual dividend (if any), the relevant profits out of which it is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding accordingly so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid.

(8) If, in a case where this section applies, an intermediate company also pays a dividend which is not an intermediate dividend (an "independent dividend") and either—

(a) that dividend is paid to a United Kingdom resident, or

(b) if it is not so paid, a dividend which to any extent represents it is paid by a company which is related to that company and resident outside the United Kingdom to a United Kingdom resident,

subsection (9) below shall have effect in relation to the United Kingdom resident.

(9) Where this subsection has effect, it shall be assumed for the purposes of allowing credit relief under this Part to the United Kingdom resident—

(a) that the relevant profits out of which the independent dividend is to be regarded for the purposes of section 799(1) as paid by the intermediate company are, in consequence of subsection (6) above, to be treated as being of such constitution and amount as remains after excluding so much of those relevant profits as constitute the whole or any part of the distributable profits out of which the ADP dividends are paid; and

(b) that any tax paid under the law of any territory in respect of the independent dividend, or which is underlying tax in relation to that dividend, had instead fallen to be borne accordingly (taking account of any reduction falling to be made under section 799(2)).

(10) For the purposes of this section—

(a) a controlled foreign company is an "ADP controlled foreign company" as respects any of its accounting periods if the condition in paragraph (a) of subsection (1) above is satisfied as respects that accounting period;

(b) an "initial dividend" (subject to subsection (14) below) is any of the dividends mentioned in paragraph (b) of subsection (1) above paid by an ADP controlled foreign company; and

(c) a "subsequent dividend" is any dividend which, in relation to one or more initial dividends, is the subsequent dividend for the purposes of paragraph 4 of Schedule 25.

(11) In this section—

"distributable profits" means a company's profits available for distribution, determined in accordance with section 799(6);

"intermediate company" means any company resident outside the United Kingdom which pays an intermediate dividend;

"intermediate dividend" means any dividend which is paid by a company resident outside the United Kingdom and which—

(a) for the purposes of paragraph 4 of Schedule 25, to any extent represents one or more initial dividends paid by other companies; and

(b) either is the subsequent dividend in the case of those initial dividends or is itself to any extent represented for those purposes by a subsequent dividend;

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"the UK recipient" means the United Kingdom resident to whom a subsequent dividend is paid.

(12) Where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

then, for the purposes of this section, dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(13) Sub-paragraph (2) of paragraph 4 of Schedule 25 (related companies) shall apply for the purposes of this section as it applies for the purposes of that paragraph.

(14) Where an intermediate company which is an ADP controlled foreign company pays a dividend—

(a) by virtue of which (whether taken alone or with other dividends) the condition in subsection (1)(a) above is satisfied as regards an accounting period of the company, but

(b) which also for the purposes of paragraph 4 of Schedule 25 to any extent represents one or more initial dividends paid by other ADP controlled foreign companies,

the dividend shall not be regarded for the purposes of this section as an initial dividend paid by the company, to the extent that it so represents initial dividends paid by other ADP controlled foreign companies.**]**

Textual Amendments

F5241 S. 801C inserted (with effect in accordance with Sch. 30 para. 13(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 13(1)**

802 U.K. insurance companies trading overseas.

F5242 . . . . . .

Textual Amendments

F5242 S. 802 repealed (with effect in accordance with Sch. 30 para. 14(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 14(1), **Sch. 40 Pt. 2(13)**, Note

803 Underlying tax reflecting interest on loans.

M1061(1) This section applies in a case where—

(a) a bank or a company connected with a bank makes a claim for an allowance by way of credit in accordance with this Chapter; and

(b) the claim relates to underlying tax on a dividend **[**F5243 ("the overseas dividend")**]** paid by the overseas company, within the meaning of section 801; and

(c) that underlying tax is or includes tax payable under the law of a territory outside the United Kingdom on or by reference to **[**F5244interest or dividends

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earned or received**]** in the course of its business by that overseas company or by such third, fourth or successive company as is referred to in subsection (2) or (3) of that section; and

[F5245(d) if the company which received the interest or dividends ("the company") had been resident in the United Kingdom, **[**F5246section 798A**]** would apply in relation to that company.**]**

(2) In a case where this section applies, the amount of the credit for that part of the foreign tax which consists of the tax referred to in subsection (1)(c) above shall not exceed an amount determined under subsection (3) below.

(3) The amount referred to in subsection (2) above is a sum equal to corporation tax, at the rate in force at the time the foreign tax referred to in paragraph (c) of subsection (1) above was chargeable, **[**F5247on so much of the interest or dividends as exceeds the amount of the company's relevant expenditure which is properly attributable to the earning of the interest or dividends**]**.

(4) F5248. . . . . .

(5) F5248. . . . . .

(6) F5248. . . . . .

(7) F5248. . . . . .

(8) F5248. . . . . .

(9) F5248. . . . . .

[F5249(10) In subsection (1) above "bank" means a company carrying on, in the United Kingdom or elsewhere, any trade which includes the receipt of interest or dividends, and section 839 applies for the purposes of that subsection.**]**

Textual Amendments

F5243 Words in s. 803(1)(b) inserted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), **s. 106(2)(a)**

F5244 Words in s. 803(1)(c) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), **s. 106(2)(b)**

F5245 S. 803(1)(d) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), **s. 106(2)(c)**

F5246 Words in s. 803(1)(d) substituted (with effect in accordance with s. 86(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **s. 86(2)(a)**

F5247 Words in s. 803(3) substituted (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), **s. 106(3)**

F5248 S. 803(4)-(9) repealed (with effect in accordance with s. 86(3)(4) of the repealing Act) by Finance Act 2005 (c. 7), s. 86(2)(b), **Sch. 11 Pt. 2(8)**, Note

F5249 S. 803(10) substituted for s. 803(10)(11) (with effect in accordance with s. 106(11)(12) of the amending Act) by Finance Act 1998 (c. 36), **s. 106(10)**

Marginal Citations

M1066 Source—1982 s.66; 1987 (No.2) s.68

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[F5250 803A Foreign taxation of group as a single entity.

(1) This section applies in any case where, under the law of a territory outside the United Kingdom, tax is payable by any one company resident in that territory ("the responsible company") in respect of the aggregate profits, or aggregate profits and aggregate gains, of that company and one or more other companies so resident, taken together as a single taxable entity.

F5251 **[** (1A) Where—

(a) a company is (within the meaning of section 801) an ADP controlled foreign company as respects any of its accounting periods, and

(b) the whole or any part of the profits or gains of that accounting period are included in the aggregate profits, or aggregate profits or gains, mentioned in subsection (1) above,

subsection (2) below shall have effect as if the companies mentioned in subsection (1) above did not include that company.**]**

(2) Where this section applies, this Part shall have effect, so far as relating to the determination of underlying tax in relation to any dividend paid by any of the companies mentioned in subsection (1) above (the "non-resident companies") to another company ("the recipient company"), as if—

(a) the non-resident companies, taken together, were a single company,

(b) anything done by or in relation to any of the non-resident companies (including the payment of the dividend) were done by or in relation to that single company, and

(c) that single company were related to the recipient company, if that one of the non-resident companies which actually pays the dividend is related to the recipient company,

(so that, in particular, the relevant profits for the purposes of section 799(1) is a single aggregate figure in respect of that single company and the foreign tax paid by the responsible company is foreign tax paid by that single company).

(3) For the purposes of this section a company is related to another company if that other company—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

not less than 10 per cent. of the voting power in the first-mentioned company.**]**

Textual Amendments

F5250 S. 803A inserted (with effect in accordance with Sch. 30 para. 15(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 15(1)**

F5251 S. 803A(1A) inserted (with effect in accordance with s. 90(3) of the amending Act) by Finance Act 2005 (c. 7), **s. 90(2)**

Miscellaneous rules

804 Relief against income tax in respect of income arising in years of commencement.

M1062 (1) Subject to the provisions of this section, credit for overseas tax paid in respect of **[**F5252 any income which is an overlap profit**]** shall be allowed under this Part against

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United Kingdom income tax chargeable for any year of assessment in respect of that income if it would have been so allowed but for the fact that credit for that overseas tax had been allowed against the United Kingdom income tax chargeable in respect of that income for a previous year of assessment.

(2) The amount of credit to be allowed in respect of any income by virtue of this section for any year of assessment shall not exceed the difference between—

(a) the total credit allowable against income tax in respect of that income under this Part (including this section) for all years of assessment for which credit is so allowable; and

(b) the amount of credit which was in fact so allowed in respect of that income for any earlier year or years of assessment.

(3) The total credit so allowable in respect of any income for all those years of assessment shall be taken to be the amount of the overseas tax charged on that income, adjusted where the number of the United Kingdom periods of assessment exceeds the number of foreign periods of assessment, in the proportion which the former number bears to the latter, a period for which part only of the income is charged to tax being counted not as one period but as a fraction equal to the proportion which that part of the income bears to the whole of the income.

(4) Where the same income is charged to different overseas taxes for different foreign periods of assessment, subsection (3) above, so far as it relates to the adjustment of overseas tax, shall be applied separately to each of the overseas taxes, and the total credit allowable shall be the aggregate of those taxes after the making of any adjustments in accordance with that subsection as so applied.

[F5253(5) Subsections (5A) and (5B) below apply where—

(a) credit against income tax for any year of assessment is allowed by virtue of subsection (1) above in respect of any income which is an overlap profit ("the original income"), and

(b) the original income or any part of it contributes to an amount which, by virtue of **[**F5254section 205 or 220 of ITTOIA 2005**]**, is deducted in computing the profits or gains of a subsequent year of assessment ("the subsequent year").

(5A) The following shall be set off one against the other, namely—

(a) the difference between—

(i) the amount of the credit which, under this Part (including this section), has been allowed against income tax in respect of so much of the original income as contributes as mentioned in subsection (5) above, and

(ii) the amount of the credit which, apart from this section, would have been so allowed; and

(b) the amount of credit which, on the assumption that no amount were deducted by virtue of **[**F5254section 205 or 220 of ITTOIA 2005**]**, would be allowable under this Part against income tax in respect of income arising in the subsequent year from the same source as the original income.

(5B) The person chargeable in respect of the income (if any) arising in the subsequent year from the same source as the original income shall—

(a) if the amount given by paragraph (a) of subsection (5A) above exceeds that given by paragraph (b) of that subsection, be treated as having received in that year a payment chargeable **[**F5255to income tax**]** of an amount such that income

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tax on it at the basic rate is equal to the excess **[**F5256and be liable for any tax so chargeable**]**; and

(b) if the amount given by paragraph (b) of subsection (5A) above exceeds that given by paragraph (a) of that subsection, be allowed for that year under this Part an amount of credit equal to the excess.

(5C) For the purposes of subsections (5) to (5B) above, it shall be assumed that, where an amount is deducted by virtue of **[**F5257section 220 of ITTOIA 2005**]**, each of the overlap profits included in the aggregate of such profits contributes to that amount in the proportion which that overlap profit bears to that aggregate.**]**

(6) Any payment which a person is treated by virtue of subsection (5) above as having received shall not on that account constitute income of his for any of the purposes of the Income Tax Acts other than that subsection and in particular no part thereof shall constitute profits or gains brought into charge to income tax for the purposes of section 348.

(7) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made **[**F5258on or before the fifth anniversary of the 31st January next following**]** that year or, where there is more than one year of assessment in respect of which such relief may be given, **[**F5258on or before the fifth anniversary of the 31st January next following**]** the later of them.

(8) In this section—

[F5259"overlap profit" means an amount of profits or gains which, by virtue of **[**F5260Chapter 15 of Part 2 of ITTOIA 2005**]**, is included in the computations for two successive years of assessment;**]**

"overseas tax" means tax under the law of a territory outside the United Kingdom;

F5261 . . . . . .

"United Kingdom period of assessment" and "foreign period of assessment", in relation to any income, mean respectively a year or other period for which under the relevant law the income falls to be charged to the relevant tax;

F5261 . . . . . .

F5262 . . . . . .; and

references to income arising in any year include, in relation to income the income tax on which is to be computed by reference to the amount of income received in the United Kingdom, references to income received in that year.

Textual Amendments

F5252 Words in s. 804(1) substituted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 217(1)** (with Sch. 20 para. 12(1))

F5253 S. 804(5)-(5C) substituted for s. 804(5) (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 217(2)** (with Sch. 20 para. 12(1))

F5254 Words in s. 804(5)(b)(5A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 323(2)** (with Sch. 2)

F5255 Words in s. 804(5B)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 323(3)(a)** (with Sch. 2)

F5256 Words in s. 804(5B)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 323(3)(b)** (with Sch. 2)

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F5257 Words in s. 804(5C) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 323(4)** (with Sch. 2)

F5258 Words in s. 804(7) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 22**

F5259 S. 804(8): definition of "overlap profit" inserted (with effect in accordance with s. 218 of the amending Act) by Finance Act 1994 (c. 9), **s. 217(3)(a)** (with Sch. 20 para. 12(1))

F5260 S. 804(8): words in definition of "overlap profit" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 323(5)** (with Sch. 2)

F5261 S. 804(8): definitions of "non-basis period" and "years of commencement" repealed (with effect in accordance with s. 218 of the repealing Act) by Finance Act 1994 (c. 9), s. 217(3)(b), **Sch. 26 Pt. 5(24)**, Note 7 (with Sch. 20 para. 12(1))

F5262 Words in s. 804(8) repealed (with effect in accordance with s. 218 of the repealing Act) by Finance Act 1994 (c. 9), s. 217(3)(b), **Sch. 26 Pt. 5(24)**, Note 7 (with Sch. 20 para. 12(1))

Marginal Citations

M1062 Source—1970 s.510; 1971 Sch.6 75

[F5263 804ZA Schemes and arrangements designed to increase relief

(1) If the Board consider, on reasonable grounds, that conditions A to D are or may be satisfied in relation to any income or chargeable gain taken or to be taken into account for the purposes of determining a person's liability to tax in a chargeable period, they may give the person a notice under this section.

(2) Condition A is that, in the case of the person, there is in respect of the income or gain an amount of foreign tax for which, under any arrangements, credit is allowable against United Kingdom tax for that chargeable period.

(3) Condition B is that there is a scheme or arrangement the main purpose, or one of the main purposes, of which is to cause an amount of foreign tax to be taken into account in the case of the person for that chargeable period.

(4) Condition C is that the scheme or arrangement is a prescribed scheme or arrangement.

(5) Condition D is that the amount referred to in subsection (6) is more than a minimal amount.

(6) The amount is the aggregate of—

(a) the aggregate amount of the claims for credit that the person has made, or is in a position to make, for the chargeable period; and

(b) for all the persons connected to that person, the aggregate amount of the claims for credit that the connected person has made, or is in a position to make, for a corresponding chargeable period.

(7) A chargeable period of a person ("A") corresponds to a chargeable period of another person ("B") if at least one day of A's chargeable period falls within B's chargeable period.

(8) A notice under this section is a notice—

(a) informing the person of the Board's view under subsection (1),

(b) specifying the chargeable period in relation to which the Board formed that view,

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(c) if the amount of foreign tax considered by the Board to satisfy condition B is an amount of underlying tax, specifying the body corporate resident in a territory outside the United Kingdom whose payment of foreign tax is relevant to that underlying tax, and

(d) informing the person that as a consequence section 804ZB has effect in relation to him.

(9) A notice under this section may specify the adjustments of a person's tax return that, in the view of the Board, fall to be made by him under section 804ZB(2).

(10) The adjustments specified may, in a case where the notice given to a person specifies a body corporate resident outside the United Kingdom, include treating the body corporate as having paid or being liable to pay only so much foreign tax as would have been allowed to it as a credit if it were resident in the United Kingdom and a notice under this section had been given to it as regards an amount of foreign tax.

(11) Schedule 28AB makes provision about what constitutes a prescribed scheme or arrangement.

(12) In this section and sections 804ZB and 804ZC "tax return" means—

(a) a return under section 8, 8A or 12AA of the Management Act, or

(b) a company tax return;

and "company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule.**]**

Textual Amendments

F5263 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

[F5263 804ZB Effect of notice under section 804ZA

(1) This section applies in relation to a person if—

(a) a notice under section 804ZA has been given to the person in respect of a chargeable period specified in the notice, and

(b) the chargeable period specified is a chargeable period in relation to which conditions A to D of section 804ZA are satisfied.

(2) The person must in his tax return for the period make (or must amend his return for the period so as to make) such adjustments as are necessary for counteracting the effects of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 804ZA.**]**

Textual Amendments

F5263 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

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[F5263 804ZXG Notices under section 804ZA: further provision

(1) Subsection (2) applies if the Board give a notice to a person under section 804ZA before the person has made his tax return for the chargeable period specified in the notice.

(2) If the person makes a tax return for that period before the end of the period of 90 days beginning with the day on which the notice is given, he may—

(a) make a tax return that disregards the notice, and

(b) at any time after making the return and before the end of the period of 90 days, amend the return for the purpose of complying with the notice.

(3) If a person has made a tax return for a chargeable period, the Board may only give him a notice under section 804ZA in relation to that period if a notice of enquiry has been given to him in respect of his tax return for that period.

(4) After any enquiries into the person's tax return for that period have been completed, the Board may only give him a notice under section 804ZA in relation to that period if the requirements in subsections (5) and (7) are satisfied.

(5) The first requirement is that at the time the enquiries were completed, the Board could not have been reasonably expected, on the basis of the information made available to them or to an officer of theirs before that time, to have been aware that the circumstances were such that a notice under section 804ZA could have been given to the person in relation to that period.

(6) For the purposes of subsection (5)—

(a) section 29(6) and (7) of the Management Act (information made available) applies as it applies for the purposes of section 29(5), and

(b) paragraph 44(2) and (3) of Schedule 18 to the Finance Act 1998 applies as it applies for the purposes of paragraph 44(1).

(7) The second requirement is that—

(a) the person was requested to produce, provide or furnish information during an enquiry into the return for that period, and

(b) if the person had duly complied with the request, the Board could have been reasonably expected to give the person a notice under section 804ZA in relation to that period.

(8) If a person is given a notice under section 804ZA in relation to a chargeable period after having made a tax return for that period, the person may amend the return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with the day on which the notice is given.

(9) If the notice under section 804ZA is given to the person after he has been given a notice of enquiry in respect of his tax return for the period, no closure notice may be given in relation to his tax return until—

(a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or

(b) the earlier amendment of the return for the purpose of complying with the notice.

(10) If the notice under section 804ZA is given to the person after any enquiries into the return for the period are completed, no discovery assessment may be made as regards the income or chargeable gain to which the notice relates until—

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(a) the end of the period of 90 days beginning with the day on which the notice under section 804ZA is given, or

(b) the earlier amendment of the return for the purpose of complying with the notice.

(11) Subsections (2)(b) and (8) do not prevent a person's tax return for a chargeable period becoming incorrect if—

(a) a notice under section 804ZA is given to the person in relation to that period,

(b) the return is not amended in accordance with subsection (2)(b) or (8) for the purpose of complying with the notice, and

(c) the return ought to have been so amended.

(12) In this section—

"closure notice" means a notice under—

(a) section 28A or 28B of the Management Act, or

(b) paragraph 32 of Schedule 18 to the Finance Act 1998;

"discovery assessment" means an assessment under—

(a) section 29 of the Management Act, or

(b) paragraph 41 of Schedule 18 to the Finance Act 1998;

"notice of enquiry" means a notice under—

(a) section 9A or 12AC of the Management Act, or

(b) paragraph 24 of Schedule 18 to the Finance Act 1998.**]**

Textual Amendments

F5263 Ss. 804ZA-804ZC inserted (with effect in accordance with s. 87(3)-(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 87(1)**

[F5264804A F5265Life assurance companies with overseas branches etc: restriction of credit.]

[F5266(1) Subsection (2) below applies where credit for tax—

(a) which is payable under the laws of a territory outside the United Kingdom in respect of insurance business carried on by a company through a **[F5267**permanent establishment**]** in that territory, and

(b) which is computed otherwise than wholly by reference to profits arising in that territory,

is to be allowed (in accordance with this Part) against corporation tax charged under Case I or Case VI of Schedule D in respect of the profits, computed in accordance with the provisions applicable to Case I of Schedule D, of life assurance business or any category of life assurance business carried on by the company in an accounting period (in this section referred to as "the relevant profits").

(1A) For the purposes of paragraph (b) of subsection (1) above, the cases where tax payable under the laws of a territory outside the United Kingdom is "computed otherwise than wholly by reference to profits arising in that territory" are those cases where the charge to tax in that territory falls within subsection (1B) below.

(1B) A charge to tax falls within this subsection if it is such a charge made otherwise than by reference to profits as (by disallowing their deduction in computing the amount chargeable) to require sums payable and other liabilities arising under policies to be

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treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the company.**]**

(2) Where this subsection applies, the amount of the credit shall not exceed the greater of—

(a) any such part of the tax payable under the laws of the territory outside the United Kingdom as is charged by reference to profits arising in that territory, and

(b) the shareholders' share of the tax so payable.

(3) For the purposes of subsection (2) above the shareholders' share of tax payable under the laws of a territory outside the United Kingdom is so much of that tax as is represented by the fraction

$$\frac{A}{B}$$

where—

[[F5268]A is an amount equal to the amount of the relevant profits before making any deduction authorised by subsection (5) below;**]** and

B is an amount equal to the excess of—

(a) the amount taken into account as receipts of the company in computing those profits, apart from premiums and sums received by virtue of a claim under a reinsurance contract, over

(b) the amounts taken into account as expenses [F5269]. . . in computing those profits.

(4) Where there is no such excess as is mentioned in subsection (3) above, or where the profits are greater than any excess, the whole of the tax payable under the laws of the territory outside the United Kingdom shall be the shareholders' share; and (subject to that) where there are no profits, none of it shall be the shareholders' share.

(5) Where, by virtue of this section, the credit for any tax payable under the laws of a territory outside the United Kingdom is less than it otherwise would be, section 795(2)(a) shall not prevent a deduction being made for the difference in computing **[**[F5270]the relevant profits**]**.**]**

Textual Amendments

F5264 S. 804A inserted (with effect in accordance with Sch. 7 para. 10 of the amending Act) by Finance Act 1990 (c. 29), **Sch. 7 para. 5**

F5265 S. 804A sidenote substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 16(5)**

F5266 S. 804A(1)-(1B) substituted for s. 804A(1) (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 16(2)**

F5267 Words in s. 804A(1)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F5268 Words in s. 804A(3) substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 16(3)**

F5269 Words in s. 804A(3) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note

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F5270 Words in s. 804A(5) substituted (with effect in accordance with Sch. 30 para. 16(6) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 16(4)**

[F5271 804B Insurance companies carrying on more than one category of business: restriction of credit.

(1) Where—

(a) an insurance company carries on more than one category of business in an accounting period, and

(b) there arises to the company in that period any income or gain ("the relevant income") in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is allowable against corporation tax in respect of so much of the relevant income as is referable (in accordance with the provisions of sections 432ZA to 432E [F5272 or section 438B]) to a particular category of business must not exceed the fraction of the foreign tax which, in accordance with the following provisions of this section, is attributable to that category of business.

(3) Where the relevant income arises from an asset—

(a) which is linked solely to a category of business (other than overseas life assurance business), or

(b) which is an asset of the company's overseas life assurance fund,

the whole of the foreign tax is attributable to the category mentioned in paragraph (a) above or, as the case may be, to the company's overseas life assurance business, unless the case is one where subsection (7) below applies in relation to the category of business in question.

(4) Where subsection (3) above does not apply and the category of business in question is—

(a) basic life assurance and general annuity business, or

(b) [F5273 long-term] business which is not life assurance business,

the fraction of the foreign tax that is attributable to that category of business is the fraction whose numerator is the part of the relevant income which is referable to that category by virtue of any provision of section 432A [F5274 or 438B] and whose denominator is the whole of the relevant income.

(5) Subsections (6) and (7) below apply where the category of business in question is neither—

(a) basic life assurance and general annuity business; nor

(b) [F5273 long-term] business which is not life assurance business.

(6) Where—

(a) subsection (3) above does not apply, and

(b) some or all of the relevant income is taken into account in accordance with section 83 of the M1063 Finance Act 1989 in an account in relation to which the provisions of section 432C or 432D apply,

the fraction of the foreign tax that is attributable to the category of business in question is the fraction whose numerator is the part of the relevant income which is referable

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to that category by virtue of any provision of section 432C or 432D and whose denominator is the whole of the relevant income.

(7) Where some or all of the relevant income falls to be taken into account in determining in accordance with section 83(2) of the Finance Act 1989 the amount referred to in section 432E(1) as the net amount, the fraction of the foreign tax that is attributable to the category of business in question is the fraction—

(a) whose numerator is the part of **[**F5275the investment income taken into account in that determination which would be referable to that category by virtue of section 432E if the investment income were the only amount included in the net amount**]**; and

(b) whose denominator is the whole of that **[**F5276investment income**]**.

F5277(7A) **[** The Treasury may by regulations amend subsection (7) above; and the regulations may include amendments having effect in relation to accounting periods during which they are made.**]**

(8) No part of the foreign tax is attributable to any category of business except as provided by subsections (3) to (7) above.

(9) Where for the purposes of this section an amount of foreign tax is attributable to a category of life assurance business other than basic life assurance and general annuity business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under Case VI of Schedule D arising from carrying on that category of business.**]**

Textual Amendments

F5271 S. 804B inserted (with effect in accordance with Sch. 30 para. 17(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 17(1)**

F5272 Words in s. 804B(2) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 6(a)**

F5273 Words in s. 804B(4)(b)(5)(b) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(k)**

F5274 Words in s. 804B(4) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 6(b)**

F5275 Words in s. 804B(7)(a) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(1)(a)**

F5276 Words in s. 804B(7)(b) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(1)(b)**

F5277 S. 804B(7A) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 7**

Modifications etc. (not altering text)

C852 S. 804B modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30C** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 6; and as amended by S.I. 2004/822, **regs. 1**, 25)

C853 S. 804B modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 23 (as amended by: S.I. 2007/2134, **regs. 1(1)(2)**, 22; S.I. 2008/1937, **regs. 1(1)(2)**, 10)

Marginal Citations

M1063 1989 c. 26.

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[F5278 804C Insurance companies: allocation of expenses etc in computations under Case I of Schedule D.

(1) Where—

(a) an insurance company carries on any category of insurance business in a period of account,

(b) a computation in accordance with the provisions applicable to Case I of Schedule D falls to be made in relation to that category of business for that period, and

(c) there arises to the company in that period any income or gain in respect of which credit for foreign tax falls to be allowed under any arrangements,

subsection (2) below shall have effect.

(2) In any such case, the amount of the credit for foreign tax which, under the arrangements, is to be allowed against corporation tax in respect of so much of that income or gain as is referable to the category of business concerned ("the relevant income") shall be limited by treating the amount of the relevant income as reduced in accordance with subsections (3) and (4) below.

(3) The first limitation is to treat the amount of the relevant income as reduced (but not below nil) for the purposes of this Chapter by the amount of expenses (if any) attributable to the relevant income.

(4) If—

(a) the amount of the relevant income after any reduction under subsection (3) above,

exceeds

(b) the relevant fraction of the profits of the category of business concerned for the period of account in question which are chargeable to corporation tax,

the second limitation is to treat the **[**F5279relevant income**]** as further reduced (but not below nil) for the purposes of this Chapter to an amount equal to that fraction of those profits.

In this subsection any reference to the profits of a category of business is a reference to those profits after the set off of any losses of that category of business which have arisen in any previous accounting period.

(5) In determining the amount of the credit for foreign tax which is to be allowed as mentioned in subsection (2) above, the **[**F5279relevant income**]** shall not be reduced except in accordance with that subsection.

(6) For the purposes of subsection (3) above, the amount of expenses attributable to the relevant income is the appropriate fraction of the total relevant expenses of the category of business concerned for the period of account in question.

(7) In subsection (6) above, the "appropriate fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above, and

(b) whose denominator is the total income of the category of business concerned for the period of account in question,

unless the denominator so determined is nil, in which case the denominator shall instead be the amount described in subsection (8) below.

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(8) That amount is so much in total of the income and gains—

(a) which arise to the company in the period of account in question, and

(b) in respect of which credit for foreign tax falls to be allowed under any arrangements,

as are referable to the category of business concerned (before any reduction in accordance with subsection (2) above).

(9) In subsection (4) above, the "relevant fraction" means the fraction—

(a) whose numerator is the amount of the relevant income before any reduction in accordance with subsection (2) above; and

(b) whose denominator is the amount described in subsection (8) above.

(10) Where a 75 per cent subsidiary of an insurance company is acting in accordance with a scheme or arrangement and—

(a) the purpose, or one of the main purposes, of that scheme or arrangement is to prevent or restrict the application of subsection (2) above to the insurance company, and

(b) the subsidiary does not carry on insurance business of any description,

the amount of corporation tax attributable (apart from this subsection) to any item of income or gain arising to the subsidiary shall be found by setting off against that item the amount of expenses that would be attributable to it under subsection (3) above if that item had arisen directly to the insurance company.

(11) Where the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is, by virtue of subsection (2) above, less than it would be if the relevant income were not treated as reduced in accordance with that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the profits of the category of business concerned.

(12) Where, by virtue of subsection (10) above, the credit allowed for any tax payable under the laws of a territory outside the United Kingdom is less than it would be apart from that subsection, section 795(2)(a) shall not prevent a deduction being made for the difference in computing the income of the 75 per cent subsidiary.

[[F5280](13) For the purposes of the operation of this section in relation to any income or gain in respect of which credit falls to be allowed under any arrangements, the amount of the income or gain that is referable to a category of insurance business is the same fraction of the income and gain as the fraction of the foreign tax that is attributable to that category of business in accordance with section 804B.**]**

(14) This section shall be construed—

(a) in accordance with section 804D, where the category of business concerned is life assurance business or a category of life assurance business; and

(b) in accordance with section 804E, where the category of business concerned is not life assurance business or any category of life assurance business.**]**

Textual Amendments

F5278 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

F5279 Words in s. 804C(4)(5) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(3)**

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F5280 S. 804C(13) substituted (with effect in accordance with Sch. 33 para. 11(5) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 11(4)**

[F5278 804D Interpretation of section 804C in relation to life assurance business etc.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is life assurance business or a category of life assurance business.

(2) The "total income" of the category of business concerned for the period of account in question is the amount (if any) by which—

(a) so much of the total income shown in the revenue account in the periodical return of the company concerned for that period as is referable to that category of business,

exceeds

(b) so much of any commissions payable and any expenses of management incurred in connection with the acquisition of the business, as shown in that return, so far as referable to that category of business.

(3) Where any amounts fall to be brought into account in accordance with section 83 of the M1064 Finance Act 1989, the amounts that are referable to the category of business concerned shall be determined for the purposes of subsection (2) above in accordance with sections 432B to 432F.

(4) The "total relevant expenses" of the category of business concerned for any period of account is the amount of the claims incurred—

(a) increased by any increase in the liabilities of the company, or

(b) reduced (but not below nil) by any decrease in the liabilities of the company.

(5) For the purposes of subsection (4) above, the amounts to be taken into account in the case of any period of account are the amounts as shown in the company's periodical return for the period so far as referable to the category of business concerned.**]**

Textual Amendments

F5278 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

Modifications etc. (not altering text)

C854 S. 804D modified (25.10.2000) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 30D** (as inserted by The Friendly Societies (Modification of the Corporation Tax Acts) (Amendment) Regulations 2000 (S.I. 2000/2710), **regs. 1**, 6; and as amended by S.I. 2004/822, **regs. 1**, 26)

C855 S. 804D modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 24

Marginal Citations

M1064 1989 c. 26.

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[F5278 804I Interpretation of section 804C in relation to other insurance business.

(1) This section has effect for the interpretation of section 804C where the category of business concerned is not life assurance business or any category of life assurance business.

(2) The "total income" of the category of business concerned for any period of account is the amount (if any) by which—

(a) the sum of the amounts specified in subsection (3) below,

exceeds

(b) the sum of the amounts specified in subsection (4) below.

(3) The amounts mentioned in subsection (2)(a) above are—

(a) earned premiums, net of reinsurance;

(b) investment income and gains;

(c) other technical income, net of reinsurance;

(d) any amount treated under section 107(2) of the Finance Act 2000 as a receipt of the company's trade.

(4) The amounts mentioned in subsection (2)(b) above are—

(a) acquisition costs;

(b) the change in deferred acquisition costs;

(c) losses on investments.

(5) The "total relevant expenses" of the category of business concerned for any period of account is the sum of—

(a) the claims incurred, net of reinsurance,

(b) the changes in other technical provisions, net of reinsurance,

(c) the change in the equalisation provision, and

(d) investment management expenses,

unless that sum is a negative amount, in which case the total relevant expenses shall be taken to be nil.

(6) The amounts to be taken into account for the purposes of the paragraphs of subsections (3) to (5) above are the amounts taken into account for the purposes of corporation tax.

(7) Expressions used—

(a) in the paragraphs of subsections (3) to (5) above, and

(b) in the provisions of section B of Schedule 9A to the [M1065] Companies Act 1985 (form and content of accounts of insurance companies and groups) which relate to the profit and loss account format (within the meaning of paragraph 7(1) of that section),

have the same meaning in those paragraphs as they have in those provisions.]

Textual Amendments

F5278 Ss. 804C-804E inserted (with effect in accordance with Sch. 30 para. 18(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 18(1)**

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M1065 1985 c. 6.

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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[F5281 804I Interpretation of sections 804A to 804E.

Expressions used in sections 804A to 804E and in Chapter I of Part XII have the same meaning in those sections as in that Chapter.]

Textual Amendments

F5281 S. 804F inserted (with effect in accordance with Sch. 30 para. 19(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 19(1)**

VALID FROM 21/07/2009

[F5282 804G Reduction in credit: payment by reference to foreign tax

(1) This section applies if—

(a) credit for foreign tax falls to be allowed to a person ("P") under any arrangements, and

(b) a payment is made by a tax authority to P, or any person connected with P, by reference to the foreign tax.

(2) The amount of that credit is to be reduced by an amount equal to that payment.

(3) Section 839 applies for the purposes of determining whether or not a person is connected with P.]

Textual Amendments

F5282 S. 804G inserted (with effect in accordance with s. 59(13) of the amending Act) by Finance Act 2009 (c. 10), **s. 59(2)**

805 Elections against credit.

M1066 Credit shall not be allowed under any arrangements against the United Kingdom taxes chargeable in respect of any income or chargeable gains of any person if he elects that credit shall not be allowed in respect of that income or those gains

Modifications etc. (not altering text)

C856 *See* s.732(4)—*dealers in securities.*

C857 Ss. 805, 806 applied (31.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **regs. 1(1)**, 4

Marginal Citations

M1066 Source—1970 s.511; 1972 s.100(1)

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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806 Time limit for claims etc.

[[F5283](1) Subject to subsection (2) below and section 804(7), any claim for an allowance under any arrangements by way of credit for foreign tax in respect of any income or chargeable gain—

(a) shall, in the case of any income or chargeable gain which falls to be charged to income tax for a year of assessment, be made on or before—

(i) the fifth anniversary of the 31st January next following that year of assessment, or

(ii) if later, the 31st January next following the year of assessment in which the foreign tax is paid;

(b) shall, in the case of any income or chargeable gain which falls to be charged to corporation tax for an accounting period, be made not more than—

(i) six years after the end of that accounting period, or

(ii) if later, one year after the end of the accounting period in which the foreign tax is paid.**]**

(2) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the United Kingdom or under the laws of any other territory, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what credit falls to be given.

[[F5284](3) Subject to subsection (5) below, where—

(a) any credit for foreign tax has been allowed to a person under any arrangements, and

(b) the amount of that credit is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the laws of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the credit excessive.

(4) A notice under subsection (3) above must be given within one year from the time of the making of the adjustment.

(5) Subsections (3) and (4) above do not apply where the adjustment is one the consequences of which in relation to the credit fall to be given effect to in accordance with regulations made under—

(a) section 182(1) of the [M1067]Finance Act 1993 (regulations relating to individual members of Lloyd's); or

(b) section 229 of the [M1068]Finance Act 1994 (regulations relating to corporate members of Lloyd's).

(6) A person who fails to comply with the requirements imposed on him by subsections (3) and (4) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount by which the credit allowed has been rendered excessive by reason of the adjustment.**]**

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Textual Amendments

F5283 S. 806(1) substituted (with effect in accordance with Sch. 30 para. 20(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 20(2)**

F5284 S. 806(3)-(6) inserted (17.3.1998 with effect in accordance with s. 107(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 107(1)**

Modifications etc. (not altering text)

C858 *See* s.448—*overseas life assurance companies.*

C859 Ss. 805, 806 applied (31.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd's Underwriters (Double Taxation Relief) (Corporate Members) Regulations 2006 (S.I. 2006/3262), **regs. 1(1)**, 4

Marginal Citations

M1067 1993 c. 34.

M1068 1994 c. 9.

F5285 Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax

Textual Amendments

F5285 Ss. 806A-806H, 806J and cross-heading inserted (with effect in accordance with Sch. 30 para. 21(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 21(1)**

806A Eligible unrelieved foreign tax on dividends: introductory.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) below paid to the company.

(2) The dividends that fall within this subsection are any dividends chargeable under Case V of Schedule D, other than—

(a) any dividend which is trading income for the purposes of section 393;

(b) any dividend which, in the circumstances described in paragraphs (a) and (b) of subsection (8) of section 393, would by virtue of that subsection fall to be treated as trading income for the purposes of subsection (1) of that section;

(c) in a case where section 801A applies, the dividend mentioned in subsection (1) (b) of that section;

(d) in a case where section 803 applies, the dividend mentioned in subsection (1) (b) of that section;

(e) any dividend the amount of which is, under section 811, treated as reduced.

(3) For the purposes of this section—

(a) the cases where an amount of eligible unrelieved foreign tax arises in respect of a dividend falling within subsection (2) above are the cases set out in subsections (4) and (5) below; and

(b) the amounts of eligible unrelieved foreign tax which arise in any such case are those determined in accordance with section 806B.

(4) Case A is where—

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(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of the dividend,

exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of the dividend.

(5) Case B is where the amount of tax which, by virtue of any provision of any arrangements, falls to be taken into account as mentioned in section 799(1) in the case of the dividend (whether or not by virtue of section 801(2) or (3)) is less than it would be apart from the mixer cap.

[[F5286]But if that is so in any case by reason only of the mixer cap restricting the amount of underlying tax that is treated as mentioned in subsection (2) or (3) of section 801 in the case of a dividend paid by a company resident in the United Kingdom, the case does not fall within Case B.**]**

(6) In determining whether the circumstances are as set out in subsection (4) or (5) above, sections 806C and 806D shall be disregarded.

Textual Amendments

F5286 Words in s. 806A(5) added (with effect in accordance with Sch. 27 para. 4(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 4(2)**

806B The amounts that are eligible unrelieved foreign tax.

(1) This section has effect for determining the amounts of eligible unrelieved foreign tax which arise in the cases set out in section 806A(4) and (5).

(2) In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of the credit that would have been so allowed if, for the purposes of subsection (2) of section 797, the rate of corporation tax payable as mentioned in that subsection were the upper percentage,

shall be an amount of eligible unrelieved foreign tax.

[[F5287](3) In Case B, the amount (if any) by which—

(a) the aggregate of the upper rate amounts falling to be brought into account for the purposes of this paragraph by virtue of subsection (4) or (5) below, exceeds

(b) the amount of tax to be taken into account as mentioned in section 799(1) in the case of the Case V dividend, before any increase under section 801(4B),

shall be an amount of eligible unrelieved foreign tax.

(4) In the case of the Case V dividend (but not any lower level dividend), the upper rate amount to be brought into account for the purposes of subsection (3)(a) above—

(a) in a case where the mixer cap does not restrict the amount of tax to be taken into account as mentioned in section 799(1) (before any increase under section 801(4B)) in the case of that dividend, is that amount of tax; or

(b) in a case where the mixer cap restricts the amount of tax to be so taken into account in the case of that dividend, is the greater amount that would have been

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so taken into account if, in the application of the formula in section 799(1A) in the case of that dividend (but not any lower level dividend) M% had, in relation to—

(i) so much of D as does not represent any lower level dividend, and

(ii) so much of U as is not underlying tax attributable to any lower level dividend,

been the upper percentage.

(5) In the case of any dividend (the "relevant dividend") received as mentioned in subsection (2) or (3) of section 801 which is a lower level dividend in relation to the Case V dividend, the upper rate amount to be brought into account for the purposes of subsection (3)(a) above—

(a) in a case where the mixer cap does not restrict the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of the relevant dividend, is the appropriate portion of that amount of underlying tax;

(b) in a case where—

(i) the relevant dividend was paid by a company resident in the United Kingdom, and

(ii) the mixer cap restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of that dividend,

is the appropriate portion of that restricted amount of underlying tax; or

(c) in a case where—

(i) the relevant dividend was paid by a company resident outside the United Kingdom, and

(ii) the mixer cap restricts the amount of underlying tax that is treated as mentioned in subsection (2) or (3), as the case may be, of section 801 in the case of that dividend,

is the appropriate portion of the greater amount of tax that would have been so treated if, in the application of the formula in section 799(1A) in the case of that dividend (but not any other dividend) M% had, in relation to so much of D as does not represent any lower level dividend, and so much of U as is not underlying tax attributable to any lower level dividend, been the upper percentage.

(6) For the purposes of subsection (5) above, the "appropriate portion" of any amount there mentioned in the case of a dividend is found by multiplying that amount by the product of the reducing fractions for each of the higher level dividends.**]**

(7) For the purposes of subsection (6) above, the "reducing fraction" for any dividend is the fraction—

(a) whose numerator is the amount of the dividend; and

(b) whose denominator is the amount of the relevant profits (within the meaning of section 799(1)) out of which the dividend is paid.

(8) Any reference in this section to any tax being restricted by the mixer cap in the case of any dividend is a reference to that tax being so restricted otherwise than by virtue only of the application of the mixer cap in the case of one or more lower level dividends.

(9) For the purpose of determining the amount described in subsection (2)(b), **[**F5288(4)(b) or (5)(c)**]** above, sections 806C and 806D shall be disregarded.

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(10) In this section—

"the Case V dividend" means the dividend mentioned in section 806A(1);

"higher level dividend", in relation to another dividend, means any dividend—

(a) by which that other dividend is to any extent represented; and

(b) which either is the Case V dividend or is to any extent represented by the Case V dividend;

"lower level dividend", in relation to another dividend, means any dividend which—

(a) is received as mentioned in section 801(2) or (3); and

(b) is to any extent represented by that other dividend;

"the relevant tax" means—

(a) in the case of the Case V dividend, the foreign tax to be taken into account as mentioned in section 799(1); and

(b) in the case of any other dividend, the amount of underlying tax to be treated as mentioned in section 801(2) or (3) in the case of the dividend.

Textual Amendments

F5287 S. 806B(3)-(6) substituted (with effect in accordance with Sch. 27 para. 5(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 5(2)**

F5288 Words in s. 806B(9) substituted (with effect in accordance with Sch. 27 para. 5(4) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 5(3)**

806C Onshore pooling.

(1) In this section "qualifying foreign dividend" means any dividend which falls within section 806A(2), other than—

(a) an ADP dividend paid by a controlled foreign company;

(b) so much of any dividend paid by any company as represents an ADP dividend paid by another company which is a controlled foreign company;

(c) a dividend in respect of which an amount of eligible unrelieved foreign tax arises.

(2) For the purposes of this section—

(a) a "related qualifying foreign dividend" is any qualifying foreign dividend paid to a company resident in the United Kingdom by a company which, at the time of payment of the dividend, is related to that company;

(b) an "unrelated qualifying foreign dividend" is any qualifying foreign dividend which is not a related qualifying foreign dividend.

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(b) the unrelated qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

(c) the underlying tax in relation to the related qualifying foreign dividends that arise to the company in an accounting period shall be aggregated;

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(d) so much of the foreign tax paid in respect of the qualifying foreign dividends that arise to the company in an accounting period as is not underlying tax shall be aggregated.

(4) Credit relief under this Part shall be given as if—

(a) the related qualifying foreign dividends aggregated under paragraph (a) of subsection (3) above in the case of any accounting period instead together constituted a single related qualifying foreign dividend arising in that accounting period ("the single related dividend" arising in that accounting period);

(b) the unrelated qualifying foreign dividends aggregated under paragraph (b) of that subsection in the case of any accounting period instead together constituted a single unrelated qualifying foreign dividend arising in that accounting period ("the single unrelated dividend" arising in that accounting period);

(c) the underlying tax aggregated under paragraph (c) of that subsection for any accounting period were instead underlying tax in relation to the single related dividend arising in that accounting period (the "aggregated underlying tax" in respect of the single related dividend);

(d) the tax aggregated under paragraph (d) of that subsection for any accounting period were instead foreign tax (other than underlying tax) paid in respect of, and computed by reference to,—

(i) the single related dividend arising in that accounting period,

(ii) the single unrelated dividend so arising, or

(iii) partly the one dividend and partly the other,

(that aggregated tax being referred to as the "aggregated withholding tax").

(5) For the purposes of this section, a dividend paid by a controlled foreign company is an "ADP dividend" if it is a dividend by virtue of which (whether in whole or in part and whether taken alone or with one or more other dividends) no apportionment under section 747(3) falls to be made as regards an accounting period of the controlled foreign company in a case where such an apportionment would fall to be made apart from section 748(1)(a).

806D Utilisation of eligible unrelieved foreign tax.

(1) For the purposes of this section, where—

(a) any eligible unrelieved foreign tax arises in an accounting period of a company, and

(b) the dividend in relation to which it arises is paid by a company which, at the time of payment of the dividend, is related to that company,

that tax is "eligible underlying tax" to the extent that it consists of or represents underlying tax.

(2) To the extent that any eligible unrelieved foreign tax is not eligible underlying tax it is for the purposes of this section "eligible withholding tax".

(3) For the purposes of giving credit relief under this Part to a company resident in the United Kingdom—

(a) the amounts of eligible underlying tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable underlying tax" arising in that accounting period); and

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(b) the amounts of eligible withholding tax that arise in an accounting period of the company shall be aggregated (that aggregate being referred to as the "relievable withholding tax" arising in that accounting period).

(4) The relievable underlying tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) underlying tax in relation to the single related dividend that arises in the same accounting period,

(b) relievable underlying tax arising in the next accounting period (whether or not any related qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) underlying tax in relation to the single related dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in each or either of the others.

(5) The relievable withholding tax arising in an accounting period of the company shall be treated for the purposes of allowing credit relief under this Part as if it were—

(a) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in the same accounting period,

(b) relievable withholding tax arising in the next accounting period (whether or not any qualifying foreign dividend in fact arises to the company in that accounting period), or

(c) foreign tax (other than underlying tax) paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend that arises in such one or more preceding accounting periods as result from applying the rules in section 806E,

or partly in one of those ways and partly in any one or more of the others.

(6) The amount of relievable underlying tax or relievable withholding tax arising in an accounting period that is treated—

(a) under subsection (4)(a) or (c) above as underlying tax in relation to the single related dividend arising in the same or any earlier accounting period, or

(b) under subsection (5)(a) or (c) above as foreign tax paid in respect of, and computed by reference to, the single related dividend or the single unrelated dividend arising in the same or any earlier accounting period,

must not be such as would cause an amount of eligible unrelieved foreign tax to arise in respect of that dividend.

806E Rules for carry back of relievable tax under section 806D.

(1) Where any relievable tax is to be treated as mentioned in section 806D(4)(c) or (5)(c), the rules for determining the accounting periods in question (and the amount of the relievable tax to be so treated in relation to each of them) are those set out in the following provisions of this section.

(2) Rule 1 is that the accounting periods in question must be accounting periods beginning not more than three years before the accounting period in which the relievable tax arises.

(3) Rule 2 is that the relievable tax must be so treated that—

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(a) credit for, or for any remaining balance of, the relievable tax is allowed against corporation tax in respect of the single dividend arising in a later one of the accounting periods beginning as mentioned in rule 1 above,

before

(b) credit for any of the relievable tax is allowed against corporation tax in respect of the single dividend arising in any earlier such accounting period.

(4) Rule 3 is that the relievable tax must be so treated that, before allowing credit for any of the relievable tax against corporation tax in respect of the single dividend arising in any accounting period, credit for foreign tax is allowed—

(a) first for the aggregated foreign tax in respect of the single dividend arising in that accounting period, so far as not consisting of relievable tax arising in another accounting period; and

(b) then for relievable tax arising in any accounting period before that in which the relievable tax in question arises.

(5) The above rules are subject to sections 806D(6) and 806F.

(6) In this section—

"aggregated foreign tax" means aggregated underlying tax or aggregated withholding tax;

"relievable tax" means relievable underlying tax or relievable withholding tax;

"the single dividend" means—

(a) in relation to relievable underlying tax, the single related dividend; and

(b) in relation to relievable withholding tax, the single related dividend or the single unrelated dividend.

806F Credit to be given for underlying tax before other foreign tax etc.

(1) For the purposes of this Part, credit in accordance with any arrangements shall, in the case of any dividend, be given so far as possible—

(a) for underlying tax (where allowable) before foreign tax other than underlying tax;

(b) for foreign tax other than underlying tax before amounts treated as underlying tax; and

(c) for amounts treated as underlying tax (where allowable) before amounts treated as foreign tax other than underlying tax.

(2) Accordingly, where the amount of foreign tax to be brought into account for the purposes of allowing credit relief under this Part is subject to any limitation or restriction, the limitation or restriction shall be taken to have the effect of excluding foreign tax other than underlying tax before excluding underlying tax.

806G Claims for the purposes of section 806D(4) or (5).

(1) The relievable underlying tax or relievable withholding tax arising in any accounting period shall only be treated as mentioned in subsection (4) or (5) of section 806D on a claim.

(2) Any such claim must specify the amount (if any) of that tax—

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(a) which is to be treated as mentioned in paragraph (a) of the subsection in question;

(b) which is to be treated as mentioned in paragraph (b) of that subsection; and

(c) which is to be treated as mentioned in paragraph (c) of that subsection.

(3) A claim under subsection (1) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection; or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.

806H Surrender of relievable tax by one company in a group to another.

(1) The Board may by regulations make provision for, or in connection with, allowing a company which is a member of a group to surrender all or any part of the amount of the relievable tax arising to it in an accounting period to another company which is a member of that group at the time, or throughout the period, prescribed by the regulations.

(2) The provision that may be made under subsection (1) above includes provision—

(a) prescribing the conditions which must be satisfied if a surrender is to be made;

(b) determining the amount of relievable tax which may be surrendered in any accounting period;

(c) prescribing the conditions which must be satisfied if a claim to surrender is to be made;

(d) prescribing the consequences for tax purposes of a surrender having been made;

(e) allowing a claim to be withdrawn and prescribing the effect of such a withdrawal.

(3) Regulations under subsection (1) above—

(a) may make different provision for different cases; and

(b) may contain such supplementary, incidental, consequential or transitional provision as the Board may think fit.

(4) For the purposes of subsection (1) above a company is a member of a group if the conditions prescribed for that purpose in the regulations are satisfied.

806J Interpretation of foreign dividend provisions of this Chapter.

(1) This section has effect for the interpretation of the foreign dividend provisions of this Chapter.

(2) In this section, "the foreign dividend provisions of this Chapter" means sections 806A to 806H and this section.

(3) For the purposes of the foreign dividend provisions of this Chapter, where—

(a) one company pays a dividend ("dividend A") to another company, and

(b) that other company, or a company which is related to it, pays a dividend ("dividend B") to another company,

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dividend B represents dividend A, and dividend A is represented by dividend B, to the extent that dividend B is paid out of profits which are derived, directly or indirectly, from the whole or part of dividend A.

(4) Where—

(a) one company is related to another, and

(b) that other is related to a third company,

the first company shall be taken for the purposes of paragraph (b) of subsection (3) above to be related to the third, and so on where there is a chain of companies, each of which is related to the next.

(5) In any case where—

(a) a company resident outside the United Kingdom pays a dividend to a company resident in the United Kingdom, and

(b) the circumstances are such that subsection (6)(b) of section 790 has effect in relation to that dividend,

the foreign dividend provisions of this Chapter shall have effect as if the company resident outside the United Kingdom were related to the company resident in the United Kingdom (and subsection (10) of that section shall have effect accordingly).

(6) Subsection (5) of section 801 (related companies) shall apply for the purposes of the foreign dividend provisions of this Chapter as it applies for the purposes of that section.

(7) In the foreign dividend provisions of this Chapter—

"aggregated underlying tax" shall be construed in accordance with section 806C(4)(c);

"aggregated withholding tax" shall be construed in accordance with section 806C(4)(d);

"controlled foreign company" has the same meaning as in Chapter IV of Part XVII;

"eligible unrelieved foreign tax" shall be construed in accordance with sections 806A and 806B;

"the mixer cap" means section 799(1)(b);

"qualifying foreign dividend" has the meaning given by section 806C(1);

"related qualifying foreign dividend" has the meaning given by section 806C(2)(a);

"relievable tax" has the meaning given by section 806E(6);

"relievable underlying tax" shall be construed in accordance with 806D(3)(a);

"relievable withholding tax" shall be construed in accordance with 806D(3)(b);

"single related dividend" shall be construed in accordance with section 806C(4)(a);

"single unrelated dividend" shall be construed in accordance with section 806C(4)(b);

"the upper percentage" is 45 per cent.**]**

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[F5289 Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere

Textual Amendments

F5289 S. 806K and cross-heading inserted (with effect in accordance with Sch. 30 para. 22(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 22(1)**

806K Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere.

(1) Sections 806A to 806J shall apply in relation to an amount of eligible unrelieved foreign tax arising in a chargeable period in respect of any of the income of a branch or agency in the United Kingdom of a person resident outside the United Kingdom as they apply in relation to eligible unrelieved foreign tax arising in an accounting period of a company resident in the United Kingdom in respect of any of the company's income, but with the modifications specified in subsection (2) below.

(2) Those modifications are—

(a) take any reference to an accounting period as a reference to a chargeable period;

(b) take any reference to corporation tax as including a reference to income tax;

[F5290(bb) in relation to income tax, take any reference to a dividend chargeable under Case V of Schedule D as a reference to a dividend chargeable under Chapter 4 of Part 4 of ITTOIA 2005;**]**

(c) take the reference in section 806A(4)(a) to section 797 as a reference to sections 796 and 797;

(d) in relation to income tax, for subsection (2) of section 806B substitute the subsection (2) set out in subsection (3) below.

(3) That subsection is—

(“) In Case A, the difference between—

(a) the amount of the credit allowed as mentioned in section 806A(4)(b), and

(b) the greater amount of credit that would have been so allowed if, for the purposes of section 796, the amount of income tax borne on the dividend as computed under that section were charged at a rate equal to the upper percentage,

shall be an amount of eligible unrelieved foreign tax. ".**]**

Textual Amendments

F5290 S. 806K(2)(bb) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 324** (with Sch. 2)

Modifications etc. (not altering text)

C860 S. 806K(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

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[F5291 Unrelieved foreign tax: profits of overseas branch or agency

Textual Amendments

F5291 Ss. 806L, 806M and cross-heading inserted (with effect in accordance with Sch. 30 para. 23(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 23(1)**

806L Carry forward or carry back of unrelieved foreign tax.

(1) This section applies where, in any accounting period of a company resident in the United Kingdom, an amount of unrelieved foreign tax arises in respect of any of the company's qualifying income from an overseas **[**F5292permanent establishment**]** of the company.

(2) The amount of the unrelieved foreign tax so arising shall be treated for the purposes of allowing credit relief under this Part as if it were foreign tax paid in respect of, and computed by reference to, the company's qualifying income from the same overseas **[**F5292permanent establishment**]**—

(a) in the next accounting period (whether or not the company in fact has any such income from that source in that accounting period), or

(b) in such one or more preceding accounting periods, beginning not more than three years before the accounting period in which the unrelieved foreign tax arises, as result from applying the rules in subsection (3) below,

or partly in the one way and partly in the other.

(3) Where any unrelieved foreign tax is to be treated as mentioned in paragraph (b) of subsection (2) above, the rules for determining the accounting periods in question (and the amount of the unrelieved foreign tax to be so treated in relation to each of them) are that the unrelieved foreign tax must be so treated under that paragraph—

(1) that—

(a) credit for, or for any remaining balance of, the unrelieved foreign tax is allowed against corporation tax in respect of income of a later one of the accounting periods beginning as mentioned in that paragraph,

before

(b) credit for any of the unrelieved foreign tax is allowed against corporation tax in respect of income of any earlier such period;

(2) that, before allowing credit for any of the unrelieved foreign tax against corporation tax in respect of income of any accounting period, credit for foreign tax is allowed—

(a) first for foreign tax in respect of the income of that accounting period, other than unrelieved foreign tax arising in another accounting period; and

(b) then for unrelieved foreign tax arising in any accounting period before that in which the unrelieved foreign tax in question arises.

(4) For the purposes of this section, the cases where an amount of unrelieved foreign tax arises in respect of any of a company's qualifying income from an overseas **[**F5292permanent establishment**]** in an accounting period are those cases where—

(a) the amount of the credit for foreign tax which under any arrangements would, apart from section 797, be allowable against corporation tax in respect of that income,

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exceeds

(b) the amount of the credit for foreign tax which under the arrangements is allowed against corporation tax in respect of that income;

and in any such case that excess is the amount of the unrelieved foreign tax in respect of that income.

(5) For the purposes of this section, a company's qualifying income from an overseas **[**F5292permanent establishment**]** is the profits of the overseas **[**F5292permanent establishment**]** which are—

(a) chargeable under Case I of Schedule D; or

(b) included in the profits of life reinsurance business or overseas life assurance business chargeable under Case VI of Schedule D by virtue of section 439B or 441.

(6) Where (whether by virtue of this subsection or otherwise) an amount of unrelieved foreign tax arising in an accounting period falls to be treated under subsection (2) above for the purposes of allowing credit relief under this Part as foreign tax paid in respect of, and computed by reference to, qualifying income of an earlier accounting period, it shall not be so treated for the purpose of any further application of this section.

[F5293(7) In this section—

"overseas permanent establishment" means a permanent establishment through which a company carries on a trade in a territory outside the United Kingdom; and

"permanent establishment"—

(a) if there are arrangements having effect under section 788 in relation to the territory concerned that define the expression, has the meaning given by those arrangements, and

(b) if there are no such arrangements, or if they do not define the expression, has the meaning given by section 148 of the Finance Act 2003.**]**

Textual Amendments

F5292 Words in s. 806L(1)(2)(4)(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F5293 S. 806L(7) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 1(3)**

806M Provisions supplemental to section 806L.

(1) This section has effect for the purposes of section 806L and shall be construed as one with that section.

(2) If, in any accounting period, a company ceases to have a particular overseas **[**F5294permanent establishment**]**, the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas **[**F5294permanent establishment**]** shall, to the extent that it is not treated as mentioned in section 806L(2)(b), be reduced to nil (so that no amount arises which falls to be treated as mentioned in section 806L(2)(a)).

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(3) If a company—

(a) at any time ceases to have a particular overseas **[**F5294permanent establishment**]** in a particular territory ("the old **[**F5294permanent establishment**]**"), but

(b) subsequently again has an overseas **[**F5294permanent establishment**]** in that territory ("the new **[**F5294permanent establishment**]**"),

the old **[**F5294permanent establishment**]** and the new **[**F5294permanent establishment**]** shall be regarded as different overseas **[**F5294permanent establishments**]**.

(4) If, under the law of a territory outside the United Kingdom, tax is charged in the case of a company resident in the United Kingdom in respect of the profits of two or more of its overseas **[**F5294permanent establishments**]** in that territory, taken together, then, for the purposes of—

(a) section 806L, and

(b) subsection (3) above,

those overseas **[**F5294permanent establishments**]** shall be treated as if they together constituted a single overseas **[**F5294permanent establishment**]** of the company.

(5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas **[**F5294permanent establishment**]** in any accounting period shall only be treated as mentioned in subsection (2) of section 806L on a claim.

(6) Any such claim must specify the amount (if any) of the unrelieved foreign tax—

(a) which is to be treated as mentioned in paragraph (a) of that subsection; and

(b) which is to be treated as mentioned in paragraph (b) of that subsection.

(7) A claim under subsection (5) above may only be made before the expiration of the period of—

(a) six years after the end of the accounting period mentioned in that subsection, or

(b) if later, one year after the end of the accounting period in which the foreign tax in question is paid.**]**

Textual Amendments

F5294 Words in s. 806M(2)-(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

CHAPTER III

MISCELLANEOUS PROVISIONS

807 Sale of securities with or without accrued interest.

M1069(1) In any case where—

(a) a person is treated under section 714(2) as receiving annual profits or gains on the day an interest period ends; and

(b) assuming that, in the chargeable period in which the day falls, he were to become entitled to any interest on the securities concerned, he would be liable

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in respect of the interest to tax chargeable under **[**[F5295]ITTOIA 2005 on relevant foreign income**]**; and

(c) he is liable under the law of a territory outside the United Kingdom to tax in respect of interest payable on the securities at the end of the interest period or he would be so liable if he were entitled to that interest,

credit of an amount equal to the relevant proportion of the profits or gains shall be allowed against any United Kingdom income tax or corporation tax computed by reference to the profits or gains, and shall be treated as if it were allowed under section 790(4).

In this subsection the relevant proportion is the rate of tax to which the person is or would be liable as mentioned in paragraph (c) above.

(2) In any case where—

(a) a person is entitled to credit against United Kingdom tax under section 790(4) or any corresponding provision of arrangements under section 788; and

(b) the tax is computed by reference to income consisting of interest which falls due on securities at the end of an interest period and which is treated as reduced by virtue of section 714(5);

then the amount of that credit shall be a proportion of the amount it would be apart from this subsection, and the proportion is to be found by applying the formula—

$$\frac{I - R}{I}$$

where—

is the amount of the interest; and

R is the amount by which it is treated as reduced.

(3) [M1070]Where the person entitled to the credit is an individual, subsection (2) above does not apply unless the interest arises from securities to which the person either became or ceased to be entitled during the interest period.

(4) Where section 811(1) applies to any income and, if credit were allowable in respect of it the credit would be reduced by virtue of subsection (2) above, section 811(1) shall have effect in relation to the income as if the reference to any sum paid in respect of tax on it were a reference to the amount which would be the amount of the credit if it were allowable and subsection (2) above applied.

(5) Sections 710 and 711 shall apply for the interpretation of this section.

[[F5296](6) This section does not apply for the purposes of corporation tax.**]**

Textual Amendments

F5295 Words in s. 807(1)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 325** (with Sch. 2)

F5296 S. 807(6) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 45** (with Sch. 15)

Marginal Citations

M1069 Source—1985 Sch.23 37

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M1070 Source—1988 Sch.23 38(1)-(3)

[F5297 807A Disposals and acquisitions of company loan relationships with or without interest.

(1) This Part shall have effect for the purposes of corporation tax in relation to any company as if tax falling within subsection (2) below were to be disregarded.

(2) **[**F5298 Subject to subsection (2A) below,**]** tax falls within this subsection in relation to a company to the extent that it is—

(a) tax under the law of a territory outside the United Kingdom; and

(b) is attributable, on a just and reasonable apportionment,

[F5299 (i) **]** to interest accruing under a loan relationship at a time when the company is not a party to the relationship **[**F5300; or

(ii) to so much of a **[**F5301 relevant payment **]** as, on such an apportionment, is attributable to a time when the company is not a party to **[**F5302 the derivative contract concerned **]]**.

[F5303 (2A) Tax attributable to interest accruing to a company under a loan relationship does not fall within subsection (2) above if—

(a) at the time when the interest accrues, that company has ceased to be a party to that relationship by reason of having made the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship; and

(b) that time falls during the period for which those arrangements have effect.**]**

[F5304 (2B) Where, in the case of any share, section 91A or 91B of the Finance Act 1996 (shares treated as loan relationships) applies in relation to a company for an accounting period, this section has effect—

(a) in relation to a distribution in respect of the share as it has effect in relation to interest under a loan relationship, and

(b) in relation to a distribution accruing in respect of the share at a time when the company does not (within the meaning of the section in question) hold the share as it applies in relation to interest accruing under a loan relationship at a time when the company is not a party to the loan relationship.**]**

(3) Subject to subsections (1), (4) and (5) of this section, where—

(a) any non-trading credit relating to an amount of interest under a loan relationship is brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in the case of any company,

(b) that amount falls, as a result of any related transaction **[**F5305 other than the initial transfer under or in accordance with any repo or stock-lending arrangements relating to that relationship**]**, to be paid to a person other than the company, and

(c) had the company been entitled, at the time of that transaction, to receive a payment of an amount of interest equal to the amount of interest to which the non-trading credit relates, the company would have been liable in respect of the amount of interest received to an amount of tax under the law of a territory outside the United Kingdom,

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credit for that amount of tax shall be allowable under section 790(4) as if that amount of tax were an amount of tax paid under the law of that territory in respect of the amount of interest to which the non-trading credit relates.

(4) Subsection (3) above does not apply in the case of a credit brought into account in accordance with paragraph 1(2) of Schedule 11 to the Finance Act 1996 (the I minus E basis).

(5) The Treasury may by regulations provide for subsection (3) above to apply—

(a) in the case of trading credits, as well as in the case of non-trading credits;

(b) in the case of any credit ("an insurance credit") in the case of which, by virtue of subsection (4) above, it would not otherwise apply.

(6) Regulations under subsection (5) above may—

(a) provide for subsection (3) above to apply in the case of a trading credit or an insurance credit only if the circumstances are such as may be described in the regulations;

(b) provide for subsection (3) above to apply, in cases where it applies by virtue of any such regulations, subject to such exceptions, adaptations or other modifications as may be specified in the regulations;

(c) make different provision for different cases; and

(d) contain such incidental, supplemental, consequential and transitional provision as the Treasury think fit.

[F5306(6A) In this section "repo or stock-lending arrangements" has the same meaning as in paragraph 15 of Schedule 9 to the M1071Finance Act 1996 (repo transactions and stock-lending); and, in relation to any such arrangements—

(a) a reference to the initial transfer is a reference to the transfer mentioned in sub-paragraph (3)(a) of that paragraph; and

(b) a reference to the period for which the arrangements have effect is a reference to the period from the making of the initial transfer until whichever is the earlier of the following—

(i) the discharge of the obligations arising by virtue of the entitlement or requirement mentioned in sub-paragraph (3)(b) of that paragraph; and

(ii) the time when it becomes apparent that the discharge mentioned in sub-paragraph (i) above will not take place.**]**

(7) In this section—

"related transaction" has the same meaning as in section 84 of the Finance Act 1996;

[F5307"relevant payment" means a payment the amount of which falls to be determined (wholly or mainly) by applying to a notional principal amount specified in a derivative contract, for a period so specified, a rate the value of which at all times is the same as that of a rate of interest so specified;**]**

[F5308F5309. . . . . **]** and

"trading credit" means any credit falling to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in accordance with section 82(2) of that Act.**]**

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Textual Amendments

F5297 S. 807A inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 46** (with Sch. 15)

F5298 Words in s. 807A(2) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(2)**

F5299 Words in s. 807A(2)(b) renumbered as s. 807A(2)(b)(i) (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 24(2)**

F5300 S. 807A(2)(b)(ii) and preceding word inserted (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 24(2)**

F5301 Words in s. 807A(2)(b)(ii) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(2)(a)** (with Sch. 28)

F5302 Words in s. 807A(2)(b)(ii) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(2)(b)** (with Sch. 28)

F5303 S. 807A(2A) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(3)**

F5304 S. 807A(2B) inserted (with effect in accordance with Sch. 7 para. 5(3) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 5(2)**

F5305 Words in s. 807A(3)(b) inserted (with effect in accordance with s. 91(7) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(4)**

F5306 S. 807A(6A) inserted (19.3.1997) by Finance Act 1997 (c. 16), **s. 91(5)**

F5307 S. 807A(7): definition of "relevant payment" inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 12(3)** (with Sch. 28)

F5308 S. 807A(7): definition of "relevant qualifying payment" inserted (with effect in accordance with Sch. 30 para. 24(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 24(3)**

F5309 S. 807A(7): definition of "relevant qualifying payment" repealed (with effect in accordance with s. 83(3) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 27 para. 12(4), **Sch. 40 Pt. 3(13)**, Note (with Sch. 28)

Marginal Citations

M1071 1996 c. 8.

808 Restriction on deduction of interest or dividends from trading income.

M1072 In the case of a person not resident in the United Kingdom who carries on in the United Kingdom **[**F5310 a business**]**, receipts of interest **[**F5311, dividend or royalties**]** which have been treated as tax-exempt under arrangements having effect by virtue of section 788 are not to be excluded from trading income or profits of the business so as to give rise to losses to be set off (under section 393 **[**F5312 393A(1)**]** or 436) against income or profits.

F5313 . . . . . .

Textual Amendments

F5310 Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 140(1)(a)**

F5311 Words in s. 808 substituted (with effect in accordance with s. 140(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 140(1)(b)**

F5312 Words in s. 808 inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para.21**

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F5313 Words in s. 808 repealed (with effect in accordance with s. 140(2) of the repealing Act) by Finance Act 1994 (c. 9), s. 140(1)(c), **Sch. 26 Pt. 5(18)**, Note

Marginal Citations

M1072 Source—1976 s.50(1)

[F5314 808A Interest: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to interest (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the interest paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the relationship,

(b) the amount which the loan would have been in the absence of the relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the relationship.

(3) The special relationship provision shall be construed as requiring the taxpayer to show that there is no special relationship or (as the case may be) to show the amount of interest which would have been paid in the absence of the special relationship.

(4) In a case where—

(a) a company makes a loan to another company with which it has a special relationship, and

(b) it is not part of the first company's business to make loans generally,

the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing subsection (2) above.

(5) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the debt on which the interest is paid in determining the excess interest (and accordingly expressly limits the factors to be taken into account).]

Textual Amendments

F5314 S. 808A inserted (16.7.1992 with application in relation to interest paid after 14.5.1992) by Finance (No. 2) Act 1992 (c. 48), **s.52**

Modifications etc. (not altering text)

C861 S. 808A(2)-(4) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), **s. 103** (with s. 106)

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C862 S. 808A(2)-(4) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 764** (with Sch. 2)

[F5315 808B Royalties: special relationship.

(1) Subsection (2) below applies where any arrangements having effect by virtue of section 788—

(a) make provision, whether for relief or otherwise, in relation to royalties (as defined in the arrangements), and

(b) make provision (the special relationship provision) that where owing to a special relationship the amount of the royalties paid exceeds the amount which would have been paid in the absence of the relationship, the provision mentioned in paragraph (a) above shall apply only to the last-mentioned amount.

(2) The special relationship provision shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the agreement under which the royalties are paid would have been made at all in the absence of the relationship,

(b) the rate or amounts of royalties and other terms which would have been agreed in the absence of the relationship, and

(c) where subsection (3) below applies, the factors specified in subsection (4) below.

(3) This subsection applies if the asset in respect of which the royalties are paid, or any asset which that asset represents or from which it is derived, has previously been in the beneficial ownership of—

(a) the person who is liable to pay the royalties,

(b) a person who is, or has at any time been, an associate of the person who is liable to pay the royalties,

(c) a person who has at any time carried on a business which, at the time when the liability to pay the royalties arises, is being carried on in whole or in part by the person liable to pay those royalties, or

(d) a person who is, or has at any time been, an associate of a person who has at any time carried on such a business as is mentioned in paragraph (c) above.

(4) The factors mentioned in subsection (2)(c) above are—

(a) the amounts which were paid under the transaction, or under each of the transactions in the series of transactions, as a result of which the asset has come to be an asset of the beneficial owner for the time being,

(b) the amounts which would have been so paid in the absence of a special relationship, and

(c) the question whether the transaction or series of transactions would have taken place in the absence of such a relationship.

(5) The special relationship provision shall be construed as requiring the taxpayer to show—

(a) the absence of any special relationship, or

(b) the rate or amount of royalties that would have been payable in the absence of the relationship,

as the case may be.

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(6) The requirement on the taxpayer to show in accordance with subsection (5)(a) above the absence of any special relationship includes a requirement—

(a) to show that no person of any of the descriptions in paragraphs (a) to (d) of subsection (3) above has previously been the beneficial owner of the asset in respect of which the royalties are paid, or of any asset which that asset represents or from which it is derived, or

(b) to show the matters specified in subsection (7) below,

as the case may be.

(7) Those matters are—

(a) that the transaction or series of transactions mentioned in subsection (4)(a) above would have taken place in the absence of a special relationship, and

(b) the amounts which would have been paid under the transaction, or under each of the transactions in the series of transactions, in the absence of such a relationship.

(8) Subsection (2) above does not apply where the special relationship provision expressly requires regard to be had to the use, right or information for which royalties are paid in determining the excess royalties (and accordingly expressly limits the factors to be taken into account).

(9) For the purposes of this section one person ("person A") is an associate of another person ("person B") at a given time if—

(a) person A was, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person B at that time, or

(b) the same person was or same persons were, within the meaning of Schedule 28AA, directly or indirectly participating in the management, control or capital of person A and person B at that time.**]**

Textual Amendments

F5315 S. 808B inserted (with effect in accordance with Sch. 30 para. 25(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 25(1)**

Modifications etc. (not altering text)

C863 S. 808B(2)-(7)(9) applied (with effect in accordance with s. 97(5)(6) of the affecting Act) by Finance Act 2004 (c. 12), **s. 103** (with s. 106)

C864 S. 808B(2)-(7)(9) applied (6.4.2005 with effect in accordance with s. 883(1) of the affecting Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **s. 764** (with Sch. 2)

809 Relief in respect of discretionary trusts.

M1073(1) In any case where—

(a) a payment made by trustees falls to be treated as a net amount in accordance with section 687(2) and the income arising under the trust includes any taxed overseas income, and

(b) the trustees certify that—

(i) the income out of which the payment was made was or included taxed overseas income of an amount and from a source stated in the certificate, and

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(ii) that amount arose to them not earlier than six years before the end of the year of assessment in which the payment was made;

then the person to whom the payment was made may claim that the payment, up to the amount so certified, shall be treated for the purposes of this Part as income received by him from that source and so received in the year in which the payment was made.

(2) In subsection (1) above "taxed overseas income", in relation to any trust, means income in respect of which the trustees are entitled to credit for overseas tax under this Part.

Marginal Citations

M1073 Source—1973 s.18

810 Postponement of capital allowances to secure double taxation relief.

F5316 . . . . . .

Textual Amendments

F5316 S. 810 repealed (with effect in accordance with Sch. 30 para. 26(2) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 26(1), **Sch. 40 Pt. 2(13)**, Note

811 Deduction for foreign tax where no credit allowable.

M1074 (1) For the purposes of the Tax Acts, the amount of any income arising in any place outside the United Kingdom shall, subject to subsection (2) below, be treated as reduced by any sum which has been paid in respect of tax on that income in the place where the income has arisen (that is to say, tax payable under the law of a territory outside the United Kingdom).

(2) Subsection (1) above—

(a) shall not apply to income the tax on which is to be computed by reference to the amount of income received in the United Kingdom; F5317 . . .

(b) shall not affect section 278(3); F5318 . . . **[**F5319 and**]**

F5318 (c) . . . . . .

[F5320 (d) shall not require any income to be treated as reduced by an amount of underlying tax which, by virtue of section 799(1B)(b), falls to be left out of account for the purposes of section 799;**]**

and this section has effect subject to section 795(2) **[**F5321 and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)**]**.

[F5322 (3) This section has effect for the purposes of corporation tax notwithstanding anything in **[**F5323—

(a)**]** section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act) **[**F5324; or

(b) paragraph 1(3) of Schedule 29 to the Finance Act 2002 (matters to be brought into account in respect of intangible fixed assets only under that Schedule).**]]**

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[F5325(4) Where the amount by which any income is treated under subsection (1) above as reduced is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either—

(a) in the United Kingdom, or

(b) under the law of any other territory,

nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than six years from the time when all such assessments, adjustments and other determinations have been made, whether in the United Kingdom or elsewhere, as are material in determining whether any and if so what reduction under subsection (1) above falls to be treated as made.

(5) Subject to subsection (7) below, where—

(a) the amount of any income of a person is treated under subsection (1) above as reduced by any sum, and

(b) the amount of that reduction is subsequently rendered excessive by reason of an adjustment of the amount of any tax payable under the law of a territory outside the United Kingdom,

that person shall give notice in writing to an officer of the Board that an adjustment has been made that has rendered the amount of the reduction excessive.

(6) A notice under subsection (5) above must be given within one year from the time of the making of the adjustment.

(7) Subsections (5) and (6) above do not apply where the adjustment is one whose consequences in relation to the reduction fall to be given effect to in accordance with regulations made under—

(a) section 182(1) of the M1075Finance Act 1993 (regulations relating to individual members of Lloyd's); or

(b) section 229 of the M1076Finance Act 1994 (regulations relating to corporate members of Lloyd's).

(8) A person who fails to comply with the requirements imposed on him by subsections (5) and (6) above in relation to any adjustment shall be liable to a penalty of an amount not exceeding the amount of the difference specified in subsection (9) below.

(9) The difference is that between—

(a) the amount of tax payable by the person in question for the relevant chargeable period, after giving effect to the reduction that ought to be made under subsection (1) above; and

(b) the amount that would have been the tax so payable after giving effect instead to a reduction under that subsection of the amount rendered excessive as mentioned in subsection (5)(b) above.

(10) For the purposes of subsection (9) above "the relevant chargeable period" means the chargeable period as respects which the reduction was treated as made.**]**

Textual Amendments

F5317 Word preceding s. 811(2)(b) repealed (with effect in accordance with Sch. 27 para. 6(3) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 27 para. 6(2)(a), **Sch. 33 Pt. 2(8)**, Note

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F5318 S. 811(2)(c) and preceding word repealed (with effect as mentioned in s. 103(3)(4) of the amending Act) by 1993 c. 34, ss. 103(2)(g)(3)(4), 213, **Sch. 23 Pt. III(9)**
F5319 Word at the end of s. 811(2)(b) inserted (with effect in accordance with Sch. 27 para. 6(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 6(2)(b)**
F5320 S. 811(2)(d) inserted (with effect in accordance with Sch. 27 para. 6(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 27 para. 6(2)(c)**
F5321 Words in s. 811(2) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 284(1)**, s. 115(2)
F5322 S. 811(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 47** (with Sch. 15)
F5323 Words in s. 811(3) renumbered as s. 811(3)(a) (24.7.2002) by virtue of Finance Act 2002 (c. 23), **Sch. 30 para. 5(5)**
F5324 S. 811(3)(b) and preceding word inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(5)**
F5325 S. 811(4)-(10) inserted (with effect in accordance with Sch. 30 para. 27(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 27(2)**

Marginal Citations

M1074 Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)
M1075 1993 c. 34.
M1076 1994 c. 9.

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states.

M1077(1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under **[**F5326section 2(1) of TIOPA 2010**]** to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**F5327section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**F5328nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) M1078In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**F5329in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) M1079A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make

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up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F5330 7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) M1080 Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

[F5331 (c) whether a person is connected with another is determined in accordance with **[**F5332 section 1122 of CTA 2010**]**;**]**

[F5333 (d) sections 449 to 451 of CTA 2010 apply but with the substitution in section 449 of "6 years" for "12 months".**]**

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) M1081 The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**F5334 either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

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or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M1082]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M1083]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F5326 Words in s. 812(1)(b) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 30** (with Sch. 9)

F5327 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F5328 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F5329 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5330 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F5331 S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 201** (with Sch. 2)

F5332 Words in s. 812(5)(c) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **Sch. 1 para. 116(a)** (with Sch. 2)

F5333 S. 812(5)(d) substituted (1.4.2010 with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), **Sch. 1 para. 116(b)** (with Sch. 2)

F5334 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M1077 Source—1985 s.54(1),(3)

M1078 Source—1985 s.54(6) Sch.13 5

M1079 Source—1985 s.54(4),(5)

M1080 Source—1985 s.54(6) Sch.13 5.

M1081 Source—1985 s.54(7)(b), Sch.13 5(1)

M1082 Source—1985 s.54(7)(a)

M1083 Source—1985 s.54(8)

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812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

M1077(1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**F5327section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**F5328nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) M1078In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**F5329in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

(3) M1079A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**F5330 7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) M1080Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in

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paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

(c) section 839 applies;

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M1081]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F5334]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M1082]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M1083]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

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Textual Amendments

F5327 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F5328 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F5329 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5330 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F5334 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M1077 Source—1985 s.54(1),(3)

M1078 Source—1985 s.54(6) Sch.13 5

M1079 Source—1985 s.54(4),(5)

M1080 Source—1985 s.54(6) Sch.13 5.

M1081 Source—1985 s.54(7)(b), Sch.13 5(1)

M1082 Source—1985 s.54(7)(a)

M1083 Source—1985 s.54(8)

812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. U.K.

M1077(1) In any case where—

(a) a company has, or is an associated company of a company which has, a qualifying presence in a unitary state, and

(b) at any time when it or its associated company has such a qualifying presence, the company is entitled by virtue of arrangements having effect under section 788(1) to a tax credit in respect of qualifying distributions made to it by companies which are resident in the United Kingdom which is equal to one half of the tax credit to which an individual resident in the United Kingdom would be entitled in respect of such distributions,

then, notwithstanding anything to the contrary in the arrangements, the company shall not be entitled to claim under **[**F5327section 397(2)(a) of ITTOIA 2005**]** to have that tax credit set against the income tax chargeable on its income for the year of assessment in which the distribution is made **[**F5328nor, by virtue of section 30(9) of the Finance (No. 2) Act 1997, where**]** the credit exceeds that income tax, to have the excess paid to it.

(2) M1078In this section and sections 813 and 814, "unitary state" means a province, state or other part of a territory outside the United Kingdom **[**F5329in relation to**]** which the arrangements referred to in subsection (1) above have been made which, in taxing the income or profits of companies from sources within that province, state or other part, takes into account, or is entitled to take into account, income, receipts, deductions, outgoings or assets of such companies, or associated companies of such companies, arising, expended or situated, as the case may be, outside that territory and which has been prescribed under subsection (6) below as a unitary state for the purposes of this subsection.

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(3) [M1079]A company shall be treated as having a qualifying presence in a unitary state if it is a member of a group and, in any period for which members of the group make up their accounts ending after the relevant date, 7½ per cent. or more in value of the property, payroll or sales of such members situated in, attributable to or derived from the territory outside the United Kingdom, of which that state is a province, state or other part, are situated in, attributable to or derived from that state.

(4) For the purposes of subsection (3) above—

(a) **[**[F5330]7½ per cent. or more in value of such property, payroll or sales as are referred to in that subsection shall be treated as being situated in, attributable to or derived from the state there referred to, unless, on making any claim under section 231(3), the claimant proves otherwise to the satisfaction of the Board; and**]**

(b) the value of the property, payroll or sales of a company shall be taken to be the value as shown in its accounts for the period in question and for this purpose the value of any property consisting of an interest in another member of the group or of any sales made to another such member shall be disregarded.

(5) [M1080]Except where the context otherwise requires, in this section and sections 813 to 815—

(a) "arrangements" means the arrangements referred to in subsection (1) above;

(b) "group" and "member of a group" shall be construed in accordance with section 272(1) of the 1970 Act with the omission of the restriction in paragraph (a) of that subsection and the substitution of the words " 51 per cent. " for the words "75 per cent." wherever they occur;

[[F5331](c) whether a person is connected with another is determined in accordance with section 839;**]**

(d) section 416 applies with the substitution of the words " six years " for "one year" in subsection (1); and

(e) "the relevant date" means the earliest of the following dates—

(i) the date on which this section comes into force;

(ii) the earliest date on which a distribution could have been made in relation to which the provisions of this section and sections 813 and 814 are applied by an order under this section;

(iii) the earliest date on which a distribution could have been made in relation to which the provisions of section 54 of the Finance Act 1985 were applied by an order under that section.

(6) [M1081]The Treasury may by order prescribe those provinces, states or other parts of a territory outside the United Kingdom which are to be treated as unitary states for the purposes of subsection (2) above, but no province, state or other part of such a territory shall be so prescribed which only takes into account such income, receipts, deductions, outgoings or assets as are mentioned in that subsection—

(a) if the associated company was incorporated under the law of the territory; or

(b) for the purposes of granting relief in taxing dividends received by companies.

(7) The Treasury may by order prescribe that for subsections (3) and (4) above (or for those subsections as they have effect at any time) there shall be substituted **[**[F5334]either the following subsection—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it is liable in such a state to a tax charged on its income or profits by whatever

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name called for any period ending after the relevant date for which that state charges tax.";

or the following subsections—

"(3) A company shall be treated as having a qualifying presence in a unitary state if it has its principal place of business in such a state at any time after the relevant date.

(4) For the purposes of subsection (3) above the principal place of business of a company shall include both the place where central management and control of the company is exercised and the place where the immediate day-to-day management of the company as a whole is exercised."**]**.

(8) [M1082]The provisions of this section and sections 813 to 815 shall come into force on such date as the Treasury may by order appoint and the Treasury may in the order prescribe that those provisions shall apply in relation to distributions made, in accounting periods ending after 5th April 1988, before the date on which the order is made.

(9) [M1083]No order shall be made under this section unless a draft of it has been laid before and approved by a resolution of the House of Commons.

Textual Amendments

F5327 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(a)** (with Sch. 2)

F5328 Words in s. 812(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 326(b)** (with Sch. 2)

F5329 Words in s. 812(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5330 S. 812(4)(a) repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 38(2), **Sch. 41 Pt. 5(10)**, Note

F5331 S. 812(5)(c) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 201** (with Sch. 2)

F5334 Words in s. 812(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 38(3)**

Marginal Citations

M1077 Source—1985 s.54(1),(3)

M1078 Source—1985 s.54(6) Sch.13 5

M1079 Source—1985 s.54(4),(5)

M1080 Source—1985 s.54(6) Sch.13 5.

M1081 Source—1985 s.54(7)(b), Sch.13 5(1)

M1082 Source—1985 s.54(7)(a)

M1083 Source—1985 s.54(8)

813 Recovery of tax credits incorrectly paid.

[M1084](1) Where—

(a) section 812 applies so as to withdraw the entitlement of a company to claim to have a tax credit in respect of a qualifying distribution set against the income tax chargeable on its income and to have the excess of the credit over that income tax paid to it; and

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(b) the company ("the recipient company") has either had that excess paid to it, or has received an additional amount in accordance with arrangements made under Regulation 2(1) of the [M1085]Double Taxation Relief (Taxes on Income) (General) (Dividend) Regulations 1973;

the recipient company shall be liable to a fine for the violation of the provisions of section 812 equal to twice the amount of the excess or the additional amount, as the case may be.

(2) Any fine payable under subsection (1) above—

(a) shall be payable to the Board;

(b) shall be treated as having become payable at the date when the excess or additional amount was paid to the recipient company; and

(c) may be recovered in accordance with subsections (3) to (7) below;

and any such fine is referred to below as "the recoverable amount".

(3) The recoverable amount may be assessed and recovered as if it were unpaid tax and section 30 of the Management Act (recovery of overpayment of tax etc.) shall apply accordingly.

(4) Any amount which may be assessed and recovered as if it were unpaid tax by virtue of this section shall carry interest at the rate of 9 per cent. per annum from the date when it was payable in accordance with subsection (1) above until the date it is paid.

(5) It is hereby declared that this section applies to a recoverable amount which is paid without the making of an assessment (but is paid after it is due) and that, where the recoverable amount is charged by any assessment (whether or not any part of it has been paid when the assessment is made), this section applies in relation to interest running before, as well as after, the making of the assessment.

(6) Where the recoverable amount is not paid by the recipient company within six months from the date on which it became payable—

(a) the recoverable amount may at any time within six years from the date on which it became payable be assessed and recovered as if it were unpaid tax due from any person who—

(i) is or was at any time prior to the expiration of that six year period connected with the recipient company, or

(ii) would have been connected on the assumption that all the facts and circumstances relating to the recipient company at the time the excess or additional amount, as the case may be, was paid continued to apply for six years thereafter,

and section 30 of the Management Act shall apply accordingly; and

(b) . . . . . .

[F5335](7) Where a recoverable amount is assessed and recovered from a person connected with the recipient company in accordance with subsection (6)(a) above, that person shall be liable for the interest payable in accordance with subsection (4) above, and until the interest is so paid, subsection (6)(b) above shall apply as if the words " the interest due in accordance with subsection (4) above is paid " were substituted for the words "the recoverable amount is paid in accordance with the provisions of this section".

(8) Interest payable under this section shall be paid without any deduction of income tax and shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

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(9) Where under the law in force in a territory outside the United Kingdom interest is payable subject to a deduction in respect of taxation and such deduction applies to an amount of interest paid in accordance with subsection (4) above, the reference to the rate of 9 per cent. per annum in that subsection shall be deemed to be a reference to such rate of interest as after such deduction shall be equal to the rate of 9 per cent. per annum.

Textual Amendments

F5335 S. 813(6)(b) repealed (with effect in accordance with Sch. 3 para. 37(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 37(2), **Sch. 27 Pt. 3(2)**, Note

Modifications etc. (not altering text)

C865 *Reproduced in* Part III Vol.5.

Marginal Citations

M1084 Source—1985 Sch.13 1

M1085 S.I. 1973/317.

814 Arrangements to avoid section 812.

M1086(1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—

(a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under **[**F5336section 2(1) of TIOPA 2010**]**; and

(b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

(3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

(a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and

(b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

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Textual Amendments

F5336 Words in s. 814(1)(a) substituted (1.4.2010 with effect in accordance with s. 381(1) of the amending Act) by Taxation (International and Other Provisions) Act 2010 (c. 8), **Sch. 8 para. 31** (with Sch. 9)

Modifications etc. (not altering text)

C866 S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations

M1086 Source-1985 Sch. 13 3

814 Arrangements to avoid section 812. U.K.

M1086 (1) In any case where arrangements are made, whether before or after the coming into force of this section, as a result of which interest is paid or a discount is allowed by or through a person who is resident in the United Kingdom, or carries on business in the United Kingdom through a branch or agency, and it is reasonable to suppose that, if such payment or allowance had not been made, a qualifying distribution would have been made by that person, or by another company resident in the United Kingdom to a company which has, or is an associated company of a company which has, a qualifying presence in a unitary state at the time when the payment or allowance is made, then—

(a) no person who receives that payment or allowance shall be entitled to relief from income tax or corporation tax thereon by virtue of arrangements having effect under section 788(1); and

(b) the payment or allowance shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(2) Without prejudice to the generality of subsection (1) above, where a payment or allowance is not of itself a payment or allowance to which that subsection applies, but is made in conjunction with other payments of whatever nature and taken together with those payments has substantially similar effect to a distribution, then, for the purposes of subsection (1) above it shall be treated as a payment or allowance within that subsection.

(3) Any company which has received such a payment of interest as is referred to in subsection (1) above, from which income tax has not been deducted by the person making the payment, and has a qualifying presence in a unitary state at the time of the payment, shall be treated for the purposes of section 813 as a company—

(a) from which the entitlement to claim payment of the excess of a tax credit over the income tax chargeable on its income has been withdrawn by section 812(1), and

(b) which has had paid to it such an excess in an amount equal to the income tax which should have been deducted from the payment of interest.

Modifications etc. (not altering text)

C866 S. 814(1) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

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Marginal Citations

M1086 Source-1985 Sch. 13 3

815 Power to inspect documents.

M1087 Where it appears to the Board that the provisions of sections 812 to 814 may apply to a company resident outside the United Kingdom ("the foreign parent"), the Board may, by notice given to the foreign parent or any associated company of the foreign parent, require that company within such time (not being less than 30 days) as may be specified in the notice to make available for inspection any books, accounts or other documents or records whatsoever of that company where in the opinion of the Board it is proper that they should inspect such documents for the purposes of ascertaining whether those provisions apply to the foreign parent or such associated company notwithstanding that in the opinion of the person to whom the notice is given those provisions do not apply to that company or any associated company of that company.

Marginal Citations

M1087 Source—1985 Sch.13 4(1)

[F5337 815A Transfer of a non-UK trade.

(1) This section applies where section 269C of the 1970 Act or section 140C [F5338 or 140F] of the Taxation of Chargeable Gains Act 1992 applies; and references in this section to company A, the transfer and the trade shall be construed accordingly.

[F5339 (2) Where gains accruing to company A on the transfer would have been chargeable to tax under the law of the relevant member State but for the Mergers Directive, this Part, including any arrangements having effect by virtue of section 788, shall apply as if the amount of tax, calculated on the required basis, which would have been payable under that law in respect of the gains so accruing but for that Directive, were tax payable under that law.]

(5) For the purposes of this section, the required basis is that—

(a) so far as permitted under the law of the relevant member State, any losses arising on the transfer are set against any gains so arising, and

(b) any relief available to company A under that law has been duly claimed.

(6) In this section—

"the Mergers Directive" means the Directive of the Council of the European Communities dated 23rd July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member States (no. 90/434/EEC);

"relevant member State" means the member State in which, immediately before the time of the transfer, company A carried on the trade through a [F5340 permanent establishment].]

Textual Amendments

F5337 S. 815A inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 50**

F5338 Words in s. 815A(1) inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 59(1)**
F5339 S. 815A(2) substituted for s. 815A(2)-(4) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 39**
F5340 Words in s. 815A(6) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

Modifications etc. (not altering text)
C867 S. 815A applied (*retrospectively*) by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 140C(5)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 45**)
S. 815A applied (*retrospectively*) by Income and Corporation Taxes Act 1970 (c. 10), **s. 269C(5)** (as inserted (*retrospectively*) by Finance (No. 2) Act 1992 (c. 48), **s. 48**)
C868 S. 815A applied by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 140F(4)** (as substituted (29.11.2007 with effect in accordance with reg. 3 of the affecting S.I.) by The Corporation Tax (Implementation of the Mergers Directive) Regulations 2007 (S.I. 2007/3186), reg. 1(2), **Sch. 2 para. 2**)

VALID FROM 21/07/2008

[F5341 815AZA Non-residents and foreign enterprises

(1) Where arrangements having effect under section 788 make the provision mentioned in subsection (2) (however expressed), that provision does not prevent income of a person resident in the United Kingdom being chargeable to income tax or corporation tax.

(2) The provision is that the profits of an enterprise which is resident outside the United Kingdom, or carries on a trade, profession or business the control or management of which is situated outside the United Kingdom, are not to be subject to United Kingdom tax except in so far as they are attributable to a permanent establishment of the enterprise in the United Kingdom.

(3) A person is resident in the United Kingdom for the purposes of this section if the person is so resident for the purposes of the arrangements having effect under section 788.

(4) This section does not apply in relation to—
(a) income of a company resident in the United Kingdom to which section 115(5A) applies, or
(b) income of a person resident in the United Kingdom to which section 858 of ITTOIA 2005 applies.]

Textual Amendments
F5341 S. 815AZA inserted (with effect in accordance with s. 59(2) of the amending Act) by Finance Act 2008 (c. 9), **s. 59(1)**

[F5342 815AA Mutual agreement procedure and presentation of cases under arrangements.

(1) Where, under and for the purposes of arrangements made [F5343 in relation to] a territory outside the United Kingdom and having effect under section 788—

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(a) a case is presented to the Board, or to an authority in that territory, by a person concerning his being taxed (whether in the United Kingdom or that territory) otherwise than in accordance with the arrangements; and

(b) the Board arrives at a solution to the case or makes a mutual agreement with an authority in that territory for the resolution of the case,

subsections (2) and (3) below have effect.

(2) The Board shall give effect to the solution or mutual agreement, notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence may be made (whether by way of discharge or repayment of tax, the allowance of credit against tax payable in the United Kingdom, the making of an assessment or otherwise).

(3) A claim for relief under any provision of the Tax Acts may be made in pursuance of the solution or mutual agreement at any time before the expiration of the period of 12 months following the notification of the solution or mutual agreement to the person affected, notwithstanding the expiration of the time limited by any other enactment for making the claim.

(4) Where arrangements having effect under section 788 include provision for a person to present a case to the Board concerning his being taxed otherwise than in accordance with the arrangements, subsections (5) and (6) below have effect.

(5) The presentation of any such case under and in accordance with the arrangements—

(a) does not constitute a claim for relief under the Tax Acts; and

(b) is accordingly not subject to section 42 of the Management Act or any other enactment relating to the making of such claims.

(6) Any such case must be presented before the expiration of—

(a) the period of 6 years following the end of the chargeable period to which the case relates; or

(b) such longer period as may be specified in the arrangements.**]**

Textual Amendments

F5342 S. 815AA inserted (with effect in accordance with Sch. 30 para. 28(2)(3) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 28(1)**

F5343 Words in s. 815AA(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

[F5344 815B The Arbitration Convention.

(1) Subsection (2) below applies if the Arbitration Convention requires the Board to give effect to—

(a) an agreement or decision, made under the Convention by the Board (or their authorised representative) and any other competent authority, on the elimination of double taxation, or

(b) an opinion, delivered by an advisory commission set up under the Convention, on the elimination of double taxation.

(2) The Board shall give effect to the agreement, decision or opinion notwithstanding anything in any enactment; and any such adjustment as is appropriate in consequence

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may be made (whether by way of discharge or repayment of tax, the making of an assessment or otherwise).

(3) Any enactment which limits the time within which claims for relief under any provision of the Tax Acts may be made shall not apply to a claim made in pursuance of an agreement, decision or opinion falling within subsection (1)(a) or (b) above.

(4) In this section "the Arbitration Convention" means the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, concluded on 23rd July 1990 by the parties to the treaty establishing the European Economic Community (90/436/EEC).**]**

Textual Amendments

F5344 S. 815B inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(1)**

[F5346 815C Exchange of information with other [F5345 territories].

(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been made **[**F5347 in relation to**]** any territory outside the United Kingdom with a view to the exchange of information **[**F5348 foreseeably relevant to the administration or enforcement of**]**—

(a) the domestic laws of the United Kingdom concerning income tax, capital gains tax and corporation tax in respect of income and chargeable gains; and

(b) the laws of the territory to which the arrangements relate concerning any taxes of a similar character to those taxes imposed by the laws of that territory,

and that it is expedient that those arrangements shall have effect, then those arrangements shall have effect notwithstanding anything in any enactment.

(2) Any Order in Council made under this section revoking an earlier such Order in Council may contain such transitional provisions as appear to Her Majesty to be necessary or expedient.

(3) An Order under this section shall not be submitted to Her Majesty in Council unless a draft of the Order has been laid before and approved by a resolution of the House of Commons.**]**

Textual Amendments

F5345 Word in s. 815C sidenote substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(b)**

F5346 S. 815C inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 146(1)**

F5347 Words in s. 815C(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(a)**

F5348 Words in s. 815C(1) substituted (10.7.2003) by Finance Act 2003 (c. 14), **s. 198(1)(2)**

816 Disclosure of information.

M1088 (1) Where under the law in force in any territory outside the United Kingdom provision is made for the allowance, in respect of the payment of United Kingdom income tax or corporation tax, of relief from tax payable under that law, the obligation as to secrecy imposed by the Tax Acts upon **[**F5349 Revenue and Customs officials**]** shall not

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prevent the disclosure to the authorised officer of the **[**F5350authorities**]** of the territory in question of such facts as may be necessary to enable the proper relief to be given under that law.

Section 790(12) shall apply for the interpretation of this subsection as it applies for the interpretation of that section.

(2) Where any arrangements have effect by virtue of section 788 **[**F5351or 815C**]**, the obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised **[**F5352Revenue and Customs official**]**, from disclosing to any authorised officer of the **[**F5353authorities of the territory in relation to**]** which the arrangements are made such information as is required to be disclosed under the arrangements.

[F5354(2ZA) Neither the Board nor an authorised **[**F5352Revenue and Customs official**]** shall disclose any information in pursuance of any arrangements having effect by virtue of section 815C unless satisfied that the **[**F5355authorities of the territory in relation to**]** which the arrangements are made **[**F5355are bound**]** by, or **[**F5355have undertaken**]** to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the United Kingdom.**]**

[F5356(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised **[**F5352Revenue and Customs official**]**, from disclosing information required to be disclosed under the Arbitration Convention in pursuance of a request made by an advisory commission set up under that Convention; and "the Arbitration Convention" here has the meaning given by section 815B(4).**]**

(3) Where a person beneficially entitled to income from any securities as defined by section 24 of the Management Act (information as to income from securities) is resident in a territory to which arrangements having effect under section 788 with respect to income tax or corporation tax relate, section 24(3) of that Act shall not exempt any bank from the duty of disclosing to the Board particulars relating to the income of that person.

[F5357(3A) In this section "bank" has the meaning given by section 840A.**]**

(4) The obligation as to secrecy imposed by any enactments with regard to income tax or corporation tax shall not prevent the disclosure, to any authorised officer of any country to which a declaration made under section 514 of the 1970 Act (agreements about shipping etc.) relates, of such facts as may be necessary to enable relief to be duly given in accordance with the arrangements specified in the declaration.

[F5358(5) In this section "Revenue and Customs official" has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).**]**

Textual Amendments

F5349 Words in s. 816(1) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 37(a)**; S.I. 2005/1126, **art. 2(2)(h)**

F5350 Word in s. 816(1) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(c)**

F5351 Words in s. 816(2) inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 146(2)**

F5352 Words in s. 816(2)(2ZA)(2A) substituted (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 37(b)**; S.I. 2005/1126, **art. 2(2)(h)**

F5353 Words in s. 816(2) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(d)**

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F5354 S. 816(2ZA) inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 146(2)**
F5355 Words in s. 816(2ZA) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2002 (c. 23), **s. 88(2)(e)**
F5356 S. 816(2A) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 51(2)**
F5357 S. 816(3A) inserted (with effect in accordance with Sch. 37 para. 9 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(1)(2)(d)**
F5358 S. 816(5) added (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), **Sch. 4 para. 37(c)**; S.I. 2005/1126, **art. 2(2)(h)**

Modifications etc. (not altering text)
C869 *See* 1979(C) s.10(4)—*application to capital gains tax.*
S. 816 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 277(4)**, 289 (with ss. 60, 101(1), 171, 201(3))
S. 816 applied (27.7.1993) by 1993 c. 34, **s. 194(5)**

Marginal Citations
M1088 Source—1970 s.518; 1972 s.100(1)

PART XIX

SUPPLEMENTAL

Miscellaneous

817 Deductions not to be allowed in computing profits or gains.

M1089 (1) In arriving at the amount of profits or gains for **[**F5359 corporation**]** tax purposes—

(a) no other deductions shall be made than such as are expressly enumerated in **[**F5360 the Corporation Tax Acts**]**; and

(b) no deduction shall be made on account of any annuity or other annual payment (not being interest) to be paid out of such profits or gains in regard that a proportionate part of income tax is allowed to be deducted on making any such payment.

(2) In arriving at the amount of profits or gains **[**F5361 for corporation tax purposes**]** from any property described in **[**F5362 the Corporation Tax Acts**]**, or from any office F5363 . . . , no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade **[**F5364 or profession**]**.

Textual Amendments
F5359 Word in s. 817(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 327(2)(a)** (with Sch. 2)
F5360 Words in s. 817(1)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 327(2)(b)** (with Sch. 2)
F5361 Words in s. 817(2) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 327(3)(a)** (with Sch. 2)
F5362 Words in s. 817(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 327(3)(b)** (with Sch. 2)

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F5363 Words in s. 817(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 327(3)(c), **Sch. 3** (with Sch. 2)
F5364 Words in s. 817(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 327(3)(d)** (with Sch. 2)

Modifications etc. (not altering text)
C870 *See* s.125—*annual payments for non-taxable consideration.*
C871 S. 817(1)(b) restricted (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 8(3)** (with Sch. 29 para. 8(4))

Marginal Citations
M1089 Source—1970 s.519.

818 Arrangements for payments of interest less tax or of fixed net amount.

M1090 (1) It is hereby declared that any provision made before or after the passing of this Act, whether orally or in writing, for the payment of interest "less tax", or using words to that effect, is to be construed, in relation to interest payable without deduction of tax, as if the words "less tax", or the equivalent words, were not included.

(2) In relation to **[**F5365 relevant interest**]** which is payable without deduction of tax, any provision, made before or after the passing of this Act, whether orally or in writing, and however worded, for the payment of interest at such a rate ("the gross rate") as shall, after the deduction of income tax, be equal to a stated rate, shall be construed as if it were a provision requiring the payment of interest at the gross rate.

[F5366 (3) In subsection (2) "relevant interest" means—

(a) interest on which the recipient is chargeable to income tax, which falls within Chapter 2 of Part 4 of ITTOIA 2005 but which is not relevant foreign income, or

(b) interest on which the recipient is chargeable to corporation tax under Case III of Schedule D.**]**

Textual Amendments
F5365 Words in s. 818(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 328(2)** (with Sch. 2)
F5366 S. 818(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 328(3)** (with Sch. 2)

Marginal Citations
M1090 Source—1970 s.425; 1971 Sch.6 51

819 Old references to standard rate tax.

M1091 (1) Where any provision, however worded, contained in an instrument (of whatever nature) made on or after 3rd September 1939 or in a will or codicil taking effect on or after that date provides for the payment, whether periodically or otherwise—

(a) of a stated amount free of income tax other than surtax; or

(b) of an amount which, after deduction of income tax at the standard rate, is equal to a stated amount;

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it shall have effect as follows.

(2) If it is such a provision as is mentioned in subsection (1)(a) above it shall have effect as if it provided for the payment of the stated amount free of income tax other than such as exceeds the amount to which the person to whom the payment is made would be liable if all income tax **[**F5367not chargeable **[**F5368at the starting rate**]][**F5369were charged at the basic rate, or (so far as applicable in accordance with **[**F5370section 1A**]**) the lower rate **[**F5371or the **[**F5372dividend**]** ordinary rate**],]** to the exclusion of **[**F5373the higher rate and the **[**F5372dividend**]** upper rate**]**.

(3) If it is such a provision as is mentioned in subsection (1)(b) above it shall have effect as if it provided for the payment of an amount which after deduction of income tax at the basic rate is equal to the stated amount.

(4) Any instrument however worded conferring on any person a right to receive a dividend or interest the amount of which depends on the standard rate of income tax shall have effect as if instead of referring to the standard rate it referred to the basic rate.

(5) Any reference in a statutory instrument made under the Tax Acts to the standard rate of income tax shall have effect as if it were a reference to the basic rate.

Textual Amendments

F5367 Words in s. 819(2) inserted (16.7.1992 for the year 1992-93 and subsequent years of assessment) by Finance (No. 2) Act 1992 (c. 48), **s. 19(3)(7)**

F5368 Words in s. 819(2) substituted (with effect in accordance with s. 22(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 22(9)(c)**

F5369 Words in s. 819(2) substituted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.1, **25(1)**

F5370 Words in s. 819(2) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 13**

F5371 Words in s. 819(2) inserted (with effect in accordance with Sch. 4 para. 21(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 21(1)(a)**

F5372 Words in s. 819(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 329** (with Sch. 2)

F5373 Words in s. 819(2) substituted (with effect in accordance with Sch. 4 para. 21(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 21(1)(b)**

Marginal Citations

M1091 Source—1971 Sch.7 2-4; 1978 Sch.2 14

820 Application of Income Tax Acts from year to year.

M1092 In order to ensure the collection in due time of income tax which may be granted for any year commencing on 6th April, all such provisions contained in the Income Tax Acts as were in force on the preceding day shall have full force and effect with respect to tax which may be so granted, in the same manner as if that tax had been actually granted by Act of Parliament and those provisions had been applied thereto by the Act.

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Modifications etc. (not altering text)

C872 S. 820 applied (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1)(2), **Sch. 2 para. 160**

Marginal Citations

M1092 Source—1970 s.520

821 Under-deductions from payments made before passing of annual Act.

M1093 (1) Where, in any year of assessment **[**F5374 or accounting period**]**, any half-yearly or quarterly payments **[**F5375 (or half-periodic or quarterly payments)**]** have been made on account of any interest, dividends or other annual profits or gains, previously to the passing of the Act imposing income **[**F5376 or corporation**]** tax for that year **[**F5377 or period**]**, and tax has not been charged thereon or deducted therefrom or has not been charged thereon or deducted therefrom at the rate ultimately imposed for that year **[**F5377 or period**]**—

(a) the amount not so charged or deducted shall be charged **[**F5378 in respect of those payments to income tax under Chapter 2 of Part 4 of ITTOIA 2005 (interest) or shall be charged to corporation tax under**][**F5379 under Case III of Schedule D F5380 . . . ; and**]**

(b) the agents entrusted with the payment of the interest, dividends or other annual profits or gains shall furnish to the Board a list containing the names and addresses of the persons to whom payments have been made and the amount of those payments, upon a requisition made by the Board in that behalf.

(2) Any person liable to pay any rent, interest or annuity, or to make any other annual payment—

(a) shall be authorised—

(i) to make any deduction on account of income tax for any year of assessment which he has failed to make previously to the passing of the Act imposing the tax for that year, or

(ii) to make up any deficiency in any such deduction which has been so made,

on the occasion of the next payment of the rent, interest or annuity or making of the other annual payment after the passing of the Act so imposing the tax, in addition to any other deduction which he may be by law authorised to make; and

(b) shall also be entitled, if there is no future payment from which the deduction may be made, to recover the sum which might have been deducted as if it were a debt due from the person as against whom the deduction could originally have been made if the Act imposing the tax for the year had been in force.

(3) Subsection (2) above shall apply with respect to—

(a) any payment for or in respect of copyright to which section 536 applies or of public lending right to which that section applies by virtue of section 537; and

[F5381 (aa) any payment for or in respect of a right in a design to which section 537B applies; and;**]**

(b) any royalty or other sum paid in respect of the user of a patent; F5382 . . .

F5382 (c) . . . . . .

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as it applies with respect to any rent, interest, annuity or other annual payment.

(4) In this section "interest" and "dividends" do not include any interest or dividend which is a distribution.

Textual Amendments

F5374 Words in s. 821(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 330(a)** (with Sch. 2)

F5375 Words in s. 821(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 330(b)** (with Sch. 2)

F5376 Words in s. 821(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 330(c)** (with Sch. 2)

F5377 Words in s. 821(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 330(d)** (with Sch. 2)

F5378 Words in s. 821(1)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 330(e)** (with Sch. 2)

F5379 Words in s. 821(1)(a) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 22**

F5380 Words in s. 821(1)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 330(f), **Sch. 3** (with Sch. 2)

F5381 S. 821(3)(aa) inserted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), **Sch. 7 para. 36(7)**; S.I. 1989/816 art. 2

F5382 S. 821(3)(c) and preceding word repealed (with effect in accordance with Sch. 18 Pt. 6(2) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(2)**

Marginal Citations

M1093 Source—1970 s.521; 1972 Sch.24 29; 1983 s.27.

822 Over-deductions from interest on loan capital etc. made before passing of annual Act.

M1094 (1) If in any year of assessment ("the year") a resolution having statutory effect under the Provisional Collection of Taxes Act 1968 provides for the charging of income tax at a **[**F5383 lower rate less**]** than that charged for the previous year, the following provisions of this section shall have effect with respect to deductions in respect of income tax by any body corporate, from payments of interest (not being a distribution) on any of its securities.

(2) Any deduction which was made before the expiration of one month from the passing of the resolution and which would, if the tax had been renewed at the rate imposed for the previous year, have been a legal deduction, shall be deemed to be a deduction rendered legal by section 2 of the Provisional Collection of Taxes Act 1968 and that section shall, subject to this section, apply accordingly.

(3) Any over-deduction to be made good under that section may be made good by a reduction of the amount of tax deducted from the next payment of like nature made on the security in question after the passing of the Act imposing the tax for the year.

(4) Any amount made good under section 2 of the Provisional Collection of Taxes Act 1968 shall—

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(a) in the case of an over-deduction which is made good under subsection (3) above, enure to the benefit of the person entitled to the payment on the occasion of which the over-deduction is made good; and

(b) in any other case, enure to the benefit of the person entitled to the security in question at the date when the amount is made good,

irrespective, in either case, of whether or not he is the person who was entitled to the payment, or to the security at the date when the original deduction was made.

(5) Subsection (3) above shall not authorise the retention of any part of the amount over-deducted for more than one year from the passing of the Act imposing the tax for the year.

Textual Amendments

F5383 Words in s. 822(1) substituted (with effect in accordance with Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 23**

Marginal Citations

M1094 Source—1970 s.522; 1971 Sch.6 76; 1972 Sch.24 30

823 Adjustments of reliefs where given at different times.

M1095 Where under the provisions of the Income Tax Acts an individual—

(a) is entitled to claim relief from income tax (other than relief in respect of life insurance premiums), by repayment or otherwise, in respect of—

(i) any amount which is paid or borne by him out of his income or which is allowable or may be deducted from his income; or

(ii) any reduction of an assessment relating to his income or any part of his income; or

(iii) any adjustment or set-off with regard to a loss; and

(b) claims that relief for any year of assessment,

any relief granted shall not extend so as to make the total income tax paid or payable by him for that year less than it would have been if the amount in respect of which relief is claimed had been deducted in computing his total income for that year and the amount of any other deductions or reliefs to which he is entitled for that year had been determined accordingly.

Marginal Citations

M1095 Source—1970 s.523

824 Repayment supplements: individuals and others.

[F5384(1) Subject to the following provisions of this section, a repayment made by the Board or an officer of the Board of any of the following, namely—

(a) an amount paid on account of income tax under section 59A of the Management Act;

(b) any income tax paid by or on behalf of an individual for a year of assessment;

(c) a surcharge imposed under section 59C of that Act; and

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(d) a penalty incurred by an individual under any of the provisions of that Act,

shall be increased under this section by an amount (a "repayment supplement") equal to interest on the amount repaid at the rate applicable under section 178 of the Finance Act 1989 for the period (if any) between the relevant time and the date on which the order for the repayment is issued.**]**

[F5385F5386(1A) . . . . . .**]**

(2) **[**F5387M1096Subsections (1) F5388. . . **]** above shall with the necessary modifications apply to a payment of the whole or part of a tax credit as **[**F5389they apply to a repayment falling within subsection (1)**]** of income tax paid in the year of assessment to which the tax credit relates.

[F5390F5391(2A) Subsection (1) above shall apply to a repayment made in consequence of a claim under section 228 of the Income Tax Act 1952 (relief in respect of income accumulated under trusts) as if the repayment were of income tax paid by the claimant for the year of assessment in which the contingency mentioned in that section happened.**]**

[F5392(2B) Subsection (1) above shall apply to a payment made by the Board under section 375(8) (payment of amount which borrower would have been able to deduct from interest payment under section 369(1)) as if the payment were a repayment falling within that subsection.**]**

[F5390(2C) Subsection (1) above shall apply to a repayment made by the Board as a result of a claim for relief under—

(a) paragraph 2 of Schedule 1B to the Management Act (carry back of loss relief),

(b) paragraph 3 of that Schedule (relief for fluctuating profits of farming etc.), or

(c) Schedule 4A to this Act (relief for fluctuating profits of creative artists etc.),

as if it were a repayment falling within that subsection.**]**

[F5393(3) For the purposes of subsection (1) above—

[F5394(aa) if the repayment is a payment made by the Board under section 375(8), the relevant time is—

(i) if the interest payment was made in the year 1996-97 or a subsequent year of assessment, the 31st January next following that year;

(ii) if the interest payment was made in an earlier year of assessment, the 5th April next following that year;**]**

[F5395(ab) if the repayment is a repayment as a result of a claim for relief under any of the provisions mentioned in subsection (2C) above, the relevant time is the 31st January next following the year that is the later year in relation to the claim;**]**

[F5396(a) if the repayment is—

(i) the repayment of an amount paid in accordance with the requirements of section 59A of the Management Act on account of income tax for a year of assessment, or

(ii) the repayment of income tax for such a year which is not income tax deducted at source,

the relevant time is the date of the payment that is being repaid;

(b) if the repayment is of income tax deducted at source for a year of assessment, the relevant time is the 31st January next following that year; and**]**

(c) if the repayment is of a penalty or surcharge, **[**F5397the relevant time is the date on which the penalty or surcharge was paid**].]**

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[F5398(4) For the purposes of subsection (3) above, where a repayment in respect of income tax for a year of assessment is made to any person, that repayment—

(a) shall be attributed first to so much of any payment made by him under section 59B of the Management Act as is a payment in respect of income tax for that year;

(b) in so far as it exceeds the amount (if any) to which it is attributable under paragraph (a) above, shall be attributed in two equal parts to each of the payments made by him under section 59A of the Management Act on account of income tax for that year;

(c) in so far as it exceeds the amounts (if any) to which it is attributable under paragraphs (a) and (b) above, shall be attributed to income tax deducted at source for that year; and

(d) in so far as it is attributable to a payment made in instalments shall be attributed to a later instalment before being attributed to an earlier one.

(4A) In this section any reference to income tax deducted at source for a year of assessment is a reference to—

(a) income tax deducted or treated as deducted from any income, or treated as paid on any income, in respect of that year, and

(b) amounts which, in respect of that year, are tax credits to which **[**F5399section 397(1) of ITTOIA 2005**]** applies,

but does not include a reference to amounts which, in that year, are deducted at source under **[**F5400PAYE regulations**]** in respect of previous years.**]**

(5) F5401. . . . . .

(6) **[**F5402F5403. . . **]** The Treasury may by order from time to time increase or decrease the rate of interestby reference to which—

(a) repayment supplements are calculated under subsection (1) above; and

(b) repayment supplements are calculated under section 47 of the Finance (No. 2) Act 1975.

(7) A repayment supplement shall not be payable under this section in respect of a repayment or payment made in consequence of an order or judgment of a court having power to allow interest on the repayment or payment, or in respect of a repayment of a post-war credit within the meaning of the Income Tax (Repayment of Post-War Credits) Act 1959.

(8) F5404. . . . . .

(9) M1097Subsections (1) **[**F5405to (7)**]** above shall apply in relation to F5406. . . **[**F5407the trustees of a settlement**][**F5408or personal representatives F5406. . . **]** as they apply in relation to an individual.

(10) F5409. . . . . .

Textual Amendments

F5384 S. 824(1) substituted (with effect in accordance with s. 199(2)(3), Sch. 19 para. 41(4) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 41(1)**; S.I. 1998/3173, **art. 2**

F5385 S. 824(1A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(b)**

F5386 S. 824(1A) repealed (from 18.8.1989) by Finance Act 1989 (c. 26), ss. 178(7), 187, **Sch. 17 Pt. 10**, Note; S.I. 1989/1298

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F5387 Words in s. 824(2) substituted (retrospectively) by Finance Act 1988 (c. 39) s. 146, Sch.13 para.7(c)
F5388 Words in s. 824(2) repealed (on and after 18.8.1989) by Finance Act 1989 (c. 26), ss. 178(7), 187, **Sch.17 Part 10**; S.I. 1989/1298
F5389 Words in s. 824(2) substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, **Sch.13 para.7(c)**
F5390 S. 824(2C) inserted (with effect in accordance with s. 90(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 90(2)**
F5391 S. 824(2A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(d)**
F5392 S. 824(2B) inserted (retrospectively, with effect in accordance with s. 41(4)-(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 41(2)**
F5393 S. 824(3) substituted (with effect in accordance with s. 199(2)(3), Sch. 19 para. 41(4) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 41(2)**; S.I. 1998/3173, **art. 2**
F5394 S. 824(3)(aa) inserted (retrospectively, with effect in accordance with s. 41(4)-(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 41(3)**
F5395 S. 824(3)(ab) inserted (with effect in accordance with s. 90(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 90(3)**
F5396 S. 824(3)(a)(b) substituted (with effect in accordance with s. 92(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 92(2)**
F5397 Words in s. 824(3)(c) substituted (with effect in accordance with s. 92(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 92(3)**
F5398 S. 824(4)(4A) substituted for s. 824(4) (with effect in accordance with s. 92(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 92(4)**
F5399 Words in s. 824(4A)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 331(2)** (with Sch. 2)
F5400 Words in s. 824(4A) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 104** (with Sch. 7)
F5401 S. 824(5) repealed (with effect in accordance with s. 199(2)(3), Sch. 19 para. 41(4) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 19 para. 41(3)(a), **Sch. 26 Pt. 5(23)**, Note 3; S.I. 1998/3173, **art. 2**
F5402 Words in s. 824(6) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(f)**
F5403 Words in s. 824(6) repealed (from 18.8.1989) by Finance Act 1989 (c. 26), ss. 178(7), 187, **Sch. 17 Pt. 10**, Note; S.I. 1989/1298
F5404 S. 824(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 331(3), **Sch. 3** (with Sch. 2)
F5405 Words in s. 824(9) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 331(4)** (with Sch. 2)
F5406 Words in s. 824(9) repealed (with effect in accordance with s. 199(2)(3), Sch. 19 para. 41(4) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 19 para. 41(3)(b), **Sch. 26 Pt. 5(23)**, Note 3; S.I. 1998/3173, **art. 2**
F5407 Words in s. 824(9) substituted (1989-90 and subsequent years) by Finance Act 1989 (c. 26), **s. 110(5)(6)-(9)**
F5408 Words in s. 824(9) substituted (1989-90 and subsequent years) by Finance Act 1989 (c. 26), **s. 111(4)(5)-(8)**
F5409 S. 824(10) repealed (with effect in accordance with s. 199(2)(3), Sch. 19 para. 41(4) of the repealing Act) by Finance Act 1994 (c. 9), Sch. 19 para. 41(3)(c), **Sch. 26 Pt. 5(23)**, Note 3; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

C873 S. 824 excluded (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by Finance Act 1993 (c. 34), ss. 173, 184(3), **Sch. 19 Pt. III para. 13(4)**
C874 S. 824 excluded (2.1.1996) by The Lloyd's Underwriters (Gilt-edged Securities) (Periodic Accounting for Tax on Interest) Regulations 1995 (S.I. 1995/3225), **reg. 12(2)** (with reg. 13)
C875 S. 824 excluded (27.12.2005 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd's Underwriters (Tax) Regulations 2005 (S.I. 2005/3338), **regs. 1(1)**, 14(4)

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C876 S. 824(3) modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 108**

Marginal Citations

M1096 Source—1975 (No.2) s.47(3)(a)

M1097 Source—1975 (No.2) s.47(11), (12).

825 Repayment supplements: companies.

(1) M1098 This section applies to the following payments made to a company in connection with any accounting period for which the company was resident in the United Kingdom ("the relevant accounting period"), that is to say—

(a) a repayment of corporation tax paid by the company for that accounting period (including advance corporation tax paid in respect of distributions made by the company in that accounting period *and any sum paid in respect of that period on an assessment under section* 430(7)(a)) F5410; or

(b) a repayment of income tax in respect of a payment received by the company in that accounting period on which the company bore income tax by deduction; or

(c) a payment of the whole or part of the tax credit comprised in any franked investment income received by the company in that accounting period.

(2) Subject to the following provisions of this section, where a payment F5411 . . . to which this section applies is made by the Board or an inspector after the end of the 12 months beginning with the material date, the payment shall be increased under this section by an amount (a "repayment supplement") equal to interest on the amount paid at the **[**F5412 rate applicable under section 178 of the Finance Act 1989**]** for each complete tax month contained in the period (if any) beginning with the relevant date and ending at the end of the tax month in which the order for the payment is issued.

[F5413 (2A) *In relation to any complete tax month beginning before* 6th *April* 1974 *which is contained in the last-mentioned period, subsection* (2) *above shall have effect as if the rate of interest specified in it were* 6 *per cent. per annum (instead of the rate so specified or any other rate in force by virtue of subsection* (5) *below or section* 48(6) *of the Finance* (No.2) Act 1975). F5414**]**

(3) M1099 For the purposes of subsection (2) above—

(a) if the payment is a repayment of corporation tax that was paid on or after the first anniversary of the material date, the relevant date is the anniversary of the material date that occurs next after the date on which that tax was paid;

(b) in any other case, the relevant date is the first anniversary of the material date;

and where a payment to which this section applies is a repayment of corporation tax paid by a company on different dates, the payment shall as far as possible be treated for the purposes of this subsection as a repayment of tax paid on a later rather than an earlier date among those dates.

(4) For the purposes of this section—

(a) a repayment of corporation tax made in consequence of a claim by a company under section 239(3) to have the whole or any part of an amount of surplus advance corporation tax arising in the case of any accounting period treated as if it were advance corporation tax paid in respect of distributions made by the company in any earlier accounting period shall be treated as a repayment

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of corporation tax paid for the accounting period in the case of which that amount of surplus advance corporation tax arose; and

(b) a repayment of income tax or corporation tax made on a claim under subsection (4) of section 419 shall be treated as if it were a repayment of corporation tax paid for the accounting period in which the repayment of, or of the part in question of, the loan or advance mentioned in that subsection was made. **[**F5415and

(c) a repayment of corporation tax or income tax falling to be made as a result of a claim under section 393A(1) to have the whole or any part of a loss incurred in an accounting period set off against profits of an earlier accounting period ("the earlier period")—

(i) shall, in a case where the earlier period falls wholly within the period of twelve months immediately preceding the accounting period in which the loss was incurred, be treated as a repayment of tax paid for the earlier period; and

(ii) in any other case, shall be treated as a repayment of tax paid for the accounting period in which the loss is incurred; and

F5416(d) . . . . . .**]**

(5) ***[***F5417*Without prejudice to subsection* (2A)*above****]*** the Treasury may by order from time to time increase or decrease the rate of interest by reference to which repayment supplements are calculated under subsection (2) above.

(6) A repayment supplement shall not be payable under this section in respect of a payment made in consequence of an order or judgment of a court having power to allow interest on the payment.

(7) A repayment supplement paid under this section shall be disregarded for all purposes of income tax and corporation tax.

(8) In this section—

"tax month" means the period beginning with the 6th day of any calendar month and ending with the 5th day of the following calendar month;

"the material date" in relation to a payment to which this section applies, means the last date on which corporation tax on any of the profits of the company in question arising in the relevant accounting period could have been paid—

(a) in a case where section 10(1) applies, within the nine months there mentioned;

(b) in a case where section 478 applies, within the time limit imposed by subsection (2)(a) of that section, but subject to subsection (6) of that section.

(9) This section has effect subject to section 826(8).

Textual Amendments

F5410 Words in s. 825(1)(a) repealed (for accounting periods beginning after 31.3.1989) by Finance Act 1989 (c. 26), s. 187, **Sch. 17 Pt. V**, Note 6

F5411 Words in s. 825(2) repealed (with effect in relation to payments made on and after 6.4.1993) by Finance Act 1989 (c. 26), ss. 158(2), 187, **Sch. 17 Pt. 8**, Note 5; S.I. 1993/753

F5412 Words in s. 825(2) substituted (from 18.8.1989) by Finance Act 1989 (c. 26), **s. 179(1)(a)(vii)**; S.I. 1989/1298

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F5413 S. 825(2A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **8(a)**
F5414 *Repealed by* 1989 s.178(7)*and* 187*and* Sch.17 Part X*from* 18*August* 1989 (*see* S.I. 1989 No.1298).
F5415 Words in s. 825(4) added by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para.22**
F5416 S. 825(4)(d) repealed (with effect in accordance with s. 20 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 8 Pt. 2(4)**, Note
F5417 Words in s. 825(2A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **8(b)**

Modifications etc. (not altering text)
C877 S. 825(4)(a) modified (27.7.1993) by Finance Act 1993 (c. 34), s. 120, **Sch. 14 para. 10(6)**
S. 825(4)(a) modified (1.5.1995) by Finance Act 1995 (c. 4), s. 120, **Sch. 24 para. 12(5)**
C878 *See* Table I*in* Vol.1*and see* 1989 s.178*for further regulation making powers and* Part III Vol.5*for regulations.*
C879 *And see* Sch.30 para.1(9).

Marginal Citations
M1098 Source—1975 (No.2) s.48(1), (2)
M1099 Source—1975 (No.2) s.48(4)-(9)

826 Interest on tax overpaid.

M1100(1) In any case where—

(a) a repayment falls to be made of corporation tax paid by a company for an accounting period which ends after the appointed day; or

[F5418(aa) a repayment falls to be made under sections 246N and 246Q of advance corporation tax paid by a company in respect of distributions made by it in such an accounting period; or**]**

(b) a repayment of income tax falls to be made in respect of a payment received by a company in such an accounting period; or

(c) a payment falls to be made to a company of the whole or part of the tax credit comprised in any franked investment income received by the company in such an accounting period **[**F5419; or

(d) a payment of R&D tax credit falls to be made to a company under Schedule 20 to the Finance Act 2000 in respect of an accounting period**][**F5420; or

[F5421(da) a payment of a tax credit falls to be made to a company under Schedule 13 to the Finance Act 2002 in respect of an accounting period, or**]**

(e) a payment of land remediation tax credit or life assurance company tax credit falls to be made to a company under Schedule 22 to the Finance Act 2001 in respect of an accounting period,**]**

then, from the material date until **[**F5422the order for repayment or payment is issued**]**, the repayment or payment shall carry interest at the rate which, under section 89 of the Management Act, is for the time being the prescribed rate for the purposes of this section.

(2) **[**F5423Subject to section 826A(2),**]** in relation to corporation tax paid by a company for an accounting period, the material date for the purposes of this section is the date on which corporation tax was paid or, if it is later, the date on which corporation tax for that accounting period became (or, as the case may be, would have become) due and payable in accordance with **[**F5424section 59D of the Management Act (payment of corporation tax)**]**.

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[F5425(2A) F5426. . . . . **]**

(3) In relation to a repayment of income tax falling within subsection (1)(b) above or a payment of the whole or part of a tax credit falling within subsection (1)(c) above, **[**F5427the material date is the day after the end of the accounting period**]** in which the payment referred to in subsection (1)(b) above or, as the case may be, the franked investment income referred to in subsection (1)(c) above was received by the company.

[F5428(3A) In relation to a payment of R&D tax credit falling within subsection (1)(d) above the material date is whichever is the later of—

(a) the filing date for the company's company tax return for the accounting period for which the R&D tax credit is claimed, and

(b) the date on which the company tax return or amended company tax return containing the claim for payment of the R&D tax credit is delivered to the Inland Revenue.

For this purpose "the filing date", in relation to a company tax return, has the same meaning as in Schedule 18 to the M1101Finance Act 1998.**]**

[F5429(3AA) In relation to a payment of tax credit falling within subsection (1)(da) above, the material date is whichever is the later of—

(a) the filing date for the company's company tax return for the accounting period for which the tax credit is claimed, and

(b) the date on which the company tax return or amended company tax return containing the claim for payment of the tax credit is delivered to the Inland Revenue.

For this purpose "the filing date", in relation to a company tax return, has the same meaning as in Schedule 18 to the Finance Act 1998.**]**

[F5430(3B) In relation to a payment of land remediation tax credit or life assurance company tax credit falling within subsection (1)(e) above the material date is whichever is the later of—

(a) the filing date for the company's company tax return for the accounting period for which the land remediation tax credit or the life assurance company tax credit is claimed, and

(b) the date on which the company tax return or amended company tax return containing the claim for payment of the land remediation tax credit or the life assurance company tax credit is delivered to the Inland Revenue.

For this purpose "the filing date", in relation to a company tax return, has the same meaning as in Schedule 18 to the Finance Act 1998.**]**

(4) For the purposes of this section a repayment of tax made on a claim under section 419(4) shall be treated as if it were a repayment of corporation tax for the accounting period in which **[**F5431the event giving rise to entitlement to relief under section 419(4) occurred**]** but, in relation to such a repayment of tax, the material date for the purposes of this section is—

[F5432(a) the date when the entitlement to relief in respect of the repayment accrued, that is to say—

(i) where the repayment **[**F5433, or the release or writing off,**]** of the loan or advance (or part thereof) occurred on or after the day mentioned in

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section 419(4A), the date nine months after the end of that accounting period; and

(ii) in any other case, the date nine months after the end of the accounting period in which the loan or advance was made;

or**]**

(b) if it is later, the date on which the tax which is to be repaid was in fact paid.

(5) Interest paid under this section—

[F5434(a)**]** shall be paid without any deduction of income tax and

[F5435(b)**]** **[**F5436subject to subsection (5A) below,**]** shall not be brought into account in computing any profits or income.

[F5437(5A) Paragraph (b) of subsection (5) above does not apply in relation to interest payable to a company within the charge to corporation tax.**]**

(6) Where a repayment of corporation tax is a repayment of tax paid by a company on different dates, the repayment shall so far as possible be treated for the purposes of this section as a repayment of tax paid on a later rather than an earlier date among those dates.

(7) F5438 . . . . . .

[F5439F5440(7A) In any case where—

(a) a company carrying on a trade incurs a loss in the trade in an accounting period ("the later period"),

(b) as a result of a claim under section 393A(1), the whole or any part of that loss is set off for the purposes of corporation tax against profits (of whatever description) of an earlier accounting period ("the earlier period") which does not fall wholly within the period of twelve months immediately preceding the later period, and

(c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that accounting period,

then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of **[**F5441so much of the amount of that repayment as falls to be made**]]** as a result of the claim under section 393A(1), except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, **[**F5442as mentioned in subsection (7D) below**]**.

[F5439(7AA) F5443 . . . . . .**]**

F5444(7B) . . . . . .

[F5445(7BB) Subject to subsection (7BC) below, in any case where—

(a) within the meaning of section 806D, any relievable underlying tax or relievable withholding tax arises in an accounting period of a company ("the later period"),

(b) pursuant to a claim under section 806G, the whole or any part of that tax is treated as mentioned in section 806D(4)(c) or (5)(c) in relation to the single related dividend or the single unrelated dividend arising in an earlier accounting period ("the earlier period"), and

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(c) a repayment falls to be made of corporation tax paid for the earlier period or of income tax in respect of a payment received by the company in that period,

then, in determining the amount of interest (if any) payable under this section on the repayment referred to in paragraph (c) above, no account shall be taken of so much of the amount of the repayment as falls to be made as a result of the claim under section 806G, except so far as concerns interest for any time after the date on which any corporation tax for the later period became due and payable (as mentioned in subsection (7D) below).

(7BC) Where, in a case falling within subsection (7A)(a) and (b) above—

(a) as a result of the claim under section 393A(1), an amount or increased amount of eligible unrelieved foreign tax arises for the purposes of section 806A(1), and

(b) pursuant to a claim under section 806G, the whole or any part of an amount of relievable underlying tax or relievable withholding tax is treated as mentioned in section 806D(4)(c) or (5)(c) in relation to the single related dividend or the single unrelated dividend arising in an accounting period before the earlier period,

then subsection (7BB) above shall have effect in relation to the claim under section 806G as if the reference in the words after paragraph (c) to the later period within the meaning of that subsection were a reference to the period which, in relation to the claim under section 393A(1), would be the later period for the purposes of subsection (7A) above.**]**

[F5446(7C) In a case where—

(a) there is for an accounting period of a company ("the later period") **[**F5447a non-trading deficit on the company's loan relationships,**]**

(b) as a result of a claim under **[**F5448section 83(2)(c) of the Finance Act 1996 or paragraph 4(3) of Schedule 11 to that Act the whole or part of the deficit for the later period is set off against profits**]** of an earlier accounting period ("the earlier period"), and

(c) a repayment falls to be made of corporation tax for the earlier period **[**F5449or of income tax in respect of a payment received by the company in that accounting period**]**,

then, in determining the amount of interest (if any) payable under this section on the **[**F5450repayment referred to in paragraph (c) above, no account shall be taken of so much of the amount of the repayment as falls to be made as a result of**]** the claim under **[**F5451section 83(2)(c) of that Act or, as the case may be, paragraph 4(3) of Schedule 11 to that Act**]** except so far as concerns interest for any time after the date on which any corporation tax for the later period became (or, as the case may be, would have become) due and payable, **[**F5442as mentioned in subsection (7D) below**].]**

. . . . . .)**]**

[F5454(7D) In subsections (7), (7A), (7B) **[**F5455, (7BB)**]** and (7C) above, any reference to the date on which corporation tax for an accounting period became, or would have become, due and payable shall be construed on the basis that corporation tax for an accounting period becomes due and payable on the day following the expiry of nine months from the end of the accounting period.**]**

[F5456(7E) The power conferred by section 59E of the Management Act (alteration of date on which corporation tax becomes due and payable) does not include power to make provision in relation to subsection (7), (7A), (7B), **[**F5457(7BB),**]** (7C) or (7D) above

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the effect of which would be to change the meaning of references in subsection (7), (7A), (7B) **[**F5457, (7BB)**]** or (7C) above to the date on which corporation tax for an accounting period became, or would have become, due and payable (as mentioned in subsection (7D) above).**]**

(8) In consequence of the preceding provisions of this section, no repayment supplement (within the meaning of section 825) shall be paid in respect of any repayment of tax or payment of tax credit where the relevant accounting period (within the meaning of that section) ends after the appointed day.

[F5458(8A) Where—

(a) interest has been paid to a company under subsection (1)(a) **[**F5459**[**F5460, (d), (da)**]][**F5461or (e)**]** above,

[F5462(b) there is—

(i) a change in the company's assessed liability to corporation tax, or

(ii) a change in the amount of the R&D tax credit **[**F5463, tax credit under Schedule 13 to the Finance Act 2002**][**F5464, land remediation tax credit or life assurance company tax credit**]** payable to the company (which does not result in a change falling within sub-paragraph (i)),

other than a change which in whole or in part corrects an error made by the Board or an officer of the Board, and**]**

(c) as a result only of that change (and, in particular, not as a result of any error in the calculation of the interest), it appears to an officer of the Board that the interest ought not to have been paid, either at all or to any extent,

the interest that ought not to have been paid may be recovered from the company as if it were interest charged under Part IX of the Management Act (interest on overdue tax).

(8B) For the purposes of subsection (8A) above, the cases where there is a change in a company's assessed liability to corporation tax are those cases where—

(a) an assessment, or an amendment of an assessment, of the amount of corporation tax payable by the company for the accounting period in question is made, or

(b) a determination of that amount is made under paragraph 36 or 37 of Schedule 18 to the Finance Act 1998 (which until superseded by a self-assessment under that Schedule has effect as if it were one),

whether or not any previous assessment or determination has been made.

[F5465(8BA) For the purposes of subsection (8A)(b) above, the cases where there is a change in the amount of the R&D tax credit **[**F5466, tax credit under Schedule 13 to the Finance Act 2002**][**F5467, the land remediation tax credit or the life assurance company tax credit**]** payable to the company are those cases where an assessment, or an amendment to an assessment, is made to recover an amount of R&D tax credit **[**F5466, tax credit under Schedule 13 to the Finance Act 2002**][**F5468, land remediation tax credit or life assurance company tax credit**]** paid to the company for the accounting period in question.**]**

(8C) In subsection (8A)(b) above "error" includes—

(a) any computational error; and

(b) the allowance of a claim or election which ought not to have been allowed.**]**

(9) In this section "the appointed day" means such day or days, not being earlier than 31st March 1992, as the Treasury may by order appoint for the purposes of this section.

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Subordinate Legislation Made

P7 S. 826(1)(8)(9) power exercised: 30.9.1993 appointed by S.I. 1992/3066, **art. 2(2)(b)**

Textual Amendments

F5418 S. 826(1)(aa) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 20(2)**

F5419 S. 826(1)(d) and preceding word inserted (with effect in accordance with s. 69(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 21 para. 1(2)**

F5420 S. 826(1)(e) and preceding word inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 23 para. 3(2)**

F5421 S. 826(1)(da) inserted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 14 para. 1(2)**

F5422 Words in s. 826(1) substituted (retrospectively) by Finance Act 1989 (c. 26), **s. 180(6)(7)**

F5423 Words in s. 826(2) inserted (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 4 para. 1(1)**

F5424 Words in s. 826(2) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 42**; S.I. 1998/3173, **art. 2**

F5425 S. 826(2A) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 20(3)**

F5426 S. 826(2A) repealed (with effect in accordance with Sch. 3 para. 38(5) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 38(2), **Sch. 27 Pt. 3(2)**, Note

F5427 Words in s. 826(3) substituted (with effect in accordance with Sch. 4 para. 2(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 2(1)**

F5428 S. 826(3A) inserted (with effect in accordance with s. 69(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 21 para. 1(3)**

F5429 S. 826(3AA) inserted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 14 para. 1(3)**

F5430 S. 826(3B) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 23 para. 3(3)**

F5431 Words in s. 826(4) substituted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 90(1)(a)**

F5432 S. 826(4)(a) substituted (with effect in accordance with s. 173(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 173(5)**

F5433 Words in s. 826(4)(a)(i) inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 90(1)(b)**

F5434 Words in s. 826(5) re-numbered as s. 826(5)(a) (31.7.1998) by virtue of Finance Act 1998 (c. 36), **s. 34(2)(a)**

F5435 Words in s. 826(5) re-numbered as s. 826(5)(b) (31.7.1998) by virtue of Finance Act 1998 (c. 36), **s. 34(2)(b)**

F5436 Words in s. 826(5)(b) inserted (with effect in accordance with s. 34(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 34(3)**

F5437 S. 826(5A) inserted (with effect in accordance with s. 34(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 34(4)**

F5438 S. 826(7) repealed (with effect in accordance with Sch. 3 para. 38(6) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 38(3), **Sch. 27 Pt. 3(2)**, Note

F5439 S. 826(7AA) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(3)(5)**

F5440 S. 826(7A)(7B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 23**

F5441 Words in s. 826(7A) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(2)**

F5442 Words in s. 826(7)(7A)(7B)(7C) substituted (with effect in accordance with Sch. 4 para. 5(5)(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 5(2)**

F5443 S. 826(7AA)(7CA) repealed (with effect in accordance with Sch. 3 para. 38(7) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 38(4), **Sch. 27 Pt. 3(2)**, Note

F5444 S. 826(7B) repealed (with effect in accordance with s. 20 of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 8 Pt. 2(4)**, Note

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F5445 S. 826(7BB)(7BC) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 30 para. 29(2)**
F5446 S. 826(7C) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.5**
F5447 Words in s. 826(7C)(a) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 48(1)(a)** (with Sch. 15)
F5448 Words in s. 826(7C)(b) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 48(1)(b)** (with Sch. 15)
F5449 Words in s. 826(7C)(c) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 24 para. 11(a)**
F5450 Words in s. 826(7C) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 24 para. 11(b)**
F5451 Words in s. 826(7C) substituted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 48(1)(c)** (with Sch. 15)
F5452 S. 826(7CA) inserted (with effect in accordance with Sch. 24 para. 12(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 24 para. 12(2)**
F5453 S. 826(7AA)(7CA) repealed (with effect in accordance with Sch. 3 para. 38(7) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 38(4), **Sch. 27 Pt. 3(2)**, Note
F5454 S. 826(7D) inserted (with effect in accordance with Sch. 4 para. 5(5)(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 5(3)**
F5455 Words in s. 826(7D) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 30 para. 29(3)**
F5456 S. 826(7E) inserted (with effect in accordance with Sch. 4 para. 5(5)(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 5(4)**
F5457 Words in s. 826(7E) inserted (28.7.2000) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 29(4)**
F5458 S. 826(8A)-(8C) inserted (with effect in accordance with Sch. 4 para. 3(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 4 para. 3(1)**
F5459 Words in s. 826(8A)(a) inserted (with effect in accordance with s. 69(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 21 para. 1(4)(a)**
F5460 Words in s. 826(8A)(a) substituted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 14 para. 1(4)(a)**
F5461 Words in s. 826(8A)(a) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 23 para. 3(4)(a)**
F5462 S. 826(8A)(b) substituted (with effect in accordance with s. 69(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 21 para. 1(4)(b)**
F5463 Words in s. 826(8A)(b)(ii) inserted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 14 para. 1(4)(b)**
F5464 Words in s. 826(8A)(b)(ii) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 23 para. 3(4)(b)**
F5465 S. 826(8BA) inserted (with effect in accordance with s. 69(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 21 para. 1(5)**
F5466 Words in s. 826(8BA) inserted (with effect in accordance with Sch. 14 para. 5 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 14 para. 1(5)**
F5467 Words in s. 826(8BA) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 23 para. 3(5)(a)**
F5468 Words in s. 826(8BA) inserted (with effect in accordance with s. 70(1) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 23 para. 3(5)(b)**

Modifications etc. (not altering text)

C880 S. 826 excluded (2.1.1996) by The Lloyd's Underwriters (Gilt-edged Securities) (Periodic Accounting for Tax on Interest) Regulations 1995 (S.I. 1995/3225), **reg. 12(2)** (with reg. 13)
C881 S. 826 applied (with modifications) (7.1.1999 in accordance with reg. 1(2) of the affecting S.I.) by The Corporation Tax (Instalment Payments) Regulations 1998 (S.I. 1998/3175), **reg. 8** (as amended by: S.I. 2005/889, **regs. 1(1)(3)**, 7; S.I. 2011/1785, **regs. 1**, 11; S.I. 2017/1072, **regs. 1**, 10)
C882 S. 826 excluded (27.12.2005 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Lloyd's Underwriters (Tax) Regulations 2005 (S.I. 2005/3338), **regs. 1(1)**, 14(4)(6)(b)

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Marginal Citations

M1100 Source—1987 (No.2) s.87

M1101 1998 c. 36.

[F5469 826A Interest on payments in respect of corporation tax and meaning of "the material date".

(1) The Treasury may by regulations make provision applying section 826, with such modifications as may be prescribed, for the purpose of conferring on companies of such descriptions as may be prescribed a right to interest—

(a) on such payments made by them in respect of corporation tax as may be prescribed,

(b) at the rate applicable under section 178 of the M1102 Finance Act 1989, and

(c) for such period as may be prescribed,

and for treating any such interest for the purposes, or prescribed purposes, of the Tax Acts as interest under section 826(1)(a) on a repayment of corporation tax.

(2) The Treasury may by regulations make provision modifying section 826(2) in relation to companies of such description as may be prescribed.

(3) Subsections (1) and (2) above do not apply in relation to companies in relation to which section 826(2) is modified or otherwise affected by regulations under section 59E of the Management Act (alteration of date on which corporation tax becomes due and payable) in relation to the accounting period to which the corporation tax in question relates.

(4) Where the Treasury make regulations under subsection (2) above in relation to companies of any description, they may also make regulations modifying section 59DA(2) of the Management Act in relation to those companies, or any description of such companies, by varying the date before which the claim there mentioned may not be made.

(5) Regulations under this section—

(a) may make different provision in relation to different cases or circumstances or in relation to companies or accounting periods of different descriptions;

(b) may make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(6) Regulations under this section may not make provision in relation to accounting periods ending before the day appointed under section 199 of the M1103 Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (corporation tax self-assessment).

(7) In this section "prescribed" means prescribed by regulations made under this section.]

Textual Amendments

F5469 S. 826A inserted (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 4 para. 1(2)**

Marginal Citations

M1102 1989 c. 26.

M1103 1994 c. 9.

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827 VAT penalties etc.

M1104(1) Where, under **[**F5470Part IV of the Value Added Tax Act 1994**]**, a person is liable to make a payment by way of—

(a) penalty under any of sections **[**F5471 60 to 70**]**; or

(b) interest under section **[**F5472 74**]**; or

(c) surcharge under section **[**F5472 59**]**;

the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473 for any corporation tax purposes (but see also subsection (3)(a) below)**]**.

[F5474(1A) Where a person is liable to make a payment by way of a penalty under any of sections 8 to 11 of the Finance Act 1994 (penalties relating to excise), that payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473 for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

[F5475(1B) Where a person is liable to make a payment by way of—

(a) penalty under any of paragraphs 12 to 19 of Schedule 7 to the Finance Act 1994 (insurance premium tax), or

(b) interest under paragraph 21 of that Schedule,

the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473 for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

[F5476(1C) Where a person is liable to make a payment by way of—

(a) penalty under Part V of Schedule 5 to the Finance Act 1996 (landfill tax), or

(b) interest under paragraph 26 or 27 of that Schedule,

the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473 for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

[F5477(1D) Where a person is liable to make a payment by way of—

(a) any penalty under any provision of Schedule 6 to the Finance Act 2000 (climate change levy),

(b) interest under paragraph 70 of that Schedule (interest on recoverable overpayments etc.),

(c) interest under any of paragraphs 81 to 85 of that Schedule (interest on climate change levy due and on interest), or

(d) interest under paragraph 109 of that Schedule (interest on penalties),

the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473 for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

[F5478(1E) Where a person is liable to make a payment by way of—

(a) any penalty under any provision of Part 2 of the Finance Act 2001 (aggregates levy),

(b) interest under any of paragraphs 5 to 9 of Schedule 5 to that Act (interest on aggregates levy due and on interest),

(c) interest under paragraph 6 of Schedule 8 to that Act (interest on recoverable overpayments etc.), or

(d) interest under paragraph 5 of Schedule 10 to that Act (interest on penalties),

the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473 for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

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[F5479(1F) Where a person is liable to make a payment by way of a penalty under section 25 or 26 of the Finance Act 2003 (evasion of, or contravention of relevant rule relating to, certain taxes and duties under the management of the Commissioners of Customs and Excise etc) the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

[F5480(1G) Where a person is liable to make a payment by way of—

(a) any penalty under Part 4 of the Finance Act 2003 (stamp duty land tax), or

(b) interest under any provision of that Part,

the payment shall not be allowed as a deduction in computing any income, profits or losses **[**F5473for any corporation tax purposes (but see also subsection (3)(a) below)**]**.**]**

(2) A sum paid to any person by way of supplement under section **[**F5481179 of that Act**]** shall be disregarded for all purposes of corporation tax **[**F5482(but see also subsection (3)(b) below)**]**.

[F5483(3) For income tax purposes—

(a) provision corresponding to that made by this section (other than subsection (2) above) is made by sections 54 and 869 of ITTOIA 2005, and

(b) provision corresponding to that made by subsection (2) above is made by section 777 of ITTOIA 2005 (as read with Chapter 10 of Part 6 of that Act).**]**

Textual Amendments

F5470 Words in s. 827(1) substituted (1.9.1994) by Value Added Tax Act 1994 (c. 23), s. 101(1), **Sch. 14 para. 10(2)(a)**

F5471 Words in s. 827(1)(a) substituted (1.9.1994) by Value Added Tax Act 1994 (c. 23), s. 101(1), **Sch. 14 para. 10(2)(b)**

F5472 Words in s. 827(1)(b)(c) substituted (1.9.1994) by Value Added Tax Act 1994 (c. 23), s. 101(1), **Sch. 14 para. 10(2)(c)**

F5473 Words in s. 827 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 332(a)** (with Sch. 2)

F5474 S. 827(1A) inserted (1.11.1994 for specified purposes and 1.1.1995 otherwise) by Finance Act 1994 (c. 9), **ss. 18(7)**, 19(1) (with s. 19(3)); S.I. 1994/2679, **arts. 2**, 3 (with art. 4(3))

F5475 S. 827(1B) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 7 para. 31**

F5476 S. 827(1C) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 5 para. 40**

F5477 S. 827(1D) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 7 para. 4**

F5478 S. 827(1E) inserted (11.5.2001) by Finance Act 2001 (c. 9), **s. 49(3)**

F5479 S. 827(1F) inserted (27.11.2003) by Finance Act 2003 (c. 14), **ss. 24(7)**, 40; S.I. 2003/2985, **art. 2**

F5480 S. 827(1G) inserted (10.7.2003 subject to Sch. 19 to the amending Act) by Finance Act 2003 (c. 14), **Sch. 18 para. 3(6)**

F5481 Words in s. 827(2) substituted (1.9.1994) by Value Added Tax Act 1994 (c. 23), s. 101(1), **Sch. 14 para. 10(2)(d)**

F5482 Words in s. 827(2) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 332(b)** (with Sch. 2)

F5483 S. 827(3) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 332(c)** (with Sch. 2)

Marginal Citations

M1104 Source—1986 s.53.

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[F5484827A Territorial scope of charges under certain provisions to which section 836B applies

(1) This section applies in relation to any amount chargeable to income tax under or by virtue of any provision to which section 836B applies (other than a provision listed in Part 2 of the table in that section).

(2) An amount arising to a person who is resident in the United Kingdom is chargeable to tax whether or not it is from a source in the United Kingdom.

(3) An amount arising to a person who is not resident in the United Kingdom is chargeable to tax only if it is from a source in the United Kingdom.

(4) References in this section to amounts which are from a source in the United Kingdom include, in the case of any amount which does not have a source, references to amounts which have a comparable connection to the United Kingdom.

(5) This section is subject to any express or implied provision to the contrary in any provision of the Income Tax Acts.

(6) This section does not apply for the purposes of corporation tax.**]**

Textual Amendments

F5484 S. 827A inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 333** (with Sch. 2)

828 Orders and regulations made by the Treasury or the Board.

(1) M1105Subject to [F5485subsections (2) and (5)] below, any power of the Treasury or the Board to make any order or regulations under this Act or under any other provision of the Tax Acts (including enactments passed after this Act) shall be exercisable by statutory instrument.

(2) Subsection (1) above shall not apply in relation to any power conferred by [F5486section 841(1)(b) or 841A][F5487or section 178(5) of the Finance Act 1989.]

(3) M1106Subject to [F5488subsections (4) and (5)] below and to any other provision to the contrary, any statutory instrument containing any order or regulations made by the Treasury or the Board under this Act or under any other provision of the Tax Acts (including enactments passed after this Act) shall be subject to annulment in pursuance of a resolution of the House of Commons.

(4) Subsection (3) above shall not apply in relation to an order or regulations made under section 1(6), [F5489779B(5),][F5490257C], F5491 . . . F5492 . . . F5493 . . . [F5494582A(1),][F5495590C(6)] 658(3) [F5496791 or 840A(1)(d)] or paragraph 7 of Schedule 14 [F5497or [F5498section 82(4)(d) of the Capital Allowances Act]] or—

(a) if any other Parliamentary procedure is expressly provided;

(b) if the order in question is an order appointing a day for the purposes of any provision of the Tax Acts, being a day as from which the provision will have effect, with or without amendments, or will cease to have effect.

[F5499(5) Nothing in this section applies in relation to any of the following (in relation to which section 717 of ITEPA 2003 [F5500or section 873 of ITTOIA 2005] applies)—

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(a) any power of the Treasury or the Board to make any order or regulations under ITEPA 2003 **[**F5501or ITTOIA 2005**]**;

(b) any statutory instrument containing any order or regulations made by the Treasury or the Board under **[**F5502either of those Acts**].]**

Textual Amendments

F5485 Words in s. 828(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 105(2)** (with Sch. 7)

F5486 Words in s. 828(2) substituted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 24**

F5487 1989 s.178(6).

F5488 Words in s. 828(3) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 105(3)** (with Sch. 7)

F5489 Words in s. 828(4) inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 180(2)**

F5490 Words in s. 828(4) substituted (1990-91 and subsequent years of assessment) by Finance Act 1990 (c. 29), **s. 17(3)**

F5491 Words in s. 828(4) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 334(2), **Sch. 3** (with Sch. 2)

F5492 Words in s. 828(4) repealed (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 26 Pt. 5(19)**

F5493 Words in s. 828(4) repealed (with effect in accordance with Sch. 20 Pt. 3(7) Note 4 of the repealing Act) by Finance Act 1999 (c. 16), **Sch. 20 Pt. 3(7)**

F5494 Words in s. 828(4) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 118(2)**

F5495 Words in s. 828(4) inserted by Finance Act 1989 (c. 26), **Sch. 6 para. 16**

F5496 Words in s. 828(4) substituted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 1(2)**

F5497 Words in s. 828(4) inserted by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(34)**

F5498 Words in s. 828(4) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 58**

F5499 S. 828(5) added (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 105(4)** (with Sch. 7)

F5500 Words in s. 828(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 334(3)(a)** (with Sch. 2)

F5501 Words in s. 828(5)(a) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 334(3)(b)** (with Sch. 2)

F5502 Words in s. 828(5)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 334(3)(c)** (with Sch. 2)

Modifications etc. (not altering text)

C883 S. 828(3) excluded by Finance Act 2000 (c. 17), **Sch. 22 para. 22C(3)** (as inserted (1.7.2005) by Finance Act 2005 (c. 7), Sch. 7 paras. 8, 18(1) (with **Sch. 7 paras. 19-21**))

Marginal Citations

M1105 Source—1970 ss.65(5), 204, 231(3), 343 (1A); 1970(F) s.29(6), Sch.5 2(3), 10; 1972 ss.91(3), 108(4); 1973 Sch.16 17(2); 1975 (No.2) ss.47(10), 48(6), 69(9), 70(8), 70A(3); 1976 ss.64(4), 64A, (4) Sch.4 16(2); 1980 s.24(9); Sch.10 13(3); 1982 ss.28(5), 29(1), (3), Sch.7 14(2); 1984 ss.26(1), 88(8), 126(1), Sch.8 2(1)(f), 3A; 1983 Sch.5 5A(9), 6(8); 1986 s.28, 61, Sch.11 11, Sch.12 3, Sch.17 6(7).

M1106 Source—1970 ss.65(5), 204, 343(1B); 1970(F) s.29(8), Sch.5 2(3), 10; 1973 Sch.16 17(2); 1975 (No.2) ss.47(10), 48(6), 69(9), 70(8), 70A(3); 1976 ss.64(4), 64A(4); 1982 s.29(5); 1983 Sch.5 5A(9), 6(9); 1984 ss.26(6), 88(8), Sch.8 2(1), 3A; 1986 ss.26, 27(7), 55, Sch.11 11, Sch.12 3, Sch.17 6(7)

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829 Application of Income Tax Acts to public departments and avoidance of exempting provisions.

M1107(1) Subject to subsections (2) and (3) below, all the provisions of the Income Tax Acts relating to the assessment, charge, deduction and payment of income tax shall apply in relation to public offices and departments of the Crown.

(2) Nothing in those provisions of the Income Tax Acts shall require the payment by any such office or department of any tax which would be ultimately borne by the Crown **[**F5503unless it is tax which would not have been so borne but for a failure by a public office or department of the Crown to make a deduction required by virtue of subsection (1) above.**]**

[F5504(2A) Subsections (1) and (2) above have effect in relation to **[**F5505Chapter 3 of Part 3 of the Finance Act 2004**]** (sub-contractors in the construction industry) as if the whole of any deduction required to be made under **[**F5506section 61 of that Act**]** were in all cases a deduction of income tax.**]**

(3) Subsection (1) above shall not apply to public offices and departments of any country, state, province or colony within section 320(3)(b) or (c) and nothing in subsection (1) above shall exempt any government from taxation to which it is liable in connection with any office or department by virtue of section 25 of the Finance Act 1925 (liability in respect of trading operations of Dominion governments and others).

(4) No letters patent granted or to be granted by the Crown to any person, city, borough or town corporate of any liberty, privilege or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any inhabitant of any city, borough or town corporate, from income tax, and all non-obstantes in any such letters patent or statute made or to be made to the contrary effect shall be void.

Textual Amendments

F5503 Words in s. 829(2) inserted (27.7.1993 with effect in relation to the year 1993-94 and subsequent years of assessment) by 1993 c. 34, **s. 122(1)(3)**

F5504 S. 829(2A) inserted (with effect in accordance with s. 40(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 40(2)**

F5505 Words in s. 829(2A) substituted (with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 12 para. 11(2)(a)**

F5506 Words in s. 829(2A) substituted (with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 12 para. 11(2)(b)**

Marginal Citations

M1107 Source—1970 ss.524, 525(1)

830 Territorial sea and designated areas.

M1108(1) The territorial sea of the United Kingdom shall for all purposes of income tax and corporation tax (including the following provisions of this section) be deemed to be part of the United Kingdom.

(2) In this section—

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(a) "exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area;

(b) "exploration or exploitation rights" means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets; and

(c) "designated area" means an area designated by Order in Council under section 1(7) of the [M1109]Continental Shelf Act 1964.

(3) Any profits or gains from exploration or exploitation activities carried on in a designated area or from exploration or exploitation rights shall be treated for the purposes of [F5507]. . . corporation tax as profits or gains from activities or property in the United Kingdom.

(4) Any profits or gains arising to any person not resident in the United Kingdom from exploration or exploitation activities or rights shall for the purposes of corporation tax be treated as **[**[F5508]profits**]** of a trade carried on by that person in the United Kingdom through a branch or agency.

(5) [F5509]. . . . . .

Textual Amendments

F5507 Words in s. 830(3) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 335, **Sch. 3** (with Sch. 2)

F5508 Word in s. 830(4) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F5509 S. 830(5) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 106, **Sch. 8 Pt. 1** (with Sch. 7)

Modifications etc. (not altering text)

C884 S. 830(4) modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

Marginal Citations

M1108 Source—1973 s.38(1), (2)-(4), (6)

M1109 1964 c. 29.

Interpretation

831 Interpretation of this Act.

(1) [M1110]In this Act, except so far as the context otherwise requires—

(a) "the Corporation Tax Acts" means the enactments relating to the taxation of the income and chargeable gains of companies and of company distributions (including provisions relating also to income tax); and

(b) "the Income Tax Acts" means the enactments relating to income tax, including any provisions of the Corporation Tax Acts which relate to income tax.

(2) In this Act "the Tax Acts", except so far as the context otherwise requires, means this Act and all other provisions of the Income Tax Acts and the Corporation Tax Acts.

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(3) In this Act—

[[F5510]"ITEPA 2003" means the Income Tax (Earnings and Pensions) Act 2003;**]**

[[F5511]"ITTOIA 2005" means the Income Tax (Trading and Other Income) Act 2005;**]**

"the Management Act" means the Taxes Management Act 1970;

"the 1968 Act" means the Capital Allowances Act 1968;

"the 1970 Act" means the Income and Corporation Taxes Act 1970; and

"the 1979 Act" means the Capital Gains Tax Act 1979.

[[F5512]"the 1990 Act" means the Capital Allowances Act 1990.**]**

[[F5513]"the 1992 Act" means the Taxation of Chargeable Gains Act 1992.**]**

(4) Section 1 of the [M1111]Family Law Reform Act 1987, the paragraph inserted in Schedule 1 to the [M1112]Interpretation Act 1978 by paragraph 73 of Schedule 2 to that Act and section 1(3) of the [M1113]Law Reform (Parent and Child) (Scotland) Act 1986 (legal equality of illegitimate children) shall be disregarded in construing references in this Act to a child or to children (however expressed).

(5) [M1114]This Act, so far as it relates to capital gains tax, shall be construed as one with the **[**[F5514]1992**]** Act.

(6) Any reference in this Act to a section, Part or Schedule is a reference to that section, Part or Schedule of or to this Act, unless the context otherwise requires.

Textual Amendments

F5510 S. 831(3): definition of "ITEPA 2003" inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 107** (with Sch. 7)

F5511 S. 831(3): definition of "ITTOIA 2005" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 336** (with Sch. 2)

F5512 S. 831(3): definition of "the 1990 Act" inserted by Capital Allowances Act 1990 (c. 1), **Sch. 1 para. 8(35)**; and that amendment continued by Capital Allowances Act 2001 (c. 2), s. 579, **Sch. 2 para. 59**

F5513 S. 831(3): definition of "the 1992 Act" inserted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(53)(a)** (with ss. 60, 101(1), 171, 201(3))

F5514 Words in s. 831(5) substituted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(53)(b)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C885 S. 831(4) applied (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 144(2)**

Marginal Citations

M1110 Source—1970 s.526(1), (2); 1987 Sch.15 12

M1111 1987 c. 42.

M1112 1978 c. 30.

M1113 1986 c. 9.

M1114 Source—1970 s.540(2)

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832 Interpretation of the Tax Acts.

(1) [M1115]In the Tax Acts, except in so far as the context otherwise requires—

"Act" includes an Act of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

[F5515] . . . . . .

"authorised unit trust" has the meaning given by section 468(6);

"basic rate", in relation to the charging of income tax for any year of assessment, means the rate of income tax determined in pursuance of section 1(2)(a), and any reference to the basic rate limit shall be construed in accordance with section 1(3);

"the Board" means the Commissioners of Inland Revenue;

"body of persons" means any body politic, corporate or collegiate, and any company, fraternity, fellowship and society of persons whether corporate or not corporate;

"building society" means a building society within the meaning of the [M1116]Building Societies Act 1986;

"capital allowance" means any allowance under **[**[F5516]the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)**]**;

[[F5517]"the Capital Allowances Act" means the Capital Allowances Act 2001;

"chargeable gain" has the same meaning as in the **[**[F5518]1992**]** Act;

"chargeable period" means an accounting period of a company or a year of assessment;

"close company" has the meaning given by sections 414 and 415;

"collector" means any collector of taxes;

"company" means, subject to subsection (2) below, any body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association;

"distribution" has the meaning given by Part VI with section 418;

[[F5519]"estate in land", in relation to any land in Scotland, includes the land;**]**

"farm land" means land in the United Kingdom wholly or mainly occupied for the purposes of husbandry, but excluding any dwelling or domestic offices, and excluding market garden land, and "farming" shall be construed accordingly;

[[F5520]"for accounting purposes" means for the purposes of accounts drawn up in accordance with generally accepted accounting practice;**]**

[[F5521]"franked investment income" means income of a company resident in the United Kingdom which consists of a distribution in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution and the amount of that credit);

[F5522] . . . . . .

[[F5523]"generally accepted accounting practice" **[**[F5524]has the meaning given by section 50(1) of the Finance Act 2004**]**;**]**

[F5525] . . . . . .

"higher rate", in relation to the charging of income tax for any year of assessment, means any rate of income tax determined in pursuance of

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section 1(2)(b),*and any reference to any higher rate band shall be construed in accordance with section* 1(3) [F5526];

"industrial assurance business" [F5527means any such business carried on before the day appointed for the coming into force of section 167(4) of the Finance Act 1996 as was industrial assurance business within] the meaning given by section 1(2) of the [M1117]Industrial Assurance Act 1923 or Article 3(1) of the [M1118]Industrial Assurance (Northern Ireland) Order 1979;

"inspector" means any inspector of taxes;

"interest" means both annual or yearly interest and interest other than annual or yearly interest;

[F5528"international accounting standards" has the meaning given by section 50(2) of the Finance Act 2004;]

[F5529"investment LLP" and "property investment LLP" have the meaning given by section 842B;]

[F5530"local authority association" has the meaning given by section 519;]

[F5531[F5532"lower rate", in relation to the charging of income tax for any year of assessment, means the rate of income tax specified in or determined in pursuance of section 1A(1B);

"market garden land" means land in the United Kingdom occupied as a nursery or garden for the sale of the produce (other than land used for the growth of hops) and "market gardening" shall be construed accordingly;

"notice" means notice in writing [F5533or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998];

[F5534"offshore installation" has the meaning given by section 837C;]

[F5535"open-ended investment company", and "authorised corporate director", "owner of shares" and "scheme property" in relation to an open-ended investment company, have the meanings given by subsection (10) of section 468, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997;

"ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;

[F5536"overseas property business"—

(a) for the purposes of income tax, has the meaning given by Chapter 2 of Part 3 of ITTOIA 2005;

(b) for the purposes of corporation tax, has the meaning given by section 70A(4);]

[F5537"period of account"—

(a) in relation to a person, means any period for which the person draws up accounts, and

(b) in relation to a trade, profession, vocation or other business means any period for which accounts of the business are drawn up;]

[F5538"permanent establishment", in relation to a company, has the meaning given by section 148 of the Finance Act 2003;]

"preference dividend" means a dividend payable on a preferred share or preferred stock at a fixed rate per cent. or, where a dividend is payable on a

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preferred share or preferred stock partly at a fixed rate per cent. and partly at a variable rate, such part of that dividend as is payable at a fixed rate per cent.;

"qualifying distribution" has the meaning given by section 14(2);

"qualifying policy" means a policy of insurance which is a qualifying policy for the purposes of Chapter I of Part VII;

[F5539"the rate applicable to trusts" shall be construed in accordance with section 686(1A);**]**

F5540 . . . . . .

F5541 . . . . . .

[F5542"relevant foreign income" has the meaning given by subsections (1) to (3) of section 830 of ITTOIA 2005 but also includes, for any purpose mentioned in any provision listed in subsection (4) of that section, income treated as relevant foreign income for that purpose by that provision;**]**

[F5543"Schedule A business" means any business the profits or gains of which are chargeable to **[**F5544corporation tax**]** under Schedule A, including the business in the course of which any transaction is by virtue of paragraph 1(2) of that Schedule to be treated as entered into;

[F5545"starting rate", in relation to the charging of income tax for any year of assessment, means the rate of income tax determined in pursuance of section 1(2)(aa), and any reference to the starting rate limit shall be construed in accordance with section 1(2A);**]**

[F5546"the **[**F5547dividend**]** ordinary rate" shall be construed in accordance with section 1B(2);**]**

[F5546"the **[**F5547dividend**]** trust rate" shall be construed in accordance with section 686(1A);**]**

[F5546"the **[**F5547dividend**]** upper rate" shall be construed in accordance with section 1B(2);**]**

[F5548"step-child", in relation to a civil partner, shall be construed in accordance with section 246 of the Civil Partnership Act 2004;**]**

F5549 . . . . . .

[F5550"tax credit" means—

(a) a tax credit under section 231 for the purposes of corporation tax; and

(b) a tax credit under section 397(1) of ITTOIA 2005 for the purposes of income tax;**]**

"trade" includes every trade, manufacture, adventure or concern in the nature of trade;

[F5551"UK generally accepted accounting practice" has the meaning given by section 50(4) of the Finance Act 2004;**]**

[F5552"UK property business" has the meaning given by Chapter 2 of Part 3 of ITTOIA 2005;**]**

F5553 . . . . . .

"unit holder" has the meaning given by section 468(6);

"unit trust scheme" has the meaning given by section 469;

"year of assessment" means, with reference to any income tax, the year for which such tax was granted by any Act granting income tax;

"the year 1988-89" means the year of assessment beginning on 6th April 1988, and any corresponding expression in which two years are similarly mentioned means the year of assessment beginning on 6th April in the first-mentioned of those two years;

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and a source of income is within the charge to corporation tax or income tax if that tax is chargeable on the income arising from it, or would be so chargeable if there were any such income, and references to a person, or to income, being within the charge to tax, shall be similarly construed.

(2) [M1119] The definition of "company" is subject to section 468, and does not apply in the following provisions of this Act, that is to say—

Chapter I of Part XVII;

sections 774 to 777;

section 839;

paragraph 15 of Schedule 3;

(and also does not apply where the context otherwise requires because some other definition of "company" applies).

(3) [M1120]Except so far as the context otherwise requires, in the Tax Acts, and in any enactment passed after 12th March 1970 which by any express provision is to be construed as one with the Tax Acts, the Corporation Tax Acts or the Income Tax Acts, "tax", where neither income tax nor corporation tax is specified, means either of those taxes.

(4) Subsection (3) above is without prejudice to the provisions of section 9 which apply income tax law for certain purposes of corporation tax, and accordingly the employment of "income tax" rather than "tax" in any provision of the Tax Acts is not a conclusive indication that that provision is not applied to corporation tax by that section.

[F5554(4A) Any reference in the Tax Acts to franked investment income received by a company apply to any such income received by another person on behalf of or in trust for the company, but not to any such income received by the company on behalf of or in trust for another person.]

(5) [M1121]In the Tax Acts any reference to a child, however expressed, shall be construed as including a reference to an adopted child.

This subsection does not apply for the purposes of paragraph 10 of Schedule 30.]]]]]]

Textual Amendments

F5515 S. 832(1): definition of "additional rate" repealed (with effect in accordance with Sch. 18 Pt. 6(1) Note of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(1)**

F5516 S. 832(1): words in definition of "capital allowance" substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 60(a)**

F5517 S. 832(1): definition of "the Capital Allowances Act" substituted for definition of "the Capital Allowances Acts" (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 60(b)**

F5518 Word in s. 832(1) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(54)** (with ss. 60, 101(1), 171, 201(3)).

F5519 S. 832(1): definition of "estate in land" inserted (S.) (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act (asp 5), ss. 71, 77(2)(c); S.S.I. 2003/456, **art. 2**

F5520 S. 832(1): definition of "for accounting purposes" inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 103(1)**

F5521 S. 832(1): definition of "franked investment income" substituted (with effect in accordance with Sch. 3 para. 39(8) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 39(2)**

F5522 S. 832(1): definition of "franked payment" repealed (with effect in accordance with Sch. 3 para. 39(8) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 39(3), **Sch. 27 Pt. 3(2)**, Note

F5523 S. 832(1): definition of "generally accepted accounting practice" inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 103(1)**

F5524 S. 832(1): words in definition of "generally accepted accounting practice" substituted (with effect in accordance with s. 50(6) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**, Note 1)) by Finance Act 2004 (c. 12), **s. 50(5)(a)**

F5525 S. 832(1): definition of "group income" repealed (with effect in accordance with Sch. 3 para. 39(9) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 39(4), **Sch. 27 Pt. 3(2)**, Note

F5526 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F5527 S. 832(1): words in definition of "industrial assurance business" substituted (1.12.2001) by Finance Act 1996 (c. 8), **s. 167(4)(11)**; S.I. 2001/3643, **art. 2(a)**

F5528 S. 832(1): definition of "international accounting standards" inserted (with effect in accordance with s. 50(6) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**, Note 1)) by Finance Act 2004 (c. 12), **s. 50(5)(b)**

F5529 S. 832(1): definition of "investment LLP" and "property investment LLP" inserted (6.4.2001 with effect in accordance with s. 76(1) of the amending Act) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 1(2)**

F5530 1990 s.127*and* Sch.18 para.5(3)*on and after* 1*April* 1990.*Previously*
" "local authority" and "local authority association" have the meanings given by section 519;".

F5531 S. 832(1): definition of "lower rate" inserted (16.3.1992 with application for the year 1992-93 and subsequent years of assessment) by Finance Act 1992 (c. 20), **s. 9(9)(10)(11)**

F5532 S. 832(1): definition of "lower rate" substituted (with effect in accordance with s. 22(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 22(10)(a)**

F5533 S. 832(1): words in definition of "notice" inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 118(10)**

F5534 S. 832(1): definition of "offshore installation" inserted (with effect in accordance with Sch. 27 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 2**

F5535 S. 832(1): definitions of "open-ended investment company", "authorised corporate director", "owner of shares" and "scheme property" inserted (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **reg. 14**

F5536 S. 832(1): definition of "overseas property business" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 337(a)** (with Sch. 2)

F5537 S. 832(1): definition of "period of account" inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 103(1)**

F5538 S. 832(1): definition of "permanent establishment" inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 148(6)**

F5539 S. 832(1): definition of "the rate applicable to trusts" inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 79, Sch. 6 paras.15, **25(1)**

F5540 S. 832(1): definition of "the rate of advance corporation tax" repealed (with effect in accordance with Sch. 3 para. 39(9) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 39(5), **Sch. 27 Pt. 3(2)**, Note

F5541 S. 832(1): definition of "recognised clearing system" repealed (with effect in accordance with Sch. 7 para. 32 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 7 para. 25, **Sch. 41 Pt. 5(2)**, Note (with Sch. 7 paras. 33-35)

F5542 S. 832(1): definition of "relevant foreign income" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 337(b)** (with Sch. 2)

F5543 S. 832(1): definition of "Schedule A business" inserted (with effect in accordance with s. 39(4)(5) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 6 para. 28**

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F5544 S. 832(1): words in definition of "Schedule A business" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 337(c)** (with Sch. 2)

F5545 S. 832(1): definition of "starting rate" and "starting rate limit" inserted after the definition of "Schedule A business" (with effect in accordance with s. 22(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 22(10)(b)**

F5546 S. 832(1): definitions of "the Schedule F ordinary rate", "the Schedule F trust rate", and "the Schedule F upper rate" inserted (with effect in accordance with Sch. 4 para. 22(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 22(1)**

F5547 S. 832(1): words in definitions of "the Schedule F ordinary rate", "the Schedule F trust rate" and "the Schedule F upper rate" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 337(d)** (with Sch. 2)

F5548 S. 832(1): definition of "step-child" inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 99

F5549 S. 832(1): definition of "surplus of franked investment income" repealed (with effect in accordance with Sch. 3 para. 39(8) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 39(6), **Sch. 27 Pt. 3(2)**, Note

F5550 S. 832(1): definition of "tax credit" substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 337(e)** (with Sch. 2)

F5551 S. 832(1): definition of "UK generally accepted accounting practice" inserted (with effect in accordance with s. 50(6) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**, Note 1)) by Finance Act 2004 (c. 12), **s. 50(5)(b)**

F5552 S. 832(1): definition of "UK property business" inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 337(f)** (with Sch. 2)

F5553 S. 832(1): definition of "Ulster Savings Certificates" repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 337(g), **Sch. 3** (with Sch. 2)

F5554 S. 832(4A) inserted (with effect in accordance with Sch. 3 para. 39(8) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 39(7)**

Marginal Citations

M1115 1970 s.526(5), 527(1); 1971 s.32(1), (1D), Sch.8 16(3); 1976 Sch.4 11; 1972 s.93(6); 1979(C), Sch.7; 1981 s.34(5); 1987 Sch.15 2(20)

M1116 1986 c. 53.

M1117 1923 c. 8.

M1118 S.I. 1979/1574 (N.I. 13).

M1119 Source—1970 s.526(6)

M1120 Source—1970 s.526(3), (4)

M1121 Source—1970 s.526(5A); 1987 Sch.15 2(21)

833 Interpretation of Income Tax Acts.

(1) [M1122] In the Income Tax Acts references to profits or gains shall not include references to chargeable gains.

(2) [M1123] References in the Income Tax Acts to the retail prices index are references to the general index of retail prices (for all items) published by the **[**[F5555] Office for National Statistics**]**; and if that index is not published for a month which is relevant for the purposes of any provision of those Acts that provision shall be construed as referring to any substituted index or index figures published by **[**[F5556] that Office**]**.

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(3) M1124For the purposes of any provision of the Income Tax Acts (other than **[**F5557sections 535 to 537 of ITTOIA 2005**]**F5558. . .) requiring income of any description to be treated as the highest part of a person's income, his income shall be calculated without regard to—

[F5559(a) any payment or other benefit charged to tax under Chapter 3 of Part 6 of ITEPA 2003 (payments and other benefits on termination of employment);**]** or

(b) any amount included in his total income by virtue of section **[**F5560465 of ITTOIA 2005**][**F5561which is a sum in relation to which section **[**F5562530 of that Act**]** applies**]**; *or*

(c) *any chargeable sum as defined in paragraph* 2*of Schedule* 2 F5558.

(4) M1125Subject to subsections (5) **[**F5563to**]** (6) below, in the Income Tax Acts "earned income" means, in relation to any individual—

[F5564(a) any income charged to tax under ITEPA 2003 except—

(i) payments that meet the conditions in section 623 of that Act (return of surplus employee additional voluntary contributions); and

(ii) jobseeker's allowance (to which Chapter 3 of Part 10 of that Act applies);

(b) any income from any property which is attached to or forms part of the general earnings from any employment;**]** and

(c) any income which is charged **[**F5565under Part 2 of ITTOIA 2005 (trading income)**]** and is immediately derived by the individual from the carrying on or exercise by him of his trade, profession or vocation, either as an individual or, in the case of a partnership, as a partner personally acting in the partnership.

*In cases where the income of a wife is deemed to be income of the husband, any reference in this subsection to the individual includes either the husband or the wife*F5566.

(5) M1126Without prejudice to the generality of the provisions of subsection (4) above, in the Income Tax Acts, except so far as is otherwise expressly provided, "earned income" also includes, in relation to any individual **[**F5567—

(a) income to which subsection (5A) applies, and

(b) income to which subsection (5B) applies.**]**

[F5568(5A) This subsection applies to income arising to the individual if—

(a) it is charged to tax under section 583 of ITTOIA 2005 (income from disposals of know-how), and

(b) the individual, alone or jointly, devised the know-how in question.

(5B) This subsection applies to income arising to the individual if—

(a) it is patent income, and

(b) the individual, alone or jointly, devised the invention for which the patent in question was granted.

This is subject to subsection (5C).

(5C) If—

(a) any part of the rights in respect of the patent, or of any rights out of which they were granted, has at any time belonged to any other person, and

(b) any part of the income is properly attributable to the rights which have belonged to that other person,

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subsection (5B) does not apply to that part of the income (and so it is not earned income).

(5D) In subsection (5B) "patent income" means—

(a) royalties or other sums paid in respect of the use of a patent charged to tax under section 579 of ITTOIA 2005,

(b) amounts on which tax is payable under section 587 or 593 of ITTOIA 2005, and

(c) amounts on which tax is payable under—

(i) section 472(5) of the Capital Allowances Act (patent allowances: balancing charges), or

(ii) paragraph 100 of Schedule 3 to that Act (balancing charges in respect of pre-1st April 1986 expenditure on the purchase of patent rights).

(5E) References in subsection (5C) to the rights in respect of the patent are to any right to do or authorise the doing of anything which would, but for the right, be an infringement of the patent.**]**

(6) [M1127]The provisions of this section are without prejudice to any other provision of the Income Tax Acts directing income to be treated as earned income.

Textual Amendments

F5555 Words in s. 833(2) substituted (1.4.1996) by The Transfer of Functions (Registration and Statistics) Order 1996 (S.I. 1996/273), **Sch. 2 para. 22(a)**

F5556 Words in s. 833(2) substituted (1.4.1996) by The Transfer of Functions (Registration and Statistics) Order 1996 (S.I. 1996/273), **Sch. 2 para. 22(b)**

F5557 Words in s. 833(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(2)(a)** (with Sch. 2)

F5558 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F5559 S. 833(3)(a) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 108(2)** (with Sch. 7)

F5560 Words in s. 833(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(2)(b)(i)** (with Sch. 2)

F5561 Words in s. 833(3)(b) inserted (with effect in accordance with s. 173(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 35 para. 5**

F5562 Words in s. 833(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(2)(b)(ii)** (with Sch. 2)

F5563 Word in s. 833(4) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(3)(a)** (with Sch. 2)

F5564 S. 833(4)(a)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 108(3)** (with Sch. 7)

F5565 Words in s. 833(4)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(3)(b)** (with Sch. 2)

F5566 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F5567 S. 833(5)(a)(b) substituted for words in s. 833(5) (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(4)** (with Sch. 2)

F5568 S. 833(5A)-(5E) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 338(5)** (with Sch. 2)

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Marginal Citations

M1122 Source—1979(C) s.155(5).
M1123 Source—1980 s.24(8)
M1124 Source—1970 s.529
M1125 Source—1970 s.530(1)
M1126 Source—1970 s.530(2), 383; 1981 s.27(10); 1982 s.31(2); 1987 Sch.3 5
M1127 Source—1970 s.530(3).

834 Interpretation of the Corporation Tax Acts.

M1128(1) For the purposes of the Corporation Tax Acts, except in so far as the context otherwise requires—

"accounting date" means the date to which a company makes up its accounts F5569. . . ;

"accounting period" shall be construed in accordance with section 12;

"allowable loss" does not include, for the purposes of corporation tax in respect of chargeable gains, a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it;

"branch or agency" means any factorship, agency, receivership, branch or management;

[F5570"chargeable profits", in relation to a company that is not resident in the United Kingdom—

(a) for corporation tax purposes generally, has the meaning given by section 11(2), and

(b) for the purposes of Chapter 4 of Part 17 (controlled foreign companies), has the meaning given by section 747(6);**]**

"charges on income" has the meaning given by section **[**F5571338A**]**;

[F5572"derivative contract" has the same meaning as it has for the purposes of Schedule 26 to the Finance Act 2002;**]**

"the financial year 1988" means the financial year beginning with April 1988, and similarly with references embodying other dates;

"group relief" has the meaning given by section 402;

[F5573"loan relationship" has the same meaning as it has for the purposes of Chapter II of Part IV of the Finance Act 1996;

"non-trading deficit", in relation to a company's loan relationships, shall be construed in accordance with section 82 of the Finance Act 1996;**]**

[F5574"statutory insolvency arrangement" means—

(a) a voluntary arrangement that has taken effect under or as a result of the Insolvency Act 1986, Schedule 4 or 5 to the Bankruptcy (Scotland) Act 1985 or the Insolvency (Northern Ireland) Order 1989,

(b) a compromise or arrangement that has taken effect under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986, or

(c) any arrangement or compromise of a kind corresponding to any of those mentioned in paragraph (a) or (b) above that has taken effect under or by virtue of the law of a country or territory outside the United Kingdom.**]**

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(2) Section 6(4) shall also apply for the purposes of the following provisions of this Act, that is to say—

Chapter II of Part X, except section 395;

sections 75 and 76;

section 490;

sections 768 and 769;

F5575 . . . .

(3) For all the purposes of the Corporation Tax Acts dividends shall be treated as paid on the date when they become due and payable, **[**F5576except in so far as Chapter III of Part XII makes other provision for dividends treated as paid by virtue of that Chapter**]**.

(4) Except as otherwise provided by the Corporation Tax Acts, any apportionment to different periods which falls to be made under those Acts shall be made on a time basis according to the respective lengths of those periods.

Textual Amendments

F5569 S. 834(1): words in definition of "accounting date" repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

F5570 S. 834(1): definition of "chargeable profits" inserted (with effect in accordance with s. 149(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 149(5)**

F5571 S. 834(1): words in definition of "charges on income" substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 1(4)**

F5572 S. 834(1): definition of "derivative contract" inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 13**

F5573 S. 834(1): definitions of "loan relationship" and "non-trading deficit" inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 49** (with Sch. 15)

F5574 S. 834(1): definition of "statutory insolvency arrangement" inserted (with effect in accordance with s. 80(3)(4) of the amending Act) by Finance Act 2005 (c. 7), **Sch. 4 para. 8**

F5575 Words in s. 834(2) repealed (with effect in accordance with s. 579 of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 61, **Sch. 4**

F5576 Words in s. 834(3) substituted (with effect in accordance with Sch. 14 para. 7 of the amending Act) by Finance Act 1994 (c. 9), **Sch. 14 para. 6**

Modifications etc. (not altering text)

C886 S. 834(1): definition of "allowable loss" excluded (with effect in accordance with s. 63(4) of the excluding Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 94(4)**

Marginal Citations

M1128 Source—1970 s.527.

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/04/2009

[F5577834A Miscellaneous charges (list for the purposes of certain provisions that formerly referred to Case VI of Schedule D)

(1) In the Corporation Tax Acts references to any provision to which this section applies are references to any provision listed in the following table, so far as the provision relates to corporation tax (but subject to any applicable limitation in subsection (3)).

(2) This is the table—

PART 1

Provisions of this Act	*Description*
Section 56(2)	Transactions in deposits
Section 214(1)(ab)	Chargeable payments connected with exempt distributions
Section 436A(1)	Gross roll-up business: separate charge on profits
Section 442A(1)	Taxation of investment return where risk reinsured
Section 571(1)	Cancellation of tax certificates
Section 730(6)	Transfers of income arising from securities
Section 761(1)(b)(ii)	Offshore income gains
Section 774(1)	Transactions between dealing company and associated company
Section 776(3A)	Transactions in land
Section 780(3A)(b)	Sale and leaseback: taxation of consideration received
Section 781(1)	Assets leased to traders and others
Section 786(5)(b)	Transactions associated with loans or credit

PART 2

Provisions of CTA 2009	*Description*
Chapter 15 of Part 3	Post-cessation receipts: trades
Chapter 7 of Part 4	Rent receivable in connection with a UK section 39(4) concern
Chapter 8 of Part 4	Rent receivable for UK electric-line wayleaves

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Chapter 9 of Part 4	Post-cessation receipts: UK property businesses
Section 752	Non-trading gains on intangible fixed assets
Section 908	Profits from disposals of know-how
Section 912	Profits from sales of patent rights
Section 965(4)	Adjustments after the administration period
Chapter 8 of Part 10	Income not otherwise charged
Section 986(4), so far as it relates to an amount treated as received under section 998(3)	Withdrawal of deductions if approval for share incentive plan withdrawn: non-trading cases
Section 1083(5)	Refunds of expenditure on research and development
Section 1229	Management expenses: claw back of relief
Section 1252	Industrial development grants: companies with investment business
Section 1253	Contributions to local enterprise organisations or urban regeneration companies: disqualifying benefits
Section 1254	Repayments under the Financial Services and Markets Act 2000
Section 1277(4)	Withdrawal of relief for unremittable foreign income after source ceases

PART 3

Other provisions	***Description***
Section 85(1) of the Finance Act 1989	Certain receipts of basic life assurance and general annuity business
Section 85A(1) of the Finance Act 1989	Excess adjusted life assurance trade profits
Paragraph 3(1) of Schedule 12 to the Finance (No 2) Act 1992	Banks etc in compulsory liquidation
Section 256(2) of the Capital Allowances Act	Life assurance business: capital allowances
Section 131(4) of the Finance Act 2004	Companies in partnership
Section 27(2) of the Finance (No 2) Act 2005	Avoidance involving tax arbitrage: qualifying payments
Section 112(1) of the Finance Act 2006	Real estate investment trusts: entry charge

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(3) The reference in Part 2 of the above table to Chapter 8 of Part 10 of CTA 2009 does not include that Chapter so far as relating to income which arises from a source outside the United Kingdom.**]**

Textual Amendments

F5577 S. 834A inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 274** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F5578 834B Meaning of "UK property business" and "overseas property business"

In the enactments relating to corporation tax "UK property business" and "overseas property business" have the meaning given by Chapter 2 of Part 4 of CTA 2009.**]**

Textual Amendments

F5578 S. 834B inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 275** (with Sch. 2 Pts. 1, 2)

VALID FROM 01/04/2009

[F5579 834C Total profits

(1) In the Corporation Tax Acts references to total profits, in relation to an accounting period of a company, are to the amount arrived at by adding together—

(a) the amounts chargeable for the period under the charge to corporation tax on income, and

(b) any amount to be included for the period in respect of chargeable gains (see section 8 of the 1992 Act).

(2) Subsection (1) is subject to the provisions of the Corporation Tax Acts.**]**

Textual Amendments

F5579 S. 834C inserted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **Sch. 1 para. 276** (with Sch. 2 Pts. 1, 2)

835 "Total income" in the Income Tax Acts.

M1129 (1) In the Income Tax Acts "total income", in relation to any person, means the total income of that person from all sources estimated in accordance with the provisions of the Income Tax Acts.

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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(2) Any person who, on his own behalf or on behalf of another person, delivers a statement of the amount of his or that other person's total income shall observe the rules and directions contained in section 836.

(3) [M1130]Where deductions reduce a person's total income and the order in which they are made or in which income of different descriptions is reduced thereby may affect his liability to income tax the deductions shall be made and treated as reducing income in accordance with subsections (4) and (5) below.

(4) Subject to any express provisions of the Income Tax Acts, any deductions allowable in computing a person's total income or to be made from a person's total income shall be treated as reducing income of different descriptions in the order which will result in the greatest reduction of his liability to income tax.

(5) Deductions from total income under Chapter I of Part VII shall be made after any other deductions and shall not affect the amount to be taken as a person's total income for the purposes of section 257(5) **[**[F5580], 257A(5)**]** or 274*nor the amount determining whether a person is entitled to relief under section* 263*or by how much relief under that section is reduced*[F5581].

(6) [M1131]In estimating the total income of any person—

(a) any income which is chargeable with income tax by way of deduction at the basic rate **[**[F5582]or the lower rate**]** in force for any year or which for the purposes of **[**[F5583]Chapter 3 of Part 4 of ITTOIA 2005 (dividends etc. from UK resident companies etc.)**]** comprises an **[**[F5584]amount which is equal to a tax credit calculated by reference to the tax credit fraction**]** shall be deemed to be income of that year; and

(b) any deductions which are allowable on account of sums payable under deduction of income tax at the basic rate in force for any year out of the property or profits of that person shall be allowed as deductions in respect of that year;

notwithstanding that the income or sums, as the case may be, accrued or will accrue in whole or in part before or after that year.

(7) Where an assessment has become final and conclusive for the purposes of income tax for any year of assessment—

(a) that assessment shall also be final and conclusive in estimating total income; and

(b) no allowance or adjustment of liability, on the ground of diminution of income or loss, shall be taken into account in estimating total income unless that allowance or adjustment has previously been made on an application under the special provisions of the Income Tax Acts relating thereto.

(8) Subsection (7) above shall apply in relation to—

(a) any relief under section 353;

(b) any relief by reason of the operation of an election for the herd basis under Schedule 5; and

[[F5585](c) any allowance given effect under section 258 or 479 of the Capital Allowances Act;**]**

as it applies in relation to allowances or adjustments on the ground of diminution of income or loss.

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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Textual Amendments

F5580 1988(F) s.35 Sch.3 para.22*for* 1990-91*and subsequent years.*

F5581 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F5582 Words in s. 835(6)(a) inserted (with effect in accordance with s. Sch. 6 para. 28 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 6 para. 24**

F5583 Words in s. 835(6)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 339** (with Sch. 2)

F5584 Words in s. 835(6)(a) substituted (with effect in accordance with Sch. 3 para. 40(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 3 para. 40(2)**

F5585 S. 835(8)(c) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 62**

Marginal Citations

M1129 Source—1970 s.528(1), (2); 1971 Sch.6 78; 1972 Sch.24 32.

M1130 Source—1971 s.34; 1975 (No.2) s.31(4)

M1131 Source—1970 s.528(3)(5); 1972 Sch.11 8, Sch.24 32; 1971 Sch.6 78

836 Returns of total income.

M1132 The following rules and directions shall be observed in delivering returns of total income under section 835(2)—

First - Declaration of the amount of profits or gains returned, or for which the person in question has been or is liable to be assessed.

Second - Declaration of the amount of rents, interest, annuities or other annual payments, in respect of which the person in question is liable to allow the tax, with the names of the respective persons by whom such payments are to be made, distinguishing the amount of each payment.

Third - Declaration of the amount of annuities or other annual payments (not being interest) to be made out of the property or profits or gains assessed on the person in question, distinguishing each source.

Fourth - Statement of the amount of income derived according to the three preceding declarations.

Fifth - Statement of any tax which the person in question may be entitled to deduct, retain or charge against any other person.

Marginal Citations

M1132 Source—1970 Sch.13

[F5586 836A Generally accepted accounting practice

F5587 . . . . . .]

Textual Amendments

F5586 S. 836A inserted (with effect in accordance with s. 103(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 103(2)**

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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F5587 S. 836A repealed (with effect in accordance with s. 80(4) of the repealing Act) by Finance Act 2005 (c. 7), Sch. 4 para. 25, **Sch. 11 Pt. 2(7)**, Note 2

[F5588 836B Table of provisions to which this section applies

(1) In the Tax Acts references to any provision to which this section applies are references to any provision listed in the following table so far as it relates to income tax (but subject to any applicable limitation in subsections (3) to (5)).

(2) This is the table—

PART 1

Provisions of this Act	*Description*
Section 214(1)(ab)	Chargeable payments connected with exempt distributions
Section 571(1)	Cancellation of certificates: schemes for rationalising industry
Section 591C(1)	Cessation of approval (retirement benefits scheme)
Section 598(1)	Repayment of employee's contribution
Section 599(1) or (1B)	Commutation of entire pension in special circumstances
Section 599A(2)	Payment out of surplus funds
Section 601(2) (as read with section 602(1)(a)) or 601(5)	Payments to employers (retirement benefits scheme)
Section 648B(1)	Return of contributions after pension date (approved personal pension scheme)
Section 650A(1)	Withdrawal of approval from arrangements (approved personal pension scheme)
Section 714(2)	Transfer of securities within accrued income scheme with or without accrued interest
Section 716(3)	Transfer of securities with unrealised interest where settlement day follows last interest period
Section 723(4)	Proceeds of transfer of foreign securities within the accrued income scheme ceasing to be unremittable
Section 730(4)	Transfers of income arising from securities
Section 740(2)(a) or (b)	Transfer of assets abroad (liability of non-transferors)

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Section 743(1)	Transfer of assets abroad (liability of transferors)
Section 761(1)(b)(i)	Offshore income gains
Section 774(1)	Transactions between dealing company and associated company
Section 775(2A)	Sale by individual of income derived from his personal activities
Section 776(3A)(a)	Transactions in land
Section 780(3A)(a)	Sale and lease-back (taxation of consideration received)
Section 781(1)	Assets leased to traders and others
Section 786(5)(a)	Transactions associated with loans or credit
Section 804(5B)(a)	Double taxation relief

PART 2

Provisions of ITTOIA 2005	***Description***
Chapter 18 of Part 2	Post-cessation receipts: trades, professions and vocations
Chapter 8 of Part 3	Rent receivable in connection with a UK section 12(4) concern
Chapter 9 of Part 3	Rent receivable for UK electric-line wayleaves
Chapter 10 of Part 3	Post-cessation receipts: UK property businesses
Chapter 2 of Part 4	Interest
Chapter 9 of Part 4	Gains from contracts for life insurance etc.
Chapter 11 of Part 4	Transactions in deposits
Chapter 12 of Part 4	Disposals of futures and options involving guaranteed returns
Section 579	Royalties and other income from intellectual property
Section 583	Income from disposals of know-how
Section 587	Income from sales of patent rights
Chapter 3 of Part 5	Films and sound recordings: non-trade businesses
Chapter 4 of Part 5	Certain telecommunication rights: non-trading income

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Chapter 5 of Part 5	Settlements: amounts treated as income of settlor
Section 682(3)	Adjustments after the administration period
Chapter 8 of Part 5	Income not otherwise charged
Section 844(4)	Withdrawal of relief for unremittable foreign income after source ceases

PART 3

Other provisions	***Description***
Paragraph 8(2)(b)(i) of Schedule 3 to the Finance Act 1971	Occupational pension schemes (refunds of contributions and commutation payments)
Section 68(2) of the Finance Act 1989	Employee share ownership trust (chargeable event)
Section 71(4) of the Finance Act 1989	Employee share ownership trust (borrowing)
Paragraph 11(3) of Schedule 20 to the Finance Act 1994	Self-assessment transitional
Section 258(4) of the Capital Allowances Act	Special leasing
Section 479(4) of the Capital Allowances Act	Persons having qualifying non-trade expenditure
Section 394(2) of ITEPA 2003	Charge on administrator of non-approved pension scheme
Section 476(5) of ITEPA 2003	Charge on occurrence of chargeable event
Section 583 of ITEPA 2003	certain pension income (approved retirement benefits schemes: unauthorised payments)
Section 623 of ITEPA 2003	certain pension income (return of surplus employee AVCs)
Section 119(4) of the Finance Act 2004	Individuals benefited by film relief
Section 127(2) of the Finance Act 2004	Losses derived from exploiting licence: individuals in partnership

(3) For the purposes of this section the reference to section 743 of this Act does not include that section so far as relating to income falling within subsection (1A) of that section.

(4) For the purposes of this section—

(a) any reference to any provision of ITTOIA 2005 does not include that provision so far as relating to relevant foreign income,

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(b) the reference to Chapter 2 of Part 4 of ITTOIA 2005 is a reference to that Chapter only so far as relating to interest falling within section 582(2)(b)(ii) of this Act (funding bonds issued in respect of interest on certain debts),

(c) the reference to Chapter 9 of Part 4 of ITTOIA 2005 is a reference to that Chapter only so far as relating to gains—

(i) which are from a policy or contract specified in section 531(3) of that Act, and

(ii) which do not fall within section 532 or 534 of that Act,

(d) the reference to section 579 of ITTOIA 2005 does not include that section so far as relating to any annual payment,

(e) the reference to Chapter 4 of Part 5 of ITTOIA 2005 does not include that Chapter so far as relating to any annual payment, and

(f) the reference to Chapter 5 of Part 5 of ITTOIA 2005 does not include that Chapter so far as relating to income which falls within section 619(3) of that Act.

(5) For the purposes of this section the reference to section 583 of ITEPA 2003 is a reference to that section only where the paying scheme (see subsection (3) of that section) is a pilots' benefit fund (see section 587 of that Act).**]**

Textual Amendments

F5588 S. 836B inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 340** (with Sch. 2)

837 "Annual value" of land.

M1133(1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, the annual value of land shall be taken to be the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all usual tenant's rates and taxes, and if the landlord undertook to bear the costs of the repairs and insurance, and the other expenses, if any, necessary for maintaining the subject of the valuation in a state to command that rent.

(2) Section 23 of the M1134General Rate Act 1967 (adjustment of gross value by reference to provision of or payment for services etc.) shall apply for the purposes of subsection (1) above, and in relation to land in Scotland or Northern Ireland shall apply as if it extended to the whole of the United Kingdom.

(3) Where any question arises as to the annual value of land it shall be determined by the General Commissioners and those Commissioners shall hear and determine the question in like manner as an appeal.

Modifications etc. (not altering text)

C887 *See*—s.26—*and managed as one estate.*s.145—*living accommodation provided for employee.*s.156—*valuation of benefits in kind.*

C888 *Reproduced in* Part II Vol.5.

Marginal Citations

M1133 Source—1970 s.531

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M11341967 c. 9.

[F5589 837A Meaning of "research and development".

(1) The following provisions have effect for the purposes of, and subject to, the provisions of the Tax Acts which apply this section.

(2) "Research and development" means activities that fall to be treated as research and development in accordance with **[**F5590 generally accepted accounting practice**]**.

This is subject to regulations under subsection (3) below.

(3) The Treasury may by regulations provide—

(a) that such activities as may be prescribed are not "research and development" for the purposes of this section, and

(b) that such other activities as may be prescribed are "research and development" for those purposes.

(4) Regulations under subsection (3) above may—

(a) make provision by reference to guidelines issued (whether before or after the coming into force of this section) by the Secretary of State, and

(b) make such supplementary, incidental, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(5) F5591 . . . . . .

(6) Unless otherwise expressly provided, "research and development" does not include oil and gas exploration and appraisal.**]**

Textual Amendments

F5589 S. 837A inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 19 para. 1**

F5590 Words in s. 837A(2) substituted (24.7.2002) by Finance Act 2002 (c. 23), **s. 103(4)(a)**

F5591 S. 837A(5) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

[F5592 837B Meaning of "oil and gas exploration and appraisal".

(1) References in the Tax Acts to "oil and gas exploration and appraisal" are to activities carried out for the purpose of—

(a) searching for petroleum anywhere in an area, or

(b) ascertaining—

(i) the extent or characteristics of any petroleum-bearing area, or

(ii) what the reserves of petroleum of any such area are,

so that it may be determined whether the petroleum is suitable for commercial exploitation.

(2) For this purpose "petroleum" has the meaning given in section 1 of the M1135 Petroleum Act 1998.**]**

Textual Amendments

F5592 S. 837B inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 19 para. 2**

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Marginal Citations

M1135 1998 c. 17.

[F5593 837C Meaning of "offshore installation"

(1) For the purposes of the Tax Acts, unless the context otherwise requires, "offshore installation" means a structure which is, is to be, or has been, put to a use specified in subsection (2) while—

(a) standing in any waters,

(b) stationed (by whatever means) in any waters, or

(c) standing on the foreshore or other land intermittently covered with water.

(2) The uses are—

(a) use for the purposes of exploiting mineral resources by means of a well;

(b) use for the purposes of exploration with a view to exploiting mineral resources by means of a well;

(c) use for the storage of gas in or under the shore or the bed of any waters;

(d) use for the recovery of gas so stored;

(e) use for the conveyance of things by means of a pipe;

(f) use mainly for the provision of accommodation for persons who work on or from a structure which is, is to be, or has been, put to a use specified in any of paragraphs (a) to (e) while—

(i) standing in any waters,

(ii) stationed (by whatever means) in any waters, or

(iii) standing on the foreshore or other land intermittently covered with water.

(3) But a structure is not an offshore installation if—

(a) it has ceased permanently to be put to a use specified in subsection (2),

(b) it is not, and is not to be, put to any other use specified in subsection (2), and

(c) since ceasing permanently to be put to a use specified in subsection (2) it has been put to a use which is not so specified.

(4) In this section "structure" includes a ship or other vessel.

(5) The Treasury may make provision by regulations as to the meaning of "offshore installation" for the purposes of the Tax Acts.

(6) The regulations may—

(a) add to, amend or repeal subsections (1) to (4) or any provision of those subsections;

(b) make different provision for different purposes;

(c) include incidental, consequential, supplemental, saving or transitional provisions.**]**

Textual Amendments

F5593 S. 837C inserted (with effect in accordance with Sch. 27 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 1**

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838 Subsidiaries.

M1136(1) For the purposes of the Tax Acts a body corporate shall be deemed to be—

(a) a "51 per cent. subsidiary" of another body corporate if and so long as more than 50 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;

(b) a "75 per cent. subsidiary" of another body corporate if and so long as not less than 75 per cent. of its ordinary share capital is owned directly or indirectly by that other body corporate;

(c) a "90 per cent. subsidiary" of another body corporate if and so long as not less than 90 per cent. of its ordinary share capital is owned directly by that other body corporate.

(2) In subsection (1)(a) and (b) above "owned directly or indirectly" by a body corporate means owned, whether directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

(3) In this section references to ownership shall be construed as references to beneficial ownership.

(4) For the purposes of this section the amount of ordinary share capital of one body corporate owned by a second body corporate through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate, shall be determined in accordance with the following provisions of this section.

(5) Where, in the case of a number of bodies corporate, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then for the purposes of this section, the first shall be deemed to own ordinary share capital of the third through the second, and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third and so on.

(6) In this section—

(a) any number of bodies corporate of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one, and so on, and, if they are more than three, any three or more of them, are referred to as "a series";

(b) in any series—

(i) that body corporate which owns ordinary share capital of another through the remainder is referred to as the "first owner";

(ii) that other body corporate the ordinary share capital of which is so owned is referred to as "the last owned body corporate";

(iii) the remainder, if one only, is referred to as "an intermediary" and, if more than one, are referred to as "a chain of intermediaries";

(c) a body corporate in a series which directly owns ordinary share capital of another body corporate in the series is referred to as "an owner"; and

(d) any two bodies corporate in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other bodies corporate in the series, are referred to as being directly related to one another.

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(7) Where every owner in a series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned body corporate.

(8) Where one of the owners in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the body corporate to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned body corporate through the intermediary or chain of intermediaries.

(9) Where—

(a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the body corporate to which it is directly related; or

(b) every owner in a series owns a fraction of the ordinary share capital of the body corporate to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned body corporate as results from the multiplication of those fractions.

(10) Where the first owner in any series owns a fraction of the ordinary share capital of the last owned body corporate in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned body corporate, either—

(a) directly, or

(b) through an intermediary or intermediaries which is not a member or are not members of that series, or

(c) through a chain or chains of intermediaries of which one or some or all are not members of that series, or

(d) in a case where the series consists of more than three bodies corporate, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the bodies corporate of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned body corporate owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

Modifications etc. (not altering text)

C889 S. 838 applied (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 184(1)(a)**, 289 (with ss. 60(1), 101(1), 171, 201(3))
S. 838 applied (27.7.1993) by 1993 c. 34, **s. 189(6)**

C890 S. 838 modified (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 29 para. 50(7)**

C891 Definition in s. 838 modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 170(2)(c)**, 289 (with ss. 60(1), 101(1), 171, 201(3))

C892 S. 838(2)-(10) applied (30.3.1995) by The Electricity (Class Exemptions from the Requirement for a Licence) (No. 2) Order 1995 (S.I. 1995/909), **art. 2(2)(c)**

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S. 838(2)-(10) applied (1.10.2001) by The Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 (S.I. 2001/3270), **art. 2(2)(c)**
S. 838(2)-(10) applied (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 50(7)**

C893 S. 838(4)-(10) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2**, Pt. I para. 31(11)

Marginal Citations

M1136 Source—1970 s.532.

839 Connected persons.

M1137(1) For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, any question whether a person is connected with another shall be determined in accordance with the following provisions of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's **[**F5594spouse or civil partner**]**, or is a relative, or the **[**F5594spouse or civil partner**]** of a relative, of the individual or of the individual's **[**F5594spouse or civil partner**]**.

[F5595(3) A person, in his capacity as trustee of a settlement, is connected with—

(a) any individual who in relation to the settlement is a settlor,

(b) any person who is connected with such an individual, and

(c) any body corporate which is connected with that settlement.

In this subsection "settlement" and "settlor" have the same meaning as in **[**F5596Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act)**]**.

(3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if—

(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement; or

(b) it is controlled (within the meaning of section 840) by a company falling within paragraph (a) above.**]**

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the **[**F5594spouse or civil partner**]** or relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other; or

(b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

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(7) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section—

"company" includes any body corporate **[**F5597(including an open-ended investment company)**]** or unincorporated association, but does not include a partnership, and this section shall apply in relation to any unit trust scheme as if the scheme were a company and as if the rights of the unit holders were shares in the company;

"control" shall be construed in accordance with section 416; and

"relative" means brother, sister, ancestor or lineal descendant.

In relation to any period during which section 470(2) has effect the reference above to a unit trust scheme shall be construed as a reference to a unit trust scheme within the meaning of the M1138Prevention of Fraud (Investments) Act 1958 or the M1139Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

Textual Amendments

F5594 Words in s. 839(2)(4) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 100

F5595 S. 839(3)(3A) substituted for s. 839(3) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 20**

F5596 Words in s. 839(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 341** (with Sch. 2)

F5597 Words in s. 839(8) inserted (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **reg. 15**

Modifications etc. (not altering text)

C894 S. 839 applied by Finance Act 1991 (c. 31, SIF 63:1), **ss. 104(3)**, 112(7)(b)
S. 839 applied by 1983 c. 55, **Sch. 4A para. 1(5)** (as inserted (1.12.1992 for specified purposes and 1.1.1993 otherwise) by Finance No. 2 Act 1992 (c. 48), s. 14(2), Sch. 3 Pt. I para. 62; S.I. 1992/2979, art. 4, **Sch. Pt. II**; S.I. 1992/3261, **art. 3**,Sch.)
S. 839 applied (27.7.1993) by 1993 c. 34, **s. 193(6)**

C895 S. 839 applied (with effect in accordance with s. 127(19) of the affecting Act) by Finance Act 1995 (c. 4), **s. 127(17)**

C896 S. 839 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 15(7)**
S. 839 applied (with effect in accordance with s. 105(1), Sch. 13 para. 8(1) of the affecting Act) by Finance Act 1996 (c. 8), **Sch. 13 para. 8(3)** (with Sch. 13 para. 6)

C897 S. 839 applied by Finance Act 1986 (c. 8), **s. 80B(1)** (as inserted by Finance Act 1997 (c. 16), **s. 97(1)(4)(6)**; S.I. 1997/ 2428, art. 2)
S. 839 applied by Finance Act 1986 (c. 8), **s. 88B(1)** (as inserted by Finance Act 1997 (c. 16), **s. 102(1)(4)(6)**; S.I. 1997/ 2428, art. 2)

C898 S. 839 applied by Finance Act 1994 (c. 9), **Sch. 6A para. 1(2)** (as inserted by Finance Act 1997 (c. 16), ss. 22(3), 24, **Sch. 4**)

C899 S. 839 applied by Value Added Tax Act 1994 (c. 23), **Sch. 9** Group 2 Note (6) (as substituted by Finance Act 1997 (c. 16), **s. 38**)
S. 839 applied by Value Added Tax Act 1994 (c. 23), **Sch. 10 para. 3A(14)** (as inserted by Finance Act 1997 (c. 16), **s. 37(3)-(6)**)

C900 S. 839 applied (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 12 para. 25(2)**

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C901 S. 839 applied (with effect in accordance with s. 48(11) of the affecting Act) by Finance (No. 2) Act 1997 (c. 58), **s. 48(10)**

C902 S. 839 applied (31.7.1998) by Finance Act 1998 (c. 36), **s. 47(10)**
S. 839 applied (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 11 para. 3(4)**

C903 S. 839 applied (27.7.1999) by Finance Act 1999 (c. 16), **s. 97(2)(a)**

C904 S. 839 applied (28.3.2000) by Finance Act 2000 (c. 17), **s. 119(9)(13)**
S. 839 applied (with effect in accordance with s. 62 of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 14 para. 71(2)**
S. 839 applied (with effect in accordance with s. 63(4) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 15 para. 102(3)**
S. 839 applied (with effect in accordance with s. 69(1) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 20 para. 25(2)** (with Sch. 20 para. 26)

C905 S. 839 applied (with effect in accordance with s. 579 of the affecting Act) by Capital Allowances Act 2001 (c. 2), **s. 575(1)** (with s. 575(2))

C906 S. 839 applied (with effect in accordance with s. 70(1) of the affecting Act) by Finance Act 2001 (c. 9), **Sch. 22 para. 31(4)** (with Sch. 22 para. 32)

C907 S. 839 applied (1.4.2002) by The Aggregates Levy (General) Regulations 2002 (S.I. 2002/761), **reg. 12(2)**

C908 S. 839 applied (1.6.2002) by The Beer Regulations 1993 (S.I. 1993/1228), **Sch. 1** (as amended by The Beer and Excise Warehousing (Amendment) Regulations 2002 (S.I. 2002/1265), **reg. 2(5)(b)**)

C909 S. 839 applied (with effect in accordance with s. 55(7) of the affecting Act) by Finance Act 2002 (c. 23), **s. 55(5)**
S. 839 applied by Finance Act 1996 (c. 8), **Sch. 13 para. 9A(5)** (as inserted (with effect in accordance with **s. 104(5)** of the amending Act) by Finance Act 2002 (c. 23), s. 104(3))
S. 839 applied by Alcoholic Liquor Duties Act 1979 (c. 4), **s. 36B(8)** (as inserted (1.6.2002) Finance Act 2002 (c. 23), s. 4(1)(2), **Sch. 1 para. 2**)
S. 839 applied (with effect in accordance with s. 53(1) of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 12 para. 19(2)** (with Sch. 12 para. 20)
S. 839 applied (with effect in accordance with Sch. 13 para. 28 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 13 para. 27(2)**
S. 839 applied (with effect in accordance with Sch. 37 para. 2(5) of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 37 para. 2(4)(b)**

C910 S. 839 applied by The Social Security (Contributions) Regulations 2001 (S.I. 2001/1004), **Sch. 4 para. 4A(3)** (as inserted (28.11.2002) by The Social Security (Contributions)(Amendment No. 5) Regulations 2002 (S.I. 2002/2929), reg. 5)

C911 S. 839 applied (23.1.2003 with effect in accordance with s. 57(4)(a) of the affecting Act) by Finance Act 2002 (c. 23), s. 57(3), **Sch. 16 para. 51(3)**; S.I. 2003/88, **art. 2**

C912 S. 839 applied (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 718** (with Sch. 7)

C913 S. 839 applied (10.7.2003 with effect in accordance with Sch. 19 of the affecting Act) by Finance Act 2003 (c. 14), ss. 45(6), 53(2), 58(5), 108(1), Sch. 4 paras. 1(2), 10(4), **12(2)**; S.I. 2003/2899, **art. 2**

C914 S. 839 applied (10.7.2003) by Finance Act 2003 (c. 14), **Sch. 26 para. 7(3)**

C915 S. 839 applied by Finance Act 2003 (c. 14), **Sch. 6A para. 10** (as inserted (1.12.2003) by The Stamp Duty and Stamp Duty Land Tax (Variation of the Finance Act 2003) (No. 2) Regulations 2003 (S.I. 2003/2816), reg. 1, **Sch. para. 3(2)** (replacing S.I. 2003/2760, reg. 1, **Sch. para. 3(2)**); and S.I. 2003/2816 is revoked and replaced by Finance Act 2004 (c. 12), Sch. 39 paras. 14, 17(2), **26**

C916 S. 839 applied by The Value Added Tax Regulations 1995 (S.I. 1995/2518), **reg. 171(7)(8)** (as inserted (11.12.2003) by The Value Added Tax (Amendment) (No. 6) Regulations 2003 (S.I. 2003/3220), **regs. 1(1)(b)**, 23)

C917 S. 839 applied (22.7.2004) by Finance Act 2004 (c. 12), **s. 278(4)** (with Sch. 36)

C918 S. 839 applied (with modifications) (with effect in accordance with s. 84(2) of the affecting Act) by Finance Act 2004 (c. 12), **Sch. 15 para. 2**

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C919 S. 839 applied by Finance Act 2003 (c. 14), **s. 45A(10)** (as inserted (with effect in accordance with Sch. 39 para. 13(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 5(5)**)
C920 S. 839 applied by Finance Act 2003 (c. 14), **s. 44(11)** (as inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 15(4)**)
C921 S. 839 applied by Finance Act 2003 (c. 14), **Sch. 6A para. 10** (as inserted (with effect in accordance with Sch. 39 para. 26 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 39 para. 17(2)**)
C922 S. 839 applied (with modifications) by Finance Act 2003 (c. 14), **Sch. 15 para. 39** (as substituted (with effect in accordance with Sch. 41 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 41 para. 1**)
C923 S. 839 applied (1.8.2004) by The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2004 (S.I. 2004/1863), **reg. 1(1)(3)**
C924 S. 839 applied (1.8.2004) by The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (S.I. 2004/1865), **reg. 1(1)(3)**
C925 S. 839 applied (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 878(5)**, 883(3)(b)
C926 S. 839 applied (with modifications) (7.4.2005) by Finance Act 2005 (c. 7), **s. 83(9)**
C927 S. 839 applied (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), ss. 17(4)(n), 31(3), **Sch. 3 para. 12**
C928 S. 839 applied by Finance Act 1996 (c. 8), **s. 91D(12)** (as inserted (with effect in accordance with Sch. 7 para. 10(7) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 10(4)**)
C929 S. 839 applied by Finance Act 2003 (c. 14), **Sch. 17A para. 18A(6)** (as inserted (with effect in accordance with Sch. 10 para. 16(5)-(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 10 para. 14**)
C930 S. 839(2)-(8) applied (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 8(9)(b), **Sch. 1 para. 3**

Marginal Citations

M1137 Source—1970 s.533.
M1138 1958 c. 45.
M1139 1940 c. 9 (N.I.)

840 Meaning of "control" in certain contexts.

M1140 For the purposes of, and subject to, the provisions of the Tax Acts which apply this section, "control", in relation to a body corporate, means the power of a person to secure—

(a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

Modifications etc. (not altering text)

C931 S. 840 applied by Finance Act 1988 (c. 39), **s. 87(3)**
S. 840 applied by Finance Act 1989 (c. 26), **s. 67(3)**
S. 840 applied by Capital Allowances Act 1990 (c. 1), **s.77(6)**
S. 840 applied (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 22 para. 17(6)(a)(ii)**
S. 840 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 8(9)**
S. 840 applied (1.2.2001) by Trustee Act 2000 (c. 29), **ss. 19(3)**, 42(2); S.I. 2001/49, **art. 2**

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S. 840 applied (29.7.2002) by Trustee Act (Northern Ireland) 2001 (c. 14), **ss. 19(3)**, 45(1); S.R. 2002/253, **art. 2**
S. 840 applied by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 5AA para. 4(3)** (as inserted (with effect in accordance with Sch. 9 para. 7 of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 3**)

C932 S. 840 applied (23.1.2003 with effect in accordance with s. 57(4)(a) of the affecting Act) by Finance Act 2002 (c. 23), s. 57(3), **Sch. 16 para. 14(3)**; S.I. 2003/88, **art. 2**

C933 S. 840 applied and extended (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **ss. 69**, 719 (with Sch. 7)

C934 S. 840 applied (with effect in accordance with s. 77 of the affecting Act) by Finance Act 2004 (c. 12), **s. 65(3)**

C935 S. 840 applied (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 878(6)**, 883(3)(b)

Marginal Citations

M1140 Source—1970 s.534

VALID FROM 06/04/2007

[F5598 840ZA Meaning of "tax advantage"

(1) In any provision of the Corporation Tax Acts in relation to which it is provided that "tax advantage" has the meaning given by this section, "tax advantage" means—

(a) a relief from tax or increased relief from tax,

(b) a repayment of tax or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax, or

(d) the avoidance of a possible assessment to tax.

(2) For the purposes of subsection (1)(c) and (d) it does not matter whether the avoidance or reduction is effected—

(a) by receipts accruing in such a way that the recipient does not pay or bear tax on them, or

(b) by a deduction in calculating profits or gains.

(3) In this section "relief from tax" includes—

(a) a tax credit under section 231 for the purposes of corporation tax, and

(b) a tax credit under section 397(1) of ITTOIA 2005 for the purposes of income tax.]

Textual Amendments

F5598 S. 840ZA inserted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 225** (with Sch. 2)

[F5599 840A Banks.

(1) In any provision in relation to which it is provided that "bank" has the meaning given by this section "bank" means—

(a) the Bank of England;

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[F5600(b) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits other than—

(i) a building society within the meaning of the Building Societies Act 1986,

[F5601(ii) a society registered within the meaning of the Friendly Societies Act 1974 M1141 or incorporated under the Friendly Societies Act 1992 M1142,**]**

(iii) a society registered as a credit union under the Industrial and Provident Societies Act 1965 M1143 or the Credit Unions (Northern Ireland) Order 1985 M1144, or

(iv) an insurance company within the meaning of section 659B(1);

(c) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to the Financial Services and Markets Act 2000 which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits;**]** or

(d) a relevant international organisation which is designated as a bank for the purposes of that provision by an order made by the Treasury.

(2) F5602. . . . . .

(3) For the purposes of subsection (1) above, a relevant international organisation is an international organisation of which the United Kingdom is a member.**]**

Textual Amendments

F5599 S. 840A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 37 para. 1(1)**

F5600 S. 840A(1)(b)(c) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 46(2)**

F5601 S. 840A(1)(b)(ii) substituted (2.7.2002) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2002 (S.I. 2002/1409), **art. 2(2)**

F5602 S. 840A(2) omitted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by virtue of The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 46(3)**

Marginal Citations

M1141 1974 c. 46.

M1142 1992 c. 40.

M1143 1965 c. 12.

M1144 S.I. 1985/1205 (N.I. 12).

841 Recognised stock exchange and recognised investment exchanges.

M1145(1) In the Tax Acts "recognised stock exchange" means—

(a) the Stock Exchange; and

(b) any such stock exchange outside the United Kingdom as is for the time being designated for the purposes of this section as a recognised stock exchange by order made by the Board.

(2) An order made by the Board under this section—

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(a) may designate a stock exchange by name, or by reference to any class or description of stock exchanges including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom;

(b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient;

(c) may be varied or revoked by a subsequent order so made.

(3) The Board may by regulations make provision securing that enactments in the Tax Acts containing references to the Stock Exchange have effect, for such purposes and subject to such modifications as may be prescribed by the regulations, in relation to all other recognised investment exchanges (within the meaning of the **[**F5603Financial Services and Markets Act 2000**]**), or in relation to such of those exchanges as may be prescribed.

Textual Amendments

F5603 Words in s. 841(3) substituted (1.12.2001) by Financial Services and Markets Act 2000 (c. 8), s. 431(2), **Sch. 20 para. 4(6)**; S.I. 2001/3538, **art. 2(1)**

Marginal Citations

M1145 Source—1970 s.535; 1973 Sch.21 9; 1987 (No.2) s.73

[F5604**841A Recognised clearing systems.**

F5605 . . . . . **]**

Textual Amendments

F5604 S. 841A inserted (with effect in accordance with Sch. 7 para. 32 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 7 para. 26** (with Sch. 7 paras. 33-35)

F5605 S. 841A repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**

842 Investment trusts.

M1146(1) In the Tax Acts "investment trust" means, as respects any accounting period, a company which is not a close company and which is approved for the purposes of this section for that accounting period by the Board, and the Board shall not approve any company unless it is shown to their satisfaction—

[F5606(aa) that the company is resident in the United Kingdom; and**]**

(a) that the company's income **[**F5607(as determined in accordance with subsection (1AB) below)**][**F5608consists wholly or mainly of eligible investment income**][**F5609(as so determined)**]**; and

(b) subject to subsection (2) below, that no holding in a company, other than an investment trust or a company which would qualify as an investment trust but for paragraph (c) below, represents more than 15 per cent. by value of the investing company's investments; and

[F5610(c) that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) are **[**F5611listed in the Official List of**]** the Stock Exchange; and**]**

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(d) that the distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company's memorandum or articles of association; and

(e) that the company does not retain in respect of any accounting period **[**F5612an amount which is greater than**]** 15 per cent. of **[**F5613its eligible investment income**][**F5614(determined in accordance with subsection (1AB) below)**]**.

[F5615(1AA) Income is eligible investment income for the purposes of this section in so far as it is either—

(a) income deriving from shares or securities, or

(b) eligible rental income, within the meaning of section 508A.**]**

[F5616(1AB) In determining for the purposes of paragraph (a) or (e) of subsection (1) above (and accordingly of subsection (2A)(b) below)—

(a) the amount of a company's income, or

(b) the amount of income which a company derives from shares or securities,

the amounts to be brought into account under Chapter 2 of Part 4 of the Finance Act 1996 in respect of the company's loan relationships shall be determined without reference to any debtor relationships of the company.**]**

[F5617(1AC) In determining the amount of a company's income for the purposes of subsection (1)(a) above, no account shall be taken of any amount that falls under section 75B(7)(b) to be regarded as income of the company chargeable under Case VI of Schedule D.**]**

[F5618(1A) For the purposes of paragraph (b) of subsection (1) above and the other provisions of this section having effect in relation to that paragraph—

(a) holdings in companies which are members of a group (whether or not including the investing company) and are not excluded from that paragraph shall be treated as holdings in a single company; and

(b) where the investing company is a member of a group, money owed to it by another member of the group shall be treated as a security of the latter held by the investing company and accordingly as, or as part of, the holding of the investing company in the company owing the money;

and for the purposes of this subsection "group" means a company and all companies which are its 51 per cent. subsidiaries**]**

(2) Subsection (1)(b) above shall not apply—

(a) to a holding in a company acquired before 6th April 1965 which on that date represented not more than 25 per cent. by value of the investing company's investments; or

(b) to a holding in a company which, when it was acquired, represented not more than 15 per cent. by value of the investing company's investments;

so long as no addition is made to the holding.

[F5619(2A) Subsection (1)(e) above shall not apply as regards an accounting period if—

(a) the company is required to retain income in respect of the period by virtue of a restriction imposed by law, and

(b) the amount of income the company is so required to retain in respect of the period exceeds an amount equal to 15 per cent. of the income the company derives from shares and securities.

(2B) Subsection (2A) above shall not apply where—

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(a) the amount of income the company retains in respect of the accounting period exceeds the amount of income it is required by virtue of a restriction imposed by law to retain in respect of the period, and

(b) the amount of the excess or, where the company distributes income in respect of the period, that amount together with the amount of income which the company so distributes is at least £10,000 or, where the period is less than 12 months, a proportionately reduced amount.

(2C) Paragraph (e) of subsection (1) above shall not apply as regards an accounting period if the amount which the company would be required to distribute in order to fall within that paragraph is less than £10,000 or, where the period is less than 12 months, a proportionately reduced amount.**]**

(3) For the purposes of subsection (2) above—

(a) "holding" means the shares or securities (whether of one class or more than one class) held in any one company; and

(b) an addition is made to a holding whenever the investing company acquires shares or securities of that one company, otherwise than by being allotted shares or securities without becoming liable to give any consideration, and if an addition is made to a holding that holding is acquired when the addition or latest addition is made to the holding; and

(c) where in connection with a scheme of reconstruction [F5620]. . . , a company issues shares or securities to persons holding shares or securities in a second company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings in the second company, without those persons becoming liable to give any consideration, a holding of the shares or securities in the second company and a corresponding holding of the shares or securities so issued shall be regarded as the same holding.

(4) In this section "company" and "shares" shall be construed in accordance with sections **[**[F5621]99 and 288 of **[**[F5622]the 1992 Act**]][**[F5623]and "scheme of reconstruction" has the same meaning as in section 136 of that Act**]**.

Textual Amendments

F5606 1988(F) s.117(1)(a)*for accounting periods ending after 5th April* 1988.

F5607 Words in s. 842(1)(a) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(2)(a)**

F5608 Words in s. 842(1)(a) substituted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by virtue of Finance Act 1996 (c. 8), **Sch. 30 para. 2(2)(a)**

F5609 Words in s. 842(1)(a) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(2)(b)**

F5610 1988(F) s.117(1)(b)*for accounting periods ending after 5th April* 1988.*Previously* "that the shares or securities of the company are quoted on the Stock Exchange and".

F5611 Words in s. 842(1)(c) substituted (with effect in accordance with Sch. 38 para. 7(3)(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 7(1)(2)(b)**

F5612 Words in s. 842(1)(e) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(3)(a)**

F5613 Words in s. 842(1)(e) substituted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 2(2)(b)**

F5614 Words in s. 842(1)(e) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(3)(b)**

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F5615 S. 842(1AA) inserted (with effect in accordance with Sch. 30 para. 3 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 30 para. 2(3)**

F5616 S. 842(1AB) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 56(4)**

F5617 S. 842(1AC) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 45(4)**

F5618 1988(F) s.117(1)(c) *for accounting periods ending after* 5*th April* 1988.

F5619 1990 s.55 *in relation to accounting periods ending on or after* 26*July* 1990.

F5620 Words in s. 842(3)(c) repealed (with effect in accordance with Sch. 9 paras. 7, 8 of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(2)**, Note

F5621 Words in s. 842(4) substituted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(55)** (with ss. 60, 101(1), 171, 201(3))

F5622 Words in s. 842(4) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**

F5623 Words in s. 842(4) added (with effect in accordance with Sch. 9 paras. 7, 8(4) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 9 para. 4(7)**

Modifications etc. (not altering text)

C936 S. 842(1A)(a) excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), **Sch. 2 para. 12(2)**

Marginal Citations

M1146 Source—1970 s.359; 1973 s.54; 1979(C) Sch.7.

[F5624 842A Venture capital trusts.

(1) In the Tax Acts "venture capital trust" means a company which is not a close company and which is for the time being approved for the purposes of this section by the Board; and an approval for the purposes of this section shall have effect as from such time as may be specified in the approval, being a time which, if it falls before the time when the approval is given, is no earlier than—

(a) in the case of an approval given in the year 1995-96, 6th April 1995; or

(b) in any other case, the time when the application for approval was made.

(2) Subject to the following provisions of this section, the Board shall not approve a company for the purposes of this section unless it is shown to their satisfaction in relation to the most recent complete accounting period of the company—

(a) that the company's income in that period has been derived wholly or mainly from shares or securities;

(b) that at least 70 per cent. by value of the company's investments has been represented throughout that period by shares or securities comprised in qualifying holdings of the company;

(c) that at least 30 per cent. by value of the company's qualifying holdings has been represented throughout that period by holdings of eligible shares;

(d) that no holding in any company, other than a venture capital trust or a company which would qualify as a venture capital trust but for paragraph (e) below, has at any time during that period represented more than 15 per cent. by value of the company's investments;

(e) that the shares making up the company's ordinary share capital (or, if there are such shares of more than one class, those of each class) have throughout that period been [F5625 listed in the Official List of] the Stock Exchange; and

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(f) that the company has not retained **[**F5626an amount which is greater than**]** 15 per cent. of the income it derived in that period from shares and securities.

(3) Where, in the case of any company, the Board are satisfied that the conditions specified in subsection (2) above are fulfilled in relation to the company's most recent complete accounting period, they shall not approve the company for the purposes of this section unless they are satisfied that the conditions will also be fulfilled in relation to the accounting period of the company which is current when the application for approval is made.

(4) The Board may approve a company for the purposes of this section notwithstanding that conditions specified in subsection (2) above are not fulfilled with respect to that company in relation to its most recent complete accounting period if they are satisfied—

(a) in the case of any of the conditions specified in paragraphs (a), (d), (e) and (f) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to the accounting period of the company which is current when the application for approval is made or in relation to its next accounting period;

(b) in the case of any of the conditions specified in paragraphs (b) and (c) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to an accounting period of the company beginning no more than three years after the time when they give their approval or, if earlier, when the approval takes effect; and

(c) in the case of every condition which is not fulfilled but with respect to which the Board are satisfied as mentioned in paragraph (a) or (b) above, that the condition will continue to be fulfilled in relation to accounting periods following the period in relation to which they are satisfied as so mentioned.

(5) For the purposes of subsection (2)(b) to (d) above the value of any holding of investments of any description shall be taken—

(a) unless—

(i) it is added to by a further holding of investments of the same description, or

(ii) any such payment is made in discharge, in whole or in part, of any obligation attached to the holding as (by discharging the whole or any part of that obligation) increases the value of the holding,

to be its value when acquired, and

(b) where it is so added to or such a payment is made, to be its value immediately after the most recent addition or payment.

F5627(5AA) **[** For the purposes of subsection (2)(b) to (d) above where—

(a) any shares ("new shares") are exchanged for other shares ("old shares") under arrangements in relation to which paragraph 10C of Schedule 28B applies, and

(b) those arrangements have not ceased by virtue of sub-paragraph (13) of that paragraph to be arrangements by reference to which requirements of that Schedule are deemed to be satisfied,

the value of the new shares, both at the time of their acquisition and immediately after any subsequent addition to a holding of the new shares that is made under those arrangements, shall be taken to be the same as the value, when last valued in accordance with subsection (5) above, of the old shares for which they are exchanged.

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(5AB) References in subsection (5AA) above to shares in a company include references to any securities of that company.

(5AC) For the purposes of subsection (2)(b) to (d) above, where—

(a) shares ("new shares") are issued to a company by virtue of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company ("convertibles"), and

(b) paragraph 10D of Schedule 28B applies in relation to the issue of the new shares,

the value of the new shares at the time of their acquisition shall be taken to be the same as the value, when last valued in accordance with subsection (5) above, of the convertibles for which they are exchanged.**]**

[F5628 (5AD) Regulations under paragraph 11B of Schedule 28B may make provision for the purposes of subsection (2)(b) to (d) above for securing that where—

(a) there is an exchange of shares to which regulations under that paragraph apply, and

(b) the new shares are treated by virtue of the regulations as meeting the requirements of that Schedule,

the value of the holding of new shares, and of any original shares that are retained under the exchange, shall be taken to be an amount such that the requirements of subsection (2)(b) to (d) above do not cease to be met by reason of the exchange.

(5AE) In subsection (5AD) above—

(a) "shares" includes securities; and

(b) "exchange of shares", "new shares" and "original shares" have the same meaning as in paragraph 11B of Schedule 28B.**]**

[F5629 (5A) Subsection (5B) below applies **[**F5630, subject to any regulations under paragraph 11 of Schedule 33 to the Finance Act 2002,**]** where—

(a) there has been an issue of ordinary share capital of a company ("the first issue"),

(b) an approval of that company for the purposes of this section has taken effect on or before the day of the making of the first issue, and

(c) a further issue of ordinary share capital of that company has been made since the making of the first issue.

(5B) Where this subsection applies, the use to which the money raised by the further issue is put, and the use of any money deriving from that use, shall be disregarded in determining whether any of the conditions specified in subsection (2)(b) and (c) above are, have been or will be fulfilled in relation to—

(a) the accounting period in which the further issue is made; or

(b) any later accounting period ending no more than three years after the making of the further issue.**]**

(6) The Board may withdraw their approval of a company for the purposes of this section wherever it at any time appears to them that there are reasonable grounds for believing—

(a) that the conditions for the approval of the company were not fulfilled at the time of the approval;

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(b) in a case where the Board were satisfied for the purposes of subsection (3) or (4) above that a condition would be fulfilled in relation to any period, that that condition is one which will not be or, as the case may be, has not been fulfilled in relation to that period;

(c) in the case of a company approved in pursuance of subsection (4) above, that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, the period of three years mentioned in subsection (4)(b) above;

[F5631(ca) in a case where the use of any money falls to be disregarded for any accounting period in accordance with subsection (5B) above—

(i) that the first accounting period of the company for which the use of that money will not be disregarded will be a period in relation to which a condition specified in subsection (2) above will fail to be fulfilled; or

(ii) that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, an accounting period for which the use of that money falls to be disregarded;**]** or

(d) that the company's most recent complete accounting period or its current one is a period in relation to which there has been or will be a failure of a condition specified in subsection (2) above to be fulfilled, not being a failure which, at the time of the approval, was allowed for in relation to that period by virtue of subsection (4) above.

(7) Subject to subsections (8) and (9) below, the withdrawal of the approval of any company for the purposes of this section shall have effect as from the time when the notice of the withdrawal is given to the company.

(8) If, in the case of a company approved for the purposes of this section in exercise of the power conferred by subsection (4) above, the approval is withdrawn at a time before all the conditions specified in subsection (2) above have been fulfilled with respect to that company in relation either—

(a) to a complete accounting period of twelve months, or

(b) to successive complete accounting periods constituting a continuous period of twelve months or more,

the withdrawal of the approval shall have the effect that the approval shall, for all purposes, be deemed never to have been given.

(9) A notice withdrawing the approval of a company for the purposes of this section may specify a time falling before the time mentioned in subsection (7) above as the time as from which the withdrawal is to be treated as having taken effect for the purposes of section 100 of the 1992 Act; but the time so specified shall be no earlier than the beginning of the accounting period in relation to which it appears to the Board that the condition by reference to which the approval is withdrawn has not been, or will not be, fulfilled.

(10) Notwithstanding any limitation on the time for making assessments, an assessment to any tax chargeable in consequence of the withdrawal of any approval given for the purposes of this section may be made at any time before the end of the period of three years beginning with the time when the notice of withdrawal is given.

(11) The following provisions of section 842 shall apply as follows for the purposes of this section as they apply for the purposes of that section, that is to say—

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[F5632(za) subsection (1AB) of that section shall apply in relation to subsection (2)(a) above as it applies in relation to subsection (1)(a) of that section;**]**

(a) subsections (1A) and (2) of that section shall apply in relation to subsection (2)(d) above (but with the omission of subsection (2)(a) of that section) as they apply in relation to subsection (1)(b) of that section;

(b) subsections **[**F5633(1AB) and**]** (2A) to (2C) of that section shall apply in relation to subsection (2)(f) above as they apply in relation to subsection (1)(e) of that section; and

(c) without prejudice to their application in relation to provisions applied by paragraph (a) or (b) above, subsections (3) and (4) of that section shall apply in relation to any reference in this section to a holding or an addition to a holding as they apply in relation to any such reference in that section.

(12) In this section, and in the provisions of section 842 as applied for the purposes of this section, "securities", in relation to any company—

(a) includes any liability of the company in respect of a loan (whether secured or not) which has been made to the company on terms that do not allow any person to require the loan to be repaid, or any stock or security relating to that loan to be re-purchased or redeemed, within the period of five years from the making of the loan or, as the case may be, the issue of the stock or security; but

(b) does not include any stock or security relating to a loan which has been made to the company on terms which allow any person to require the loan to be repaid, or the stock or security to be re-purchased or redeemed, within that period.

(13) Schedule 28B shall have effect for construing the references in this section to a qualifying holding.

(14) In this section "eligible shares" means shares in a company which are comprised in the ordinary share capital of the company and carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future F5634. . . right to be redeemed.**]**

Textual Amendments

F5624 S. 842AA inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 70(1)**

F5625 Words in s. 842AA(2)(e) substituted (with effect in accordance with Sch. 38 para. 7(3)(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 7(1)(2)(c)**

F5626 Words in s. 842AA(2)(f) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 57(2)**

F5627 S. 842AA(5AA)-(5AC) inserted (16.6.1999 with effect in accordance with s. 69(5)(a) of the amending Act) by Finance Act 1999 (c. 16), **s. 69(4)(5)**

F5628 S. 842AA(5AD)(5AE) inserted (with effect in accordance with Sch. 18 para. 8(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 8(2)**

F5629 S. 842AA(5A)(5B) inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 75(1)**

F5630 Words in s. 842AA(5A) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 33 para. 13**

F5631 S. 842AA(6)(ca) inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 75(2)**

F5632 S. 842AA(11)(za) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 57(3)(a)**

F5633 Words in s. 842AA(11)(b) inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 57(3)(b)**

F5634 Word in s. 842AA(14) repealed (with effect in accordance with s. 73(6) of the repealing Act) by Finance Act 1998 (c. 36), s. 73(1)(a), **Sch. 27 Pt. 3(13)**, Note 1

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Modifications etc. (not altering text)

C937 S. 842AA: power to modify conferred (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 33 paras. 3-12**

C938 S. 842AA modified (17.9.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (S.I. 2004/2199), **regs. 1(1)**, 12(1), 13(7)(9), 14(1)

[F5635 842A Local authorities.

(1) Except so far as the context otherwise requires, in the Tax Acts "local authority" means—

(a) in relation to England and Wales, an authority of a description specified for the purposes of this paragraph **[**F5636F5637. . . **]**.

(b) in relation to Scotland, an authority of a description specified for the purposes of this paragraph **[**F5638F5637. . . **]**, and

(c) in relation to Northern Ireland, an authority of a description specified for the purposes of this paragraph **[**F5639F5637. . . **]**.

(2) The following are the descriptions of authority specified for the purposes of paragraph (a) of subsection (1) above—

[F5640(a) a billing authority as defined in section 69 of the Local Government Finance Act 1992;

(b) a precepting authority as defined in that section;

(c) a body having power by virtue of regulations under section 74 of the M1147Local Government Finance Act 1988 to issue a levy;**]**

(d) a body having power by virtue of regulations under section 75 of that Act to issue a special levy;

F5641(e) . . . . . .

[F5642(f) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;**]**

(g) an authority having power to make or determine a rate;

[F5643(h) a residuary body established by order under section 22(1) of the M1148Local Government Act 1992.**]**

(3) The following are the descriptions of authority specified for the purposes of paragraph (b) of subsection (1) above—

[F5644(a) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**]**;

(d) a joint board or committee within the meaning of the M1149Local Government (Scotland) Act 1973;

(e) an authority having power to requisition any sum from an authority **[**F5645such as is mentioned in paragraph (a) above**]**.

(4) The following are the descriptions of authority specified for the purposes of paragraph (c) of subsection (1) above—

(a) an authority having power to make or determine a rate;

(b) an authority having power to issue a precept, requisition or other demand for the payment of money to be raised out of a rate.

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(5) In this section "rate" means a rate the proceeds of which are applicable for public local purposes and which is leviable by reference to the value of land or other property.**]**

Textual Amendments

F5635 S. 842A inserted (1.4.1990) by Finance Act 1990 (c. 29), **s.127(1)(4)**

F5636 Words in s. 842A(1)(a) inserted (1.4.1998) by Police Act 1997 (c. 50), s. 135(1), **Sch. 9 para. 53(a)**; S.I. 1998/354, **art. 2(1)(2)(bb)**

F5637 Words in s. 842A(1)(a)(b)(c) repealed (1.4.2002) by Criminal Justice and Police Act 2001 (c. 16), s. 138(2), Sch. 6 para. 71, **Sch. 7 Pt. 5(1)**; S.I. 2002/344, **art. 3(k)(m)**

F5638 Words in s. 842A(1)(b) inserted (1.4.1998) by Police Act 1997 (c. 50), s. 135(1), **Sch. 9 para. 53(b)**; S.I. 1998/354, **art. 2(1)(2)(bb)**

F5639 Words in s. 842A(1)(c) inserted (1.4.1998) by Police Act 1997 (c. 50), s. 135(1), **Sch. 9 para. 53(c)**; S.I. 1998/354, **art. 2(1)(2)(bb)**

F5640 S. 842A(2)(a)-(c) substituted (1.4.1993) by Local Government Finance Act 1992 (c. 14), s. 117(1), **Sch. 13 para. 57** (with s. 118(1)(2)(4)); S.I. 1992/2454, **art. 3(1)(a)**

F5641 S. 842A(2)(e) repealed (1.4.1995) by Police and Magistrates' Courts Act 1994 (c. 29), s. 94(1), **Sch. 9 Pt. 1**; S.I. 1994/3262, art. 4, **Sch.**

F5642 S. 842A(2)(f) substituted (E.W.) (1.10.2004 for E. and 10.11.2004 for W.) by Fire and Rescue Services Act 2004 (c. 21), s. 61, **Sch. 1 para. 64**; S.I. 2004/2304, **art. 2** (with art. 3); S.I. 2004/2917, **art. 2**

F5643 S. 842A(2)(h) inserted (retrospective to 29.11.1994) by Finance Act 1995 (c. 4), **s. 144**

F5644 S. 842A(3)(a) substituted (1.4.1996) for s. 842A(3)(a)-(c) by Local Government etc. (Scotland) Act 1994 (c. 39), s. 184(2), **Sch. 13 para. 155(a)**; S.I. 1996/323, **art. 4(1)(c)**

F5645 Words in s. 842A(3)(e) substituted (1.4.1996) by Local Government etc. (Scotland) Act 1994 (c. 39), s. 184(2), **Sch. 13 para. 155(b)**; S.I. 1996/323, **art. 4(1)(c)**

Marginal Citations

M1147 1988 c. 41.

M1148 1992 c. 19.

M1149 1973 c. 65.

[F5646 842B Meaning of "investment LLP" and "property investment LLP"

(1) In this Act—

(a) an "investment LLP" means a limited liability partnership whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom; and

(b) a "property investment LLP" means a limited liability partnership whose business consists wholly or mainly in the making of investments in land and the principal part of whose income is derived therefrom.

(2) Whether a limited liability partnership is an investment LLP or a property investment LLP is determined for each period of account of the partnership.

F5647 . . . . . .**]**

Textual Amendments

F5646 S. 842B inserted (6.4.2001 with effect in accordance with s. 76(1) of the amending Act) by Finance Act 2001 (c. 9), s. 76(2), **Sch. 25 para. 1(1)**

F5647 Words in s. 842B(2) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

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Commencement, savings, repeals etc.

843 Commencement.

(1) Except as otherwise provided by the following provisions of this section, this Act shall come into force in relation to tax for the year 1988-89 and subsequent years of assessment, and for companies' accounting periods ending after 5th April 1988.

(2) Except as otherwise provided by the following provisions of this section, such of the provisions of this Act as relate to capital gains tax (including the provisions of Part XVIII as applied to capital gains tax by section **[**F5648277 of **[**F5649the 1992 Act**]]**) shall come into force in relation to that tax for the year 1988-89 and subsequent years of assessment.

(3) The following provisions of this Act, that is to say—

(a) so much of any provision as authorises the making of any Order in Council or regulations or other instrument;

(b) so much of any provision as relates to the making of a return, the furnishing of a certificate or the giving of any other information, including any such provision which imposes a duty on the Board or an officer of the Board as well as any such provision which imposes a duty on any other person;

(c) so much of any provision as imposes any penalty;

(d) except where the tax concerned is all tax for years of assessment before the year 1988-89 or accounting periods ending before 6th April 1988, so much of any other provision as confers any power or imposes any duty the exercise or performance of which operates or may operate in relation to tax for more than one chargeable period,

shall come into force for all purposes on 6th April 1988 to the exclusion of the corresponding enactments repealed by this Act.

(4) This section has effect except as otherwise provided by any other provision of this Act, and in particular except as provided by sections 96, 380 to 384, 393, F5650 . . ., 400, 703 and 812.

Textual Amendments

F5648 Words in s. 843(2) substituted (with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(56)** (with ss. 60, 101(1), 171, 201(3))

F5649 Words in s. 843(2) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**

F5650 Words in s. 843(4) repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 73(3)(4)(5), 123, Sch. 15 para. 24, **Sch. 19 Pt. V**, Note 4

844 Savings, transitional provisions, consequential amendments and repeals.

(1) Schedule 29, which makes amendments to other enactments consequential on the passing of this Act, shall have effect.

(2) Schedule 29, section 843 and this section are without prejudice to the provisions of the M1150Interpretation Act 1978 as respects the effect of repeals.

(3) Schedule 30 which contains savings and transitional provisions shall have effect.

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(4) The enactments mentioned in Schedule 31 are hereby repealed to the extent specified in the third column of that Schedule.

(5) Subject to subsection (6) below, section 843(3), Schedule 30 and to any other provision of this Act by which any provision is brought into force to the exclusion of the corresponding enactments repealed by this Act, those repeals shall come into force in accordance with subsections (1) and (2) of section 843.

(6) No provision mentioned in subsection (5) above shall be taken as bringing a repeal into force except to the extent that the repealed enactment is being superseded.

Marginal Citations
M1150 1978 c. 30.

845 Short title.

This Act may be cited as the Income and Corporation Taxes Act 1988.

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SCHEDULES

SCHEDULE A1

DETERMINATION OF PROFITS ATTRIBUTABLE TO PERMANENT ESTABLISHMENT: SUPPLEMENTARY PROVISIONS

PART 1

INTRODUCTION

Introduction

1 (1) The provisions of this Schedule have effect for supplementing section 11AA as regards the determination of the profits attributable to a permanent establishment in the United Kingdom of a company that is not resident in the United Kingdom ("the non-resident company").

(2) In this Schedule "the separate enterprise principle" means the principle in section 11AA(2) (read with subsection (3) of that section).

PART 2

GENERAL PROVISIONS

Transactions treated as taking place at arm's length

2 In accordance with the separate enterprise principle, transactions between the permanent establishment and any other part of the non-resident company are treated as taking place on such terms as would have been agreed between parties dealing at arm's length.

Application of general provision as to allowable deductions

3 (1) Section 11AA(4) (general provision as to allowable deductions) applies whether or not the expenses are incurred by, or reimbursed by, the permanent establishment.

(2) The amount of expenses to be taken into account under section 11AA(4) is the actual cost to the non-resident company.

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Prohibition of deductions for payments in respect of intangible assets

4 (1) No deduction is allowed in respect of royalties paid, or other similar payments made, by the permanent establishment to any other part of the non-resident company in respect of the use of intangible assets held by the company.

(2) This does not prevent a deduction in respect of any contribution by the permanent establishment to the costs of creation of an intangible asset.

(3) In this paragraph "intangible asset" has the meaning it has for accounting purposes, and includes any intellectual property (as defined in paragraph 2(2) of Schedule 29 to the Finance Act 2002).

Prohibition of deductions for interest or other financing costs

5 (1) No deduction is allowed in respect of payments of interest or other financing costs by the permanent establishment to any other part of the non-resident company, except as provided by sub-paragraph (2).

(2) The restriction in sub-paragraph (1) above does not apply to interest or other costs of financing that are payable in respect of borrowing by the permanent establishment in the ordinary course of a financial business carried on by it.

(3) In sub-paragraph (2) "financial business" means any of the following—

(a) banking, deposit-taking, money-lending or debt-factoring, or a business similar to any of those;

(b) dealing in commodity or financial futures.

Provision of goods or services for permanent establishment

6 (1) This paragraph applies where the non-resident company provides the permanent establishment with goods or services.

(2) If the goods or services are of a kind that the company supplies, in the ordinary course of its business, to third parties dealing with it at arm's length, the matter is dealt with as a transaction to which the separate enterprise principle applies.

(3) If not, the matter is dealt with as an expense incurred by the non-resident company for the purposes of the permanent establishment.

PART 3

PROVISIONS APPLICABLE TO NON-RESIDENT BANKS

Application of this Part

7 (1) The provisions of this Part of this Schedule have effect where the non-resident company is a bank.

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"Bank" for this purpose has the meaning given by section 840A.

(2) Nothing in this Part of this Schedule shall be read as preventing the application of principles similar to those provided for in this Part in applying the separate enterprise principle to a non-resident company that is not a bank.

Non-resident banks: transfer of financial assets

8 (1) In accordance with the separate enterprise principle, transfers of loans and other financial assets between the permanent establishment and any other part of the company are recognised only if they would have taken place between independent enterprises.

(2) Such a transfer is not recognised where it cannot reasonably be considered that it is carried out for valid commercial reasons. For this purpose the obtaining of a tax advantage is not a valid commercial reason.

Loans by non-resident banks: attribution of financial assets and profits arising

9 (1) In accordance with the separate enterprise principle, loans and other financial assets, and profits arising from them, are attributed to a permanent establishment to the extent that they can reasonably be regarded as having been generated by the activities of the permanent establishment.

(2) The following provisions have effect as regards the factors to be taken into account.

(3) Particular account shall be taken of the extent to which the permanent establishment is responsible for—

(a) obtaining the offer of new business;

(b) establishing the potential borrower's credit rating and the risk involved in providing credit;

(c) negotiating the terms of the loan with the borrower;

(d) deciding whether, and if so on what conditions, to make or extend the loan.

(4) Account may also be taken of the extent to which the permanent establishment is responsible for—

(a) concluding the loan agreement and disbursing the proceeds of the loan;

(b) administering the loan (including handling and monitoring the service of it) and holding and controlling any securities pledged.

(5) References in this paragraph to a financial asset include any financial risk in relation to a loan, or potential loan, that is capable of giving rise to fees or other receipts and for which the holding of capital is required (or would be required if the transaction were between parties at arm's length).

Borrowing by non-resident banks: permanent establishment acting as agent or intermediary

10 (1) This paragraph applies where a permanent establishment—

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(a) borrows funds for the purposes of another part of the non-resident company, and

(b) in relation to that borrowing acts only as an agent or intermediary.

(2) In such a case, in accordance with the separate enterprise principle—

(a) the profits attributable to the permanent establishment, and

(b) the capital attributable to the permanent establishment under section 11AA(3),

shall be that appropriate in the case of an agent acting at arm's length, taking into account the risks and costs borne by the establishment.

SCHEDULE A2

CORPORATION TAX: THE NON-CORPORATE DISTRIBUTION RATE: SUPPLEMENTARY PROVISIONS

PART 1

GENERAL PROVISIONS

Introduction

1 The provisions of this Schedule supplement section 13AB (corporation tax: the non-corporate distribution rate).

Meaning of "non-corporate distribution"

2 (1) A "non-corporate distribution" means a distribution made by a company to a recipient who is not a company.

"Recipient" here means the person beneficially entitled to the distribution.

(2) A distribution made to a partnership is treated as made to the partners notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

Calculation of company's "underlying rate of corporation tax"

3 (1) A company's underlying rate of corporation tax for an accounting period is determined as follows:

Step One

Take the company's basic profits for the accounting period ("BP").

Step Two

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Find the amount of corporation tax chargeable on those profits apart from section 13AB ("CT").

Step Three

The company's underlying rate of corporation tax is the percentage determined as follows—

$$\left(\frac{\text{CT}}{\text{BP}} \right) \times 100$$

(2) In determining CT—

(a) apply the rate of corporation tax fixed for companies generally, and

(b) if the company is entitled to and claims relief under section 13 (small companies' relief) or section 13AA (corporation tax starting rate), apply the provisions of those sections.

But take no account of any other relief that is given by reducing the amount or rate of tax payable (as opposed to the amount of the profits chargeable to tax).

Matching: distributions not exceeding basic profits

4 Where in an accounting period the total amount of the distributions made (or treated as made) by a company does not exceed the amount of its basic profits, the amount of the company's basic profits matched with non-corporate distributions is equal to the total amount of the non-corporate distributions made (or treated as made) by the company in that period.

Matching: distributions exceeding basic profits

5 Where in an accounting period the total amount of the distributions made (or treated as made) by a company exceeds its basic profits, the amount of the company's basic profits for that period matched with non-corporate distributions is—

PART 2

ALLOCATION OF EXCESS NCDS TO OTHER COMPANIES

Allocation of excess NCDs to other companies

6 (1) This Part of this Schedule provides for the allocation to other companies of any amount by which the total amount of the non-corporate distributions made (or treated as made) by a company (the "distributing company") in an accounting period (the "distribution period") exceeds the amount of the company's basic profits for that period that are matched under paragraph 5.

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(2) That amount is referred to in this Schedule as "excess NCDs".

(3) A company to which an amount of excess NCDs is allocated (a "recipient company") is treated as if it had made a non-corporate distribution of that amount in the period to which it is allocated.

Allocation of excess NCDs to other group companies

7 (1) If at the end of the distribution period the distributing company is a member of a group, excess NCDs must be allocated, so far as possible, to the other group companies.

The allocation must be made in accordance with the following rules.

(2) Excess NCDs may not be allocated to a recipient company unless it has available profits for the accounting period to which they are to be allocated.

(3) The amount of a recipient company's available profits for an accounting period is given by:

$$BP - NCD$$

where—

BP is the amount of that company's basic profits for that accounting period, and

NCD is the total amount of non-corporate distributions made (or treated as made) by that company in that period.

(4) The maximum amount of excess NCDs that may be allocated to an accounting period of a recipient company is:

$$\left(\frac{NCD}{D} \right) \times AP$$

where—

NCD is the total amount of the non-corporate distributions made (or treated as made) by the distributing company in the distribution period;

D is the total amount of all the distributions made (or treated as made) by that company in that period; and

AP is the amount of the recipient company's available profits for that period.

(5) In determining the amount of a company's available profits at any time account shall only be taken of excess NCDs allocated to it by virtue of an allocation made before that time that remains (or so far as it remains) effective.

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Allocation of excess NCDs: period or periods to which amount to be allocated

8 (1) Excess NCDs falling to be allocated to another company under paragraph 7 (allocation to other group companies) may be allocated to any accounting period identified by this paragraph as a corresponding accounting period.

If there is more than one such period, excess NCDs must be allocated to the first to the full extent possible before any allocation is made to the second, and so on.

(2) The accounting period of a recipient company that includes the last day of the distribution period is its first corresponding accounting period.

Unless that accounting period is shorter than the distribution period, it is the recipient company's only corresponding accounting period.

(3) If the first corresponding accounting period is shorter than the distribution period, any subsequent accounting period of the recipient company beginning before the end of the period specified in sub-paragraph (4) is a corresponding accounting period.

(4) The period referred to in sub-paragraph (3) is a period—

(a) of the same length as the distribution period, and

(b) beginning on the same day as the recipient company's first corresponding accounting period.

Allocation of excess NCDs: degrouping

9 (1) This paragraph applies where a company ("company A") ceases to be a member of the same group as another company ("company B") but the companies remain under the control of the same person or persons.

This is referred to below as "degrouping".

(2) If at the end of any accounting period of company A ending on or after the degrouping but no more than two years after the degrouping—

(a) company A has excess NCDs that (apart from this paragraph) cannot be allocated to other companies,

(b) the business activities of company A and any other companies in the same group as that company are negligible, and

(c) the business activities of company B and any other companies in the same group as that company are not negligible,

the provisions of sub-paragraphs (3) to (5) below apply.

The end of the accounting period when the above conditions are met is referred to in those provisions as "the relevant time".

(3) Company B and any other companies in the same group as that company at the relevant time (the "B group") shall be treated for the purposes of allocating the excess NCDs as if they were members of the same group as company A.

(4) Any excess NCDs remaining after any allocation made by virtue of sub-paragraph (3) must be allocated—

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(a) to company B or, if different, the company in the B group that at the relevant time has the greatest number of members who are not companies, and

(b) to the accounting period of that company that includes the relevant time.

This allocation is not subject to the restrictions in paragraph 7 on the amount that may be allocated to another company.

(5) If there is more than one company answering the description in sub-paragraph (4)(a), the excess NCDs shall be apportioned between them according to the amount of their basic profits for the accounting period to which the amount falls to be allocated.

(6) In this paragraph "control" shall be construed in accordance with section 416(2) to (6).

Allocation of excess NCDs: procedure

10 (1) The basic rule is that the allocation of excess NCDs to another company must be made by the distributing company with the agreement of the recipient company.

(2) If excess NCDs are not so allocated within nine months after—

(a) in a case within paragraph 7, the end of the distribution period, or

(b) in a case within paragraph 9, the relevant time within the meaning of that paragraph,

they may be allocated at any time thereafter by an officer of the Board.

(3) An allocation under sub-paragraph (1) or (2) may be varied—

(a) by agreement between the relevant companies, or

(b) if further excess NCDs are required to be allocated and no variation is agreed within one year after its becoming apparent that a variation is required, by an officer of the Board.

Any such variation may in turn be varied as mentioned in paragraph (a) or (b).

(4) No allocation or variation of an allocation of excess NCDs may be made after the end of the period of one year after whichever of the following last occurs—

(a) the final determination of the tax affairs of the distributing company in relation to the distribution period,

(b) in a case within paragraph 7, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods that are or could be corresponding accounting periods, or

(c) in a case within paragraph 9, the final determination of the tax affairs of all recipient or potential recipient companies in relation to accounting periods to which an allocation may be made under that paragraph.

(5) If circumstances arise as a result of which the tax affairs of any such company for any such period are reopened, an allocation or variation of an allocation may (and shall if necessary) be made at any time before the end of the period of one year after the tax affairs of the company are again finally determined.

(6) For the purposes of sub-paragraphs (4) and (5) the tax affairs of a company for a period are finally determined when the amounts are conclusively determined within the meaning of paragraph 88 of Schedule 18 to the Finance Act 1998 (c. 36) (company tax returns: conclusiveness of amounts stated in return).

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(7) References in this paragraph to variation of an allocation include reducing the amount allocated to nil.

Allocation of excess NCDs: amounts proving to be excessive

11 (1) This paragraph applies where an amount of excess NCDs allocated to another company in accordance with this Part of this Schedule later proves to be excessive.

(2) The excess shall revert to the distributing company.

(3) If allocations to two or more companies are involved, the amounts shall revert in the opposite order to that in which the allocations were made.

(4) In the case of allocations made at the same time, the amounts reverting to the distributing company shall be in proportion to the original allocations.

Allocation of excess NCDs to companies not resident in the United Kingdom

12 (1) The provisions of this Part of this Schedule as to the allocation of excess NCDs to other companies apply, with any necessary modifications, to companies that are not resident in the United Kingdom as they apply to companies that are so resident.

(2) In particular, references to the company's basic profits and accounting periods shall be read in relation to a company that is not resident in the United Kingdom as references to what would have been the case if the company had been resident in the United Kingdom at all material times.

PART 3

OTHER SUPPLEMENTARY PROVISIONS

Carry forward of excess NCDs

13 (1) Any excess NCDs not allocated to another company under Part 2 shall be carried forward by the distributing company.

(2) That company shall be treated as if it had made a non-corporate distribution of the amount carried forward (in addition to any distributions actually made by it) in its next accounting period.

(3) Where an allocation is made under paragraph 9(4) references in this paragraph to the distributing company shall be read as references to the company to which that allocation is made (which is treated by virtue of paragraph 6(3) as having made a distribution in the accounting period to which the allocation is made).

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Definition of a group

14 (1) For the purposes of section 13AB and this Schedule a company and all its 51% subsidiaries form a group, and if any of those subsidiaries have 51% subsidiaries the group includes them and their 51% subsidiaries, and so on.

(2) The question whether a company is a 51% subsidiary shall be determined in accordance with section 838, subject to the following provisions.

(3) A company ("company A") shall be treated for the purposes of this Schedule as if it were a 51% subsidiary of another company ("company B") if company B has rights to, or in fact receives, more than 50% of the distributions made by company A.

(4) For the purposes of this paragraph a company shall be treated as not being the owner—

(a) of any share capital that it owns directly if a profit on the sale of the shares would be treated as a trading receipt of its trade, or

(b) of any share capital that it owns indirectly and that is owned directly by a body corporate for which a profit on the sale of the shares would be treated as a trading receipt of its trade.

Accounting period treated as ending if company ceases to be a member of a group

15 (1) Section 13AB and this Schedule apply in relation to an accounting period of a company in which it ceases to be a member of the group as if there were two accounting periods, one ending immediately before the company ceases to be a member of the group and the other consisting of the remainder of the period.

(2) For this purpose a company ceases to be in a group if it and another company cease to be in the same group, whether as a result it is no longer in a group, becomes a member of another group or continues to be in the same group as one or more other companies.

Treatment of distributions made otherwise than in an accounting period

16 For the purposes of section 13AB and this Schedule, a non-corporate distribution made by a company otherwise than in an accounting period of the company shall be treated as made in the next accounting period of the company.

Holding companies treated as carrying on a business

17 (1) For the purposes of section 13AB and this Schedule a holding company that is not otherwise carrying on a business shall be deemed to be carrying on a business and to be within the charge to corporation tax.

(2) For this purpose "a holding company" means a company that has one or more 51% subsidiaries from which it receives or has received one or more distributions.

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Interpretation

18 In section 13AB and this Schedule—

"basic profits" means the amount of a company's profits for an accounting period on which corporation tax finally falls to be borne;

"corresponding accounting period", in relation to a recipient company, has the meaning given by paragraph 8;

"distributing company" has the meaning given by paragraph 6(1);

"distribution" does not include an amount treated as a dividend under paragraph 2(2) of Schedule 23A (manufactured dividends and interest);

"distribution period" has the meaning given by paragraph 6(1); and

"excess NCDs" has the meaning given by paragraph 6(2);

"group" has the meaning given by paragraph 14 (and references to a group company and membership of a group have a corresponding meaning);

"non-corporate distribution" has the meaning given by paragraph 2;

"recipient company" has the meaning given by paragraph 6(3);

"underlying rate of corporation tax" has the meaning given by paragraph 3.

F5651F5651SCHEDULE 1

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Textual Amendments

F5651 Sch. 1 repealed (with effect in accordance with s. 38(2)(3) of the repealing Act) by Finance Act 1998 (c. 36), s. 165, **Sch. 27 Pt. 3(4)**, Note

F5652F5652SCHEDULE 2

Textual Amendments

F5652 Sch. 2 repealed (with effect in accordance with Sch. 14 Pt. IV Note 9 of the repealing Act) by Finance Act 1988 (c. 39) ss. 75, 148, Sch.14 Part IV

F5652 . . . . . .

F5653F5653SCHEDULE 3

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Textual Amendments

F5653 Sch. 3 repealed (with effect in accordance with Sch. 7 para. 32 of the repealing Act) by Finance Act 1996 (c. 8), ss. 79, 205, Sch. 7 para. 27, **Sch. 41 Pt. 5(2)**, Note (with Sch. 7 paras. 33-35)

F5676F5676 SCHEDULE 4

Textual Amendments

F5676 Sch. 4 repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

Interpretation

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1 F5677 . . . . . .

Textual Amendments

F5677 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Charge to tax after acquisition of certain securities

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2 F5678 . . . . . .

Textual Amendments

F5678 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

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3 F5679 . . . . . .

Textual Amendments

F5679 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

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Charge to tax on disposal of securities

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4 F5680 . . . . . .

Textual Amendments

F5680 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Deduction of income element from total profits of company and allowance as charge on income

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5 F5681 . . . . . .

Textual Amendments

F5681 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Modifications etc. (not altering text)

C944 Sch. 4 para. 5 modified (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 15 para. 19(2)**

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6 F5682 . . . . . .

Textual Amendments

F5682 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Disposals

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7 F5683 . . . . . .

Textual Amendments

F5683 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

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8 F5684 . . . . . .

Textual Amendments

F5684 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Securities issued and owned by associated companies or group companies

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9 F5685 . . . . . .

Textual Amendments

F5685 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Close companies

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10 F5686 . . . . . .

Textual Amendments

F5686 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Early redemption

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11 F5687 . . . . . .

Textual Amendments

F5687 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

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11A F5688 . . . . . .

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Textual Amendments

F5688 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Modifications etc. (not altering text)

C945 1989 s. 93*and* Sch. 10 para. 5.

[F5689 Issue price]

Textual Amendments

F5689 Sch. 4 para. 11B and heading preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 4 paras.3, **5**

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F5690 11B F5691 . . . . . .

Textual Amendments

F5690 Sch. 4 para. 11B and heading preceding it inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 12 paras. 3, **5**

F5691 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Identification of securities disposed of

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12 F5692 . . . . . .

Textual Amendments

F5692 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Information

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13 F5693 . . . . . .

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Textual Amendments

F5693 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Charities

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14 F5694 . . . . . .

Textual Amendments

F5694 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

[F5695 Retirement benefit schemes]

Textual Amendments

F5695 1989 s.93*and* Sch.10 para.7.

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15 F5696 . . . . . .

Textual Amendments

F5696 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Stock lending

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16 F5697 . . . . . .

Textual Amendments

F5697 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

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Trustees

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17 F5698 . . . . . .

Textual Amendments

F5698 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Underwriters

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18 F5699 . . . . . .

Textual Amendments

F5699 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Gilts: special rules

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19 F5700 . . . . . .

Textual Amendments

F5700 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

Non-gilts: special rules

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20 F5701 . . . . . .

Textual Amendments

F5701 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

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[F5702 Convertible securities: special rules]

Textual Amendments

F5702 1990 s.56*and* Sch.10 paras.26(3), 29(4)*on and after* 9*June* 1989.

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21 F5703 . . . . . .

Textual Amendments

F5703 Sch. 4 repealed (29.4.1996 with effect in accordance with ss. 80-105 of the amending act) by Finance Act 1996 (c. 8), Sch. 14 para. 50, **Sch. 41 Pt. 5(3)**

SCHEDULE 4AA

Section 85B

SHARE INCENTIVE PLANS: CORPORATION TAX DEDUCTIONS

Introductory

1 (1) This Schedule forms part of the SIP code (see section 488 of ITEPA 2003 (approved share incentive plans)).

(2) Accordingly, expressions used in this Schedule and contained in the index at the end of Schedule 2 to that Act (approved share incentive plans) have the meaning indicated by that index.

(3) References in this Schedule to deductions are to deductions by a company in calculating for the purposes of corporation tax the profits of a trade carried on by it.

(4) Sub-paragraph (3) is subject to paragraph 13 (application of provisions to expenses of management of **[**F5704companies with investment business**]** etc.).

Textual Amendments

F5704 Words in Sch. 4AA para. 1(4) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 35(2)

Deduction for providing free or matching shares

2 (1) Where, under an approved share incentive plan, shares are awarded to employees as free or matching shares by reason of their employment with a company, a deduction is allowed under this paragraph to that company.

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(2) Any such deduction—

(a) is of an amount equal to the market value of the shares at the time they are acquired by the trustees, and

(b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.

(3) Except as provided by sub-paragraph (1), no deduction may be made by the company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 7 and 8 (deductions for costs of setting up, and contributions to running expenses of, plan).

(4) Where the shares are awarded under a group plan, the market value of the shares at the time they are acquired by the trustees shall for the purposes of this paragraph be taken to be the relevant proportion of the total market value of the shares included in the award.

(5) For the purposes of sub-paragraph (4) "the relevant proportion" means the proportion that the number of shares in the award awarded to the employees of the company concerned bears to the total number of shares in the award.

(6) In determining the market value of any shares for the purposes of this paragraph, if shares have been acquired by the trustees on different days it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.

(7) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.

(8) This paragraph has effect subject to paragraph 4 (cases in which no deduction is allowed).

Deduction for additional expenses in providing partnership shares

3 (1) Where under an approved share incentive plan—

(a) partnership shares are awarded to employees by reason of their employment with a company, and

(b) the market value of those shares at the time they are acquired by the trustees exceeds the partnership share money paid by the participants to acquire those shares,

a deduction is allowed under this paragraph to that company.

(2) Any such deduction—

(a) is of an amount equal to the amount of the excess referred to in sub-paragraph (1)(b), and

(b) must be made for the period of account in which the shares are awarded to employees in accordance with the plan.

(3) Except as provided by sub-paragraph (1), no deduction may be made by that company or any associated company in respect of the provision of those shares.

This is subject to paragraphs 7 and 8 (deductions for costs of setting up, and contributions to running expenses of, plan).

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(4) If a deduction is made under this paragraph by a company, no deduction may be made by any other company under this paragraph in respect of the provision of the shares.

(5) This paragraph has effect subject to paragraph 4 (cases in which no deduction is allowed).

Cases in which no deduction is allowed

4 (1) No deduction is allowed under paragraph 2 or 3 (deductions for providing free or matching shares or for additional expenses in providing partnership shares) in the following cases.

(2) No deduction is allowed in respect of shares awarded to an individual under the plan unless, at the time of the award, any earnings from the required employment are (or would be) chargeable earnings.

(3) In sub-paragraph (2)—

"chargeable earnings" means general earnings to which any of the charging provisions of Chapter 4 or 5 of Part 2 of ITEPA 2003 apply, and

the "required employment" means the employment by reference to which the individual is eligible to participate in the award.

(4) In sub-paragraph (3), the reference to any of the charging provisions of Chapter 4 or 5 of Part 2 of that Act has the same meaning as it has in the employment income Parts of ITEPA 2003 (see sections 14(3) and 20(3) of that Act).

(5) No deduction is allowed in respect of shares that are liable to depreciate substantially in value for reasons that do not apply generally to shares in the company.

(6) No deduction is allowed if a deduction has been made—

(a) by the company, or

(b) by an associated company of the company,

in respect of the provision of the same shares for this or another trust.

(7) Sub-paragraph (6) applies whatever the nature or purpose of the other trust and whatever the basis on which the deduction was made.

(8) For the purposes of determining whether the same shares have been provided to more than one trust, if shares have been acquired by the trustees of the plan trust on different days it shall be assumed that those acquired on an earlier day are awarded under the plan before those acquired by the trustees on a later day.

(9) No deduction is allowed in respect of the award of shares acquired by the trustees by virtue of a payment in respect of which a deduction has been made under paragraph 9 (deduction for contribution to plan trust) or 10(3) (further deduction where deduction under paragraph 9 withdrawn).

No deduction for expenses in providing dividend shares

5 (1) No deduction is allowed for expenses in providing shares that are acquired on behalf of individuals under an approved share incentive plan as dividend shares.

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(2) This is subject to paragraph 8 (deductions for contributions to running expenses of plan).

Treatment of forfeited shares

6 (1) This paragraph applies if any of a participant's plan shares are forfeited.

(2) The shares are treated for the purposes of this Schedule as acquired by the trustees—

(a) when the forfeiture occurs, and

(b) for no consideration.

(3) No deduction is allowed under paragraph 2 or 3 (deductions for providing free or matching shares or for additional expenses in providing partnership shares) in respect of any subsequent award of those shares under the plan.

Deduction for costs of setting up the plan

7 (1) A deduction is allowed under this paragraph for expenses incurred by a company in establishing a share incentive plan which is approved by the Inland Revenue.

(2) No deduction may be made under this paragraph if—

(a) any employee acquires rights under the plan, or

(b) the trustees acquire any shares for the purposes of the plan,

before the Inland Revenue approve the plan.

(3) If Inland Revenue approval of the plan is given more than nine months after the end of the period of account in which the expenses are incurred, the expenses are treated for the purposes of this paragraph as **[**F5705deductible for**]** the period in which the approval is given.

(4) No other deduction is allowed in respect of expenses for which a deduction is allowed under this paragraph.

Textual Amendments

F5705 Words in Sch. 4AA para. 7(3) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 35(3)

Deductions for contributions to running expenses of plan

8 (1) Nothing in this Schedule affects any deduction for expenses incurred by a company in contributing to the expenses of the trustees in operating an approved share incentive plan.

(2) For this purpose the expenses of the trustees in operating the plan—

(a) do not include expenses in acquiring shares for the purposes of the trust, other than incidental acquisition costs, but

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(b) do include the payment of interest on money borrowed by them for that purpose.

(3) In sub-paragraph (2)(a) "incidental acquisition costs" means any fees, commission, stamp duty and similar incidental costs attributable to the acquisition of the shares.

Deduction for contribution to plan trust

9 (1) A deduction is allowed to a company under this paragraph where—

(a) on or after 6th April 2003, that company makes a payment to the trustees of an approved share incentive plan in order to enable them to acquire shares in that company or a company which controls it,

(b) the payment is applied by the trustees to acquire such shares,

(c) the shares are not acquired from a company, and

(d) the condition in sub-paragraph (2) is met in relation to the company in which the shares are acquired.

(2) The condition in this sub-paragraph is that, at the end of the period of 12 months beginning with the date of the acquisition, the trustees hold shares in the company for the plan trust that—

(a) constitute not less than 10 per cent of the ordinary share capital of the company, and

(b) carry rights to not less than 10 per cent of—

(i) any profits available for distribution to shareholders of the company,

(ii) any assets of that company available for distribution to its shareholders in the event of a winding-up.

(3) For the purposes of sub-paragraph (2), shares that have been appropriated to, and acquired on behalf of, an individual under the plan shall continue to be treated as held by the trustees of the plan trust for the beneficiaries of that trust until such time as they cease to be subject to the plan (within the meaning of the SIP code).

(4) A deduction allowed under this paragraph—

(a) is of an amount equal to the amount of the payment referred to in sub-paragraph (1), and

(b) must be made for the period of account in which the condition in sub-paragraph (2) is met.

(5) No other deduction is allowed for any amount in respect of which a deduction has been made under this paragraph (except as specified in paragraph 10).

Withdrawal of deduction under paragraph 9

10 (1) The Inland Revenue may by notice direct that the benefit of a deduction made under paragraph 9 is withdrawn where—

(a) fewer than 30 per cent of the shares acquired by virtue of the payment in respect of which the deduction is made have been awarded under the plan before the end of the period of 5 years beginning with the date of acquisition, or

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(b) not all the shares acquired by virtue of that payment have been so awarded before the end of the period of 10 years beginning with that date.

(2) The effect of a direction under sub-paragraph (1)(a) or (b) is that the amount of the deduction is treated as a trading receipt of the company for the period of account in which the direction is given.

(3) However, where—

(a) the Inland Revenue give a direction under sub-paragraph (1)(a) or (b) in respect of any deduction, and

(b) at any time after the giving of the direction, all the shares acquired by virtue of the payment in respect of which the deduction was made are awarded under the plan,

a further deduction is allowed under this sub-paragraph to the company which made the payment.

(4) A deduction under sub-paragraph (3)—

(a) is of an amount equal to the amount of the payment referred to in that sub-paragraph, and

(b) must be made for the period of account in which sub-paragraph (3)(b) is first satisfied.

(5) No other deduction is allowed in respect of any amount for which a deduction has been made under sub-paragraph (3).

(6) Sub-paragraph (8) applies where—

(a) a deduction is made under paragraph 9 (deduction for contribution to plan trust) or sub-paragraph (3) in respect of a payment for the acquisition of shares, but

(b) shares are awarded under the plan to an individual at a time when the earnings from the required employment are not (or would not be if there were any) chargeable earnings.

(7) In sub-paragraph (6) "required employment" and "chargeable earnings", in relation to an individual, have the same meanings as they have in paragraph 4(2) (cases in which no deduction is allowed).

(8) An amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the shares are so awarded.

(9) For the purposes of sub-paragraph (8), the appropriate proportion of the deduction is the proportion which the number of shares awarded to the individual bears to the total number of shares acquired by virtue of the payment.

(10) For the purposes of this paragraph, where shares are acquired by the trustees on different days, it shall be assumed that those acquired on an earlier day are awarded to employees under the plan before those acquired by the trustees on a later day.

Withdrawal of deductions on withdrawal of approval

11 (1) If approval of a share incentive plan is withdrawn the Inland Revenue may by notice to a company direct that the benefit of—

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(a) any deductions under paragraph 2 (deduction for providing free or matching shares),

(b) any deductions under paragraph 3 (deduction for additional expenses in providing partnership shares),

(c) any deductions under paragraph 9 (deduction for contribution to plan trust) (in so far as not already withdrawn under paragraph 10), or

(d) any deductions under paragraph 10(3) (further deduction where deduction under paragraph 9 withdrawn),

in relation to the plan is also withdrawn.

(2) The effect of the direction is that the aggregate amount of the deductions is treated as a trading receipt of that company for the period of account in which the Inland Revenue give notice of the withdrawal of approval.

Termination of plan: shares acquired as mentioned in paragraph 9 but not yet awarded

12 (1) This paragraph applies where the company has issued a plan termination notice under paragraph 89 of Schedule 2 to ITEPA 2003 (termination of plan).

(2) In a case where—

(a) by virtue of a payment made to the trustees by the company, the trustees acquire shares in the company, or a company which controls it,

(b) a deduction under paragraph 9 (deduction for contribution to plan trust) has been made in respect of that payment (and has not been withdrawn under paragraph 10), and

(c) not all the shares acquired by virtue of the payment have been awarded under the plan before issue of the plan termination notice,

an amount equal to the appropriate proportion of the deduction is treated as a trading receipt of the company for the period of account in which the plan termination notice is given.

(3) For the purposes of sub-paragraph (2), the appropriate proportion of the deduction is the proportion which the number of shares acquired by virtue of the payment and not awarded as specified in sub-paragraph (2)(c) bears to the total number of shares so acquired.

[F5706** Application of provisions to expenses of management of companies with investment business etc**]

Textual Amendments

F5706 Sch. 4AA para. 13 heading substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 35(5)

13 **[F5707** (1) The provisions of this Schedule apply in relation to—

(a) companies with investment business, and

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(b) companies in relation to which section 76 applies (expenses of insurance companies),

in accordance with the following provisions.

(2) The provisions of this Schedule which allow a deduction in calculating the profits of a trade apply—

(a) in relation to a company with investment business, to treat amounts as expenses of management, and

(b) in relation to companies in relation to which section 76 applies, to treat amounts as expenses payable falling to be brought into account at Step 1 in section 76(7).**]**

(3) Paragraph 11(2) applies as if the reference to a trading receipt for the period of account in which the Inland Revenue give notice of the withdrawal of approval were a reference to profits or gains chargeable to tax under Case VI of Schedule D arising when the Inland Revenue give notice of the withdrawal.

Textual Amendments

F5707 Sch. 4AA para. 13(1)(2) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), Sch. para. 35(4)

F5708F5708[F5709SCHEDULE 4A

. . . . . .

Textual Amendments

F5708 Sch. 4A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 342, **Sch. 3** (with Sch. 2)

F5709 Sch. 4A inserted (11.5.2001) by Finance Act 2001 (c. 9), s. 71(2), **Sch. 24 para. 1**

SCHEDULE 5

Section 97.

TREATMENT OF FARM ANIMALS ETC. FOR PURPOSES OF CASE I OF SCHEDULE D

Farming: the general rule

1 (1) **M1160**Subject to the provisions of this Schedule, in computing **[F5710**profits**][F5711**chargeable to corporation tax**]** under Case I of Schedule D, animals kept by a farmer for the purposes of **[F5712**its**]** farming shall be treated as trading stock.

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(2) Animals forming part of production herds with respect to which an election under paragraph 2 below has effect shall not be so treated, but shall be treated instead in accordance with the rules set out in paragraph 3 below.

(3) An election under paragraph 2 below is referred to in this Schedule as "an election for the herd basis".

Textual Amendments

F5710 Words in Sch. 5 para. 1(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F5711 Words in Sch. 5 para. 1(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(2)(a)** (with Sch. 2)

F5712 Word in Sch. 5 para. 1(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(2)(b)** (with Sch. 2)

Marginal Citations

M1160 Source—1970 Sch.6; 1973 s.35; 1984 s.48(6)-(9)

Farming: election for the herd basis

2 (1) An election for the herd basis shall apply to all production herds of a particular class kept by the farmer making the election, including herds which **[**F5713the farmer**]** has ceased to keep before, or first begins to keep after, the making of the election.

(2) An election for the herd basis must be made in writing to the inspector, and must specify the class of herds to which it relates.

(3) Subject to paragraphs 6 and 12 below, an election for the herd basis made by any farmer shall be valid only if it is made **[**F5714—

(a) F5715 . . . . . .

(b) in the case of an election on behalf of persons in partnership, not later than twelve months from the 31st January next following the year of assessment in which the qualifying period of account ends; and

(c) in the case of an election by a person chargeable to corporation tax, not later than two years from the end of the qualifying accounting period.**]**

(4) An election for the herd basis made by any farmer shall be irrevocable and, subject to paragraph 6 below, shall have effect—

[F5716(a) F5715 . . . . . .

(b) in a case falling within sub-paragraph (3)(b) above, for the qualifying period of account and all subsequent periods of account; and

(c) in a case falling within sub-paragraph (3)(c) above, for the qualifying accounting period and all subsequent accounting periods.**]**

[F5717(5) F5715 . . . . . .

(6) In this paragraph—

F5718 . . . . . .

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F5719 . . . . . .

"qualifying accounting period", in relation to a person chargeable to corporation tax, means the first accounting period during the whole or part of which it kept a production herd of the class in question;

"qualifying period of account", in relation to persons in partnership, means the first period of account during the whole or part of which those persons kept such a herd;

F5718 . . . . . .**]**

Textual Amendments

F5713 Words in Sch. 5 para. 2(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(3)(a)** (with Sch. 2)

F5714 Words in Sch. 5 para. 2(3) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(1)**

F5715 Sch. 5 para. 2(3)(a)(4)(a)(5) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 343(3)(b), **Sch. 3** (with Sch. 2)

F5716 Sch. 5 para. 2(4)(a)-(c) substituted for para. 2(4)(a)(b) (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(2)**

F5717 Sch. 5 para. 2(5)(6) inserted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(3)**

F5718 Sch. 5 para. 2(6): definitions of "commencement year" and "qualifying year of assessment" repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 343(3)(c), **Sch. 3** (with Sch. 2)

F5719 Sch. 5 para. 2(6): definition of "period of account" repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

3 (1) Where an election for the herd basis has effect, the consequences for the purposes of computing **[**F5720profits**][**F5721chargeable to corporation tax**]** under Case I of Schedule D shall be as provided by this paragraph.

(2) The initial cost of the herd and, subject to the provisions of this paragraph as to replacements, the cost of any animal added to the herd shall not be deducted as an expense and the value of the herd shall not be brought into account.

(3) Where an animal which has theretofore been treated as part of the farmer's trading stock is added to the herd otherwise than by way of replacement, there shall be included as a trading receipt—

(a) in the case of an animal bred by the farmer, a sum equal to the cost of breeding it and rearing it to maturity; and

(b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal, together with any cost incurred by **[**F5722the farmer**]** in rearing it to maturity.

(4) Where an animal (the "first animal") forming part of the herd dies, or ceases to form part of the herd, and is replaced in the herd by another animal (the "second animal") —

(a) any proceeds of sale of the first animal shall be included as a trading receipt; and

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(b) the cost of the second animal, except in so far as that cost consists of such costs as are allowable apart from the provisions of this Schedule as deductions in computing **[**F5720profits**]** of farming under Case I of Schedule D, shall, subject to sub-paragraphs (5) and (6) below, be deducted as an expense.

(5) Where the second animal is of better quality than the first animal, the amount deducted shall not exceed the amount which it would have been necessary to expend in order to acquire an animal of the same quality as the first animal.

(6) Where the first animal was slaughtered by the order of any Ministry, government department or local or public authority under the law relating to diseases of animals, and the second animal is of worse quality, the amount included as a trading receipt shall not exceed the amount allowable as a deduction.

(7) Where the herd is sold as a whole, and another production herd of the same class is acquired, sub-paragraphs (1) to (6) above shall apply as though there had been sold from, and replaced in, the original herd a number of animals equal to the number in the original herd or in the newly acquired herd, whichever is the less.

(8) Subject to sub-paragraph (9) below, if (either all at once or over a period not exceeding 12 months) either—

(a) the whole of a herd is sold in circumstances in which sub-paragraph (7) above does not apply, or

(b) a part of a herd is sold on a substantial reduction being made in the number of animals in the herd,

any profit or loss arising from the transaction shall not be taken into account.

(9) Where within five years of the sale the seller acquires or begins to acquire another production herd of the class in question or, as the case may be, acquires or begins to acquire animals to replace the part of the herd in question—

(a) sub-paragraphs (4) to (7) above shall apply to the acquisition or replacement, except that, if the sale was one which the seller was compelled to effect by causes wholly beyond **[**F5723the seller's**]** control, the amount included as a trading receipt in respect of any animal sold which is replaced by an animal of worse quality shall not exceed the amount allowable as a deduction in respect of that animal of worse quality; and

(b) for the purpose of the application of those sub-paragraphs, the proceeds of sale of the animals comprised in the original herd or part of a herd shall be brought into account as if they had been respectively received at the times of the corresponding acquisitions.

(10) If an animal forming part of the herd is sold, and none of sub-paragraphs (4) to (9) above applies, any profit or loss arising from the transaction shall be included or deducted, as the case may be; and for the purposes of this sub-paragraph, that profit or loss shall be computed by comparing with the proceeds of sale—

(a) in the case of an animal bred by the farmer, the cost of breeding it and rearing it to maturity; and

(b) in any other case, a sum equal to the initial cost to the farmer of acquiring the animal (or in the case of an animal acquired otherwise than for valuable consideration, its market value when the farmer acquired it) together, in both cases, with any cost incurred by **[**F5724the farmer**]** in rearing it to maturity.

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(11) Where the herd is sold as a whole, and another production herd of the same class is acquired, and the number of animals in the newly acquired herd is less than the number in the original herd, then, if the difference is not substantial, sub-paragraphs (8) and (9) above shall not apply, and sub-paragraph (10) above shall apply to a number of animals in the original herd equal to the difference.

(12) The preceding provisions of this paragraph shall apply in relation to the death or destruction of animals as they apply in relation to their sale, as if any insurance or compensation moneys received by reason of the death or destruction were proceeds of sale, and any reference in this paragraph to the proceeds of sale of an animal includes a reference to any proceeds of sale of its carcase or any part of its carcase.

Textual Amendments

F5720 Words in Sch. 5 para. 3(1)(4)(b) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F5721 Words in Sch. 5 para. 3(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(4)(a)** (with Sch. 2)

F5722 Words in Sch. 5 para. 3(3)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(4)(b)** (with Sch. 2)

F5723 Words in Sch. 5 para. 3(9)(a) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(4)(c)** (with Sch. 2)

F5724 Words in Sch. 5 para. 3(10)(b) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(4)(d)** (with Sch. 2)

Farming: provisions applicable to special cases

4 A farmer who, having kept a production herd of a particular class, ceases altogether to keep herds of that class for a period of at least five years shall, as respects production herds kept by **[**F5725the farmer**]** after the end of that period, be treated as if **[**F5725the farmer**]** had never kept any production herds of that class before the end of that period.

Textual Amendments

F5725 Words in Sch. 5 para. 4 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(5)(a)(b)** (with Sch. 2)

5 (1) Where a farmer transfers to another person all or any of the animals which form part of a production herd otherwise than by way of sale or by way of sale but for a price other than that which they would have fetched if sold in the open market, and either—

(a) the transferor is a body of persons over whom the transferee has control or the transferee is a body of persons over whom the transferor has control or both the transferor and the transferee are bodies of persons and some other person has control over both of them; or

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(b) it appears with respect to the transfer, or with respect to transactions of which the transfer is one that the sole or main benefit, or one of the main benefits, which (apart from the provisions of this paragraph) might have been expected to accrue to the parties or any of them was a benefit resulting from—

(i) the obtaining of a right to make an election for the herd basis, or

(ii) such an election having effect or ceasing to have effect, or

(iii) such an election having a greater effect or a less effect;

the like consequences shall ensue, in relation to all persons concerned, for the purpose of computing **[**F5726profits**][**F5727chargeable to corporation tax**]** under Case I of Schedule D as would have ensued if the animals had been sold for the price which they would have fetched if sold in the open market.

(2) In this paragraph "body of persons" includes a partnership, and "control" has the meaning given by section 840.

Textual Amendments

F5726 Words in Sch. 5 para. 5(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1

F5727 Words in Sch. 5 para. 5(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(6)** (with Sch. 2)

6 (1) Where the whole or a substantial part of a production herd kept by a farmer for the purposes of **[**F5728its**]** farming is slaughtered by the order of any Ministry, government department or local or public authority under the law relating to the diseases of animals in such circumstances that compensation is payable in respect of it, an election for the herd basis thereupon made by the farmer in relation to that herd and any other production herds of the same class so kept by **[**F5729the farmer**]** shall, subject to sub-paragraph (2) below, be valid notwithstanding that it is not made within the time required by paragraph 2(3) above.

[F5730(2) An election for the herd basis made by virtue of sub-paragraph (1) above shall only be valid if made—

(a) F5731 . . . . . .

(b) in the case of an election on behalf of persons in partnership, not later than twelve months from the 31st January next following the year of assessment in which the qualifying period of account ends; and

(c) in the case of an election by a person chargeable to corporation tax, not later than two years from the end of the qualifying accounting period.

(3) An election for the herd basis made by virtue of sub-paragraph (1) above shall, notwithstanding paragraph 2(4) above, have effect—

(a) F5731 . . . . . .

(b) in a case falling within sub-paragraph (2)(b) above, for the qualifying period of account and all subsequent periods of account; and

(c) in a case falling within sub-paragraph (2)(c) above, for the qualifying accounting period and all subsequent accounting periods.

(4) In this paragraph—

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F5732 . . . . . .

"qualifying accounting period", in relation to a person chargeable to corporation tax, means the first accounting period in which the compensation is relevant;

"qualifying period of account", in relation to persons in partnership, means the first period of account in which the compensation is relevant;

F5733 . . . . . .**]**

(5) For the purposes of this paragraph, compensation shall be deemed to be relevant in any period if, but only if, it falls (or would but for an election under this paragraph fall) to be taken into account as a trading receipt in computing the **[**F5734profits**]** or losses of that or an earlier period.

Textual Amendments

F5728 Word in Sch. 5 para. 6(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(7)(a)(i)** (with Sch. 2)

F5729 Words in Sch. 5 para. 6(1) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(7)(a)(ii)** (with Sch. 2)

F5730 Sch. 5 para. 6(2)-(4) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 43(4)**

F5731 Sch. 5 para. 6(2)(a)(3)(a) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 343(7)(b), **Sch. 3** (with Sch. 2)

F5732 Sch. 5 para. 6(4): definition of "period of account" repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

F5733 Sch. 5 para. 6(4): definition of "qualifying year of assessment" repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 343(7)(c), **Sch. 3** (with Sch. 2)

F5734 Words in Sch. 5 para. 6(4)(5) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a)(b), **Sch. 7 para. 1**

Exclusion of working animals, and interpretation of preceding provisions

7 Nothing in this Schedule applies to any animals kept wholly or mainly for the work they do in connection with the carrying on of the farming.

8 (1) In this Schedule "herd" includes a flock, and any other collection of animals however named.

(2) For the purposes of this Schedule, immature animals kept in a herd shall not be treated as forming part of the herd unless—

(a) the land on which the herd is kept is such that animals which die or cease to form part of the herd cannot be replaced except by animals bred and reared on that land; and

(b) the immature animals in question are bred in the herd, are maintained in the herd for the purpose of replacement, and are necessarily maintained for that purpose;

and references in this Schedule to herds shall be construed accordingly.

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(3) References in this Schedule to an animal being added to a herd include references to an immature animal which is kept in the herd becoming a mature animal except that not more immature animals shall be treated as forming part of a herd than are required to prevent a fall in the numbers of the herd.

(4) Female animals shall be treated for the purposes of this Schedule as becoming mature when they produce their first young.

(5) In this Schedule "a production herd" means, in relation to a farmer, a herd of animals of the same species (irrespective of breed) kept by **[**F5735the farmer**]** wholly or mainly for the sake of the products which they produce for **[**F5735the farmer**]** to sell, being products obtainable from the living animal.

In this sub-paragraph "products obtainable from the living animal" means—

(a) the young of the animal, or

(b) any other product obtainable from the animal, not being a product obtainable only by slaughtering the animal itself.

(6) For the purposes of this Schedule, production herds kept by a farmer shall be deemed to be of the same class if, and only if, all the animals kept in the herds are of the same species (irrespective of breed) and the products produced for **[**F5735the farmer**]** to sell for the sake of which (either wholly or mainly) the herds are kept by **[**F5735the farmer**]** are of the same kinds in the case of all the herds; and elections for the herd basis shall be framed accordingly.

(7) Any reference in this Schedule to **[**F5736profits**]** chargeable to **[**F5737corporation**]** tax under Schedule D includes a reference to **[**F5736profits**]** which would be so chargeable if there were any such **[**F5736profits**]** for the **[**F5738accounting period**]** in question.

Textual Amendments

F5735 Words in Sch. 5 para. 8(5)(6) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(8)(a)** (with Sch. 2)

F5736 Words in Sch. 5 para. 8(7) substituted (31.7.1998) by Finance Act 1998 (c. 36), **ss. 46(3)(a)(b)**, Sch. 7 para. 1

F5737 Word in Sch. 5 para. 8(7) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(8)(b)(i)** (with Sch. 2)

F5738 Words in Sch. 5 para. 8(7) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(8)(b)(ii)** (with Sch. 2)

Application of preceding provisions to trades other than farming, creatures other than animals, and animals and creatures kept singly

9 (1) The preceding provisions of this Schedule shall, with the necessary adaptations, apply in relation to trades other than farming, and trades consisting only in part of farming as they apply in relation to farming, and references to farmers shall be construed accordingly.

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(2) Those provisions shall (both in relation to farming and in relation to other trades) apply in relation to living creatures other than animals as they apply in relation to animals.

(3) Laying birds shall be treated for the purposes of this Schedule as becoming mature when they first lay.

(4) The provisions of this Schedule shall (both in relation to farming and in relation to other trades) apply, with the necessary adaptations **[**F5739—

(a) in relation to animals or other creatures kept singly as they apply in relation to herds; and

(b) in relation to shares in animals or other creatures as they apply in relation to animals or other creatures themselves.**]**

(5) Nothing in this Schedule shall apply in relation to any animal or other creature kept wholly or mainly for public exhibition or for racing or other competitive purposes.

Textual Amendments

F5739 Words in Sch. 5 para. 9(4) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 76(2)(3)**

Supplemental and saving

10 Where an election for the herd basis is made, every person carrying on any farming or other trade affected by the election shall, if required to do so by notice from the inspector, make and deliver to the inspector, within the time specified in the notice, such returns as to, and as to the products of, the animals or other creatures kept by him for the purposes of the trade as may be required by the notice.

11 Where an election for the herd basis has effect for any **[**F5740accounting period**]** after an assessment for that period has become final and conclusive, any such assessment or, on a claim therefor, repayment of tax shall be made as may be necessary to give effect to the election.

Textual Amendments

F5740 Words in Sch. 5 para. 11 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 343(9)** (with Sch. 2)

12 The validity of an election for the herd basis in force immediately before the commencement of this Schedule and made in pursuance of—

(a) section 35 of the Finance Act 1973 on or after 25th July 1973 and before 6th April 1976, or

(b) section 48(6) to (9) of the Finance Act 1984,

shall not be affected by the repeal of those sections by this Act.

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F5741F5741[F5742SCHEDULE 5AA]

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Textual Amendments

F5741 Sch. 5AA repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 344, **Sch. 3** (with Sch. 2)

F5742 Sch. 5AA inserted (with effect in accordance with s. 80(6)(7) of the amending Act) by Finance Act 1997 (c. 16), s. 80(2), **Sch. 11**

F5759F5759[F5760SCHEDULE 5A

. . . . . .

Textual Amendments

F5759 Sch. 5A repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), Sch. 10 para. 1(2), **Sch. 18 Pt. 6(10)**, Note 1; S.I. 1997/991, **art. 2**

F5760 Sch. 5A inserted (with effect in accordance with s. 85(3) of the amending Act) by Finance Act 1995 (c. 4), s. 85(2), **Sch. 19**

F5761F5761SCHEDULE 6

. . . . . .

Textual Amendments

F5761 Schs. 6, 6A, 7, 7A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 paras. 110, 111, **Sch 8 Pt. 1** (with Sch. 7)

F5774F5774[F5775SCHEDULE 6A]

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Textual Amendments

F5774 Schs. 6, 6A, 7, 7A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 paras. 110, 111, **Sch 8 Pt. 1** (with Sch. 7)

F5775 Sch. 6A inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment) by 1993 c. 34, s. 73, Sch. 4 paras.7, **8**

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F5803F5803SCHEDULE 7

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Textual Amendments

F5803 Schs. 6, 6A, 7, 7A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 paras. 110, 111, **Sch 8 Pt. 1** (with Sch. 7)

F5828F5828[F5829SCHEDULE 7A

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Textual Amendments

F5828 Schs. 6, 6A, 7, 7A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 paras. 110, 111, **Sch 8 Pt. 1** (with Sch. 7)

F5829 Sch. 7A inserted (with effect in accordance with s. 57(2) of the amending Act) by Finance Act 2000 (c. 17), s. 57(1), **Sch. 10 para. 5(2)**

F5830F5830SCHEDULE 8

. . . . . .

Textual Amendments

F5830 Sch. 8 repealed (with effect in accordance with s. 61(2)(3), Sch. 18 Pt. 6(3) Notes 1-3 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(3)**

SCHEDULE 9

Sections 185, 186, 187.

APPROVED SHARE OPTION SCHEMES AND PROFIT SHARING SCHEMES

Modifications etc. (not altering text)

C950 Sch. 9 excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 238(2)(c)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))

C951 Sch. 9 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 115**

C952 Sch. 9 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 116(3)**

C953 Sch. 9 modified (28.7.2000) by Finance Act 2000 (c. 17), **s. 49(1)(2)**

C954 Sch. 9 continued for specified purposes (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(3)** (with Sch. 7)

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[F5858PART I

GENERAL

Textual Amendments

F5858 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

1 (1) M1175Subject to the provisions of this Schedule, on the application of a body corporate ("the grantor") which has established a share option scheme or a profit sharing scheme, the Board shall approve the scheme if they are satisfied that it fulfils such requirements of Part II and this Part as apply in relation to the scheme in question, and the requirements of Part III, IV or V of this Schedule; and in this Schedule—

"the relevant requirements" means, in relation to any scheme, the requirements of this Schedule by reference to which the scheme is approved; and

"savings-related share option scheme" means a scheme in relation to which the relevant requirements include the requirements of Part III of this Schedule.

(2) M1176An application under sub-paragraph (1) above shall be made in writing and contain such particulars and be supported by such evidence as the Board may require.

(3) M1177Where the grantor has control of another company or companies, the scheme may be expressed to extend to all or any of the companies of which it has control and in this Schedule a scheme which is expressed so to extend is referred to as a "group scheme".

(4) M1178In relation to a group scheme the expression "participating company" means the grantor or any other company to which for the time being the scheme is expressed to extend.

Marginal Citations

M1175 Source—1978 Sch.9 1(1)(a); 1980 Sch.10 1(1)(a); 1984 Sch.10 1(1)
M1176 Source—1978 Sch.9 1(5); 1980 Sch.10 1(2); 1984 Sch.10 1(2)
M1177 Source—1978 Sch.9 1(2); 1980 Sch.10 1(3); 1984 Sch.10 1(3)
M1178 Source—1978 Sch.9 1(2); 1980 Sch.10 1(3); 1984 Sch.10 1(4)

2 (1) M1179The Board shall not approve a scheme under this Schedule if it appears to them that it contains features which are neither essential nor reasonably incidental to the purpose of providing for employees and directors benefits in the nature of rights to acquire shares or, in the case of a profit sharing scheme, in the nature of interests in shares.

(2) M1180A profit sharing scheme shall not be approved under paragraph 1 above unless the Board are satisfied that, whether under the terms of the scheme or otherwise, every participant in the scheme is bound in contract with the grantor—

(a) to permit his shares to remain in the hands of the trustees throughout the period of retention; and

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(b) not to assign, charge or otherwise dispose of his beneficial interest in his shares during that period; and

(c) if he directs the trustees to transfer the ownership of his shares to him at any time before the release date, to pay to the trustees before the transfer takes place a sum equal to income tax at the basic rate on the appropriate percentage of the locked-in value of the shares at the time of the direction; and

(d) not to direct the trustees to dispose of his shares at any time before the release date in any other way except by sale for the best consideration in money that can reasonably be obtained at the time of the sale or, in the case of redeemable shares in a workers' cooperative, by redemption.

[The Board shall not approve a profit sharing scheme unless they are satisfied—

F5859(2A) (a) that the arrangements for the scheme do not make any provision, and are not in any way associated with any provision made, for loans to some or all of the employees of—

(i) the company that established the scheme, or

(ii) in the case of a group scheme, any participating company, and

(b) that the operation of the scheme is not in any way associated with such loans.

(2B) For the purposes of sub-paragraph (2A) above "arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable.**]**

(3) M1181The Board must be satisfied in the case of a savings-related share option scheme or a profit sharing scheme—

(a) that there are no features of the scheme (other than any which are included to satisfy requirements of this Schedule) which have or would have the effect of discouraging any description of employees or former employees who fulfil the conditions in paragraph 26(1) or, as the case may be, 36(1) below from actually participating in the scheme; and

(b) where the grantor is a member of a group of companies, that the scheme does not and would not have the effect of conferring benefits wholly or mainly on directors of companies in the group or on those employees of companies in the group who are in receipt of the higher or highest levels of remuneration.

(4) For the purposes of sub-paragraph (3) above "a group of companies" means a company and any other companies of which it has control.

Textual Amendments

F5859 Sch. 9 para. 2(2A)(2B) inserted (21.3.2000) by Finance Act 2000 (c. 17), **s. 53(1)(3)**

Modifications etc. (not altering text)

C955 Sch. 9 para. 2(2) excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 238(1)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1179 Source—1978 Sch.9 1(1)(b); 1980 Sch.10 1(1), (b); 1984 Sch.10 1(1); 1987 Sch.15 13

M1180 Source—1978 s.54(1); 1986 s.24(3)(a)

M1181 Source—1978 Sch.9 2(3), (4); 1980 Sch.10 1(1)(aa), (ab), (1A); 1983 s.25(5); 1984 s.39(2)

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3 (1) If, at any time after the Board have approved a share option scheme, any of the relevant requirements ceases to be satisfied or the grantor fails to provide information requested by the Board under paragraph 6 below, the Board may withdraw the approval with effect from that time or such later time as the Board may specify; but where rights obtained under a savings-related share option scheme before the withdrawal of approval from the scheme under this paragraph are exercised after the withdrawal, section 185(3) shall apply in respect of the exercise as if the scheme were still approved.

(2) If at any time after the Board have approved a profit sharing scheme—

(a) a participant is in breach of any of his obligations under paragraph 2(2)(a), (c) and (d) above; or

(b) there is, with respect to the operation of the scheme, any contravention of any of the relevant requirements, Schedule 10, the scheme itself or the terms of the trust referred to in paragraph 30(1)(c) below; or

(c) any shares of a class of which shares have been appropriated to the participants receive different treatment in any respect from the other shares of that class, in particular, different treatment in respect of—

(i) the dividend payable;

(ii) repayment;

(iii) the restrictions attaching to the shares; or

(iv) any offer of substituted or additional shares, securities or rights of any description in respect of the shares; or

[the Board—

F5860(ca) (i) cease to be satisfied of the matters mentioned in paragraph 2(2A) above, or

(ii) in the case of a scheme approved before 21st March 2000, are not satisfied of those matters; or**]**

(d) the Board cease to be satisfied that the scheme complies with the requirements of paragraph 2(3) above or paragraph 36 below; or

(e) the trustees, the grantor or, in the case of a group scheme, a company which is or has been a participating company fail or fails to furnish any information which they are or it is required to furnish under paragraph 6 below **[**F5861; or,

(f) the trustees appropriate shares to participants, one or more of whom have had free shares appropriated to them, at an earlier time in the same year of assessment, under a relevant share plan**]**,

the Board may, subject to sub-paragraph (3) below, withdraw the approval with effect from that time or from such later time as the Board may specify.

(3) M1182It shall not be a ground for withdrawal of approval of a profit sharing scheme that shares which have been newly issued receive, in respect of dividends payable with respect to a period beginning before the date on which the shares were issued, treatment which is less favourable than that accorded to shares issued before that date.

[For the purposes of sub-paragraph (2)(f) above the reference to persons having had
F5862(4) free shares appropriated to them includes persons who would have had free shares appropriated to them but for their failure to obtain a performance allowance (within the meaning of paragraph 25 of Schedule 8 to the Finance Act 2000).

(5) In sub-paragraph (2)(f) and (4) above—

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"free shares" has the same meaning as in Schedule 8 to the Finance Act 2000;

"relevant share plan", in relation to a profit sharing scheme, means an employee share ownership plan that—

(a) was established by the grantor or a connected company, and

(b) is approved under Schedule 8 to that Act.

(6) For the purposes of sub-paragraph (5) above "connected company" means—

(a) a company which controls or is controlled by the grantor or which is controlled by a company which also controls the grantor, or

(b) a company which is a member of a consortium owning the grantor or which is owned in part by the grantor as a member of a consortium.**]**

Textual Amendments

F5860 Sch. 9 para. 3(2)(ca) inserted (21.3.2000) by Finance Act 2000 (c. 17), **s. 53(2)(3)**

F5861 Sch. 9 para. 3(2)(f) and preceding word inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 51(1)**

F5862 Sch. 9 para. 3(4)-(6) inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 51(2)**

Marginal Citations

M1182 Source—1978 Sch.9 3(3)

4 **M1183**If an alteration is made in the scheme at any time after the Board have approved the scheme, the approval shall not have effect after the date of the alteration unless the Board have approved the alteration.

Modifications etc. (not altering text)

C956 Sch. 9 para. 4 modified (with effect in accordance with Sch. 16 para. 1 of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 16 para. 4**

Marginal Citations

M1183 Source—1978 Sch.9 3(2); 1980 Sch.10 3(2); 1984 Sch.10 2(2)

5 **M1184**If aggrieved—

(a) in any case, by the failure of the Board to approve the scheme or to approve an alteration in the scheme or by the withdrawal of approval; or

(b) in the case of a savings-related share option scheme, by the failure of the Board to decide that a condition subject to which the approval has been given is satisfied; or

(c) in the case of a profit sharing scheme, by the failure of the Board to approve an alteration in the terms of the trust referred to in paragraph 30(1)(c) below;

the grantor may, by notice given to the Board within 30 days from the date on which it is notified of the Board's decision, require the matter to be determined by the Special Commissioners, and the Special Commissioners shall hear and determine the matter in like manner as an appeal.

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Modifications etc. (not altering text)

C957 Sch. 9 para. 5 modified (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 158**

Marginal Citations

M1184 Source—1978 Sch.9 4; 1980 Sch.10 4; 1984 Sch.10 3

6 M1185The Board may by notice require any person to furnish them, within such time as the Board may direct (not being less than 30 days), with such information as the Board think necessary for the performance of their functions under the relevant provisions and as the person to whom the notice is addressed has or can reasonably obtain, including in particular information—

(a) to enable the Board to determine—

(i) whether to approve a scheme or withdraw an approval already given; or

(ii) the liability to tax, including capital gains tax, of any person who has participated in a scheme; and

(b) in relation to the administration of a scheme and any alteration of the terms of a scheme.**]**

Marginal Citations

M1185 Source—1978 s.53(7); 1980 Sch.10 25; 1984 Sch.10 14

[F5863PART II

REQUIREMENTS GENERALLY APPLICABLE

Textual Amendments

F5863 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

7 The provisions of this Part apply in relation to all schemes unless otherwise stated.

8 M1186The scheme must not provide for any person to be eligible to participate in it, that is to say, to obtain and exercise rights under it, or in the case of a profit sharing scheme to have shares appropriated to him, at any time when he has, or has within the preceding 12 months had, a material interest in a close company which is—

(a) a company shares in which, in the case of a profit sharing scheme, are to be appropriated or, in the case of a share option scheme, may be acquired pursuant to the exercise of rights obtained under the scheme; or

(b) a company which has control of such a company or is a member of a consortium which owns such a company.

In determining whether a company is a close company for the purposes of this paragraph, sections 414(1)(a) and 415 shall be disregarded.

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Marginal Citations

M1186 Source—1978 Sch.9 11(1), (2); 1980 Sch.10 23; 1984 Sch.10 4(1)(b), (3)

F5864 8A (1) In the case of a savings-related share option scheme or a profit sharing scheme, the scheme must specify what age is to be the specified age for the purposes of the scheme.

(2) The age specified—

(a) must be the same for men and women, and

(b) must be not less than 60 and not more than 75.**]**

Textual Amendments

F5864 Sch. 9 Pt. II para. 8A inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(5)(6)**

9 (1) M1187 A share option scheme must provide for directors and employees to obtain rights to acquire shares ("scheme shares") which satisfy the requirements of paragraphs 10 to 14 below **[**F5865 (disregarding paragraph 11A)**]**.

(2) In the case of a profit sharing scheme, the shares to be acquired by the trustees as mentioned in paragraph 30 below ("scheme shares") must satisfy the requirements of paragraphs 10 to 12 and 14 below.

Textual Amendments

F5865 Words in Sch. 9 para. 9(1) inserted (21.3.2000) by Finance Act 2000 (c. 17), **s. 52(2)(5)**

Marginal Citations

M1187 Source—1978 Sch.9 1(1), (3); 1980 Sch.10 5(a); 1984 Sch.10

10 M1188 Scheme shares must form part of the ordinary share capital of—

(a) the grantor; or

(b) a company which has control of the grantor; or

(c) a company which either is, or has control of, a company which—

(i) is a member of a consortium owning either the grantor or a company having control of the grantor; F5866 . . .

F5866 (ii) . . . . . .

Textual Amendments

F5866 Sch. 9 para. 10(c)(ii) and preceding word repealed by Finance Act 1989 (c. 26), s. 64, **Sch. 17 Pt. 4**

Marginal Citations

M1188 Source—1978 Sch.9 5; 1980 Sch.10 15; 1984 Sch.10 7

11 M1189 Scheme shares must be—

(a) shares of a class **[**F5867 listed**]** on a recognised stock exchange; or

(b) shares in a company which is not under the control of another company; or

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(c) shares in a company which is under the control of a company (other than a company which is, or would if resident in the United Kingdom be, a close company), whose shares are **[**F5867listed**]** on a recognised stock exchange.

Textual Amendments

F5867 Words in Sch. 9 para. 11(a)(c) substituted (with effect in accordance with Sch. 38 para. 6(10) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(j)**

Marginal Citations

M1189 Source—1978 Sch.9 6; 1980, s.46(10), Sch.10 16; 1984 Sch.10 8

[F5868 11(1A) In the case of a profit sharing scheme, scheme shares must not be shares—

(a) in an employer company, or

(b) in a company that—

(i) has control of an employer company, and

(ii) is under the control of a person or persons within sub-paragraph (2)(b)(i) below in relation to an employer company.

(2) For the purposes of this paragraph a company is "an employer company" if—

(a) the business carried on by it consists substantially in the provision of the services of the persons employed by it, and

(b) the majority of those services are provided to—

(i) a person who has, or two or more persons who together have, control of the company, or

(ii) a company associated with the company.

(3) For the purposes of sub-paragraph (2)(b)(ii) above a company shall be treated as associated with another company if both companies are under the control of the same person or persons.

(4) For the purposes of sub-paragraphs (1) to (3) above—

(a) references to a person include a partnership, and

(b) where a partner, alone or together with others, has control of a company, the partnership shall be treated as having like control of that company.

(5) For the purposes of this paragraph the question whether a person controls a company shall be determined in accordance with section 416(2) to (6).**]**

Textual Amendments

F5868 Sch. 9 para. 11A inserted (21.3.2000) by Finance Act 2000 (c. 17), **s. 52(3)(5)** (with s. 52(6))

12 (1) **M1190** Scheme shares must be—

(a) fully paid up;

(b) not redeemable; and

(c) not subject to any restrictions **[**F5869 other than those permitted by sub-paragraph (1A) below.**]**

Sub-paragraph (b) above does not apply, in the case of a profit sharing scheme, in relation to shares in a workers' cooperative.

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[F5870(1A) Subject to sub-paragraph (1B) below, scheme shares may be subject to—

(a) restrictions which attach to all shares of the same class, or

(b) a restriction authorised by sub-paragraph (2) below.

(1B) In the case of a profit sharing scheme, scheme shares must not be subject to any restrictions affecting the rights attaching to those shares which relate to—

(a) dividends, or

(b) assets on a winding-up of the company,

other than restrictions which attach to all other ordinary shares in the same company.**]**

(2) Except as provided below, the shares may be subject to a restriction imposed by the company's articles of association—

(a) requiring all shares held by directors or employees of the company or of any other company of which it has control to be disposed of on ceasing to be so held; and

(b) requiring all shares acquired, in pursuance of rights or interests obtained by such directors or employees, by persons who are not (or have ceased to be) such directors or employees to be disposed of when they are acquired.

(3) A restriction is not authorised by sub-paragraph (2) above unless—

(a) any disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association; and

(b) the articles also contain general provisions by virtue of which any person disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2) above) may be required to sell them on terms which are the same as those mentioned in paragraph (a) above.

(4) In the case of a profit sharing scheme, except in relation to redeemable shares in a workers' cooperative, nothing in sub-paragraph (2) above authorises a restriction which would require a person, before the release date, to dispose of his beneficial interest in shares the ownership of which has not been transferred to him.

Textual Amendments

F5869 Words in Sch. 9 para. 12(1)(c) substituted (21.3.2000) by Finance Act 2000 (c. 17), **s. 52(4)(a)(5)** (with s. 52(6))

F5870 Sch. 9 para. 12(1A)(1B) inserted (21.3.2000) by Finance Act 2000 (c. 17), **s. 52(4)(b)(5)** (with s. 52(6))

Marginal Citations

M1190 Source—1978 Sch.9 7; 1980 Sch.10 17; 1984 Sch.10 9; 1986 s.22, 24(2)

13 (1) **M1191** In determining, in the case of a share option scheme, for the purposes of paragraph 12(1)(c) above whether scheme shares which are or are to be acquired by any person are subject to any restrictions, there shall be regarded as a restriction attaching to the shares any contract, agreement, arrangement or condition by which his freedom to dispose of the shares or of any interest in them or of the proceeds of their sale or to exercise any right conferred by them is restricted or by which such a disposal or exercise may result in any disadvantage to him or to a person connected with him.

(2) Sub-paragraph (1) does not apply to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to

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any of the provisions of the Model Rules set out in the Model Code for Securities Transactions by Directors of Listed Companies issued by the Stock Exchange in November 1984.

[[F5871](3) In the case of schemes other than savings-related share option schemes, sub-paragraph (1) above does not apply in relation to any terms of a loan making provision about how it is to be repaid or the security to be given for it.**]**

Textual Amendments

F5871 Sch. 9 para. 13(3) added (retrospectively) by Finance Act 1988 (c. 39), **s. 69(1)**

Marginal Citations

M1191 Source—1980 Sch.10 18; 1982 s.41; 1984 Sch.10 10; 1986 s.23(4)

14 (1) [M1192]Except where scheme shares are shares in a company the ordinary share capital of which consists of shares of one class only, the majority of the issued shares of the same class either must be employee-control shares or must be held by persons other than—

(a) persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as a director or employee of the grantor or any other company and not in pursuance of an offer to the public;

(b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in sub-paragraph (a) above; and

(c) in a case where the shares fall within sub-paragraph (c), but not within sub-paragraph (a), of paragraph 11 above, companies which have control of the company whose shares are in question or of which that company is an associated company.

(2) In its application to a profit sharing scheme, sub-paragraph (1) above shall have effect with the addition after the words "ordinary share capital of which" of the words " at the time of the acquisition of the shares by the trustees ".

(3) For the purposes of this paragraph, shares in a company are employee-control shares if—

(a) the persons holding the shares are, by virtue of their holding, together able to control the company; and

(b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.

Marginal Citations

M1192 Source—1978 Sch.9 8; 1980 s.46(11), Sch.10 19; 1984 Sch.10 11; 1986 s.23(3)

15 (1) [M1193]Except in the case of a profit sharing scheme, the scheme may provide that if any company ("the acquiring company")—

(a) obtains control of a company whose shares are scheme shares as a result of making a general offer—

(i) to acquire the whole of the issued ordinary share capital of the company which is made on a condition such that if it is satisfied the person making the offer will have control of the company; or

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(ii) to acquire all the shares in the company which are of the same class as the scheme shares;

(b) obtains control of a company whose shares are scheme shares in pursuance of a compromise or arrangement sanctioned by the court under section 425 of the [M1194]Companies Act 1985 or Article 418 of the [M1195]Companies (Northern Ireland) Order 1986; or

(c) becomes bound or entitled to acquire shares in a company whose shares are scheme shares under sections 428 to 430 of that Act or Articles 421 to 423 of that Order,

any participant in the scheme may at any time within the appropriate period, by agreement with the acquiring company, release his rights under the scheme (in this paragraph referred to as "the old rights") in consideration of the grant to him of rights (in this paragraph referred to as "the new rights") which are equivalent to the old rights but relate to shares in a different company (whether the acquiring company itself or some other company falling within paragraph 10(b) or (c) above).

(2) In sub-paragraph (1) above "the appropriate period" means—

(a) in a case falling within paragraph (a), the period of six months beginning with the time when the person making the offer has obtained control of the company and any condition subject to which the offer is made is satisfied;

(b) in a case falling within paragraph (b), the period of six months beginning with the time when the court sanctions the compromise or arrangement; and

(c) in a case falling within paragraph (c), the period during which the acquiring company remains bound or entitled as mentioned in that paragraph.

(3) The new rights shall not be regarded for the purposes of this paragraph as equivalent to the old rights unless—

(a) the shares to which they relate satisfy the conditions specified, in relation to scheme shares, in paragraphs 10 to 14 above; and

(b) the new rights will be exercisable in the same manner as the old rights and subject to the provisions of the scheme as it had effect immediately before the release of the old rights; and

(c) the total market value, immediately before the release, of the shares which were subject to the participant's old rights is equal to the total market value, immediately after the grant, of the shares in respect of which the new rights are granted to the participant; and

(d) the total amount payable by the participant for the acquisition of shares in pursuance of the new rights is equal to the total amount that would have been payable for the acquisition of shares in pursuance of the old rights.

(4) Where any new rights are granted pursuant to a provision included in a scheme by virtue of this paragraph they shall be regarded—

(a) for the purposes of section 185 and this Schedule; and

(b) for the purposes of the subsequent application (by virtue of a condition complying with sub-paragraph (3)(b) above) of the provisions of the scheme,

as having been granted at the time when the corresponding old rights were granted.

(5) [M1196]Where a scheme which was approved before 1st August 1987 is altered before 1st August 1989 so as to include such a provision as is mentioned above ("an exchange provision"), the scheme as altered may by virtue of this and the following

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sub-paragraphs apply that provision to rights obtained under the scheme before the date on which the alteration takes effect.

(6) If an exchange provision is applied as mentioned in sub-paragraph (5) above in a case where, on or after 17th March 1987 but before the date on which the alteration takes effect, an event has occurred by reason of which a person holding rights under the scheme would be able to take advantage of the exchange provision—

(a) the scheme may permit a person who held rights under the scheme immediately before that event to take advantage of the exchange provision; and

(b) in a case where rights then held would otherwise, by reason of the event, have ceased to be exercisable, the scheme may provide that the exchange provision shall apply as if the rights were still exercisable.

(7) The application of an exchange provision as mentioned in sub-paragraph (5) or (6) above shall not itself be regarded for the purposes of this Schedule as the acquisition of a right.

(8) Sub-paragraphs (5) and (6) above have effect subject to paragraph 4 above.

Marginal Citations

M1193 Source—1980 Sch.10, 10A; 1984 Sch.10 4A; 1987 Sch.4 1, 2; 1987 (No.2) s.59

M1194 1985 c. 6.

M1195 S.I. 1986/1032 (N.I. 6).

M1196 Source—1987 Sch.4 3

F5872F5872PART III

REQUIREMENTS APPLICABLE TO SAVINGS-RELATED SHARE OPTION SCHEMES

Textual Amendments

F5872 Sch. 9 Pts. 3, 4 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(2), **Sch 8 Pt. 1** (with Sch. 7)

. . . . . .

16 (1) The scheme must provide for the scheme shares to be paid for with moneys not exceeding the amount of repayments made and any interest paid to them under a certified contractual savings scheme which has been approved by the Board for the purposes of this Schedule.

(2) Where the Board are satisfied that—

(a) a person has entered into a certified contractual savings scheme before 15th November 1980, and

(b) he has obtained rights under a scheme established before that date to acquire shares in a company of which he is an employee or director (or a company of which such a company has control) using repayments made under the certified contractual savings scheme;

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then, repayments and interest paid under the certified contractual savings scheme shall be treated as repayments and interest paid, under a scheme approved by the Board for the purposes of this Schedule under sub-paragraph (1) above, and, accordingly, may be used for the purchase of shares under a savings-related share option scheme approved under this Schedule.

(3) The repayments and interest to which sub-paragraph (2) above applies shall not exceed the repayments and interest to which the participant would have been entitled if the terms of the scheme had corresponded to those of a certified contractual savings scheme approved by the Board under sub-paragraph (1) above.

. . . . . .

17 Subject to paragraphs 18 to 21 below, the rights obtained under the scheme must not be capable of being exercised before the bonus date, that is to say, the date on which repayments under the certified contractual savings scheme are due; and for the purposes of this paragraph and paragraph 16 above—

(a) repayments under a certified contractual savings scheme may be taken as including or as not including a bonus;

(b) the time when repayments are due shall be, where repayments are taken as including the maximum bonus, the earliest date on which the maximum bonus is payable and, in any other case, the earliest date on which a bonus is payable under the scheme; and

(c) the question what is to be taken as so included must be required to be determined at the time when rights under the scheme are obtained.

. . . . . .

18 The scheme must provide that if a person who has obtained rights under the scheme dies before the bonus date the rights must be exercised, if at all, within 12 months after the date of his death and if he dies within six months after the bonus date the rights may be exercised within 12 months after the bonus date.

. . . . . .

19 The scheme must provide that if a person who has obtained rights under it ceases to hold the office or employment by virtue of which he is eligible to participate in the scheme by reason of—

(a) injury or disability or redundancy within the meaning of the Employment Rights Act 1996; or

(b) retirement on reaching the specified age or any other age at which he is bound to retire in accordance with the terms of his contract of employment,

then the rights must be exercised, if at all, within six months of his so ceasing and, if he so ceases for any other reason within three years of obtaining the rights, they may not be exercised at all except pursuant to such a provision of the scheme as is mentioned in paragraph 21(1)(e) below; and in relation to the case where he so ceases for any other reason more than three years after obtaining the rights the scheme must either provide that the rights may not be exercised or that they must be exercised, if at all, within six months of his so ceasing.

. . . . . .

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20 The scheme must provide that where a person who has obtained rights under it continues to hold the office or employment by virtue of which he is eligible to participate in the scheme after the date on which he reaches the specified age, he may exercise the rights within six months of that date.

. . . . . .

21 (1) The scheme may provide that—

(a) if any person obtains control of a company whose shares are scheme shares as a result of making a general offer falling within paragraph 15(a)(i) or (ii) above, rights obtained under the scheme to acquire shares in the company may be exercised within six months of the time when the person making the offer has obtained control of the company and any condition subject to which the offer is made has been satisfied;

(b) if under section 425 of the Companies Act 1985 or Article 418 of the Companies (Northern Ireland) Order 1986 (power to compromise with creditors and members) the court sanctions a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction of a company whose shares are scheme shares or its amalgamation with any other company or companies, rights obtained under the share option scheme to acquire shares in the company may be exercised within six months of the court sanctioning the compromise or arrangement;

(c) if any person becomes bound or entitled, under sections 428 to 430 of that Act of 1985 or Articles 421 to 423 of that Order of 1986 (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), to acquire shares in a company shares in which are scheme shares, rights obtained under the scheme to acquire shares in the company may be exercised at any time when that person remains so bound or entitled;

(d) if a company whose shares are scheme shares passes a resolution for voluntary winding up, rights obtained under a scheme to acquire shares in the company may be exercised within six months of the passing of the resolution; . . .

(e) if a person ceases to hold an office or employment by virtue of which he is eligible to participate in the scheme by reason only that—

(i) that office or employment is in a company of which the grantor ceases to have control; or

(ii) that office or employment relates to a business or part of a business which is transferred to a person who is neither an associated company of the grantor nor a company of which the grantor has control;

rights under the scheme held by that person may be exercised within six months of his so ceasing; and

(f) if, at the bonus date, a person who has obtained rights under the scheme holds an office or employment in a company which is not a participating company but which is—

(i) an associated company of the grantor, or

(ii) a company of which the grantor has control,

those rights may be exercised within six months of that date.

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(2) For the purposes of this paragraph a person shall be deemed to have obtained control of a company if he and others acting in concert with him have together obtained control of it.

(3) Where a scheme which has been approved before 1st August 1986 has been or is altered before 1st August 1988 so as to include such a provision as is specified in sub-paragraph (1)(e) above, the scheme as altered may by virtue of this sub-paragraph apply that provision to rights obtained under the scheme before the date on which the alteration takes effect, and where that provision is so applied in relation to such rights—

(a) the scheme may permit a person having such rights to take advantage of the provision notwithstanding that under the scheme he would otherwise be unable to exercise those rights after he has ceased to hold the office or employment in question; and

(b) if, before the date on which the alteration takes effect, a person who held such rights on 18th March 1986 ceases, in either of the circumstances set out in sub-paragraph (1)(e) above, to hold an office or employment by virtue of which he was eligible to participate in the scheme, then, so far as concerns the rights so held, the scheme may permit him to take advantage of the provision in question as if the alteration had been made immediately before he ceased to hold that office or employment; and

(c) the application of the provision shall not itself be regarded as the acquisition of a right for the purposes of this Schedule.

This sub-paragraph has effect subject to paragraph 4 above.

(4) Where a scheme approved before the date of the passing of the Finance Act 1996 is altered before 5th May 1998 so as to include such a provision as is specified in sub-paragraph (1)(f) above, the scheme may apply the provision to rights obtained under the scheme before the alteration takes effect, whether the bonus date in relation to the rights occurred before or after the passing of that Act; and where the provision is applied to such rights by virtue of this sub-paragraph, its application to such rights shall not itself be regarded as the acquisition of a right for the purposes of this Schedule.

This sub-paragraph has effect subject to paragraph 4 above.

. . . . . .

22 Except as provided in paragraph 18 above, rights obtained by a person under the scheme must not be capable—

(a) of being transferred by him, or

(b) of being exercised later than six months after the bonus date.

. . . . . .

23 No person shall be treated for the purposes of paragraph 19 or 21(1)(e) above as ceasing to hold an office or employment by virtue of which he is eligible to participate in the scheme until he ceases to hold an office or employment in the grantor or in any associated company or company of which the grantor has control.

. . . . . .

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24 (1) The scheme must provide for a person's contributions under the certified contractual savings scheme to be of such amount as to secure as nearly as may be repayment of an amount equal to that for which shares may be acquired in pursuance of rights obtained under the scheme; and for this purpose the amount of repayment under the certified contractual savings scheme shall be determined as mentioned in paragraph 17 above.

(2) The scheme must not—

(a) permit the aggregate amount of a person's contributions under certified contractual savings schemes linked to savings-related share option schemes approved under this Schedule to exceed £250 monthly, nor

(b) impose a minimum on the amount of a person's contributions which exceeds £10 monthly.

(3) The Treasury may by order amend sub-paragraph (2) above by substituting for any amount for the time being specified in that sub-paragraph such amount as may be specified in the order.

. . . . . .

25 The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—

(a) must be stated at the time the right is obtained, and

(b) must not be manifestly less than 80%. of the market value of shares of the same class at that time or, if the Board and the grantor agree in writing, at such earlier time or times as may be provided in the agreement,

but the scheme may provide for such variation of the price as may be necessary to take account of any variation in the share capital of which the scheme shares form part.

. . . . . .

26 (1) Subject to paragraph 8 above, every person who—

(a) is an employee or a full-time director of the grantor or, in the case of a group scheme, a participating company, and

(b) has been such an employee or director at all times during a qualifying period not exceeding five years, and

(c) is chargeable to tax in respect of his office or employment under Case I of Schedule E,

must be eligible to participate in the scheme, that is to say, to obtain and exercise rights under it, on similar terms, and those who do participate in the scheme must actually do so on similar terms.

(2) For the purposes of sub-paragraph (1) above, the fact that the rights to be obtained by the persons participating in a scheme vary according to the levels of their remuneration, the length of their service or similar factors shall not be regarded as meaning that they are not eligible to participate in the scheme on similar terms or do not actually do so.

(3) Except as provided by paragraph 19 above or pursuant to such a provision as is referred to in paragraph 21(1)(e) or (f) above, a person must not be eligible to

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participate in the scheme at any time unless he is at that time a director or employee of the grantor or, in the case of a group scheme, of a participating company.

F5883F5883PART IV

REQUIREMENTS APPLICABLE TO OTHER SHARE OPTION SCHEMES

Textual Amendments

F5883 Sch. 9 Pts. 3, 4 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(2), **Sch 8 Pt. 1** (with Sch. 7)

. . . . . .

27 (1) A person must not be eligible to obtain rights under the scheme at any time unless he is at that time a full-time director or qualifying employee of the grantor or, in the case of a group scheme, of a participating company, but the scheme may provide that a person may exercise rights under it after he has ceased to be a full-time director or qualifying employee.

(2) The scheme must not permit any person obtaining rights under it to transfer any of them but may provide that, if a person who has obtained rights under it dies before exercising them, they may be exercised after, but not more than one year after, the date of his death.

(3) Where the scheme contains the provision permitted by sub-paragraph (2) above and any rights are exercised—

(a) after the death of the person who obtained them; but

(b) before the expiry of the period of ten years beginning with his obtaining them;

subsection (3) of section 185 shall apply with the omission of the reference to subsection (5) of that section.

(4) In sub-paragraph (1) above "qualifying employee", in relation to a company, means an employee of the company (other than one who is a director of the company or, in the case of a group scheme, of a participating company) . . . .

. . . . . .

28 (1) The scheme must provide that no person shall obtain rights under it which would, at the time they are obtained, cause the aggregate market value of the shares which he may acquire in pursuance of rights obtained under the scheme or under any other share option scheme, not being a savings-related share option scheme, approved under this Schedule and established by the grantor or by any associated company of the grantor (and not exercised) to exceed or further exceed £30,000.

(2) . . . . . .

(3) For the purposes of sub-paragraph (1) above, the market value of shares shall be calculated as at the time when the rights in relation to those shares were obtained or, in a case where an agreement relating to them has been made under paragraph 29 below, such earlier time or times as may be provided in the agreement.

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(4) . . . . . .

. . . . . .

F5887 29 (1) The price at which scheme shares may be acquired by the exercise of a right obtained under the scheme—

(a) must be stated at the time the right is obtained, and

(b) must not be manifestly less than the market value of shares of the same class at that time or, if the Board and the grantor agree in writing, at such earlier time or times as may be provided in the agreement.

(7) The scheme may provide for such variation of the price at which scheme shares may be acquired as may be necessary to take account of any variation in the share capital of which the scheme shares form part.

(8) F5889 . . . . . .

PART V

REQUIREMENTS APPLICABLE TO PROFIT SHARING SCHEMES

30 (1) M1217 The scheme must provide for the establishment of a body of persons resident in the United Kingdom ("the trustees")—

(a) who, out of moneys paid to them by the grantor or, in the case of a group scheme, a participating company, are required by the scheme to acquire shares in respect of which the conditions in paragraphs 10 to 12 and 14 above are fulfilled; and

(b) who are under a duty to appropriate shares acquired by them to individuals who participate in the scheme, not being individuals who are ineligible by virtue of paragraph 8 or 35 of this Schedule; and

(c) whose functions with respect to shares held by them are regulated by a trust which is constituted under the law of a part of the United Kingdom and the terms of which are embodied in an instrument which complies with the provisions of paragraphs 31 to 34 below.

(2) M1218 If at any time after the Board have approved the scheme, an alteration is made in the terms of the trust referred to in sub-paragraph (1)(c) above, the approval shall not have effect after the date of the alteration unless the Board have approved the alteration.

(3) M1219 The scheme must provide that the total of the initial market values of the shares appropriated to any one participant in a year of assessment will not exceed the relevant amount.

(4) M1220 In this Part of this Schedule "initial market value", in relation to a participant's shares, means the market value of those shares determined—

(a) except where paragraph (b) below applies, on the date on which the shares were appropriated to him; and

(b) if the Board and the trustees agree in writing, on or by reference to such earlier date or dates as may be provided for in the agreement.

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Marginal Citations

M1217 Source—1978 Sch.9 1(3)
M1218 Source—1978 Sch.9 3(2)
M1219 Source—1978 Sch.9 1 (4); 1983 s.25(1)
M1220 Source—1978 s.53(4)

31 M1221 The trust instrument shall provide that, as soon as practicable after any shares have been appropriated to a participant, the trustees will give him notice of the appropriation—

(a) specifying the number and description of those shares; and

(b) stating their initial market value.

Marginal Citations

M1221 Source—1978 Sch.9 12

32 (1) M1222 The trust instrument must contain a provision prohibiting the trustees from disposing of any shares, except as mentioned in paragraph 1(1)(a), (b) **[**F5890, (c) or (cc)**]** of Schedule 10, during the period of retention (whether by transfer to the participant or otherwise).

(2) The trust instrument must contain a provision prohibiting the trustees from disposing of any shares after the end of the period of retention and before the release date except—

(a) pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in his shares is for the time being vested; and

(b) by a transaction which would not involve a breach of the participant's obligations under paragraph 2(2)(c) or (d) above.

Textual Amendments

F5890 Words in Sch. 9 para. 32(1) substituted (with effect in accordance with s. 101(9)(10) of the amending Act) by Finance Act 1994 (c. 9), **s. 101(5)**

Marginal Citations

M1222 Source—1978 Sch.9 13; 1980 s.46(13)

33 M1223 The trust instrument must contain a provision requiring the trustees—

(a) subject to their obligations under paragraph 7 of Schedule 10 and to any such direction as is mentioned in paragraph 4(2) of that Schedule to pay over to the participant any money or money's worth received by them in respect of or by reference to any of his shares other than money's worth consisting of new shares within the meaning of paragraph 5 of that Schedule; and

(b) to deal only pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in his shares is for the time being vested with any right conferred in respect of any of his shares to be allotted other shares, securities or rights of any description.

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Modifications etc. (not altering text)
C959 Sch. 9 para. 33(a) modified (with effect in accordance with s. 101(11)(12) of the affecting Act) by Finance Act 1994 (c. 9), **s. 101(6)** (with s. 101(14))

Marginal Citations
M1223 Source—1978 Sch.9 14

34 M1224 The trust instrument must impose an obligation on the trustees—

(a) to maintain such records as may be necessary to enable the trustees to carry out their obligations under paragraph 7 of Schedule 10; and

(b) where the participant becomes liable to income tax under Schedule E by reason of the occurrence of any event, to inform him of any facts relevant to determining that liability.

Marginal Citations
M1224 Source—1978 Sch.9 15

35 (1) M1225 An individual shall not be eligible to have shares appropriated to him under the scheme at any time unless he is at that time or was within the preceding 18 months a director or employee of the grantor or, in the case of a group scheme, of a participating company.

(2) M1226 An individual shall not be eligible to have shares appropriated to him under the scheme at any time if in that year of assessment shares have been appropriated to him under another approved scheme established by the grantor or by—

(a) a company which controls or is controlled by the grantor or which is controlled by a company which also controls the grantor, or

(b) a company which is a member of a consortium owning the grantor or which is owned in part by the grantor as a member of a consortium.

Marginal Citations
M1225 Source—1978 Sch.9 9
M1226 Source—1978 Sch.9 10

36 (1) M1227 Subject to paragraphs 8 and 35 above, every person who at any time—

(a) is **[**F5891 an employee**]** or a full-time director of the grantor or, in the case of a group scheme, a participating company, and

(b) has been such an employee or director at all times during a qualifying period, not exceeding five years, ending at that time, and

(c) is chargeable to tax in respect of his office or employment under Case I of Schedule E,

must then be eligible (subject to paragraphs 8 and 35 of this Schedule) to participate in the scheme on similar terms and those who do participate must actually do so on similar terms.

(2) For the purposes of sub-paragraph (1) above, the fact that the number of shares to be appropriated to the participants in a scheme varies by reference to the levels of

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their remuneration, the length of their service or similar factors shall not be regarded as meaning that they are not eligible to participate in the scheme on similar terms or do not actually do so.

Textual Amendments

F5891 Words in Sch. 9 para. 36(1)(a) substituted (with application in accordance with s. 137(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 137(4)**

Marginal Citations

M1227 Source—1978 Sch.9 2; 1983 s.25(4)

[F5892 PART VI

MATERIAL INTEREST TEST

Textual Amendments

F5892 Sch. 9 Pts. 1, 2, 6 repealed (except for specified purposes) (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 112(1), **Sch 8 Pt. 1** (with Sch. 7)

Interests under trusts

37 (1) This M1228 paragraph applies in a case where—

(a) the individual ("the beneficiary") was one of the objects of a discretionary trust; and

(b) the property subject to the trust at any time consisted of or included any shares or obligations of the company.

(2) If neither the beneficiary nor any relevant associate of his had received any benefit under the discretionary trust before 14th November 1986, then, as respects any time before that date, the trustees of the settlement concerned shall not be regarded, by reason only of the matters referred to in sub-paragraph (1) above, as having been associates (as defined in section 417(3) and (4)) of the beneficiary.

(3) If, on or after 14th November 1986—

(a) the beneficiary ceases to be eligible to benefit under the discretionary trust by reason of—

(i) an irrevocable disclaimer or release executed by him under seal; or

(ii) the irrevocable exercise by the trustees of a power to exclude him from the objects of the trust; and

(b) immediately after he so ceases, no relevant associate of his is interested in the shares or obligations of the company which are subject to the trust; and

(c) during the period of 12 months ending with the date when the beneficiary so ceases, neither the beneficiary nor any relevant associate of his received any benefit under the trust,

the beneficiary shall not be regarded, by reason only of the matters referred to in sub-paragraph (1) above, as having been interested in the shares or obligations of

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the company as mentioned in section 417(3)(c) at any time during the period of 12 months referred to in paragraph (c) above.

(4) In sub-paragraphs (2) and (3) above "relevant associate" has the meaning given to "associate" by subsection (3) of section 417 but with the omission of paragraph (c) of that subsection.

(5) Sub-paragraph (3)(a)(i) above, in its application to Scotland, shall be construed as if the words "under seal" were omitted.

Marginal Citations
M122 Source—1987 Sch.4 6-8

Options etc.

38 (1) For the purposes of section 187(3)(a) a right to acquire shares (however arising) shall be taken to be a right to control them.

(2) Any reference in sub-paragraph (3) below to the shares attributed to an individual is a reference to the shares which, in accordance with section 187(3)(a), fall to be brought into account in his case to determine whether their number exceeds a particular percentage of the company's ordinary share capital.

(3) In any case where—

(a) the shares attributed to an individual consist of or include shares which he or any other person has a right to acquire; and

(b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company is contractually bound to issue in the event of the exercise of the right;

then, in determining at any time prior to the exercise of that right whether the number of shares attributed to the individual exceeds a particular percentage of the ordinary share capital of the company, that ordinary share capital shall be taken to be increased by the number of unissued shares referred to in paragraph (b) above.

(4) This paragraph has effect as respects any time after 5th April 1987.

Shares held by trustees of approved profit sharing schemes

39 In applying section 187(3), as respects any time before or after the passing of this Act, there shall be disregarded—

(a) the interest of the trustees of an approved profit sharing scheme in any shares which are held by them in accordance with the scheme and have not yet been appropriated to an individual; and

(b) any rights exercisable by those trustees by virtue of that interest.

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I[F5893] Shares subject to an employee benefit trust

Textual Amendments

F5893 Sch. 9 para. 40 and preceding cross-heading inserted by Finance Act 1989 (c. 26), **s. 65**

40 (1) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees shall not be regarded as associates of his by reason only of that interest unless sub-paragraph (3) below applies in relation to him.

(2) In this paragraph "employee benefit trust" has the same meaning as in paragraph 7 of Schedule 8.

(3) This sub-paragraph applies in relation to an individual if at any time on or after 14th March 1989—

(a) the individual, either on his own or with any one or more of his associates, or

(b) any associate of his, with or without other such associates,

has been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control, more than 25 per cent., or in the case of a share option scheme which is not a savings-related share option scheme more than 10 per cent., of the ordinary share capital of the company.

(4) Sub-paragraphs (9) to (12) of paragraph 7 of Schedule 8 shall apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.**]]**

SCHEDULE 10

FURTHER PROVISIONS RELATING TO PROFIT SHARING SCHEMES

Modifications etc. (not altering text)

C960 Sch. 10 excluded (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 238(2)(c)(4)**, 289 (with ss. 60, 101(1), 171, 201(3))

C961 Sch. 10 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 116(3)**

C962 Sch. 10 continued (6.4.2003 with effect in accordance with s. 723(1) of the affecting Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **s. 418(3)** (with Sch. 7)

Limitations on contractual obligations of participants

1 (1) **M1229**Any obligation placed on the participant by virtue of paragraph 2(2) of Schedule 9 shall not prevent the participant from—

(a) directing the trustees to accept an offer for any of his shares ("the original shares") if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax; or

(b) directing the trustees to agree to a transaction affecting his shares or such of them as are of a particular class, if the transaction would be entered

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into pursuant to a compromise, arrangement or scheme applicable to or affecting—

(i) all the ordinary share capital of the company in question or, as the case may be, all the shares of the class in question; or

(ii) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved scheme; or

(c) directing the trustees to accept an offer of cash, with or without other assets, for his shares if the offer forms part of a general offer which is made to holders of shares of the same class as his or of shares in the same company and which is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company, within the meaning of section 416; or

[F5894(cc) directing the trustees to accept an offer of a qualifying corporate bond, whether alone or with cash or other assets or both, for his shares if the offer forms part of a general offer which is made as mentioned in paragraph (c) above; or**]**

(d) agreeing after the expiry of the period of retention to sell the beneficial interest in his shares to the trustees for the same consideration as, in accordance with sub-paragraph (d) of paragraph 2(2) of Schedule 9, would be required to be obtained for the shares themselves.

(2) M1230No obligation placed on the participant by virtue of paragraph 2(2)(c) of Schedule 9 shall be construed as binding his personal representatives to pay any sum to the trustees.

(3) M1231If, in breach of his obligation under paragraph 2(2)(b) of Schedule 9 a participant assigns, charges or otherwise disposes of the beneficial interest in any of his shares, then, as respects those shares, he shall be treated for the purposes of the relevant provisions as if at the time they were appropriated to him he was ineligible to participate in the scheme; and paragraph 6 below shall apply accordingly.

[F5895(4) In sub-paragraph (1)(cc) above "qualifying corporate bond" shall be construed in accordance with section 117 of the 1992 Act.**]**

Textual Amendments

F5894 Sch. 10 para. 1(1)(cc) inserted (with effect in accordance with s. 101(7) of the amending Act) by Finance Act 1994 (c. 9), **s. 101(2)**

F5895 Sch. 10 para. 1(4) inserted (with effect in accordance with s. 101(7) of the amending Act) by Finance Act 1994 (c. 9), **s. 101(3)**

Marginal Citations

M1229 Source—1978 s.54(2); 1979 Sch.7

M1230 Source—1978 s.54(1A); 1980 s.46(2)

M1231 Source—1978 s.54(3)

The period of retention

2 M1232For the purposes of any of the relevant provisions, "the period of retention", in relation to any of a participant's shares, means the period beginning on the date on

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which they are appropriated to him and ending on the second anniversary of that date or, if it is earlier—

(a) the date on which the participant ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company by reason of injury or disability or on account of his being dismissed by reason of redundancy, within the meaning of **[**F5896the Employment Rights Act 1996**]** or the **[**F5897Employment Rights (Northern Ireland) Order 1996**]**; or

(b) the date on which the participant reaches **[**F5898the relevant age**]**; or

(c) the date of the participant's death; **[**F5899or**]**

(d) in a case where the participant's shares are redeemable shares in a workers' cooperative, the date on which the participant ceases to be employed by, or by a subsidiary of, the cooperative.

For the purposes of sub-paragraph (a) above, in the case of a group scheme, the participant shall not be treated as ceasing to be a director or employee of a participating company until such time as he is no longer a director or employee of any of the participating companies.

[F5900In this paragraph, the reference to the relevant age is a reference, in the case of a scheme approved before the day on which the Finance Act 1991 was passed, **[**F5901in the case of a man, to the age of 65, and in the case of a woman, to the age of 60**]** and, in the case of a scheme approved on or after that day, to the specified age.**]**

Textual Amendments

F5896 Words in Sch. 10 para. 2 substituted (22.8.1996) by Employment Rights Act 1996 (c. 18), s. 243, **Sch. 1 para. 35(4)(b)**

F5897 Words in Sch. 10 para. 2 substituted (24.9.1996) by The Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16)), art. 1(2), **Sch. 1** (with Sch. 2)

F5898 Words in Sch. 10 para. 2(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(3)**

F5899 Word at the end of Sch. 10 para. 2(c) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **9**

F5900 Words in Sch. 10 para. 2 inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 38(3)**

F5901 Words in Sch. 10 para. 2 substituted (19.7.1995) by Pensions Act 1995 (c. 26), ss. 126, 180(2)(a), **Sch. 4 para. 12(b)**, s. 178(3)

Marginal Citations

M1232 Source—1978 s.54(4), (5); 1980 s.46(3); 1986 s.24(3)

The appropriate percentage

3 **[**F5902(1) For the purposes of any of the relevant provisions **[**F5903under which an amount counts as employment income of an individual**]** by reason of the occurrence of an event relating to any of his shares, the "appropriate percentage" in relation to those shares is 100 per cent., unless sub-paragraph (2) below applies.

(2) Where the individual—

(a) ceases to be a director or employee of the grantor or, in the case of a group scheme, a participating company as mentioned in paragraph 2(a) above, or

(b) reaches the relevant age,

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before the event occurs, the "appropriate percentage" is 50 per cent., unless paragraph 6(4) below applies.**]**

Textual Amendments

F5902 Sch. 10 para. 3 substituted (with effect in accordance with s. 107(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 117(1)**

F5903 Words in Sch. 10 paras. 3(1), 6(4) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 113(2)** (with Sch. 7)

[F5904 3A (1) In paragraph 3 above the reference to the relevant age shall be construed as follows.

(2) Where the scheme is approved before 25th July 1991 and the event occurs before 30th November 1993, the relevant age is

[F5905 (a) in the case of a man, 65, and

(b) in the case of a woman, 60.**]**

(3) Where—

(a) the scheme is approved before 25th July 1991,

(b) the event occurs on or after 30th November 1993,

(c) the scheme defines the period of retention by reference to the age of 60 for both men and women, and

(d) the reference to that age is incorporated in the definition by virtue of an alteration approved by the Board under paragraph 4 of Schedule 9 before the event occurs,

the relevant age is 60.

(4) Where—

(a) the scheme is approved before 25th July 1991,

(b) the event occurs on or after 30th November 1993, and

(c) sub-paragraph (3) above does not apply,

the relevant age is **[**F5906 in the case of a man, 65, and in the case of a woman, 60.**]**

(5) Where the scheme is approved on or after 25th July 1991, the relevant age is the specified age.**]**

Textual Amendments

F5904 Sch. 10 para. 3A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 100(3)**

F5905 Words in Sch. 10 para. 3A(2) substituted (19.7.1995) by Pensions Act 1995 (c. 26), s. 180(2)(a), **Sch. 4 para. 12(c)**

F5906 Words in Sch. 10 para. 3A(4) substituted (19.7.1995) by Pensions Act 1995 (c. 26), s. 180(2)(a), **Sch. 4 para. 12(d)**

Capital receipts

4 (1) **M1233** Money or money's worth is not a capital receipt for the purposes of section 186(3) if or, as the case may be, to the extent that—

(a) it constitutes income in the hands of the recipient for the purposes of income tax; or

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(b) it consists of the proceeds of a disposal falling within section 186(4); or

(c) it consists of new shares within the meaning of paragraph 5 below.

(2) If, pursuant to a direction given by or on behalf of the participant or any person in whom the beneficial interest in the participant's shares is for the time being vested, the trustees—

(a) dispose of some of the rights arising under a rights issue, as defined in section 186(8), and

(b) use the proceeds of that disposal to exercise other such rights,

the money or money's worth which constitutes the proceeds of that disposal is not a capital receipt for the purposes of section 186(3).

(3) If, apart from this sub-paragraph, the amount or value of a capital receipt would exceed the sum which, immediately before the entitlement to the receipt arose, was the locked-in value of the shares to which the receipt is referable, section 186(3) shall have effect as if the amount or value of the receipt were equal to that locked-in value.

(4) Section 186(3) does not apply in relation to a capital receipt if the entitlement to it arises after the death of the participant to whose shares it is referable.

Marginal Citations

M1233 Source—1978 s.56(2)-(5)

Company reconstructions

5 (1) **M1234** This paragraph applies where there occurs in relation to any of a participant's shares ("the original holding") a transaction which results in a new holding being equated with the original holding for the purposes of capital gains tax; and any such transaction is referred to below as a "company reconstruction".

(2) Where an issue of shares of any of the following descriptions (in respect of which a charge to income tax arises) is made as part of a company reconstruction, those shares shall be treated for the purposes of this paragraph as not forming part of the new holding, that is to say—

(a) redeemable shares or securities issued as mentioned in section 209(2)(c);

(b) share capital issued in circumstances such that section 210(1) applies; and

(c) share capital to which section 249 applies.

(3) In this paragraph—

"corresponding shares", in relation to any new shares, means those shares in respect of which the new shares are issued or which the new shares otherwise represent;

"new shares" means shares comprised in the new holding which were issued in respect of, or otherwise represent, shares comprised in the original holding; and

"original holding" has the meaning given by sub-paragraph (1) above.

(4) Subject to the following provisions of this paragraph, in relation to a profit sharing scheme, references in the relevant provisions to a participant's shares shall be

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construed, after the time of the company reconstruction, as being or, as the case may be, as including references to any new shares, and for the purposes of the relevant provisions—

(a) a company reconstruction shall be treated as not involving a disposal of shares comprised in the original holding;

(b) the date on which any new shares are to be treated as having been appropriated to the participant shall be that on which the corresponding shares were appropriated; and

(c) the conditions in paragraphs 10 to 12 and 14 of Schedule 9 shall be treated as fulfilled with respect to any new shares if they were (or were treated as) fulfilled with respect to the corresponding shares.

(5) In relation to shares comprised in the new holding, section 186(5) shall apply as if the references in that subsection to the initial market value of the shares were references to their locked-in value immediately after the company reconstruction, which shall be determined as follows—

(a) ascertain the aggregate amount of locked-in value immediately before the reconstruction of those shares comprised in the original holding which had at that time the same locked-in value; and

(b) distribute that amount*pro rata* among—

(i) such of those shares as remain in the new holding, and

(ii) any new shares in relation to which those shares are the corresponding shares, according to their market value immediately after the date of their reconstruction;

and section 186(5)(a) shall apply only to capital receipts after the date of the reconstruction.

(6) For the purposes of the relevant provisions if, as part of a company reconstruction, trustees become entitled to a capital receipt, their entitlement to the capital receipt shall be taken to arise before the new holding comes into being and, for the purposes of sub-paragraph (5) above, before the date on which the locked-in value of any shares comprised in the original holding falls to be ascertained.

(7) In the context of a new holding, any reference in this paragraph to shares includes securities and rights of any description which form part of the new holding for the purposes of Chapter II of Part IV of the **[**F5907 1992**]** Act.

Textual Amendments

F5907 Word in Sch. 10 para. 5(7) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(58)** (with ss. 60, 101(1), 171, 201(3))

Marginal Citations

M1234 Source—1978 s.57; 1979(C) Sch.7

[F5908 5A (1) Paragraph 5(2) to (6) above apply where there occurs in relation to any of a participant's shares ("the original holding") a relevant transaction which would result in a new holding being equated with the original holding for the purposes of capital gains tax, were it not for the fact that what would be the new holding consists of or includes a qualifying corporate bond; and "relevant transaction" here means a transaction mentioned in Chapter II of Part IV of the 1992 Act.

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(2) In paragraph 5(2) to (6) above as applied by this paragraph—

(a) references to a company reconstruction are to the transaction referred to in sub-paragraph (1) above;

(b) references to the new holding are to what would be the new holding were it not for the fact mentioned in sub-paragraph (1) above;

(c) references to the original holding shall be construed in accordance with sub-paragraph (1) above (and not paragraph 5(1));

(d) references to shares, in the context of the new holding, include securities and rights of any description which form part of the new holding.

(3) In sub-paragraph (1) above "qualifying corporate bond" shall be construed in accordance with section 117 of the 1992 Act.**]**

Textual Amendments

F5908 Sch. 10 para. 5A inserted (with effect in accordance with s. 101(8) of the amending Act) by Finance Act 1994 (c. 9), **s. 101(4)** (with s. 101(13))

Excess or unauthorised shares

6 (1) **M1235**This paragraph applies in any case where—

(a) the total amount of the initial market value of all the shares which are appropriated to an individual in any one year of assessment (whether under a single approved profit sharing scheme or under two or more such schemes) exceeds the relevant amount; or

(b) the trustees of an approved profit sharing scheme appropriate shares to an individual at a time when he is ineligible to participate in the scheme by virtue of paragraph 8 or 35 of Schedule 9.

(2) In this paragraph—

"excess shares" means any share which caused the relevant amount to be exceeded and any share appropriated after that amount was exceeded; and

"unauthorised shares" means any share appropriated as mentioned in sub-paragraph (1)(b) above.

(3) For the purposes of sub-paragraph (1)(a) above, if a number of shares is appropriated to an individual at the same time under two or more approved profit sharing schemes, the same proportion of the shares appropriated at that time under each scheme shall be regarded as being appropriated before the relevant amount is exceeded.

(4) For the purposes of any of the relevant provisions **[**F5909under which an amount counts as employment income of an individual**]** by reason of the occurrence of an event relating to any of his shares—

(a) the appropriate percentage in relation to excess or unauthorised shares shall in every case be 100 per cent.; and

(b) without prejudice to section 187(8), the event shall be treated as relating to shares which are not excess or unauthorised shares before shares which are.

(5) Excess or unauthorised shares which have not been disposed of before the release date or, if it is earlier, the date of the death of the participant whose shares they are, shall be treated for the purposes of the relevant provisions as having been disposed

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of by the trustees immediately before the release date or, as the case may require, the date of the participant's death, for a consideration equal to their market value at that time.

(6) The locked-in value at any time of any excess or unauthorised shares shall be their market value at that time.

(7) Where there has been a company reconstruction to which paragraph 5 above applies, a new share (within the meaning of that paragraph) shall be treated as an excess or unauthorised share if the corresponding share (within the meaning of that paragraph) or, if there was more than one corresponding share, each of them was an excess or unauthorised share.

Textual Amendments

F5909 Words in Sch. 10 paras. 3(1), 6(4) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 113(2)** (with Sch. 7)

Marginal Citations

M1235 Source—1978 s.58; 1983 s.25(1)

P.A.Y.E. deduction of tax

7 (1) **M1236** Subject to sub-paragraphs (4) and (5) below, where the trustees of an approved profit sharing scheme receive a sum of money which constitutes (or forms part of)—

(a) the proceeds of a disposal of shares falling within section 186(4), or

(b) a capital receipt,

in respect of which **[**F5910 an amount counts as employment income of the participant**]** in accordance with section 186, the trustees shall pay out of that sum of money to the company specified in sub-paragraph (3) below an amount equal to that on which income tax is so payable; and the company shall then pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction.

(2) Where a participant disposes of his beneficial interest in any of his shares to the trustees of the scheme and the trustees are deemed by virtue of section 186(9) to have disposed of the shares in question, this paragraph shall apply as if the consideration payable by the trustees to the participant on the disposal had been received by the trustees as the proceeds of disposal of shares falling within section 186(4).

(3) The company to which the payment mentioned in sub-paragraph (1) above is to be made is the company—

(a) of which the participant is an employee or director at the time the trustees receive the sum of money referred to in that sub-paragraph, and

(b) whose employees are at that time eligible (subject to the terms of the scheme and Schedule 9) to be participants in the approved profit sharing scheme concerned,

and if there is more than one company which falls within paragraphs (a) and (b) above, such one of those companies as the Board may direct.

(4) Where the trustees of an approved profit sharing scheme receive a sum of money to which sub-paragraph (1) above applies but—

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(a) there is no company which falls within paragraphs (a) and (b) of sub-paragraph (3) above, or

(b) the Board is of opinion that it is impracticable for the company which falls within those paragraphs (or, as the case may be, any of them) to make a P.A.Y.E. deduction and accordingly direct that this sub-paragraph shall apply,

then, in paying over to the participant the proceeds of the disposal or the capital receipt, the trustees shall make a P.A.Y.E. deduction in respect of an amount equal to that on which income tax is payable as mentioned in sub-paragraph (1) above as if the participant were a former employee of the trustees.

(5) Where the trustees of an approved profit sharing scheme receive a sum of money to which sub-paragraph (1) above applies and the Board direct that this sub-paragraph shall apply—

(a) the trustees shall make the payment mentioned in that sub-paragraph to the company specified in the Board's direction; and

(b) that company shall pay over that amount to the participant but in so doing shall make a P.A.Y.E. deduction, and for that purpose if the participant is not an employee of that company he shall be treated as a former employee;

but no such direction shall be given except with the consent of the trustees, the company or companies (if any) specified in sub-paragraph (3) above and the company specified in the direction.

(6) Where, in accordance with this paragraph any person is required to make a P.A.Y.E. deduction in respect of any amount, that amount shall be treated for the purposes of **[**F5911section 684 of ITEPA 2003 (PAYE regulations) and PAYE regulations as PAYE income payable to the recipient**]**, and, accordingly, such deduction shall be made as is required by those regulations.

(7) Where, in connection with a transfer of a participant's shares to which sub-paragraph (c) of paragraph 2(2) of Schedule 9 applies, the trustees receive such a sum as is referred to in that sub-paragraph, that sum shall be treated for the purposes of the Income Tax Acts—

(a) as a sum deducted by the trustees pursuant to a requirement to make a P.A.Y.E. deduction under sub-paragraph (4) above; and

(b) as referable to the income tax F5912. . . which, as a result of the transfer, **[**F5913is charged on the participant**]** by virtue of section 186(4).

(8) Unless the Board otherwise direct, in the application of this paragraph to a sum of money which constitutes or forms part of the proceeds of a disposal of, or a capital receipt referable to, excess or unauthorised shares (within the meaning of paragraph 6 above), the trustees shall determine the amount of the payment mentioned in sub-paragraph (1) above or, as the case may be, the amount of the P.A.Y.E. deduction to be made under sub-paragraph (4) above as if the shares were not excess or unauthorised shares.

Textual Amendments

F5910 Words in Sch. 10 para. 7(1) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 113(3)(a)** (with Sch. 7)

F5911 Words in Sch. 10 para. 7(6) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 113(3)(b)** (with Sch. 7)

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F5912 Word in Sch. 10 para. 7(7)(b) repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 113(3)(c)(i), **Sch 8 Pt. 1** (with Sch. 7)

F5913 Words in Sch. 10 para. 7(7)(b) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 113(3)(c)(ii)** (with Sch. 7)

Marginal Citations

M1236 Source—1978 s.59; 1980 s.46(8); 1987 Sch.15 11(3)

[F5914F5915SCHEDULE 11]

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Textual Amendments

F5914 Sch. 11 substituted (with effect in accordance with s. 58(4) of the amending Act) by Finance Act 1998 (c. 36), s. 58(2), **Sch. 9 Pt. 1**

F5915 Sch. 11 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 114, **Sch 8 Pt. 1** (with Sch. 7)

F5917F5917[F5918SCHEDULE 11A]

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Textual Amendments

F5917 Sch. 11A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 115, **Sch 8 Pt. 1** (with Sch. 7)

F5918 Sch. 11A inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para. 2**

F5977F5977SCHEDULE 12

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Textual Amendments

F5977 Sch. 12 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 116, **Sch 8 Pt. 1** (with Sch. 7)

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F5995F5995[F5996SCHEDULE 12AA

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Textual Amendments

F5995 Sch. 12AA repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 117, **Sch. 8 Pt. 1** (with Sch. 7)

F5996 Sch. 12AA inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2001 (c. 9), s. 57(2), **Sch. 12 Pt. 1**

F5997F5997[F5998SCHEDULE 12A

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Textual Amendments

F5997 Sch. 12A repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), Sch. 6 para. 118, **Sch. 8 Pt. 1** (with Sch. 7)

F5998 Sch. 12A inserted (with effect in accordance with s. 61(3) of the amending Act) by Finance Act 1998 (c. 36), s. 61(2), **Sch. 10**

F5999F5999 SCHEDULE 13

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Textual Amendments

F5999 Sch. 13 repealed (with effect in accordance with Sch. 3 para. 41(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 41(1), **Sch. 27 Pt. 3(2)**, Note

F6038F6038[F6039SCHEDULE 13A

. . . . . .

Textual Amendments

F6038 Sch. 13A repealed (with effect in accordance with Sch. 3 para. 42(2) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 42(1), **Sch. 27 Pt. 3(2)**, Note

F6039 Sch. 13A inserted (with effect in accordance with Sch. 25 para. 3 of the amending Act) by Finance Act 1996 (c. 8), s. 139, **Sch. 25 para. 2**

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F6045F6045[F6046SCHEDULE 13B

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Textual Amendments

F6045 Sch. 13B repealed (6.4.2003) by Tax Credits Act 2002 (c. 21), s. 61, **Sch. 6**; S.I. 2003/962, art. 2(3)(e), **Sch. 1** (with arts. 3-5)

F6046 Sch. 13B inserted (with effect in accordance with s. 30(5) of the amending Act) by Finance Act 1999 (c. 16), s. 30(2), **Sch. 3**

SCHEDULE 14

Section 266(12).

PROVISIONS ANCILLARY TO SECTION 266

PART I

MODIFICATION OF SECTION 266 IN CERTAIN CASES

[F6055Spouses and civil partners]

Textual Amendments

F6055 Cross-heading preceding Sch. 14 para. 1 substituted (5.12.2005) by virtue of The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 101(3)

1 (1) [F6056M1244In section 266—

(a) references] to an individual's spouse shall include any person who was that individual's spouse at the time the insurance or contract was made, unless the marriage was dissolved before 6th April 1979;

[F6057(b) references to an individual's civil partner shall include any person who was that individual's civil partner at the time the insurance or contract was made.]

F6058(2) . . . . . .

F6058(3) . . . . . .

Textual Amendments

F6056 Words in Sch. 14 para. 1(1) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 101(2)(a)

F6057 Sch. 14 para. 1(1)(b) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 101(2)(b)

F6058 Sch. 14 para. 1(2)(3) repealed by Finance Act 1988 (c. 39), **Sch.14 Part VIII**, Note 6

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Marginal Citations

M1244 Source—1976 Sch.4 8, 9, 10

Premiums payable to friendly societies and industrial assurance companies

2 (1) [M1245] This paragraph applies to—

(a) a policy issued in the course of an industrial assurance business; and

(b) a policy issued by a **[**[F6059]friendly society**]** in the course of tax exempt life or endowment business (as defined in section 466).

(2) Subject to paragraph 3(2) below, if a policy to which this paragraph applies was issued before the passing of the Finance Act 1976 (29th July 1976), section 266 shall have effect in relation to it as if subsections (2)(b), (3)(a), (b) and (d) were omitted; and if a policy to which this paragraph applies was issued after the passing of that Act, subsection (2)(b) of that section shall have effect in relation to it as if it permitted the insurance to be on the life of the individual's parent or grandparent or, subject to sub-paragraph (3) below, on the life of the individual's child or grandchild.

(3) Relief may be given in respect of premiums under a policy of insurance on the life of an individual's child or grandchild which was or is issued after the passing of the Finance Act 1976 (29th July 1976), as if subsection (3)(d) of section 266 were omitted, but may be given only if the annual amount of the premiums, together with that of any relevant premiums, does not exceed £52 if the policy was issued in respect of an insurance made before 25th March 1982 or £64 in any other case.

(4) For the purposes of sub-paragraph (3) above, a relevant premium, in relation to an insurance made at any time on the life of an individual's child or grandchild, is any premium under a policy of insurance on the same life, where the insurance is made at the same time or earlier, whether it is made by the individual or any other person.

(5) In this paragraph "child" includes a step-child and an illegitimate child whose parents have married each other after his birth, and "grandchild", "parent" and "grandparent" have corresponding meanings.

Textual Amendments

F6059 Words in Sch. 14 para. 2(1)(b) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 18(2)**; S.I. 1993/236, **art.2**

Marginal Citations

M1245 Source—1976 Sch.4 11; 1979/1576; 1982 s.35(2), (4); 1970 s.10

3 (1) [M1246] Where a policy is issued or a contract is made by a **[**[F6060]friendly society**]** or a policy to which paragraph 2 above applies is issued by an industrial assurance company, section 266(4), (5) and (8) shall apply in relation to premiums payable under the policy or contract subject to the following provisions of this paragraph.

(2) References to the deductions authorised under section 266(5) shall be construed as including references to any amount retained by or refunded to the person paying the premium under any scheme made by the society or company in accordance with regulations made under this paragraph.

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(3) The appropriate authority may make regulations authorising—

(a) the adoption by **[**F6060friendly societies**]** and industrial assurance companies of any prescribed scheme for securing that in the case of policies or contracts to which the scheme applies amounts equal to **[**F606112.5 per cent.**]** of the premiums payable are retained by or refunded to the person paying the premiums or that, in the case of such policies or contracts issued or made before 6th April 1979, the amounts expressed as the amounts of the premiums payable are treated as amounts arrived at by deducting **[**F606112.5 per cent.**]** from the amounts payable and that the amounts of the capital sums assured or guaranteed are treated as correspondingly increased; or

(b) the adoption by any such society or company of any special scheme for that purpose which may, in such circumstances as may be prescribed, be approved by the appropriate authority.

(4) Increases treated as made in pursuance of regulations under this paragraph shall not be treated as variations of a policy or contract and shall be disregarded for the purposes of paragraph 2(3) above, sections 268(6), 460, 461(1) and 464 of, and paragraph 7 of Schedule 15 to, this Act F6062 . . . .

(5) The regulations may include such adaptations and modifications of the enactments relating to friendly societies or industrial assurance companies and such other incidental and supplementary provisions as appear to the appropriate authority necessary or expedient for the purpose of enabling such societies or companies to adopt the schemes authorised by the regulations.

(6) Subsections (4), (5) and (7) to (11) of section 6 of the M1247Decimal Currency Act 1969 shall, with the necessary modifications, apply in relation to regulations made under this paragraph.

Textual Amendments

F6060 Words in Sch. 14 para. 3(1)(3)(a) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 18(2)(3)**; S.I. 1993/236, **art.2**

F6061 Words in Sch. 14 para. 3(3)(a) substituted (6.4.1989) by Finance Act 1988 (c. 39), **s. 29**

F6062 Words in Sch. 14 para. 3(4) repealed (with effect in accordance with s. 173 of the repealing Act) by Finance Act 1989 (c. 26), **Sch. 17 Pt. 9**, Note

Marginal Citations

M1246 Source—1976 Sch.4 13; 1978 Sch.3 7; 1980 s.29(2)(c); 1987 Sch.15 9

M1247 1969 c.19.

PART II

SUPPLEMENTARY PROVISIONS AS TO RELIEF UNDER SECTION 266

4 (1) M1248Where it appears to the Board that the relief (if any) to which a person is entitled under section 266 has been exceeded or might be exceeded unless the premiums payable by him under any policy or contract were paid in full, they may, by notice to that person and to the person to whom the payments are made, exclude the application of subsection (5) of that section in relation to any payments due or made after such

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date as may be specified in the notice and before such date as may be specified in a further notice to those persons.

(2) Where the application of section 266(5) is so excluded in relation to any payments, the relief (if any) to which the person by whom the payments are made is entitled under section 266 shall be given to him under paragraph 6 below.

Marginal Citations
M1248 Source—1976 Sch.4 14; 1978 Sch.3 2, 8

5 M1249 Where a person is entitled to relief under section 266 in respect of a payment to which **[**F6063 section 386 of ITEPA 2003 (payments to non-approved retirement benefits schemes)**]** applies, section 266(5) shall not apply but the like relief shall be given to him under paragraph 6 below.

Textual Amendments
F6063 Words in Sch. 14 para. 5 substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 119** (with Sch. 7)

Marginal Citations
M1249 Source—1976 Sch.4 14A; 1978 Sch.3 9

6 (1) M1250 Where in any year of assessment the relief to which a person is entitled under section 266, otherwise than in accordance with subsections (6) and (7) of that section, has not been fully given in accordance with that section and the preceding provisions of this Schedule, he may claim relief for the difference, and relief for the difference shall then be given by a payment made by the Board or by discharge or repayment of tax or partly in one such manner and partly in another; and where relief so given to any person exceeds that to which he is entitled under section 266, he shall be liable to make good the excess and an inspector may make such assessments as may in his judgment be required for recovering the excess.

(2) The Management Act shall apply to any assessment under this paragraph as if it were an assessment to tax for the year of assessment in which the relief was given F6064 . . . .

Textual Amendments
F6064 Words in Sch. 14 para. 6(2) repealed (with effect in accordance with Sch. 18 para. 17(5) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 18 para. 11(2), **Sch. 41 Pt. 5(8)**, Note

Marginal Citations
M1250 Source—1976 Sch.4 15

7 (1) M1251 The Board may make regulations for carrying into effect section 266(4), (5), (8) and (9) and the preceding provisions of this Schedule **[**F6065 and paragraphs 9 and 10 of Schedule 15**]** ("the relevant provisions").

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(2) Regulations under this paragraph may, without prejudice to the generality of sub-paragraph (1) above, provide—

(a) for the furnishing of such information by persons by whom premiums are payable as may be necessary for determining whether they are entitled to make deductions under section 266(5) and for excluding the operation of that subsection in relation to payments made by persons who fail to comply with the regulations;

(b) for rounding to a multiple of one penny any payment which, after a deduction authorised under section 266(5), is not such a multiple;

(c) for the manner in which claims for the recovery of any sum under section 266(5)(b) may be made;

(d) for the furnishing of such information by persons by or to whom premiums are payable as appears to the Board necessary for deciding such claims and for exercising their powers under paragraph 4 or 6 above; and

(e) for requiring persons to whom premiums are paid to make available for inspection by an officer authorised by the Board such books and other documents in their possession or under their control as may reasonably be required for the purposes of determining whether any information given by those persons for the purposes of the relevant provisions is correct and complete.

(3) The following provisions of the Management Act, that is to say—

[F6066(a) section 29(1)(c) (excessive relief) as it has effect apart from section 29(2) to (10) of that Act;**]**

(b) section 30 (recovery of tax repaid in consequence of fraud or negligence etc.) **[**F6067apart from subsection (1B)**]**;

(c) **[**F6068section 86**]** (interest); and

(d) section 95 (incorrect return or accounts);

[F6069shall apply in relation to an amount which is paid to any person by the Board as an amount recoverable by virtue of section 266(5)(b) but to which that person is not entitled as if it were income tax which ought not to have been repaid and, where that amount was claimed by that person, as if it had been repaid as respects a chargeable period as a relief which was not due.**]**

[F6070(4) In the application of section 86 of the Management Act by virtue of sub-paragraph (3) above in relation to sums due and payable by virtue of an assessment made for the whole or part of a year of assessment ("the relevant year of assessment") under section 29(1)(c) or 30 of that Act, as applied by that sub-paragraph, the relevant date—

(a) is 1st January in the relevant year of assessment in a case where the person falling within section 266(5)(b) has made a relevant interim claim; and

(b) in any other case, is the later of the following dates, that is to say—

(i) 1st January in the relevant year of assessment; or

(ii) the date of the making of the payment by the Board which gives rise to the assessment.

(5) In this paragraph—

"financial year", in relation to any person, means a financial year of that person for the purposes of the relevant regulations;

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"interim claim" means an interim claim within the meaning of the relevant regulations;

"relevant interim claim" means, in relation to an assessment made for a period coterminous with, or falling wholly within, a person's financial year, an interim claim made for a period falling wholly or partly within that financial year;

"the relevant regulations" means regulations made under sub-paragraph (1) above.**]**

Textual Amendments

F6065 Words in Sch. 14 para. 7(1) repealed (with effect in accordance with s. 55(1)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(7)**, Note (as s. 55 of that repealing Act is amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

F6066 Sch. 14 para. 7(3)(a) substituted (with effect in accordance with Sch. 18 para. 17(1)(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 11(3)(a)**

F6067 Words in Sch. 14 para. 7(3)(b) inserted (with effect in accordance with Sch. 18 para. 17(1)(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 11(3)(b)**

F6068 Words in Sch. 14 para. 7(3)(c) substituted (with effect in accordance with Sch. 18 para. 17(3)(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 11(3)(c)**

F6069 Words in Sch. 14 para. 7(3) substituted (with effect in accordance with Sch. 18 para. 17(8) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 11(3)(d)**

F6070 Sch. 14 para. 7(4)(5) added (with effect in accordance with Sch. 18 para. 17(3)(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 11(4)**

Marginal Citations

M1251 Source—1976 Sch.4 16; 1978 Sch.3 10

8 (1) **M1252**A policy of life insurance issued in respect of an insurance made on or before 19th March 1968 shall be treated for the purposes of section 266(3)(b) as issued in respect of one made after that date if varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(2) A variation effected before the end of the year 1968 shall be disregarded for the purposes of sub-paragraph (1) above if its only effect was to bring into conformity with paragraph 2 of Schedule 9 to the Finance Act 1968 (qualifying conditions for endowment policies, and now re-enacted as paragraph 2 of Schedule 15 to this Act) a policy previously conforming therewith except as respects the amount guaranteed on death, and no increase was made in the premiums payable under the policy.

(3) **M1253**A policy which was issued in the course of industrial assurance business in respect of an insurance made after 13th March 1984 shall be treated for the purposes of section 266(3)(c) and this paragraph as issued in respect of an insurance made on or before that date if—

(a) the proposal form for the policy was completed on or before that date; and

(b) on or before 31st March 1984 the policy was prepared for issue by the company or society concerned; and

(c) on or before 31st March 1984 and in accordance with the normal business practice of the company or society a permanent record of the preparation of

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the policy was made in any book or by any other means kept or instituted by the company or society for the purpose.

(4) **[**F6071Subject to sub-paragraph (8) below,**]** for the purposes of section 266(3)(c) a policy of life insurance which was issued in respect of an insurance made on or before 13th March 1984 shall be treated as issued in respect of an insurance made after that date if the policy is varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(5) If a policy of life insurance which was issued as mentioned in sub-paragraph (4) above confers on the person to whom it was issued an option to have another policy substituted for it or to have any of its terms changed, then, for the purposes of that sub-paragraph and section 266(3)(c), any change in the terms of the policy which is made in pursuance of the option shall be deemed to be a variation of the policy.

(6) In any case where—

(a) one policy is replaced by another in such circumstances that the provisions of paragraph 20 of Schedule 15 apply; and

(b) the earlier policy was issued in respect of an insurance made on or before 13th March 1984; and

(c) the later policy confers on the life or lives assured thereby benefits which are substantially equivalent to those which would have been enjoyed by the life or lives assured under the earlier policy, if that policy had continued in force;

then, for the purposes of section 266(3)(c), the insurance in respect of which the later policy is issued shall be deemed to have been made before 13th March 1984; and in this sub-paragraph "the earlier policy" and "the later policy" have the same meaning as in paragraph 20 of Schedule 15.

(7) In any case where—

(a) there is a substitution of policies falling within paragraph 25(1) or (3) of Schedule 15; and

(b) the old policy was issued in respect of an insurance made on or before 13th March 1984;

then, for the purposes of section 266(3)(c), the insurance in respect of which the new policy is issued shall be deemed to have been made before 13th March 1984; and in this sub-paragraph "the old policy" and "the new policy" have the same meaning as in paragraph 17 of Schedule 15.

[F6072(8) Sub-paragraph (4) above does not apply in the case of a variation so as to increase the benefits secured, if the variation is made—

(a) on or after such day as the Board may by order appoint, and

(b) in consideration of a change in the method of payment of premiums from collection by a person collecting premiums from house to house to payment by a different method.**]**

Subordinate Legislation Made

P8 Sch. 14 para. 8(8)(a) power exercised: 1.12.2001 appointed by S.I. 2001/3643, **art. 2(b)**

Textual Amendments

F6071 Words in Sch. 14 para. 8(4) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(5)**

F6072 Sch. 14 para. 8(8) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(6)**

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Marginal Citations
M1252 Source—1970 s.19(5)
M1253 Source—1984 s.72(2)-(4), (6), (7)

SCHEDULE 15

Section 267.

QUALIFYING POLICIES

Modifications etc. (not altering text)
C985 Sch. 15 modified by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 5** (2)
C986 Sch. 15 modified (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 4(2)(3)**

VALID FROM 17/07/2013

[F6073PART A1

PREMIUM LIMIT FOR QUALIFYING POLICIES

Textual Amendments
F6073 Sch. 15 Pt. A1 inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 9 para. 2**

Premium limit for qualifying policies to apply from 6 April 2013

A1 (1) Sub-paragraph (2) applies if—

(a) an event falling within sub-paragraph (3) occurs,

(b) apart from sub-paragraph (2), the policy to which the event relates would be a qualifying policy after the event, and

(c) an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

(2) That policy is not to be a qualifying policy after the event.

(3) The events falling within this sub-paragraph are—

(a) the issue of a policy in respect of an insurance made on or after 6 April 2013;

(b) the variation of a policy on or after 6 April 2013 where as a result of the variation—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both;

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(c) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a policy where the assignment falls within paragraph B2(3)(c) to (g) or (5) below;

(d) a deceased beneficiary event on or after 6 April 2013;

(e) the conditions in paragraph 24(3) below being fulfilled for the first time in respect of a new non-resident policy where—

(i) the conditions are fulfilled for the first time on or after 6 April 2013, and

(ii) but for the conditions being fulfilled, the policy could not be a qualifying policy because of paragraph 24(2).

(4) An event does not fall within sub-paragraph (3) if—

(a) the policy to which the event relates is—

(i) a protected policy,

(ii) a restricted relief qualifying policy, or

(iii) a pure protection policy,

(b) the event is the issue of a policy which is a new policy in relation to an earlier policy where—

(i) the new policy is issued in substitution for the earlier policy (and not on its maturity), and

(ii) the life assured under the new policy is different to the life assured under the earlier policy but that is the only difference to what the position would have been had the earlier policy continued to run,

(c) paragraph 20ZA below applies to a policy and the event is the reinstatement or replacement of the policy as mentioned in paragraph 20ZA(4),

(d) the event is the issue or variation of a policy in relation to which paragraph 29 of Schedule 39 to the Finance Act 2012 applies, or

(e) the event is an assignment falling within paragraph B2(3)(e) below where the assignment is a mortgage endowment assignment.

(5) In sub-paragraph (3)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation.

(6) A variation is to be ignored for the purposes of sub-paragraph (3)(b) if its effect is nullified before the end of the period of 3 months after the day on which the variation occurs.

(7) Sub-paragraph (4)(a)(i) does not apply in the case of an event mentioned in sub-paragraph (3)(e).

(8) Sub-paragraph (4)(a)(ii) does not apply in the case of—

(a) an event mentioned in sub-paragraph (3)(c) or (d) occurring in relation to a restricted relief qualifying policy ("the assigned policy"),

(b) any subsequent event relating to the assigned policy, or

(c) any event relating to—

(i) a later policy which is a new policy in relation to the assigned policy, or

(ii) any policy which is a new policy in relation to the later policy,

and so on.

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(9) In the case of an event mentioned in sub-paragraph (3)(b), sub-paragraph (4)(a)(iii) applies only if the policy is a pure protection policy both before and after the variation.

(10) This paragraph is to be applied after all other provisions of this Schedule relevant to the question of whether a policy is a qualifying policy after an event have been applied.

Restricted relief qualifying policies

A2 (1) Sub-paragraph (2) applies if—

(a) an event falling within sub-paragraph (3) occurs,

(b) the policy to which the event relates is a qualifying policy after the event, and

(c) an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

(2) That policy is to be a restricted relief qualifying policy after the event.

(3) The events falling within this sub-paragraph are—

(a) a premium limit event in relation to a protected policy on or after 21 March 2012;

(b) the issue of a policy as mentioned in paragraph A4(2)(b) below if, assuming that the substitution of the protected policy were instead a variation of that policy, there would be a premium limit event in relation to that policy;

(c) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a protected policy where the assignment falls within paragraph B2(3)(c) to (g) or (5) below;

(d) a deceased beneficiary event on or after 6 April 2013 where the policy in question is a protected policy;

(e) the issue of a policy in respect of an insurance made on or after 21 March 2012 but before 6 April 2013 otherwise than as mentioned in paragraph A4(2)(b) below;

(f) the variation of a policy, other than a protected policy, on or after 21 March 2012 but before 6 April 2013 where as a result of the variation—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both;

(g) the conditions in either sub-paragraph (3) or sub-paragraph (4) of paragraph 24 below being fulfilled for the first time in respect of a new non-resident policy where—

(i) the conditions are fulfilled for the first time on or after 21 March 2012 but before 6 April 2013, and

(ii) but for the conditions being fulfilled, the policy could not be a qualifying policy because of sub-paragraph (2) of paragraph 24.

(4) An event does not fall within sub-paragraph (3) if—

(a) the policy to which the event relates is a pure protection policy,

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(b) the event is the issue of a policy which is a new policy in relation to an earlier policy where—

(i) the new policy is issued in substitution for the earlier policy (and not on its maturity), and

(ii) the life assured under the new policy is different to the life assured under the earlier policy but that is the only difference to what the position would have been had the earlier policy continued to run,

(c) paragraph 20ZA below applies to a policy and the event is the reinstatement or replacement of the policy as mentioned in paragraph 20ZA(4),

(d) the event is the issue or variation of a policy in relation to which paragraph 29 of Schedule 39 to the Finance Act 2012 applies, or

(e) the event is an assignment falling within paragraph B2(3)(e) below where the assignment is a mortgage endowment assignment.

(5) In sub-paragraph (3)(f)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation.

(6) A premium limit event or a variation is to be ignored for the purposes of sub-paragraph (3)(a) or (f) if its effect is nullified before 6 July 2013.

(7) In the case of a premium limit event which occurs on or after 6 April 2013, in sub-paragraph (6) the reference to 6 July 2013 is to be read as a reference to the end of the period of 3 months after the day on which the premium limit event occurs.

(8) In the case of an event mentioned in sub-paragraph (3)(a) or (f), sub-paragraph (4)(a) applies only if the policy is a pure protection policy both before and after the premium limit event or variation.

(9) A "premium limit event" occurs in relation to a protected policy if—

(a) the policy is varied or a relevant option is exercised so as to change the terms of the policy, and

(b) as a result of the variation or exercise of the relevant option—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both.

(10) A "premium limit event" also occurs in relation to a protected policy if on or after 6 April 2013—

(a) the policy is varied or a relevant option is exercised so as to change the terms of the policy, and

(b) as a result of the variation or exercise of the relevant option—

(i) the period over which premiums are payable under the policy is or could be shortened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be decreased,

or both.

(11) In sub-paragraphs (9)(b)(ii) and (10)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation or exercise of the relevant option.

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(12) The variation of, or exercise of a relevant option under, a protected policy is not a premium limit event in relation to the policy if—

(a) the policy secures a capital sum payable either—

(i) on survival for a specified term, or

(ii) on earlier death or on earlier death or disability,

(b) the policy is issued and maintained for the sole purpose of ensuring that the borrower under an interest-only mortgage will have sufficient funds to repay the principal lent under the mortgage, and

(c) the policy is varied, or the relevant option is exercised, for that sole purpose.

(13) In sub-paragraph (3)(g) references to paragraph 24 below are to that paragraph as it has effect before the appointed date for the purposes of section 55 of the Finance Act 1995.

(14) A qualifying policy which is a new policy in relation to an earlier policy is a restricted relief qualifying policy if the earlier policy is a restricted relief qualifying policy.

(15) A policy which is a restricted relief qualifying policy remains a restricted relief qualifying policy so long as it is a qualifying policy.

(16) Paragraph A1 above is to be ignored in determining for the purposes of sub-paragraph (14) or (15) if a policy is a qualifying policy. This is subject to paragraph A1(8).

(17) For further provision about restricted relief qualifying policies, see sections 463A to 463D of ITTOIA 2005.

The premium limit for qualifying policies

A3 (1) For the purposes of paragraphs A1(1)(c) and A2(1)(c) above an individual is in breach of the premium limit for qualifying policies if the total amount of the premiums payable under relevant policies in any relevant period—

(a) exceeds £3,600, or

(b) could exceed £3,600 as a result of—

(i) the exercise of any one or more relevant options conferred by one or more relevant policies, or

(ii) so far as not covered by sub-paragraph (i), the application of one or more terms of one or more relevant policies relating to increases in premiums.

(2) For the purposes of sub-paragraph (1)—

(a) so much of a premium payable under a relevant policy as is charged on the grounds that an exceptional risk of death or disability is involved is to be left out of account in determining the premiums payable under the policy,

(b) so much of the first premium payable under a relevant policy the liability for the payment of which—

(i) is discharged in accordance with paragraph 15(2) below, or

(ii) in the case of a policy in relation to which paragraph 3 below applies, is discharged under a provision of the policy falling within paragraph 3(4)(c),

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is to be left out of account in determining the premiums payable under the policy (subject to sub-paragraph (3) below),

(c) in determining the premiums payable under a relevant policy any provision for the waiver of premiums by reason of a person's disability is to be ignored, and

(d) "relevant period" means any period of 12 months beginning at or after the time when the event falling within paragraph A1(3) or A2(3) above ("the relevant event") occurs.

(3) The maximum amount that may be left out of account under sub-paragraph (2)(b) in the case of a relevant policy is—

where N is the number of complete years for which ran—

a the other policy involved, or

b if there is more than one other policy involved, the policy which ran for the most number of complete years.

(4) For the purposes of this paragraph the following are "relevant policies"—

(a) the policy to which the relevant event relates, and

(b) any other policy—

(i) which is a qualifying policy, and

(ii) under which the individual is a beneficiary.

(5) But neither a protected policy nor a pure protection policy is to be a relevant policy by virtue of sub-paragraph (4)(b).

(6) Sub-paragraph (7) applies if this paragraph is to be applied in the case of an individual in consequence of two or more events occurring at the same time (including where one or more of the events falls within paragraph A1(3) above and one or more of the events falls within paragraph A2(3) above).

(7) For the purpose of applying this paragraph in the case of the individual in consequence of any of the events, sub-paragraph (4)(a) has effect as if the reference to the policy to which the relevant event relates were a reference to all the policies to which the events, taken together, relate.

(8) But sub-paragraph (7) does not apply, and sub-paragraph (9) applies instead, if—

(a) all the policies in question are policies issued by the same issuer, and

(b) each of them has an unique identifier in a series of unique identifiers which the issuer gives to policies issued by it.

(9) For the purpose of applying this paragraph in the case of the individual in consequence of any of the events, an event relating to a policy ("policy A") is treated as occurring before an event relating to another policy ("policy B") if, in the issuer's series of unique identifiers, policy A's unique identifier comes before policy B's unique identifier.

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Protected policies

A4 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) A policy is "protected" if—

(a) it is issued in respect of an insurance made before 21 March 2012, or

(b) it is issued in respect of an insurance made on or after 21 March 2012 where—

(i) it is a new policy in relation to an earlier policy,

(ii) it is issued in substitution for the earlier policy (and not on its maturity), and

(iii) the earlier policy is a protected policy (whether by virtue of paragraph (a) or this paragraph).

(3) A policy which is protected ceases to be protected if it becomes a restricted relief qualifying policy.

(4) A policy issued as mentioned in sub-paragraph (2)(b) is not protected if—

(a) its issue is an event falling within paragraph A2(3) above, and

(b) after that event it is a restricted relief qualifying policy.

How to determine if an individual is a beneficiary under a policy

A5 (1) This paragraph applies for the purposes of this Part of this Schedule in determining if an individual is a beneficiary under a policy.

(2) An individual is a beneficiary under a policy if the individual beneficially owns—

(a) any rights under the policy, or

(b) any share in any rights under the policy.

(3) An individual is a beneficiary under a policy if—

(a) any rights under the policy are, or any share in any rights under the policy is, held on non-charitable trusts created by the individual, and

(b) those rights are, or that share is, not beneficially owned by any individual.

(4) The following provisions of ITTOIA 2005 apply for the purposes of sub-paragraph (3)(a)—

(a) section 465(6), and

(b) the definition of "non-charitable trust" in section 545(1).

(5) An individual is a beneficiary under a policy if—

(a) any rights under the policy are, or any share in any rights under the policy is, held as security for a debt of the individual, and

(b) those rights are, or that share is, not beneficially owned by any individual.

Further definitions

A6 (1) In this Part of this Schedule—

(a) "new policy" has the meaning given in paragraph 17 below,

(b) references to the variation of a policy are to a variation in relation to which paragraph 18 below applies,

(c) "pure protection policy" means a policy—

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(i) which has no surrender value and is not capable of acquiring a surrender value, or

(ii) under which the benefits payable cannot exceed the amount of the premiums paid except on death or in respect of disability, and

(d) "relevant option", in relation to a policy, means an option conferred by the policy on the person to whom it is issued to have another policy substituted for it or to have any of its terms changed.

(2) For the purposes of this Part of this Schedule a "deceased beneficiary event" occurs if, in connection with the death of an individual ("D") who was a beneficiary under a policy, an individual ("B") becomes a beneficiary under that policy by reference (wholly or partly) to any rights, or to any share in any rights, by reference to which D was a beneficiary (wholly or partly).

For this purpose, it does not matter if B is already a beneficiary under the policy.

(3) For the purposes of this Part of this Schedule an assignment is a "mortgage endowment assignment" if—

(a) the policy to which the assignment relates secures a capital sum payable either—

(i) on survival for a specified term, or

(ii) on earlier death or on earlier death or disability,

(b) the policy is issued and maintained for the sole purpose of ensuring that the borrower under an interest-only mortgage will have sufficient funds to repay the principal lent under the mortgage, and

(c) when the assignment occurs, it is intended that the policy will continue to be maintained for that sole purpose.**]**

PART I

QUALIFYING CONDITIONS

VALID FROM 17/07/2013

[F6074RULES FOR QUALIFYING POLICIES

Textual Amendments

F6074 Sch. 15 paras. B1-B3, cross-headings and preceding heading inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 9 para. 3**

Rights to be beneficially owned by individuals only

B1 (1) Sub-paragraph (2) applies in relation to a policy issued in respect of an insurance made on or after 6 April 2013.

(2) In order for the policy to be a qualifying policy, when it is issued all the rights under it must be beneficially owned by (and only by)—

(a) one individual, or

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(b) two or more individuals taken together.

(This is the case notwithstanding any other provision of this Schedule.)

(3) Sub-paragraph (2) does not apply if the policy is protected.

(4) A policy is "protected" if it is a new policy (as defined in paragraph 17 below) in relation to—

(a) a policy issued in respect of an insurance made before 21 March 2012, or

(b) a policy which is protected (whether by virtue of paragraph (a) or this paragraph).

Assignments

B2 (1) Sub-paragraph (2) applies if any rights under a qualifying policy are, or any share in any rights under a qualifying policy is, assigned on or after 6 April 2013.

(2) The policy is not to be a qualifying policy after the assignment (notwithstanding any other provision of this Schedule).

(3) Sub-paragraph (2) does not apply if—

(a) the assignment is from an individual by way of security for a debt of the individual,

(b) the assignment is to an individual on the discharge of a debt of the individual secured by the rights or share,

(c) the assignment is from an individual to the individual's spouse or civil partner,

(d) the assignment is to an individual in pursuance of an order made by a court,

(e) the assignment is to an individual in pursuance of a legally enforceable obligation relating to a divorce or the dissolution of a civil partnership,

(f) the assignment is from an individual and, as a result of the assignment, the rights assigned are, or the share assigned is, held on trusts created by the individual,

(g) the assignment is to an individual and, as a result of the assignment, the rights assigned are, or the share assigned is, no longer held on trusts, or

(h) the assignment—

(i) is to the personal representatives of a deceased individual, or

(ii) is to an individual where, as a result of the assignment, a deceased beneficiary event (see paragraph A6(2) above) occurs.

(4) Section 465(6) of ITTOIA 2005 applies for the purposes of sub-paragraph (3)(f).

(5) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that sub-paragraph (2) does not apply if prescribed conditions are met in relation to the assignment.

"Prescribed" means prescribed by the regulations.

(6) Regulations under sub-paragraph (5) may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.

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(7) See paragraphs A1 and A2 above which may apply in consequence of an assignment falling within sub-paragraph (3) or (5).

Required statements

B3 (1) Sub-paragraph (2) applies if any of the following events occurs—

(a) the issue of a policy in respect of an insurance made on or after 6 April 2013;

(b) the variation of a policy on or after 6 April 2013 where paragraph 18 below applies in relation to the variation and as a result of the variation—

(i) the period over which premiums are payable under the policy is or could be lengthened, or

(ii) the total amount of the premiums payable under the policy in any relevant period is or could be increased,

or both;

(c) a premium limit event in relation to a protected policy on or after 6 April 2013 (see paragraph A2(9) to (12) above);

(d) an event on or after 6 April 2013 which would be a premium limit event in relation to a protected policy but for paragraph A2(12) above;

(e) the assignment on or after 6 April 2013 of any rights, or any share in any rights, under a policy where the assignment falls within paragraph B2(3)(c) to (g) or (5) above;

(f) a deceased beneficiary event (see paragraph A6(2) above) on or after 6 April 2013;

(g) the conditions in paragraph 24(3) below being fulfilled for the first time in respect of a new non-resident policy where—

(i) the conditions are fulfilled for the first time on or after 6 April 2013, and

(ii) but for the conditions being fulfilled, the policy could not be a qualifying policy because of paragraph 24(2).

(2) Each individual who is a beneficiary under the policy must, before the end of the statement period, make to the issuer of the policy a statement dealing with the prescribed matters.

(3) If an individual does not comply with sub-paragraph (2) the policy is not to be a qualifying policy after the event (notwithstanding any other provision of this Schedule).

(4) In sub-paragraph (1)(b)(ii) "relevant period" means any period of 12 months beginning at or after the time of the variation.

(5) Sub-paragraph (2)—

(a) does not apply in the case of an event mentioned in sub-paragraph (1)(a), (e), (f) or (g) if the policy is a pure protection policy, and

(b) does not apply in the case of an event mentioned in sub-paragraph (1)(b), (c) or (d) if the policy is a pure protection policy both before and after the event.

"Pure protection policy" has the meaning given by paragraph A6(1)(c) above.

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(6) Sub-paragraph (2) does not apply in the case of an event mentioned in sub-paragraph (1)(e) where the assignment falls within paragraph B2(3)(e) above and is a mortgage endowment assignment.

"Mortgage endowment assignment" is to be read in accordance with paragraph A6(3) above.

(7) The Commissioners for Her Majesty's Revenue and Customs may by regulations provide that an individual is not required to comply with sub-paragraph (2) if prescribed conditions are met.

"Prescribed" means prescribed by the regulations.

(8) Accordingly, if by virtue of regulations under sub-paragraph (7) an individual is not required to comply with sub-paragraph (2), sub-paragraph (3) does not apply because that individual does not comply with sub-paragraph (2).

(9) In sub-paragraph (2)—

(a) the reference to an individual who is a beneficiary under the policy is to be read in accordance with paragraph A5 above,

(b) "the statement period" means—

(i) the period of 3 months after the day on which the event occurs, or

(ii) if the event occurs before the day on which the first regulations under paragraph (c) below come into force, the period of 3 months after that day,

or such longer period as an officer of Revenue and Customs may allow, and

(c) "prescribed" means prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.

(10) An officer of Revenue and Customs may allow a longer period for the purposes of sub-paragraph (9)(b) only if—

(a) the individual in question has made a request in writing to an officer of Revenue and Customs for a longer period to be allowed, and

(b) such an officer is satisfied—

(i) that there is a reasonable excuse for the required statement not having been made within the period mentioned in sub-paragraph (9)(b)(i) or (ii), and

(ii) that the request under paragraph (a) was made without unreasonable delay after the reasonable excuse ceased.

(11) Sub-paragraph (12) applies in relation to a policy if the obligations under the policy of its issuer are at any time the obligations of another person ("the transferee") to whom there has been a transfer of the whole or any part of a business previously carried on by the issuer.

(12) In relation to that time, in sub-paragraph (2) the reference to the issuer of the policy is to be read as a reference to the transferee.

(13) Regulations under sub-paragraph (7) or (9)(c) may—

(a) make different provision for different cases or circumstances, and

(b) contain incidental, supplementary, consequential, transitional, transitory or saving provision.**]**

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GENERAL RULES APPLICABLE TO WHOLE LIFE AND TERM ASSURANCES

1 (1) [M1254] Subject to the following provisions of this Part of this Schedule, if a policy secures a capital sum which is payable only on death, or one payable either on death or on earlier disability, it is a qualifying policy if—

(a) it satisfies the conditions appropriate to it under sub-paragraphs (2) to (5) below, and

(b) except to the extent permitted by sub-paragraph (7) below, it does not secure any other benefits.

(2) If the capital sum referred to in sub-paragraph (1) above is payable whenever the event in question happens, or if it happens at any time during the life of a specified person—

(a) the premiums under the policy must be payable at yearly or shorter intervals, and either—

(i) until the happening of the event or, as the case may require, until the happening of the event or the earlier death of the specified person, or

(ii) until the time referred to in sub-paragraph (i) above or the earlier expiry of a specified period ending not earlier than ten years after the making of the insurance; and

(b) the total premiums payable in any period of 12 months must not exceed—

(i) twice the amount of the total premiums payable in any other such period, or

(ii) one-eighth of the total premiums which would be payable if the policy were to continue in force for a period of ten years from the making of the insurance, or, in a case falling within sub-paragraph (ii) of paragraph (a) above, until the end of the period referred to in that sub-paragraph.

(3) If the capital sum referred to in sub-paragraph (1) above is payable only if the event in question happens before the expiry of a specified term ending more than ten years after the making of the insurance, or only if it happens both before the expiry of such a term and during the life of a specified person—

(a) the premiums under the policy must be payable at yearly or shorter intervals, and either—

(i) until the happening of the event or the earlier expiry of that term or, as the case may require, until the happening of the event or, if earlier, the expiry of the term or the death of the specified person, or

(ii) as in sub-paragraph (i) above, but with the substitution for references to the term of references to a specified shorter period being one ending not earlier than ten years after the making of the insurance or, if sooner, the expiry of three-quarters of that term; and

(b) the total premiums payable in any period of 12 months must not exceed—

(i) twice the amount of the total premiums payable in any other such period, or

(ii) one-eighth of the total premiums which would be payable if the policy were to continue in force for the term referred to in sub-paragraph (i) of paragraph (a) above, or, as the case may require, for the shorter period referred to in sub-paragraph (ii) of that paragraph.

(4) If the capital sum referred to in sub-paragraph (1) above is payable only if the event in question happens before the expiry of a specified term ending not more than ten years after the making of the insurance, or only if it happens both before the expiry

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of such a term and during the life of a specified person, the policy must provide that any payment made by reason of its surrender during the period is not to exceed the total premiums previously paid under the policy.

(5) Except where—

(a) the capital sum referred to in sub-paragraph (1) above is payable only in the circumstances mentioned in sub-paragraph (3) or (4) above; and

(b) the policy does not provide for any payment on the surrender in whole or in part of the rights conferred by it; and

(c) the specified term mentioned in sub-paragraph (3) or, as the case may be, (4) above ends at or before the time when the person whose life is insured attains the age of 75 years;

the capital sum, so far as payable on death, must not be less than 75 per cent. of the total premiums that would be payable if the death occurred at the age of 75 years, the age being, if the sum is payable on the death of the first to die of two persons, that of the older of them, if on the death of the survivor of them, that of the younger of them, and in any other case, that of the person on whose death it is payable; and if the policy does not secure a capital sum in the event of death occurring before the age of 16 or some lower age, it must not provide for the payment in that event of an amount exceeding the total premiums previously paid under it.

(6) **M1255** In determining for the purposes of sub-paragraph (5) above whether a capital sum is less than 75 per cent. of the total premiums, any amount included in the premiums by reason of their being payable otherwise than annually shall be disregarded, **[**F6075and if the policy provides for payment otherwise than annually without providing for the amount of the premiums if they are paid annually,**]** 10 per cent. of the premiums payable under the policy shall be treated as so included.

(7) **M1256** Notwithstanding sub-paragraph (1)(b) above, if a policy secures a capital sum payable only on death, it may also secure benefits (including benefits of a capital nature) to be provided in the event of a person's disability; and no policy is to be regarded for the purposes of that provision as securing other benefits by reason only of the fact that—

(a) it confers a right to participate in profits, or

(b) it provides for a payment on the surrender in whole or in part of the rights conferred by the policy, or

(c) it gives an option to receive payments by way of annuity, or

(d) it makes provision for the waiver of premiums by reason of a person's disability, or for the effecting of a further insurance or insurances without the production of evidence of insurability.

(8) In applying sub-paragraph (2) or (3) above to any policy—

(a) no account shall be taken of any provision for the waiver of premiums by reason of a person's disability, and

(b) if the term of the policy runs from a date earlier, but not more than three months earlier, than the making of the insurance, the insurance shall be treated as having been made on that date, and any premium paid in respect of the period before the making of the insurance, or in respect of that period and a subsequent period, as having been payable on that date.

(9) References in this paragraph to a capital sum payable on any event include references to any capital sum, or series of capital sums, payable by reason of that event but where

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what is so payable is either an amount consisting of one sum or an amount made up of two or more sums, the 75 per cent. mentioned in sub-paragraph (5) above shall be compared with the smaller or smallest amount so payable; and a policy secures a capital sum payable either on death or on disability notwithstanding that the amount payable may vary with the event.

(10) [M1257] In relation to any policy issued in respect of an insurance made before 1st April 1976 this paragraph shall have effect—

(a) with the omission of sub-paragraphs (5) and (6) and in sub-paragraph (9) the words "but where what is so payable is either an amount consisting of one sum or an amount made up of two or more sums, the 75 per cent. mentioned in sub-paragraph (5) above shall be compared with the smaller or smallest amount so payable"; and

(b) with the substitution, for sub-paragraph (7)(b), of—

"(b) it carries a guaranteed surrender value;".

Textual Amendments

F6075 Words in Sch. 15 para. 1(6) substituted (with effect as mentioned in s. 167(12) of the amending Act) by Finance Act 1996 (c. 8), **s. 167(7)(a)**; S.I. 2001/3643, **art. 2(a)**

Marginal Citations

M1254 Source—1970 Sch.1 1(1)-(4A); 1975 Sch.2 4(2), (3)
M1255 Source—1975 Sch.2 4(4)
M1256 Source—1970 Sch.1 1(5)-(7); 1975 Sch.2 4(5), (6)
M1257 Source—1975 Sch.2 4(1)

GENERAL RULES APPLICABLE TO ENDOWMENT ASSURANCES

2 (1) [M1258] Subject to the following provisions of this Part of this Schedule, a policy which secures a capital sum payable either on survival for a specified term or on earlier death, or earlier death or disability, including a policy securing the sum on death only if occurring after the attainment of a specified age not exceeding 16, is a qualifying policy if it satisfies the following conditions—

(a) the term must be one ending not earlier than ten years after the making of the insurance;

(b) premiums must be payable under the policy at yearly or shorter intervals, and—

(i) until the happening of the event in question; or

(ii) until the happening of that event, or the earlier expiry of a specified period shorter than the term but also ending not earlier than ten years after the making of the insurance; or

(iii) if the policy is to lapse on the death of a specified person, until one of those times or the policy's earlier lapse;

(c) the total premiums payable under the policy in any period of 12 months must not exceed—

(i) twice the amount of the total premiums payable in any other such period, or

(ii) one-eighth of the total premiums which would be payable if the policy were to run for the specified term;

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(d) the policy—

(i) must guarantee that the capital sum payable on death, or on death occurring after the attainment of a specified age not exceeding 16, will, whenever that event may happen, be equal to 75 per cent. at least of the total premiums which would be payable if the policy were to run for that term, disregarding any amounts included in those premiums by reason of their being payable otherwise than annually, except that if, at the beginning of that term, the age of the person concerned exceeds 55 years, the capital sum so guaranteed may, for each year of the excess, be less by 2 per cent. of that total than 75 per cent. thereof, the person concerned being, if the capital sum is payable on the death of the first to die of two persons, the older of them, if on the death of the survivor of them, the younger of them and in any other case the person on whose death it is payable; and

(ii) if it is a policy which does not secure a capital sum in the event of death before the attainment of a specified age not exceeding 16, must not provide for the payment in that event of an amount exceeding the total premiums previously paid thereunder; and

(e) the policy must not secure the provision (except by surrender in whole or in part of the rights conferred by the policy) at any time before the happening of the event in question of any benefit of a capital nature other than a payment falling within paragraph (d)(ii) above, or benefits attributable to a right to participate in profits or arising by reason of a person's disability.

(2) For the purposes of sub-paragraph (1)(d)(i) above, 10 per cent. of the premiums payable under any policy **[**[F6076]that provides for the payment of premiums otherwise than annually without providing for the amount of the premiums if they are paid annually,**]** shall be treated as attributable to the fact that they are not paid annually.

(3) Sub-paragraphs (8) and (9) of paragraph 1 above shall, with any necessary modifications, have effect for the purposes of this paragraph as they have effect for the purposes of that paragraph.

(4) [M1259] In relation to any policy issued in respect of an insurance made before 1st April 1976 this paragraph shall have effect with the omission in sub-paragraph (1)(d)(i) of the words from "except that if" to the end, and in sub-paragraph (1)(e) of the words "in whole or in part of the rights conferred by the policy".

Textual Amendments

F6076 Words in Sch. 15 para. 2(2) substituted (with effect as mentioned in s. 167(12) of the amending Act) by Finance Act 1996 (c. 8), **s. 167(7)(b)**; S.I. 2001/3643, **art. 2(a)**

Marginal Citations

M1258 Source—1970 Sch.1 2; 1975 Sch.2 4(7), (8)

M1259 Source—1975 Sch.2 4(1)

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SPECIAL TYPES OF POLICY

(i)Friendly Society policies

3 (1) M1260 Paragraphs 1 and 2 above do not apply to a policy issued by a **[**F6077friendly society**]** in the course of tax exempt life or endowment business in respect of an insurance made or varied on or after 19th March 1985, but such a policy shall not be a qualifying policy unless—

(a) in the case of a policy for the assurance of a gross sum or annuity, the conditions in sub-paragraph (2) are fulfilled with respect to it; and

(b) in the case of a policy for the assurance of a gross sum, the conditions in sub-paragraphs (5) to (11) below are fulfilled with respect to it; F6078 . . .

F6078(c) . . . . . .

(2) The conditions referred to in sub-paragraph (1) above are as follows—

(a) subject to sub-paragraph (3) below, the period (the "term" of the policy) between—

(i) the making of the insurance or, where the contract provides for the term to begin on a date not more than three months earlier than the making of the insurance, that date, and

(ii) the time when the gross sum assured is payable (or, as the case may be, when the first instalment of the annuity is payable),

shall be not less than ten years, and must not, on any contingency other than the death, or retirement on grounds of ill health, of the person liable to pay the premiums or whose life is insured, become less than ten years;

(b) subject to sub-paragraph (4) below, the premiums payable under the policy shall be premiums of equal or rateable amounts payable at yearly or shorter intervals over the whole term of the policy of assurance, or over the whole term of the policy of assurance apart from any period after the person liable to pay the premiums or whose life is insured attains a specified age, being an age which he will attain at a time not less than ten years after the beginning of the term of the policy of assurance;

F6079(c) . . . . . .

(3) Notwithstanding sub-paragraph (2)(a) above, the policy—

(a) may provide for a payment to a person of an age not exceeding 18 years at any time not less than five years from the beginning of the term of the policy if the premium or premiums payable in any period of 12 months in the term of the policy do not exceed £13;

(b) may provide for a payment at any time not less than five years from the beginning of the term of the policy, if it is one of a series of payments falling due at intervals of not less than five years, and the amount of any payment, other than the final payment, does not exceed four-fifths of the premiums paid in the interval before its payment.

For the purposes of paragraph (a) above, if the term begins on a date earlier than the making of the insurance, any premium paid in respect of a period before the making of the insurance, or in respect of that period and a subsequent period, shall be treated as having been payable on that date.

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(4) Notwithstanding sub-paragraph (2)(b) above, the policy—

(a) may allow a payment at any time after the expiration of one-half of the term of the policy of assurance, or of ten years from the beginning of the term, whichever is the earlier, being a payment in commutation of the liability to pay premiums falling due after that time;

(b) may allow the person liable to pay the premiums to commute any liability for premiums where he ceases to reside in the United Kingdom or gives satisfactory proof of intention to emigrate;

(c) may allow any liability for premiums to be discharged in consideration of surrendering a sum which has become payable on the maturity of any other policy of assurance issued by the same friendly society **[**F6080(or any predecessor of it)**]** to the person liable to pay the premiums, or to his parent, where that other policy of assurance is issued as part of the friendly society's tax exempt life or endowment business; and

(d) may make provision for the waiver of premiums by reason of a person's disability.

[F6081(4A) For the purposes of sub-paragraphs (2) and (4) above—

(a) a friendly society formed on the amalgamation of two or more friendly societies is the successor of each of those societies (and each of those societies was a predecessor of the society so formed), and

(b) an incorporated friendly society that was a registered friendly society before its incorporation is the successor of the registered friendly society (and the registered friendly society was the predecessor of the incorporated friendly society).**]**

(5) Where the policy secures a capital sum which is payable only on death or only on death occurring after the attainment of a specified age not exceeding 16, that capital sum must be not less than 75 per cent. of the total premiums which would be payable if the death of the relevant beneficiary occurred at the age of 75.

(6) Where the policy secures a capital sum which is payable only on survival for a specified term, that capital sum must be not less than 75 per cent. of the total premiums which would be payable if the policy were to run for that term.

(7) Where the policy secures a capital sum which is payable on survival for a specified term or on earlier death, or on earlier death or disability (including a policy securing the sum on death only if occurring after the attainment of a specified age not exceeding 16), the capital sum payable on death, whenever that event occurs, must be not less than 75 per cent. of the total premiums which would be payable if the policy were to run for that term, except that if, at the beginning of that term, the age of the relevant beneficiary exceeds 55, that capital sum may, for each year of the excess, be less by 2 per cent. of that total than 75 per cent. thereof.

(8) For the purposes of sub-paragraphs (5) to (7) above—

(a) "the relevant beneficiary" means—

(i) if the capital sum concerned is payable on the death of the first to die of two persons, the older of them;

(ii) if that capital sum is payable on the death of the survivor of two persons, the younger of them; and

(iii) in any other case, the person on whose death that capital sum is payable; and

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(b) in determining the total premiums payable in any circumstances—

(i) where those premiums are payable otherwise than annually, and the policy is issued by a new society, there shall be disregarded an amount equal to 10 per cent. of those premiums;

(ii) where the policy is issued by a society other than a new society, there shall be disregarded an amount equal to £10 for each year for which account is taken of those premiums **[**F6082or, where those premiums are payable otherwise than annually, an amount equal to 10 per cent. of those premiums if that is greater**]**; F6083. . .

(iii) F6083. . . . . .

(c) F6083. . . . . .

(9) If the policy does not secure a capital sum in the event of death occurring before the age of 16 or some lower age, it must not provide for the payment in that event of an amount exceeding the total premiums previously paid under it.

(10) References in this paragraph to a capital sum payable on any event include references to a capital sum or series of capital sums payable by reason of that event, but where what is so payable is either an amount consisting of one sum or an amount made up of two or more sums, any reference in sub-paragraphs (5) to (7) above to 75 per cent. of the total premiums payable in any circumstances shall be compared with the smaller or smallest amount so payable; and for the purposes of those sub-paragraphs a policy secures a capital sum payable either on death or on disability notwithstanding that the amount may vary with the event.

(11) For the purposes of sub-paragraphs (5) to (7) and (10) above, in the case of a policy which provides for any such payments as are referred to in sub-paragraph (3) above ("interim payments"), the amount of the capital sum which is payable on any event shall be taken to be increased—

(a) in the case of a policy which secures such a capital sum as is referred to in sub-paragraph (5) above, by the total of the interim payments which would be payable if the death of the relevant beneficiary (within the meaning of that sub-paragraph) occurred at the age of 75; and

(b) in the case of a policy which secures such a capital sum as is referred to in sub-paragraph (6) or (7) above, by the total of the interim payments which would be payable if the policy were to run for the specified term referred to in that sub-paragraph.

Textual Amendments

F6077 Words in Sch. 15 para. 3(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(2)**; S.I. 1993/236, **art.2**

F6078 Sch. 15 para. 3(1)(c) and word preceding it repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 50, 123, Sch. 9 para. 4(1)(2), **Sch. 19 Pt. V**, Note 7

F6079 Sch. 15 para. 3(2)(c) repealed (1.5.1995) by Finance Act 1995 (c. 4), Sch. 10 para. 3, **Sch. 29 Pt. 8(6)**

F6080 Words in Sch. 15 para. 3(2)(c)(4)(c) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(3)(4)**; S.I. 1993/236, **art.2**

F6081 Sch. 15 para. 3(4A) inserted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(5)**; S.I. 1993/236, **art.2**

F6082 Words in Sch. 15 para. 3(8)(b)(ii) inserted by Finance Act 1990 (c. 29), **s. 49(5)**

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F6083 Sch. 15 para. 3(8)(b)(iii)(c) and word preceding para. (b)(iii) repealed (retrospectively with effect in accordance with s. 172(6) of the repealing Act) by Finance Act 2003 (c. 14), s. 172(3), **Sch. 43 Pt. 3(13)**, Note 3

Marginal Citations

M1260 Source—1970 ss.334(2)–(4), 337(5)(a), Sch.1 3, 3A; 1984 s.72(a); 1985 s.41(4), (6), Sch.10 Pt.I; 1979/1576

4 (1) The provisions of this paragraph have effect notwithstanding anything in paragraph 3 above.

(2) In determining whether a policy—

(a) which affords provision for sickness or other infirmity (whether bodily or mental), and

(b) which also affords assurance for a gross sum independent of sickness or other infirmity, and

(c) under which not less than 60 per cent. of the amount of the premiums is attributable to the provision referred to in paragraph (a) above,

is a qualifying policy, the conditions referred to in paragraph 3(1)(b) above shall be deemed to be fulfilled with respect to it.

(3) A policy shall cease to be a qualifying policy—

(a) if it falls within sub-paragraph (1) of paragraph 3 above and there is such a variation of its terms that any of the conditions referred to in that sub-paragraph ceases to be fulfilled; or

(b) if—

[[F6084](i) it was effected in the course of **[**[F6085]the business of effecting or carrying out contracts of insurance which fall within paragraph 1 of Part I or paragraph VI of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**]**,**]**

(ii) it was issued by a new society, and

(iii) the rights conferred by it are surrendered in whole or in part.

Textual Amendments

F6084 Sch. 15 para. 4(3)(b)(i) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, Sch. 9 paras. 19(6), **22**; S.I. 1993/236, **art. 2**

F6085 Words in Sch. 15 para. 4(3)(b)(i) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 47(2)**

5 **M1261** Section 466 shall apply for the interpretation of paragraphs 3 and 4 above as it applies for the interpretation of sections 460 to 465.

Marginal Citations

M1261 Source—1970 s.337(1)(b); 1985 s.41(7)(a)

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6 (1) [M1262] A policy which was issued by **[**[F6086]any registered friendly society (as defined in section 466)**]**, or branch of **[**[F6086]such a society**]**, in the course of tax exempt life or endowment business (as defined in section 466) in respect of insurances made before 19th March 1985 and which has not been varied on or after that date is a qualifying policy notwithstanding that it does not comply with the conditions specified in paragraph 1 or 2 above.

(2) [M1263] Notwithstanding paragraphs 3 to 5 or sub-paragraph (1) above, if, on or after 19th March 1985, a person becomes in breach of the limits in section 464, the policy effected by that contract which causes those limits to be exceeded shall not be a qualifying policy; and in any case where—

(a) the limits in that section are exceeded as a result of the aggregation of the sums assured or premiums payable under two or more contracts, and

(b) at a time immediately before one of those contracts was entered into (but not immediately after it was entered into) the sums assured by or, as the case may be, the premiums payable under the contract or contracts which were then in existence did not exceed the limits in that section,

only those policies effected by contracts made after that time shall be treated as causing the limits to be exceeded.

Textual Amendments

F6086 Words in Sch. 15 para. 6(1) substituted (19.2.1993) by Finance (No. 2) Act 1992 (c. 48), s. 56, **Sch. 9 para. 19(7)**; S.I. 1993/236, **art.2**

Marginal Citations

M1262 Source—1970 Sch.1, 3; 1985 s.41(4)

M1263 Source—FSA 1974 s.64(2B); 1985 s.41(1); 1987 s.30(6)

VALID FROM 17/07/2012

[[F6087]6A Any expression—

(a) which is used in any provision made by any of paragraphs 3 to 6, and

(b) which is used in Part 3 of the Finance Act 2012,

has the same meaning in that provision as it has in that Part.**]**

Textual Amendments

F6087 Sch. 15 para. 6A inserted (with effect in accordance with s. 178 of the amending Act) by Finance Act 2012 (c. 14), **Sch. 18 para. 13(6)**

(ii) Industrial assurance policies

7 (1) [M1264] A policy issued in the course of an industrial assurance business, and not constituting a qualifying policy by virtue of paragraph 1 or 2 above, is nevertheless a qualifying policy if—

(a) the sums guaranteed by the policy, together with those guaranteed at the time the assurance is made by all other policies issued in the course of such a

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business to the same person and not constituting qualifying policies apart from this paragraph, do not exceed £1,000;

(b) it satisfies the conditions with respect to premiums specified in paragraph 1(2) above;

(c) except by reason of death or surrender, no capital sum other than one falling within paragraph (d) below can become payable under the policy earlier than ten years after the making of the assurance; and

(d) where the policy provides for the making of a series of payments during its term—

(i) the first such payment is due not earlier than five years after the making of the assurance, and the others, except the final payment, at intervals of not less than five years, and

(ii) the amount of any payment, other than the final payment, does not exceed four-fifths of the premiums paid in the interval before its payment; or

(e) the policy was issued before 6th April 1976, or was issued before 6th April 1979 and is in substantially the same form as policies so issued before 6th April 1976.

(2) For the purposes of this paragraph, the sums guaranteed by a policy do not include any bonuses, or in the case of a policy providing for a series of payments during its term, any of those payments except the first, or any sum payable on death during the term by reference to one or more of those payments except so far as that sum is referable to the first such payment.

Marginal Citations

M1264 Source—1970 Sch.1 4; 1976 Sch.4 12

8 **M1265** Where a policy issued in respect of an insurance made after 1st April 1976 in the course of an industrial assurance business is not a qualifying policy by virtue of paragraph 1 or 2 above but is a policy with respect to which the conditions in paragraph 7(1)(b) and (c) above are satisfied, it shall be a qualifying policy whether or not the condition in paragraph 7(1)(a) above is satisfied with respect to it; but where that condition is not satisfied, relief under section 266 in respect of premiums paid under the policy shall be given only on such amount (if any) as would have been the amount of those premiums had that condition been satisfied.

Marginal Citations

M1265 Source—1975 Sch.2 7; 1976 Sch.4 19(4)

[F6088A(1) Paragraphs 7 and 8 above shall have effect in relation to any policy issued on or after the appointed day as if the references to the issue of a policy in the course of an industrial assurance business were references to the issue of a policy by any company in a case in which—

(a) the company, before that day and in the course of such a business, issued any policy which was a qualifying policy by virtue of either of those paragraphs; and

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(b) the policies which on 28th November 1995 were being offered by the company as available to be issued included policies of the same description as the policy issued on or after the appointed day.

(2) In this paragraph "the appointed day" means such day as the Board may by order appoint.**]**

Subordinate Legislation Made

P9 Sch. 15 para. 8A power exercised: 1.12.2001 appointed by S.I. 2001/3643, **art. 2(c)**

Textual Amendments

F6088 Sch. 15 para. 8A inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(8)**

(iii) Family income policies and mortgage protection

9 (1) [M1266] The following provisions apply to any policy which is not a qualifying policy apart from those provisions, and the benefits secured by which consist of or include the payment on or after a person's death of—

(a) one capital sum which does not vary according to the date of death, plus a series of capital sums payable if the death occurs during a specified period, or

(b) a capital sum, the amount of which is less if the death occurs in a later part of a specified period than if it occurs in an earlier part of that period.

(2) A policy falling within sub-paragraph (1)(a) above is a qualifying policy if—

(a) it would be one if it did not secure the series of capital sums there referred to, and the premiums payable under the policy were such as would be chargeable if that were in fact the case, and

(b) it would also be one if it secured only that series of sums, and the premiums thereunder were the balance of those actually so payable.

(3) A policy falling within sub-paragraph (1)(b) above is a qualifying policy if—

(a) it would be one if the amount of the capital sum there referred to were equal throughout the period to its smallest amount, and the premiums payable under the policy were such as would be chargeable if that were in fact the case, and

(b) it would also be one if it secured only that capital sum so far as it from time to time exceeds its smallest amount, and the premiums payable thereunder were the balance of those actually so payable.

Marginal Citations

M1266 Source—1970 Sch.1 5

OTHER SPECIAL PROVISIONS

(i) Short-term assurances

10 [M1267] A policy which secures a capital sum payable only on death or payable either on death or on earlier disability shall not be a qualifying policy if the capital sum is

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payable only if the event in question happens before the expiry of a specified term ending less than one year after the making of the insurance.

Marginal Citations

M1267 Source—1976 Sch.4 2, 2A; 1978 Sch.3 4; 1982 s.35(1)

(ii) Personal accident insurance

11 (1) A policy which evidences a contract of insurance to which sub-paragraph (3) below applies shall not be a qualifying policy unless it also evidences **[**[F6089]—

(a) a contract of insurance on human life; or

(b) a contract to pay annuities on human life.**]**

(2) A policy which evidences a contract of insurance to which sub-paragraph (4) below applies shall not be a qualifying policy unless it also evidences a contract falling within section 83(2)(a) of the [M1268]Insurance Companies Act 1974.

(3) This sub-paragraph applies to contracts of insurance issued in respect of insurances made on or after 25th March 1982 against risks of persons dying as a result of an accident or an accident of a specified class, not being contracts which—

(a) are expressed to be in effect for a period of not less than five years or without limit of time; and

(b) either are not expressed to be terminable by the insurer before the expiration of five years from their taking effect or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned.

(4) This sub-paragraph applies to contracts of insurance issued in respect of insurances made before 25th March 1982 against risks of persons dying as a result of an accident or an accident of a specified class, not being contracts falling within section 83(2)(b) of the Insurance Companies Act 1974.

Textual Amendments

F6089 Words in Sch. 15 para. 11(1) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 47(3)**

Marginal Citations

M1268 1974 c. 49.

*(iii) Exceptional **[**[F6090]risk of death or disability**]***

Textual Amendments

F6090 Words in Sch. 15 para. 12 heading substituted (retrospectively with effect in accordance with s. 172(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 172(2)**

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12 M1269 For the purpose of determining whether any policy is a qualifying policy, there shall be disregarded—

(a) so much of any premium thereunder as is charged on the grounds that an exceptional risk of death **[**F6091or disability**]** is involved; and

(b) any provision under which, on those grounds, any sum may become chargeable as a debt against the capital sum guaranteed by the policy on death **[**F6091or disability**]**.

Textual Amendments

F6091 Words in Sch. 15 para. 12 inserted (retrospectively with effect in accordance with s. 172(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 172(1)**

Marginal Citations

M1269 Source—1970 Sch.1 6, 7

(iv) Connected policies

13 M1270 Subject to paragraph 14 below, where the terms of any policy provide that it is to continue in force only so long as another policy does so, neither policy is a qualifying policy unless, if they had constituted together a single policy issued in respect of an insurance made at the time of the insurance in respect of which the first-mentioned policy was issued, that single policy would have been a qualifying policy.

Marginal Citations

M1270 Source—1980 s.30; 1984 s.74; 1982 s.35(3)

14 (1) A policy shall not be a qualifying policy if the policy is connected with another policy and the terms of either policy provide benefits which are greater than would reasonably be expected if any policy connected with it were disregarded.

(2) For the purposes of this paragraph a policy is connected with another policy if they are at any time simultaneously in force and either of them is issued with reference to the other, or with a view to enabling the other to be issued on particular terms or facilitating its being issued on those terms.

(3) In this paragraph "policy" means a policy **[**F6092evidencing a contract of long-term insurance**]**, and includes any such policy issued outside the United Kingdom.

[F6093(3A) In sub-paragraph (3) "contract of long-term insurance" means a contract which falls within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.**]**

(4) Where any person issues a policy—

(a) which by virtue of this paragraph is not a qualifying policy, or

(b) the issue of which causes another policy to cease by virtue of this paragraph to be a qualifying policy,

he shall within three months of issuing the policy give notice of that fact to the Board.

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(5) The Board may, by notice, require any person who is, or appears to them to be, concerned in the issue of any such policy as is mentioned in sub-paragraph (4) above, to furnish them within such time (not being less than 30 days) as may be specified in the notice with such particulars as they think necessary for the purposes of this paragraph and as the person to whom the notice is addressed has or can reasonably obtain; but no solicitor shall be deemed for the purposes of this sub-paragraph to have been concerned in the issue of a policy by reason only that he has given professional advice to a client in connection with that policy.

(6) This paragraph shall apply to policies issued in respect of insurances made before 23rd August 1983 in accordance with sub-paragraphs (7) and (8) below.

(7) Where—

(a) a policy is issued in respect of an insurance made before 23rd August 1983, and

(b) a policy is issued in respect of an insurance made on or after that date which is connected with it within the meaning of this paragraph,

sub-paragraphs (1) to (6) above shall apply to the policy issued in respect of an insurance made before that date.

(8) Sub-paragraphs (1) to (7) above shall apply to policies issued in respect of insurances made before 23rd August 1983 (other than policies which, disregarding this paragraph, fall within sub-paragraph (7)) with the substitution—

(a) in sub-paragraph (1) for the words "and the terms of either policy" of the words " the terms of which ";

(b) in sub-paragraph (3) for the words from "long term business" to "1982" of the words " ordinary long-term insurance business within the meaning of section 83(2) of the Insurance Companies Act 1974 (as enacted) or, in relation to a policy made after 25th March 1982, section 96(1) of the Insurance Companies Act 1982 "; and

(c) in sub-paragraphs (6) and (7) for the words "23rd August 1983" of the words " 26th March 1980 ".

(9) In any case where payments made—

(a) after 22nd August 1983, and

(b) by way of premium or other consideration in respect of a policy issued in respect of an insurance made before that date,

exceed £5 in any period of 12 months, the policy shall be treated for the purposes of this paragraph as if it were issued in respect of an insurance made after 22nd August 1983; but nothing in this paragraph shall apply with respect to any premium paid in respect of it before that date.

(10) Sub-paragraphs (8) and (9) above do not apply in relation to policies issued in the course of industrial assurance business.

Textual Amendments

F6092 Words in Sch. 15 para. 14(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 47(4)**

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F6093 Sch. 15 para. 14(3A) inserted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 47(5)**

Modifications etc. (not altering text)

C987 *See* S.I.1989 No.1343(N.I.14) Art.10(2)*and* Sch.1 para.38(3)*for construction in the case of a solicitor who is a member of a recognised body.*

(v) Premiums paid out of sums due under previous policies

15 (1) [M1271] Where, in the case of a policy under which a single premium only is payable, liability for the payment of that premium is discharged in accordance with sub-paragraph (2) below, the policy is a qualifying policy notwithstanding anything in paragraph 1(2) or (3) or paragraph 2(1)(b) or (c) above; and where, in the case of any other policy, liability for the payment of the first premium thereunder, or of any part of that premium, is so discharged, the premium or part shall be disregarded for the purposes of paragraphs 1(2)(b) and (3)(b) and 2(1)(c) above.

(2) Liability for the payment of a premium is discharged in accordance with this sub-paragraph if it is discharged by the retention by the company with which the insurance is made of the whole or a part of any sum which has become payable on the maturity of, or on the surrender more than ten years after its issue of the rights conferred by, a policy—

(a) previously issued by the company to the person making the insurance, or, if it is made by trustees, to them or any predecessors in office; or

(b) issued by the company when the person making the insurance was an infant, and securing a capital sum payable either on a specified date falling not more than one month after his attaining 25, or on the anniversary of the policy immediately following his attainment of that age,

being, unless it is a policy falling within paragraph (b) above and the premium in question is a first premium only, a policy which was itself a qualifying policy, or which would have been a qualifying policy had it been issued in respect of an insurance made after 19th March 1968.

Marginal Citations

M1271 Source—1970 Sch.1 8

(vi) Additional premiums under section 72(9) of the Ginance Act 1984

16 [M1272] In determining whether a policy is a qualifying policy, no account shall be taken of any amount recovered, as if it were an additional premium, in pursuance of section 72(9) of the Finance Act 1984.

Marginal Citations

M1272 Source—1984 s.72(9)(a)

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(viii) Substituitions and variations

17 (1) [M1273] Subject to paragraph 19 below, where one policy ("the new policy") is issued in substitution for, or on the maturity of and in consequence of an option conferred by, another policy ("the old policy"), the question whether the new policy is a qualifying policy shall, to the extent provided by the rules in sub-paragraph (2) below, be determined by reference to both policies.

(2) The rules (for the purposes of which, the question whether the old policy was a qualifying policy shall be determined in accordance with this Part of this Schedule, whatever the date of the insurance in respect of which it was issued), are as follows—

(a) if the new policy would apart from this paragraph be a qualifying policy but the old policy was **[**[F6094]not,**]** the new policy is not a qualifying policy unless the person making the insurance in respect of which it is issued was an infant when the old policy was issued, and the old policy was one securing a capital sum payable either on a specified date falling not later than one month after his attaining 25 or on the anniversary of the policy immediately following his attainment of that age;

(b) if the new policy would apart from this paragraph be a qualifying policy, and the old policy was also a qualifying policy, the new policy is a qualifying policy unless—

(i) it takes effect before the expiry of ten years from the making of the insurance in respect of which the old policy was issued, and

(ii) subject to sub-paragraph (4) below, the highest total of premiums payable thereunder for any period of 12 months expiring before that time is less than one half of the highest total paid for any period of 12 months under the old policy, or under any related policy issued less than ten years before the issue of the new policy ("related policy" meaning any policy in relation to which the old policy was a new policy within the meaning of this paragraph, any policy in relation to which that policy was such a policy, and so on);

(c) if the new policy would not apart from this paragraph be a qualifying policy, and would fail to be so by reason only of paragraph 1(2) or (3) or 2(1)(a), (b) or (c) above, it is nevertheless a qualifying policy if the old policy was a qualifying policy and—

(i) the old policy was issued in respect of an insurance made more than ten years before the taking effect of the new policy, and, subject to sub-paragraph (4) below, the premiums payable for any period of 12 months under the new policy do not exceed the smallest total paid for any such period under the old policy; or

(ii) the old policy was issued outside the United Kingdom, and the circumstances are as specified in sub-paragraph (3) below.

(3) [M1274] The circumstances are—

(a) where the new policy referred to in sub-paragraph (2)(c) above is issued after 22nd February 1984, that the policy holder under the new policy became resident in the United Kingdom during the 12 months ending with the date of its issue;

(b) where paragraph (a) above does not apply, that the person in respect of whom the new insurance is made became resident in the United Kingdom during the 12 months ending with the date of its issue;

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(c) that the issuing company certify that the new policy is in substitution for the old, and that the old was issued either by a **[**F6095permanent establishment**]** of theirs outside the United Kingdom or by a company outside the United Kingdom with whom they have arrangements for the issue of policies in substitution for ones held by persons coming to the United Kingdom; and

(d) that the new policy confers on the holder benefits which are substantially equivalent to those which he would have enjoyed if the old policy had continued in force.

(4) M1275 Where the new policy is one issued on or after 1st April 1976 then, in determining under sub-paragraph (2) above whether that policy would or would not (apart from sub-paragraphs (1) to (3) above) be a qualifying policy, there shall be left out of account so much of the first premium payable thereunder as is accounted for by the value of the old policy.

Textual Amendments

F6094 Word in Sch. 15 para. 17(2)(a) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **10**

F6095 Words in Sch. 15 para. 17(3)(c) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

Marginal Citations

M1273 Source—1970 Sch.1 9(1), (2)

M1274 Source—1970 Sch.1 9(3); 1984 s.76(3), (6)

M1275 Source—1975 Sch.2 5

18 (1) M1276 Subject to paragraph 19 below and to the provisions of this paragraph, where the terms of a policy are varied, the question whether the policy after the variation is a qualifying policy shall be determined in accordance with the rules in paragraph 17 above, with references in those rules to the new policy and the old policy construed for that purpose as references respectively to the policy after the variation and the policy before the variation, and with any other necessary modifications.

(2) In applying any of those rules by virtue of this paragraph, the question whether a policy after a variation would be a qualifying policy apart from the rule shall be determined as if any reference in paragraphs **[**F6096**]**1, 2, 3(5) to (11), 4 to 9**]**, 12 and 13 above to the making of an insurance, or to a policy's term, were a reference to the taking effect of the variation or, as the case may be, to the term of the policy as from the variation.

(3) This paragraph does not apply by reason of—

(a) any variation which, whether or not of a purely formal character, does not affect the terms of a policy in any significant respect, or

(b) any variation effected before the end of the year 1968 for the sole purpose of converting into a qualifying policy any policy issued (but not one treated, by virtue of paragraph 8(1) and (2) of Schedule 14, as issued) in respect of an insurance made after 19th March 1968,**[**F6097 or

(c) any variation so as to increase the benefits secured or reduce the premiums payable which is effected—

(i) on or after such day as the Board may by order appoint, and

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(ii) in consideration of a change in the method of payment of premiums from collection by a person collecting premiums from house to house to payment by a different method**]**[F6098, or

(d) any variation which alters the method for calculating the benefits secured by the policy.**]**

[F6099(4) For the purposes of this paragraph there is no variation in the terms of a policy where—

(a) an amount of premium chargeable on the grounds that an exceptional risk of death or disability is involved becomes or ceases to be payable, or

(b) the policy is amended by the insertion, variation or removal of a provision under which, on those grounds, any sum may become chargeable as a debt against the capital sum guaranteed by the policy on death or disability.**]**

Subordinate Legislation Made

P10 Sch. 15 para. 18(3)(c)(i) power exercised: 1.12.2001 appointed by S.I. 2001/3643, **art. 2(c)**

Textual Amendments

F6096 Word in Sch. 15 para. 18(2) substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **11**

F6097 Sch. 15 para. 18(3)(c) and preceding word inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(9)**

F6098 Sch. 15 para. 18(3)(d) and preceding word inserted (partly retrospective, and otherwise with effect in accordance with s. 87(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 87(2)(4)(6)**

F6099 Sch. 15 para. 18(4) inserted (retrospectively with effect in accordance with s. 172(6) of the amending Act) by Finance Act 2003 (c. 14), **s. 172(4)**

Marginal Citations

M1276 Source—1970 Sch.1 10

19 (1) M1277 The following provisions of this paragraph shall have effect for determining for the purposes of this Schedule whether a policy has been varied or whether a policy which confers on the person to whom it is issued an option to have another policy substituted for it or to have any of its terms changed is a qualifying policy.

(2) If the policy is one issued in respect of an insurance made before 1st April 1976—

(a) any such option shall, until it is exercised, be disregarded in determining whether the policy is a qualifying policy; and

(b) any change in the terms of the policy which is made in pursuance of such an option shall be deemed to be a variation of the policy.

(3) If the policy is one issued in respect of an insurance made on or after 1st April 1976, the policy shall not be a qualifying policy unless it satisfies the conditions applicable to it under this Schedule before any such option is exercised and—

(a) each policy that might be substituted for it in pursuance of such an option would satisfy those conditions under the rules of paragraph 17 above; and

(b) the policy would continue to satisfy those conditions under the rules of that paragraph as applied by paragraph 18 above if each or any of the changes capable of being made in pursuance of such an option had been made and were treated as a variation;

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and it shall not be treated as being varied by reason only of any change made in pursuance of such an option.

Marginal Citations
M1277 Source—1975 Sch.2 3

20 (1) [M1278] Where, as a result of a variation in the life or lives for the time being assured, a qualifying policy ("the earlier policy") is replaced by a new policy ("the later policy") which in accordance with the rules in paragraph 17 above is also a qualifying policy, then, subject to sub-paragraph (2) below, for the purposes of—

(a) sections 268 to 270 and 540 and 541; and

(b) any second or subsequent application of this paragraph;

the later policy and the earlier policy shall be treated as a single policy issued in respect of an insurance made at the time of the making of the insurance in respect of which the earlier policy was issued; and, accordingly, so long as the later policy continues to be a qualifying policy, the single policy shall also be treated as a qualifying policy for those purposes.

(2) Sub-paragraph (1) above does not apply unless—

(a) any sum which would otherwise become payable by the insurer on or in connection with the coming to an end of the earlier policy is retained by the insurer and applied in the discharge of some or all of the liability for any premium becoming due under the later policy; and

(b) no consideration in money or money's worth (other than the benefits for which provision is made by the later policy) is receivable by any person on or in connection with the coming to an end of the earlier policy or the coming into existence of the later policy.

(3) Any sum which is applied as mentioned in sub-paragraph (2)(a) above—

(a) shall be left out of account in determining, for the purposes of sections 268 to 270 and 540 and 541, the total amount which at any time has been paid by way of premiums under the single policy referred to in sub-paragraph (1) above; and

(b) shall not be regarded, in relation to that single policy, as a relevant capital payment, within the meaning of section 541.

(4) This paragraph applies where the later policy comes into existence on or after 25th March 1982.

Marginal Citations
M1278 Source—1982 s.34

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VALID FROM 01/04/2011

[F6100(viii) Policy reinstated after non-payment of premium

Textual Amendments

F6100 Sch. 15 para. 20ZA and preceding cross-heading inserted (1.4.2011 with effect in accordance with art. 15(2) of the amending S.I.) by The Enactment of Extra-Statutory Concessions Order 2011 (S.I. 2011/1037), **arts. 1**, 15(1)

20ZA (1) This paragraph applies to a qualifying policy ("the original policy") if conditions A to D are satisfied.

(2) Condition A is that one or more premiums due under the original policy are not paid on or before the date on which they become due.

(3) Condition B is that the original policy, in accordance with its terms, is treated as having lapsed or is converted into a paid-up policy—

(a) by reason only of the failure to pay that premium or those premiums, and

(b) within the period of 12 months beginning with the day following the day on which the earliest unpaid premium becomes due.

(4) Condition C is that the original policy—

(a) is reinstated on the same terms, or

(b) is replaced by another policy in the same terms ("the replacement policy"),

on or before the thirtieth day after the first anniversary of the day following the day on which the earliest unpaid premium becomes due.

(5) Condition D is that all unpaid premiums due under the original policy are paid on or before the date on which the policy is reinstated or replaced.

(6) Where condition C is satisfied by virtue of sub-paragraph (4)(b) the replacement policy is to be treated for the purposes of this Schedule as if it were the original policy.

(7) The policy is to be treated for the purposes of this Schedule as if the premiums payable under it had been paid on their due dates.**]**

PART II

CERTIFICATION OF QUALIFYING POLICIES

Policies issued in respect of insurances made on or after 1st April 1976 or varied on or after that date

21 **[**F6101(1) M1279A policy of life insurance issued in respect of an insurance made on or after 1st April 1976 or varied on or after that date (other than one to which paragraph 22(2)(c) below applies) shall not be a qualifying policy unless—

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(a) it is certified by the Board as being a qualifying policy; or

(b) it conforms with a form which at the time the policy is issued or varied is either—

(i) a standard form certified by the Board as a standard form of qualifying policy; or

(ii) a form varying from a standard form so certified in no other respect than by making such additions thereto as are, at the time the policy is issued, certified by the Board as compatible with a qualifying policy when made to that standard form and satisfy any conditions subject to which they are so certified;

and any certificate issued in pursuance of paragraph (a) above shall be conclusive evidence that the policy is a qualifying policy.

(2) In issuing a certificate in pursuance of sub-paragraph (1) above the Board may disregard any provision of the policy, standard form or addition which appears to them insignificant.

(3) Where the Board refuse to certify a policy as being a qualifying policy, the person to whom it is issued may appeal to the General Commissioners or, if he so elects, to the Special Commissioners.

(4) Sub-paragraphs (1) to (3) above do not apply in relation to such a policy as is mentioned in paragraphs 3 to 6 above.**]**

Textual Amendments

F6101 Sch. 15 para. 21 repealed (with effect in accordance with s. 55(1)-(5) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(7)**, Note (as s. 55 of that repealing Act is amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

Modifications etc. (not altering text)

C988 Sch. 15 para. 21 restricted by Finance Act 1995 (c. 4), **s. 55(1)(9)** (with s. 55(2)(3)) (as amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**)

Marginal Citations

M1279 Source—1975 Sch.2 1; 1987 Sch.15 7

22**[**F6102(1) M1280 A body which issues or which, after 5th April 1979, has issued any policy of life insurance (other than one to which sub-paragraph (2)(c) below applies)—

(a) which is certified by the Board as being a qualifying policy; or

(b) which conforms with such a form as is mentioned in paragraph 21(1)(b) above, and is in the opinion of the body issuing it a qualifying policy,

shall, within three months of receipt of a request in writing by the policy holder, give to the policy holder a duly authenticated certificate to that effect, specifying in the certificate the name of the policy holder, the name of the person whose life is assured, the reference number or other means of identification allocated to the policy, the reference number of the relevant Inland Revenue certificate (if any), the capital sum or sums assured and the amounts and dates for payment of the premiums.

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(2) [M1281] Subject to sub-paragraph (3) below, where a policy of life insurance is varied after 5th April 1979, and, after the variation—

(a) it is certified by the Board as a qualifying policy, or

(b) it conforms with such a form as is referred to in sub-paragraph (1) above and is in the opinion of the body by whom it was issued a qualifying policy, or

(c) in the case of a policy issued in respect of an insurance made before 1st April 1976, it is in the opinion of the body by whom it was issued a qualifying policy,

that body shall, within three months of receipt of a request in writing by the policy holder, give to the policy holder a like certificate with respect to the policy as varied.

(3) [M1282] Sub-paragraph (2) above shall not apply by reason of—

(a) any variation which, whether or not of a purely formal character, does not affect the terms of a policy in any significant respect; or

(b) any variation of a policy issued in respect of an insurance made on or before 19th March 1968, other than a variation by virtue of which the policy falls, under paragraph 8(1) and (2) of Schedule 14, to be treated as issued in respect of an insurance made after that date **[**[F6103]; or

(c) any variation which alters the method for calculating the benefits secured by the policy.**]]**

Textual Amendments

F6102 Sch. 15 para. 22 repealed (with effect in accordance with s. 55(1)-(5) of the repealing Act) by Finance Act 1995 (c. 4), s. 55(4)(9), **Sch. 29 Pt. 8(7)**, Note (as s. 55 of that repealing Act is amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

F6103 Sch. 15 para. 22(3)(c) and preceding word inserted (partly retrospective, and otherwise with effect in accordance with s. 87(5) of the amending Act) by Finance Act 2006 (c. 25), **s. 87(3)(4)(6)**

Marginal Citations

M1280 Source—1970 Sch.1 11(1); 1975 Sch.2 2(1); 1976 s.33(1); 1978 Sch.3 13(1)(a), (b)

M1281 Source—1970 Sch.1 11(2); 1975 Sch.2 2(2); 1976 s.33(2); 1978 Sch.3 13(1)(b)

M1282 Source—1970 Sch.1 11(3)

PART III

POLICIES ISSUED BY NON-RESIDENT COMPANIES

23 [M1283] In this Part—

(a) any reference to a paragraph is a reference to that paragraph of this Schedule; and

(b) "the old policy" and "the new policy" have the same meanings as in paragraph 17.

Marginal Citations

M1283 Source—1984 Sch.15 Pt.II 1

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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24 (1) M1284 This paragraph applies to a policy of life insurance—

(a) which is issued in respect of an insurance made after 17th November 1983; and

(b) which is so issued by a company resident outside the United Kingdom;

and in the following provisions of this paragraph such a policy is referred to as "a new non-resident policy" and the company by which it is issued is referred to as "the issuing company".

[F6104(2) Subject to section 55(3) of the Finance Act 1995 (transitional provision for the certification of certain policies), a new non-resident policy that falls outside sub-paragraph (2A) below shall not be a qualifying policy until such time as the conditions in sub-paragraph (3) are fulfilled with respect to it.

(2A) A policy falls outside this sub-paragraph unless, at the time immediately before [F6105the appointed date for the purposes of section 55 of the Finance Act 1995 (removal of certification requirements)], it was a qualifying policy by virtue of sub-paragraphs (2)(b) and (4) of this paragraph, as they had effect in relation to that time.]

(3) The conditions [F6106first] referred to in sub-paragraph (2) above are—

(a) that the issuing company is lawfully carrying on in the United Kingdom life assurance business (as defined in section 431(2)); and

(b) that the premiums under the policy are payable to a [F6107permanent establishment] in the United Kingdom of the issuing company, being a [F6107permanent establishment] through which the issuing company carries on its life assurance business; and

(c) the premiums under the policy form part of those business receipts of the issuing company which arise through that [F6107permanent establishment].

(4) [F6108The conditions secondly referred to in sub-paragraph (2) above are—

(a) that the policy holder is resident in the United Kingdom; and

(b) that the income of the issuing company from the investments of its life assurance fund is, by virtue of section 445, charged to corporation tax under Case III of Schedule D;

and expressions used in paragraph (b) above have the same meaning as in section 445(1).]

Textual Amendments

F6104 Sch. 15 para. 24(2)(2A) substituted for para. 24(2) by Finance Act 1995 (c. 4), **s. 55(5)(a)(9)** (as amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

F6105 Words in Sch. 15 para. 24(2A) substituted (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(2)**

F6106 Words in Sch. 15 para. 24(3) repealed (with effect in accordance with s. 55(1)-(5) of the repealing Act) by Finance Act 1995 (c. 4), s. 55(5)(b)(9), **Sch. 29 Pt. 8(7)**, Note (as s. 55 of that repealing Act is amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

F6107 Words in Sch. 15 para. 24(3)(b)(c) substituted (with effect in accordance with s. 155(2) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 27 para. 1(4)**

F6108 Sch. 15 para. 24(4) repealed (with effect in accordance with s. 55(1)-(5) of the repealing Act) by Finance Act 1995 (c. 4), s. 55(5)(b)(9), **Sch. 29 Pt. 8(7)**, Note (as s. 55 of that repealing Act is amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

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Marginal Citations

M1284 Source—1975 Sch.2 1A; 1984 Sch.5 Pt.I

25 (1) [M1285] In the application of paragraph 17 in any case where—

(a) the old policy was issued in respect of an insurance made after 17th November 1983 and could not be a qualifying policy by virtue of paragraph 24, and

(b) the new policy is not a new non-resident policy as defined in that paragraph,

the rules for the determination of the question whether the new policy is a qualifying policy shall apply with the modifications in sub-paragraph (2) below.

[[F6109](2) The modifications are the following—

(a) if, apart from paragraph 24, the old policy or any related policy (within the meaning of paragraph 17(2)(b)) of which account falls to be taken would have been a qualifying policy, that policy shall be assumed to have been a qualifying policy for the purposes of paragraph 17(2); and

(b) if, apart from this paragraph, the new policy would be a qualifying policy, it shall not be such a policy unless the circumstances are as specified in paragraph 17(3); and

(c) in paragraph 17(3)(c) the words "either by a **[**[F6110]permanent establishment**]** of theirs outside the United Kingdom or" shall be omitted;

and references in this sub-paragraph to being a qualifying policy shall have effect, in relation to any time before **[**[F6111]the appointed date for the purposes of section 55 of the Finance Act 1995 (removal of certification requirements)**]**, as including a reference to being capable of being certified as such a policy.**]**

(3) In the application of paragraph 17 in any case where—

(a) the old policy is a qualifying policy which was issued in respect of an insurance made on or before 17th November 1983 but, if the insurance had been made after that date, the policy could not have been a qualifying policy by virtue of paragraph 24, and

(b) the new policy is issued after that date and is not a new non-resident policy, as defined in paragraph 24,

the rules for the determination of the question whether the new policy is a qualifying policy shall apply with the modification in sub-paragraph (2)(c) above.

Textual Amendments

F6109 Sch. 15 para. 25(2) substituted by Finance Act 1995 (c. 4), **s. 55(6)(9)** (as amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

F6110 Words in Sch. 15 para. 25(2)(c) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F6111 Words in Sch. 15 para. 25(2) substituted (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(2)**

Marginal Citations

M1285 Source—1984 Sch.15 Pt.II 2-4

26 If, in the case of a substitution of policies falling within paragraph 25(1) or (3), the new policy confers such an option as results in the application to it of paragraph

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19(3), the new policy shall be treated for the purposes of paragraph 19(3) as having been issued in respect of an insurance made on the same day as that on which was made the insurance in respect of which the old policy was issued.

27 (1) For the purposes of Part I and **[**F6112paragraph**]** 24, a policy of life insurance which was issued—

(a) in respect of an insurance made on or before 17th November 1983, and

(b) by a company resident outside the United Kingdom,

shall be treated as issued in respect of an insurance made after that date if the policy is varied after that date so as to increase the benefits secured or to extend the term of the insurance.

(2) If a policy of life insurance which was issued as mentioned in sub-paragraph (1)(a) and (b) above confers on the person to whom it is issued an option to have another policy substituted for it or to have any of its terms changed, then for the purposes of that sub-paragraph any change in the terms of the policy which is made in pursuance of the option shall be deemed to be a variation of the policy.

Textual Amendments

F6112 Word in Sch. 15 para. 27(1) substituted (except for specified purposes) by Finance Act 1995 (c. 4), **s. 55(7)(9)** (as amended (29.4.1996) by Finance Act 1996 (c. 8), **s. 162(1)**); S.I. 2013/759, **art. 2**

F6113F6113[F6114SCHEDULE 15A

. . . . . .

Textual Amendments

F6113 Sch. 15A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 345, **Sch. 3** (with Sch. 2)

F6114 Sch. 15A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 12 para. 6(2)**

[F6118SCHEDULE 15B

VENTURE CAPITAL TRUSTS: RELIEF FROM INCOME TAX

Textual Amendments

F6118 Sch. 15B inserted (with effect in accordance with s. 71(4) of the amending Act) by Finance Act 1995 (c. 4), s. 71(2), **Sch. 15**

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PART I

RELIEF ON INVESTMENT

Entitlement to claim relief

1 (1) Subject to the following provisions of this Schedule, an individual shall, for any year of assessment, be entitled under this Part of this Schedule to claim relief in respect of an amount equal to the aggregate of the amounts (if any) which, by reference to eligible shares issued to him by venture capital trusts in the course of that year, are amounts on which he is eligible for relief in accordance with sub-paragraph (2) below.

(2) The amounts on which an individual shall be taken for the purposes of sub-paragraph (1) above to be eligible for relief shall be any amounts subscribed by him on his own behalf for eligible shares issued by a venture capital trust for raising money.

(3) An individual shall not be entitled under this Part of this Schedule to claim relief for any given year of assessment in respect of an amount of more than **[**F6119£200,000**]**.

(4) An individual shall not be entitled under this Schedule to claim any relief to which he is eligible by reference to any shares unless he had attained the age of eighteen years before those shares were issued.

(5) Where an individual makes a claim for any relief to which he is entitled under this Part of this Schedule for any year of assessment, the amount of his liability for that year to income tax on his total income shall be equal to the amount to which he would be so liable apart from this Part of this Schedule less whichever is the smaller of—

(a) an amount equal to tax at the lower rate for that year on the amount in respect of which he is entitled to claim relief for that year, and

(b) the amount which reduces his liability to nil.

(6) In determining for the purposes of sub-paragraph (5) above the amount of income tax to which a person would be liable apart from this Part of this Schedule, no account shall be taken of—

(a) any income tax reduction under section 289A,

(b) any income tax reduction under Chapter I of Part VII or under section 347B,

(c) any income tax reduction under section 353(1A),

(d) any income tax reduction under section 54(3A) of the M1286Finance Act 1989,

[F6120(da) any income tax reduction under paragraph 19(2) of Schedule 16 to the Finance Act 2002 (community investment tax relief),**]**

(e) any relief by way of a reduction of liability to tax which is given in accordance with any arrangements having effect by virtue of section 788 or by way of a credit under section 790(1), or

(f) any tax at the basic rate on so much of that person's income as is income the income tax on which he is entitled to charge against any other person or to deduct, retain or satisfy out of any payment.

(7) F6121 . . . . . .

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(8) A person shall not be entitled to be given any relief under this Part of this Schedule by reference to any shares if circumstances have arisen which would have resulted, had that relief already been given, in the withdrawal or reduction of the relief.

(9) A person shall not under this Part of this Schedule be eligible for any relief on any amount by reference to any shares unless the shares are both subscribed for and issued for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

[F6122(10) An individual is not eligible for relief under this Part of this Schedule by reference to any shares which are treated as issued to him by virtue of section 195(8) of the Finance Act 2003 (tax treatment of disposal by company of its own shares).

(11) Where a company which is a venture capital trust issues to any individual eligible shares to which sub-paragraph (10) above applies, it must—

(a) at the time of the issue of those shares, give that individual a notice stating that he is not eligible for relief under this Part of this Schedule by reference to those shares, and

(b) no later than three months after the issue of those shares, give a copy of that notice to an officer of the Board.**]**

Textual Amendments

F6119 Words in Sch. 15B para. 1(3) substituted (with effect in accordance with Sch. 19 para. 3 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 1**

F6120 Sch. 15B para. 1(6)(da) inserted (23.1.2003) by Finance Act 2002 (c. 23), s. 57(3), **Sch. 17 para. 3**; S.I. 2003/88, **art. 2**

F6121 Sch. 15B para. 1(7) repealed (with effect in accordance with Sch. 16 para. 3(2) of the repealing Act) by Finance Act 2001 (c. 9), Sch. 16 para. 3(1), **Sch. 33 Pt. 2(3)**, Note 4

F6122 Sch. 15B para. 1(10)(11) inserted (with effect in accordance with s. 195(12) of the amending Act) by Finance Act 2003 (c. 14), **Sch. 40 para. 1**; S.I. 2003/3077, **art. 2**

Modifications etc. (not altering text)

C989 Sch. 15B para. 1(5)(a) modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 94(1)**

Marginal Citations

M1286 1989 c. 26.

Loan-linked investments

2 (1) An individual shall not be entitled to relief under this Part of this Schedule in respect of any shares if—

(a) there is a loan made by any person, at any time in the relevant period, to that individual or any associate of his; and

(b) the loan is one which would not have been made, or would not have been made on the same terms, if that individual had not subscribed for those shares or had not been proposing to do so.

(2) References in this paragraph to the making by any person of a loan to any individual or an associate of his include references—

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(a) to the giving by that person of any credit to that individual or any associate of his; and

(b) to the assignment or assignation to that person of any debt due from that individual or any associate of his.

(3) In this paragraph—

"associate" has the meaning given in subsections (3) and (4) of section 417, except that in those subsections (as applied for the purposes of this paragraph) "relative" shall not include a brother or sister; and

"the relevant period", in relation to relief under this Part of this Schedule in respect of any shares in a company which is a venture capital trust, means the period beginning with the incorporation of the company (or, if the company was incorporated more than two years before the date on which the shares were issued, beginning two years before that date) and **[**F6123ending immediately before the third anniversary of the date on which the shares were issued**]**.

Textual Amendments

F6123 Words in Sch. 15B para. 2(3) substituted (with effect in accordance with Sch. 18 para. 3 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 1(2)**

Loss of investment relief

3 (1) This paragraph applies, subject to sub-paragraph (5) below, where—

(a) an individual who has made any claim for relief under this Part of this Schedule makes any disposal of eligible shares in a venture capital trust, and

(b) that disposal takes place before the end of the period of **[**F6124three years beginning with the date on which those shares were issued to that individual**]**.

(2) If the disposal is made otherwise than by way of a bargain made at arm's length, any relief given under this Part of this Schedule by reference to the shares which are disposed of shall be withdrawn.

(3) Where the disposal was made by way of a bargain made at arm's length—

(a) if, apart from this sub-paragraph, the relief given by reference to the shares that are disposed of is greater than the amount mentioned in sub-paragraph (4) below, it shall be reduced by that amount, and

(b) if paragraph (a) above does not apply, any relief given by reference to those shares shall be withdrawn.

(4) The amount referred to in sub-paragraph (3) above is an amount equal to tax at the lower rate for the year of assessment for which the relief was given on the amount or value of the consideration which the individual receives for the shares.

(5) This paragraph shall not apply in the case of any disposal of shares which is made by a **[**F6125person to his spouse or civil partner**]** at a time when they are living together.

(6) Where any eligible shares issued to any individual ("the transferor"), being shares by reference to which any amount of relief under this Part of this Schedule has been given, are transferred to the transferor's spouse **[**F6126or civil partner**]** ("the

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transferee") by a disposal such as is mentioned in sub-paragraph (5) above, this paragraph shall have effect, in relation to any subsequent disposal or other event, as if—

(a) the transferee were the person who had subscribed for the shares,

(b) the shares had been issued to the transferee at the time when they were issued to the transferor,

(c) there had been, in respect of the transferred shares, such a reduction under this Part of this Schedule in the transferee's liability to income tax as is equal to the actual reduction in respect of those shares of the transferor's liability, and

(d) that deemed reduction were (notwithstanding the transfer) to be treated for the purposes of this paragraph as an amount of relief given by reference to the shares transferred.

(7) Any assessment for withdrawing or reducing relief by reason of a disposal or other event falling within sub-paragraph (6) above shall be made on the transferee.

(8) In determining for the purposes of this paragraph any question whether any disposal relates to shares by reference to which any relief under this Part of this Schedule has been given, it shall be assumed, in relation to any disposal by any person of any eligible shares in a venture capital trust, that—

(a) as between eligible shares acquired by the same person on different days, those acquired on an earlier day are disposed of by that person before those acquired on a later day; and

(b) as between eligible shares acquired by the same person on the same day, those by reference to which relief under this Part of this Schedule has been given are disposed of by that person only after he has disposed of any other eligible shares acquired by him on that day.

(9) Where—

(a) the approval of any company as a venture capital trust is withdrawn, and

(b) the withdrawal of the approval is not one to which section 842AA(8) applies,

any person who, at the time when the withdrawal takes effect, is holding any shares by reference to which relief under this Part of this Schedule has been given shall be deemed for the purposes of this paragraph to have disposed of those shares immediately before that time and otherwise than by way of a bargain made at arm's length.

Textual Amendments

F6124 Words in Sch. 15B para. 3(1)(b) substituted (with effect in accordance with Sch. 18 para. 3 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 1(3)**

F6125 Words in Sch. 15B para. 3(5) substituted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 102(a)

F6126 Words in Sch. 15B para. 3(6) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 102(b)

Modifications etc. (not altering text)

C990 Sch. 15B para. 3: power to exclude conferred (24.7.2002) by Finance Act 2002 (c. 23), Sch. 33 paras. 8, 9(1)(b), **10**

C991 Sch. 15B para. 3(4) modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 94(2)**

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C992 Sch. 15B para. 3(9) modified (17.9.2004 with effect in accordance with reg. 1(2)(a) of the modifying S.I.) by The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (S.I. 2004/2199), **regs. 1(1)**, 4

Assessment on withdrawal or reduction of relief

4 (1) Any relief given under this Part of this Schedule which is subsequently found not to have been due shall be withdrawn by the making of an assessment to tax [F6127]. . . for the year of assessment for which the relief was given.

(2) An assessment for withdrawing or reducing relief in pursuance of paragraph 3 above shall also be made as an assessment to tax [F6127]. . . for the year of assessment for which the relief was given.

(3) No assessment for withdrawing or reducing relief given by reference to shares issued to any person shall be made by reason of any event occurring after his death.

Textual Amendments

F6127 Words in Sch. 15B para. 4(1)(2) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 346(2), **Sch. 3** (with Sch. 2)

Provision of information

5 (1) Where an event occurs by reason of which any relief under this Part of this Schedule falls to be withdrawn or reduced, the individual to whom the relief was given shall, within 60 days of his coming to know of the event, give a notice to the inspector containing particulars of the event.

(2) If the inspector has reason to believe that a person has not given a notice which he is required to give under sub-paragraph (1) above in respect of any event, the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event as the inspector may reasonably require for the purposes of this Part of this Schedule.

(3) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a venture capital trust that relief given by reference to a particular number or proportion of its shares has been given or claimed under this Part of this Schedule.

Interpretation of Part I

6 (1) In this Part of this Schedule "eligible shares", in relation to a company which is a venture capital trust, means new ordinary shares in that trust which, throughout the period of **[**[F6128]three**]** years beginning with the date on which they are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future [F6129]. . . right to be redeemed.

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(2) In this Part of this Schedule "ordinary shares", in relation to a company, means shares forming part of a company's ordinary share capital.

(3) In this Part of this Schedule references to a disposal of shares shall include references to a disposal of an interest or right in or over the shares.

Textual Amendments

F6128 Word in Sch. 15B para. 6(1) substituted (with effect in accordance with Sch. 18 para. 3 of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 1(4)**

F6129 Word in Sch. 15B para. 6(1) repealed (with effect in accordance with s. 73(6) of the repealing Act) by Finance Act 1998 (c. 36), s. 73(1)(b), **Sch. 27 Pt. 3(13)**, Note 1

PART II

RELIEF ON DISTRIBUTIONS

Modifications etc. (not altering text)

C993 Sch. 15B Pt. 2 applied (1.5.1995) by Taxation of Chargeable Gains Act 1992 (c. 12), **s. 151A(6)** (as inserted by Finance Act 1995 (c. 4), **s. 72(3)**)

7 **F6130** . . . . . .

Textual Amendments

F6130 Sch. 15B paras. 7-9 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 346(3), **Sch. 3** (with Sch. 2)

Meaning of "permitted maximum"

8 **F6131** . . . . . .

Textual Amendments

F6131 Sch. 15B paras. 7-9 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 346(3), **Sch. 3** (with Sch. 2)

Interpretation of Part II

9 **F6132** . . . . . .]

Textual Amendments

F6132 Sch. 15B paras. 7-9 repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 346(3), **Sch. 3** (with Sch. 2)

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SCHEDULE 16

Section 350(4).

[M1287] COLLECTION OF INCOME TAX ON COMPANY PAYMENTS WHICH ARE NOT DISTRIBUTIONS

Modifications etc. (not altering text)

C994 *See*—1970(M) s.55—*recovery of tax not in dispute.*1970(M) s.87—*interest on overdue ACT.*1988 s.339—*donations to charity.*1988 s.341—*payments of interest etc between related companies.*1988 s.479—*interest paid on deposits with banks etc.* (*but ceases to have effect as regards interest paid or credited on or after 6April* 1991).1988 s.480A—*relevant deposits: deduction of tax from interest payments.*S.I. 1988 No.482 (*in* Part III Vol.5) regn. 7—*Building Society Regulations.*

C995 Sch. 16 modified by S.I. 1991/512, **reg.3**
Sch. 16 excluded (22.3.1992) by S.I. 1992/569, **reg. 13(2)(d)**
Sch. 16 applied (with modifications) (24.9.1992) by S.I. 1992/2074, **reg. 14(5)**
Sch. 16 applied (with modifications) (1.10.1993) by S.I. 1993/2004, **reg. 13(3)**

C996 Sch. 16 applied (with modifications) (1.7.1997) by The Manufactured Interest (Tax) Regulations 1997 (S.I. 1997/992), **reg. 3**

Marginal Citations

M1287 Source—1972 Sch.20

Interpretation

1 In this Schedule "relevant payment" means any payment to which section 350(4)(a) applies.

Duty to make returns

2 (1) A company shall for each of its accounting periods make, in accordance with this Schedule, returns to the collector of the relevant payments made by it in that period and of the income tax for which it is accountable in respect of those payments.

(2) A return shall be made for—

(a) each complete quarter falling within the accounting period, that is to say, each of the periods of three months ending with 31st March, 30th June, 30th September and 31st December which falls within that period;

(b) each part of the accounting period which is not a complete quarter and ends on the first (or only), or begins immediately after the last (or only), of those dates which falls within the accounting period;

(c) if none of those dates falls within the accounting period, the whole accounting period.

(3) A return for any period for which a return is required to be made under this paragraph shall be made within 14 days from the end of that period.

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Modifications etc. (not altering text)
C997 Sch. 16 para. 2(2)(a) modified by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 3(1)**

Contents of returns

3 The return made by a company for any period shall show—

(a) the amount of any relevant payments made by the company in that period; and

(b) the income tax in respect of those payments for which the company is accountable.

Payment of tax

4 (1) F6133. . . Income tax in respect of any payment required to be included in a return under this Schedule shall be due at the time by which the return is to be made, and income tax so due—

(a) shall be payable by the company without the making of any assessment; and

(b) may be assessed on the company (whether or not it has been paid when the assessment is made) if it, or any part of it, is not paid on or before the due date.

(2) If it appears to **[**F6134an officer of the Board**]** that there is a relevant payment which ought to have been and has not been included in a return, **[**F6135or if an officer of the Board is of the opinion that a return is incorrect, any such officer may**]** make an assessment on the company to the best of his judgment; and any income tax due under an assessment made by virtue of this sub-paragraph shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

(3) F6136. . . . . .

Textual Amendments
F6133 Words in Sch. 16 para. 4(1) repealed (with effect in accordance with s. 91(5) of the repealing Act) by Finance Act 1999 (c. 16), s. 91(2)(a), **Sch. 20 Pt. 3(19)**, Note
F6134 Words in Sch. 16 para. 4(2) substituted (with effect in accordance with s. 137(2)(3) of the amending Act) by Finance Act 1996 (c. 8). Sch. 23 para. 11(a)
F6135 Words in Sch. 16 para. 4(2) substituted (with effect in accordance with s. 137(2)(3) of the amending Act) by Finance Act 1996 (c. 8). Sch. 23 para. 11(b)
F6136 Sch. 16 para. 4(3) repealed (with effect in accordance with s. 91(5) of the repealing Act) by Finance Act 1999 (c. 16), s. 91(2)(b), **Sch. 20 Pt. 3(19)**, Note

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Set-off of income tax borne on company income against tax payable

5 (1) Where in any accounting period a company receives any payment on which it bears income tax by deduction the company may claim to have the income tax thereon set against any income tax which it is liable to pay under this Schedule in respect of payments made by it in that period.

(2) Any such claim shall be included in a return made under paragraph 2 above for the accounting period in question and (where necessary) income tax paid by the company under this Schedule for that accounting period and before the claim is allowed shall be repaid accordingly.

Modifications etc. (not altering text)

C998 Sch. 16 para. 5 restricted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 4(1)(2)**

C999 Sch. 16 para. 5 restricted (with effect in accordance with s. 105(1) of the affecting Act) by Finance Act 1996 (c. 8), **s. 91(1)(7)** (with Schs. 10, 11, 15)

C1000 *See* s.341—*payments of interest between related companies.*

6 (1) Where a claim has been made under paragraph 5 above no proceedings for collecting tax which would fall to be discharged if the claim were allowed shall be instituted pending the final determination of the claim, but this sub-paragraph shall not affect the date when the tax is due.

(2) When the claim is finally determined any tax underpaid in consequence of sub-paragraph (1) above shall be paid.

(3) Where proceedings are instituted for collecting tax assessed, or interest on tax assessed, under any provision of paragraph 4 above, effect shall not be given to any claim made after the institution of the proceedings so as to affect or delay the collection or recovery of the tax charged by the assessment or of interest thereon, until the claim has been finally determined.

(4) When the claim is finally determined any tax overpaid in consequence of sub-paragraph (3) above shall be repaid.

(5) References in this paragraph to proceedings for the collection of tax include references to proceedings by way of distraint or **[**F6137attachment**]**.

Textual Amendments

F6137 Words in Sch. 16 para. 6(5) substituted (S.) (30.12.2002) by Debt Arrangement and Attachment (Scotland) Act 2002 (asp17), s. 64(2), sch. 3 para. 19

7 Income tax set against other tax under paragraph 5 above shall be treated as paid or repaid, as the case may be, and the same tax shall not be taken into account both under this Schedule and under section 7(2).

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Amended return where company becomes aware of an error

7A (1) If a company becomes aware—

(a) that anything which ought to have been included in a return made by it under this Schedule for any period has not been so included,

(b) that anything which ought not to have been included in a return made by it under this Schedule for any period has been so included, or

(c) that any other error has occurred in a return made by it under this Schedule for any period,

it shall forthwith supply to the collector an amended return for that period.

(2) The duty imposed by sub-paragraph (1) above is without prejudice to any duty that may also arise under paragraph 7A of Schedule 13.

(3) Where an amended return is supplied under this paragraph, all such assessments, adjustments, set-offs or payments or repayments of tax shall be made as may be required for securing that the resulting liabilities to tax (including interest on unpaid or overpaid tax) whether of the company or any other person are the same as they would have been if a correct return had been made.

Items included in error

8 Where any item has been included in a return or claim under this Schedule as a relevant payment but **[**F6138should not have been so included**]**, **[**F6139an officer of the Board**]** may make such assessments, adjustments or set-offs as may be required for securing that the resulting liabilities to tax (including interest on unpaid tax) whether of the company or of any other person are the same as they would have been if the item had **[**F6140not been included in the return or claim in question**]**.

Textual Amendments

F6138 Words in Sch. 16 para. 8 substituted (with effect in accordance with s. 91(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 91(3)(a)**

F6139 Words in Sch. 16 para. 8 substituted (with effect in accordance with s. 137(2)(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 23 para. 13**

F6140 Words in Sch. 16 para. 8 substituted (with effect in accordance with s. 91(5) of the amending Act) by Finance Act 1999 (c. 16), **s. 91(3)(b)**

Relevant payment made otherwise than in accounting period

9 Where a company makes a relevant payment on a date which does not fall within an accounting period the company shall make a return of that payment within 14 days from that date, and the income tax for which the company is accountable in respect of that payment shall be due at the time by which the return is to be made.

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Assessments and due date of tax

10 (1) All the provisions of the Income Tax Acts as to the time within which an assessment may be made, so far as they refer or relate to the year of assessment for which an assessment is made, or the year to which an assessment relates, shall apply in relation to any assessment under this Schedule notwithstanding that, under this Schedule, the assessment may be said to relate to a quarter or other period which is not a year of assessment, and the provisions of **[**[F6141]section 36**]** of the Management Act as to the circumstances in which an assessment may be made out of time shall apply accordingly on the footing that any such assessment relates to the year of assessment in which the quarter or other period ends.

(2) Income tax assessed on a company under this Schedule shall be due within 14 days after the issue of the notice of assessment (unless due earlier under paragraph 4(1) or 9 above).

(3) Sub-paragraph (2) above has effect subject to any appeal against the assessment, but no such appeal shall affect the date when tax is due under paragraph 4(1) or 9 above.

(4) On the determination of an appeal against an assessment under this Schedule any tax overpaid shall be repaid.

(5) Any tax assessable under any one or more of the provisions of this Schedule may be included in one assessment if the tax so included is all due on the same date.

Textual Amendments

F6141 1989 s.149(3)(d)—*not to affect the making of assessments before* 1983-84*or for accounting periods ending before* 1*April* 1983.*Previously*
"sections 36 and 37".

Saving

11 Nothing in paragraphs 1 to 10 above shall be taken to prejudice any powers conferred by the Income Tax Acts for the recovery of income tax by means of an assessment or otherwise; and any assessment in respect of tax payable under paragraph 9 above shall be treated for the purposes of the provisions mentioned in paragraph 10(1) above as relating to the year of assessment in which the payment is made.

SCHEDULE 17

Section 404.

[M1288]DUAL RESIDENT INVESTING COMPANIES

Marginal Citations

M1288 Source—1987 (No.2) Sch.4

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PART I

DIVISION OF ACCOUNTING PERIODS COVERING 1ST APRIL 1987

1 (1) This Part of this Schedule has effect in the circumstances set out in section 404(3)(a).

(2) In this Part of this Schedule—

(a) "the straddling period" means the accounting period of the dual resident investing company which begins before and ends on or after 1st April 1987; and

(b) "dual resident investing company" has the same meaning as in section 404.

(3) It shall be assumed for the purposes of this Chapter (except section 404(3) to (6)) and Part II of this Schedule—

(a) that an accounting period of the company ends on 31st March 1987; and

(b) that a new accounting period begins on 1st April 1987, the new accounting period to end with the end of the straddling period.

(4) In this Part of this Schedule "the component accounting periods" means the two accounting periods referred to in sub-paragraph (3) above.

2 Subject to paragraph 5 below, for the purposes referred to in paragraph 1(3) above, the losses and other amounts of the straddling period of a dual resident investing company, excluding any such excess of charges on income as is referred to in section 403(7), shall be apportioned to the component accounting periods on a time basis according to their lengths.

3 If, in the straddling period of a dual resident investing company, the company has paid any amount by way of charges on income, then, for the purposes referred to in paragraph 1(3) above, the excess of that amount referred to in section 403(7) shall be apportioned to the component accounting periods—

(a) according to the dates on which, subject to paragraph 6 below, the interest or other payments giving rise to those charges were paid (or were treated as paid for the purposes of section 338); and

(b) in proportion to the amounts of interest or other payments paid (or treated as paid) on those dates.

PART II

EARLY PAYMENTS OF INTEREST ETC. AND CHARGES ON INCOME

Interpretation

4 In this Part of this Schedule—

(a) a "1986 accounting period" means an accounting period which begins or ends (or begins and ends) in the financial year 1986;

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(b) a "post-1986 accounting period" means an accounting period which begins on or after 1st April 1987; and

(c) "dual resident investing company" has the same meaning as in section 404.

Early payment of interest etc.

5 (1) If the conditions in sub-paragraph (2) or (3) below are fulfilled and if the Board so direct, this paragraph applies in relation to a 1986 accounting period of a dual resident investing company.

(2) The conditions in this sub-paragraph are applicable only if the company is carrying on a trade in the 1986 accounting period, and those conditions are—

(a) that in that accounting period the company has incurred a loss, computed as for the purposes of section 393(2), in carrying on that trade; and

(b) that in that period the company has made a payment falling within section 404(6)(a)(iii); and

(c) that the payment referred to in paragraph (b) above either did not fall due in that period or would not have fallen due in that period but for the making, on or after 5th December 1986, of arrangements varying the due date for payment.

(3) The conditions in this sub-paragraph are applicable only if the company is an investment company in the 1986 accounting period, and those conditions are—

(a) that for that accounting period the company has (apart from this paragraph) such an excess as is referred to in section 403(4); and

(b) that one or more of the sums which for that accounting period may be deducted as expenses of management under section 75(1) either did not fall due in that period or would not have fallen due in that period but for the making, on or after 5th December 1986, of arrangements varying the due date for payment.

(4) The Board shall not give a direction under this paragraph with respect to a 1986 accounting period of a dual resident investing company unless it appears to the Board that the sole or main benefit that might be expected to accrue from the early payment or, as the case may be, from the arrangements was that (apart from this paragraph) the company would, for that period, have an amount or, as the case may be, a larger amount available for surrender by way of group relief.

(5) If this paragraph applies in relation to a 1986 accounting period of a dual resident investing company which is carrying on a trade then, for the purposes of this Chapter and, where appropriate, any apportionment under paragraph 2 above—

(a) the loss (if any) of the company for that period shall be computed (as mentioned in section 403(1)) as if any payment falling within sub-paragraph (2)(b) above had not been made in that period; and

(b) the loss (if any) of the company for its first post-1986 accounting period shall be computed as if any such payment were made in that period.

(6) If this paragraph applies in relation to a 1986 accounting period of a dual resident investing company which is an investment company, then, for the purposes referred to in sub-paragraph (5) above—

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(a) the amount which may be deducted as expenses of management for that period, as mentioned in section 403(4), shall be computed as if any sum falling within sub-paragraph (3)(b) above had not been disbursed; and

(b) the amount which may be so deducted as expenses of management for the first of the company's post-1986 accounting periods shall be computed as if any such sum were disbursed in that period.

Early payment of charges on income

6 (1) If, in the case of a dual resident investing company, either of the following conditions is fulfilled—

(a) that any interest or other payment which is, or is treated as, a charge on income falls due in a post-1986 accounting period but is paid (or treated for the purposes of section 338 as paid) in a 1986 accounting period, or

(b) that, on or after 5th December 1986, arrangements have been made such that any such interest or other payment which, but for the arrangements, would have fallen due in a post-1986 accounting period, fell due in a 1986 accounting period,

the interest or other payment shall, if the Board so direct, be treated for the purposes of this Chapter and, where appropriate, paragraph 3 above as paid in the post-1986 accounting period referred to in paragraph (a) or, as the case may be, paragraph (b) above.

(2) The Board shall not give a direction under this paragraph unless it appears to them that the sole or main benefit that might be expected to accrue from the early payment or, as the case may be, from the arrangements was that (apart from the direction) the interest or other payment would be attributed or apportioned to a 1986 accounting period rather than a post-1986 accounting period, so that, for the 1986 accounting period, the dual resident investing company would have an amount or, as the case may be, a larger amount available for surrender by way of group relief.

Appeals

7 Notice of the giving of a direction under paragraph 5 or 6 above shall be given to the dual resident investing company concerned; and any company to which such a notice is given may, by giving notice of appeal to the Board within 60 days of the date of the notice given to the company, appeal to the Special Commissioners against the direction on either or both of the following grounds—

(a) that the conditions applicable to the company under paragraph 5(2) or (3) above are not fulfilled or, as the case may be, that neither of the conditions in paragraph 6(1) above is fulfilled;

(b) that the sole or main benefit that might be expected to accrue from the early payment or, as the case may be, the arrangements was not that stated in paragraph 5(4) or, as the case may be, paragraph 6(2) above.

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PART III

GENERAL

8 (1) Parts I and II of this Schedule have effect in priority to section 409 and, accordingly, each of the component accounting periods resulting from the operation of Part I of this Schedule shall be regarded as a true accounting period for the purposes of that section.

(2) References in this Schedule to this Chapter do not include any provision of this Schedule.

F6142F6142[F6143SCHEDULE 17A]

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Textual Amendments

F6142 Sch. 17A repealed and replaced (with effect in accordance with Sch. 27 Pt. 3(28) Note of the repealing Act) by Finance Act 1998 (c. 36), s. 117(1)(c), Sch. 18, **Sch. 27 Pt. 3(28)**

F6143 Sch. 17A inserted (with effect in accordance with s. 100(4) of the amending Act) by Finance Act 1990 (c. 29), s. 100(3), **Sch. 15**; S.I. 1992/3066, **art. 2(2)(b)**

SCHEDULE 18

Section 413(10).

M1289 GROUP RELIEF: EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION F6144

Textual Amendments

F6144 *See*—s.240(13)—*application of* Sch.18*for purposes of* s.240—*set-off of surplus ACT.*s.247(9A)—*application of* Sch.18*for purposes of.*s.247(8A), (9)(c)—*dividends etc. paid by one member of a group to another.*s.769(6C)—*application of* Sch.18*for purposes of.*s.769(6B)—*rules for ascertaining change in ownership of company.*1990 s.32(12)—*application of* Sch.18*for relief for disposal of shares to employee share ownership trusts.*

Modifications etc. (not altering text)

C1001 Sch. 18 applied (E.W.S) (16.1.1992) by S.I. 1992/58, **art. 35(5)**
Sch. 18 applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 170(8)**, 289 (with ss. 60, 101(1), 171, 201(3))
Sch. 18 applied (with modifications) (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 228(10)**, 289 (with ss. 60, 101(1), 171, 201(3))

C1002 Sch. 18 applied by Finance Act 1930 (c. 28), **s. 42(5)** (as added (with effect in accordance with s. 123(7) of the 2000 amending Act) by Finance Act 2000 (c. 17), **s. 123(6)**)

C1003 Sch. 18 applied (with effect in accordance with s. 98(2) of the affecting Act) by Finance Act 2000 (c. 17), **Sch. 28 para. 5(4)**

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C1004 Sch. 18 applied (with modifications) by Taxation of Chargeable Gains Act 1992 (c. 12), **Sch. 7AC para. 8(2)** (as inserted (with application in accordance with s. 44(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 8 para. 1**)

C1005 Sch. 18 applied (with modifications) (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 53**

C1006 Sch. 18 applied (with effect in accordance with s. 31 of the affecting Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 3 para. 10(5)**

C1007 Sch. 18 applied (with effect in accordance with Sch. 10 para. 2 of the affecting Act) by Finance Act 2006 (c. 25), **Sch. 10 para. 15(5)(6)**

C1008 Sch. 18 modified (1.4.2009 with effect in accordance with s. 1329(1) of the modifying Act) by Corporation Tax Act 2009 (c. 4), **s. 519(3)** (with Sch. 2 Pts. 1, 2, paras. 73-75)

C1009 Sch. 18 applied (with modifications) (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 772** (with Sch. 2 Pts. 1, 2)

Marginal Citations

M128 Source—1973 Sch. 12 Pt. I; 1973 s. 32(6); 1987 Sch. 15 5

1 (1) For the purposes of **[**F6145sections 403C and 413(7)**]** and this Schedule, an equity holder of a company is any person who—

(a) holds ordinary shares in the company, or

(b) is a loan creditor of the company in respect of a loan which is not a normal commercial loan,

and any reference in that section to profits or assets available for distribution to a company's equity holders does not include a reference to any profits or assets available for distribution to any equity holder otherwise than as an equity holder.

(2) For the purposes of sub-paragraph (1)(a) above "ordinary shares" means all shares other than fixed-rate preference shares.

(3) In this Schedule "fixed-rate preference shares" means shares which—

(a) are issued for consideration which is or includes new consideration; and

[F6146(b) do not carry any right either to conversion into shares or securities of any other description except—

(i) shares to which sub-paragraph (5A) below applies,

(ii) securities to which sub-paragraph (5B) below applies, or

(iii) shares or securities in the company's quoted parent company,

or to the acquisition of any additional shares or securities;**]** and

(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and

(ii) represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares; and

(d) on repayment do not carry any rights to an amount exceeding that new consideration except in so far as those rights are reasonably comparable with those general for fixed dividend shares listed **[**F6147on a recognised stock exchange**]**.

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(4) Subsection (7) of section 417 shall apply for the purposes of sub-paragraph (1)(b) above as it applies for the purposes of Part XI, but with the omission of the reference to subsection (9) of that section.

(5) In sub-paragraph (1)(b) above "normal commercial loan" means a loan of or including new consideration and—

[F6148(a) which does not carry any right either to conversion into shares or securities of any other description except—

(i) shares to which sub-paragraph (5A) below applies,

(ii) securities to which sub-paragraph (5B) below applies, or

(iii) shares or securities in the company's quoted parent company,

or to the acquisition of any additional shares or securities;**]** and

(b) which does not entitle that loan creditor to any amount by way of interest which depends to any extent on the results of the company's business or any part of it or on the value of any of the company's assets or which exceeds a reasonable commercial return on the new consideration lent; and

(c) in respect of which the loan creditor is entitled, on repayment, to an amount which either does not exceed the new consideration lent or is reasonably comparable with the amount generally repayable (in respect of an equal amount of new consideration) under the terms of issue of securities listed **[**F6147on a recognised stock exchange**]**.

[F6149(5A) This sub-paragraph applies to any shares which—

(a) satisfy the requirements of sub-paragraph (3)(a), (c) and (d) above, and

(b) do not carry any rights either to conversion into shares or securities of any other description, except shares or securities in the company's quoted parent company, or to the acquisition of any additional shares or securities.

(5B) This sub-paragraph applies to any securities representing a loan of or including new consideration and—

(a) which satisfies the requirements of sub-paragraph (5)(b) and (c) above, and

(b) which does not carry any such rights as are mentioned in sub-paragraph (5A)(b) above.

(5C) For the purposes of sub-paragraphs (3) and (5) to (5B) above a company ("the parent company") is another company's "quoted parent company" if and only if—

(a) the other company is a 75 per cent. subsidiary of the parent company,

(b) the parent company is not a 75 per cent. subsidiary of any company, and

(c) the parent company's ordinary shares (or, if its ordinary share capital is divided into two or more classes, its ordinary shares of each class) are **[**F6150listed**]** on a recognised stock exchange or dealt in on the Unlisted Securities Market;

and in this sub-paragraph "ordinary shares" means shares forming part of ordinary share capital.

(5D) In the application of sub-paragraphs (3) and (5) to (5B) above in determining for the purposes of sub-paragraph (5C)(a) above who are the equity holders of the other company (and, accordingly, whether section 413(7) prevents the other company from being treated as a 75 per cent. subsidiary of the parent company for the purposes of sub-paragraph (5C)(a)), it shall be assumed that the parent company is for the

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purposes of sub-paragraphs (3) and (5) to (5B) above the other company's quoted parent company.**]**

[F6151(5E) For the purposes of sub-paragraph (5)(b) above, the amount to which the loan creditor is entitled by way of interest—

(a) shall not be treated as depending to any extent on the results of the company's business or any part of it by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the results of the company's business or any part of it improving **[**F6152, or for the rate of interest to be increased in the event of the results of the company's business or any part of it deteriorating**]** , and

(b) shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan provide for the rate of interest to be reduced in the event of the value of any of the company's assets increasing **[**F6153, or for the rate of interest to be increased in the event of the value of any of the company's assets diminishing**]**.

(5F) Sub-paragraph (5H) below applies where—

(a) a person makes a loan to a company on the basis mentioned in sub-paragraph (5G) below for the purpose of facilitating the acquisition of land, and

(b) none of the land which the loan is used to acquire is acquired with a view to resale at a profit.

(5G) The basis referred to above is that—

(a) the whole of the loan is to be applied in the acquisition of land by the company or in meeting the incidental costs of obtaining the loan,

(b) the payment of any amount due in connection with the loan to the person making it is to be secured on the land which the loan is to be used to acquire, and

(c) no other security is to be required for the payment of any such amount.

(5H) For the purposes of sub-paragraph (5)(b) above, the amount to which the loan creditor is entitled by way of interest shall not be treated as depending to any extent on the value of any of the company's assets by reason only of the fact that the terms of the loan are such that the only way the loan creditor can enforce payment of an amount due is by exercising rights granted by way of security over the land which the loan is used to acquire.

(5I) In sub-paragraph (5G)(a) above the reference to the incidental costs of obtaining the loan is to any expenditure on fees, commissions, advertising, printing or other incidental matters wholly and exclusively incurred for the purpose of obtaining the loan or of providing security for it.**]**

(6) Notwithstanding anything in sub-paragraphs (1) to (5) above but subject to sub-paragraph (7) below, where—

(a) any person has, directly or indirectly, provided new consideration for any shares or securities in the company, and

(b) that person, or any person connected with him, uses for the purposes of his trade assets which belong to the company and in respect of which there is made to the company—

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(i) a first-year allowance within the meaning of **[**F6154Part 2 of the Capital Allowances Act**]** in respect of expenditure incurred by the company on the provision of **[**F6154plant or machinery**]**;

(ii) a writing-down allowance within the meaning of **[**F6154Part 2 of the Capital Allowances Act**]** in respect of expenditure incurred by the company on the provision of **[**F6154plant or machinery**]**; or

(iii) an allowance under section **[**F6155Chapter 3 of Part 6 of the Capital Allowances Act**]** in respect of expenditure incurred by the company on **[**F6156research and development (within the meaning of Part VII of that Act)**]**;

then, for the purposes of this Schedule, that person, and no other, shall be treated as being an equity holder in respect of those shares or securities and as being beneficially entitled to any distribution of profits or assets attributable to those shares or securities.

(7) In any case where sub-paragraph (6) above applies in relation to a bank in such circumstances that—

(a) the only new consideration provided by the bank as mentioned in paragraph (a) of that sub-paragraph is provided in the normal course of its banking business by way of a normal commercial loan as defined in sub-paragraph (5) above; and

(b) the cost to the company concerned of assets falling within paragraph (b) of that sub-paragraph which are used as mentioned in that paragraph by the bank or a person connected with the bank is less than the amount of that new consideration,

references in sub-paragraph (6) above, other than the reference in paragraph (a), to shares or securities in the company shall be construed as references to so much only of the loan referred to paragraph (a) above as is equal to the cost referred to in paragraph (b) above.

(8) In this paragraph "new consideration" has the same meaning as in section 254 and any question whether one person is connected with another shall be determined in accordance with section 839 .

Textual Amendments

F6145 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F6146 1989 s.101(2)*from* 27*July* 1989;*from* 14*March* 1989*for purposes of* subss. (1D)*and* (1E)*of* 1970 s.272.*Previously*
"(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities;".

F6147 Words in Sch. 18 para. 1(3)(d)(5)(c) substituted (with effect in accordance with Sch. 27 para. 6(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 5(2)** (with Sch. 27 para. 6(1))

F6148 1989 s.101(3)*from* 27*July* 1989;*from* 14*March*
for purposes of subss. (1D)*and* (1E)*of* 1970 s.272.*Previously*
"(a) which does not carry any right either to conversion into shares or securities of any other description or to the acquisition of additional shares or securities;".

F6149 1989 s.101(4)*from* 27*July* 1989;*from* 14*March* 1989*for purposes of* subss. (1D)*and* (1E)*of* 1970 s.272.

F6150 Word in Sch. 18 para 1(5C)(c) substituted (with effect in accordance with Sch. 38 para. 6(10) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(k)**

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F6151 Sch. 18 para. 1(5E)-(5I) inserted (1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), **s. 77(1)-(3)**
F6152 Words in Sch. 18 para. 1(5E)(a) inserted (with application in accordance with s. 86(2) of the amending Act) by Finance Act 2000 (c. 17), **s. 86(2)(a)**
F6153 Words in Sch. 18 para. 1(5E)(b) inserted (with application in accordance with **s. 86(2)** of the amending Act) (by Finance Act 2000 (c. 17), s. 86(2)(b)
F6154 Words in Sch. 18 para. 1(6)(b)(i)(ii) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 63(a)** (with Sch. 3)
F6155 Words in Sch. 18 para. 1(6)(b)(iii) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 63(b)** (with Sch. 3)
F6156 Words in Sch. 18 para 1(6)(b)(iii) substituted (with effect in accordance with s. 68(2) of the amending Act) by Finance Act 2000 (c.17), **Sch. 19 para. 6**

Modifications etc. (not altering text)
C1010 *See* 1990 s.32(12)(b).*Reference to* "section 413(7) to (9)" *to be construed as a reference to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*
C1011 Sch. 18 para. 1(5) applied (with modifications) (1.5.1995) by Finance Act 1993 (c. 34), **s. 153(11A)** (as inserted by Finance Act 1995 (c. 4), **Sch. 24 para 4(4)**)
C1012 *See* s.291(6)—para.1*applied for purposes of business expansion scheme.*

VALID FROM 21/07/2009

1A (1) This paragraph applies to a right to dividends carried by shares in a company if—
(a) the dividends represent no more than a reasonable commercial return on the new consideration received by the company in respect of the issue of the shares, and
(b) condition A, B or C is met.

(2) Condition A is that—
(a) the dividends are of a fixed amount or at a fixed rate per cent of the nominal value of the shares, and
(b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.

(3) Condition B is that—
(a) the dividends are of a rate per cent of the nominal value of the shares and the rate fluctuates in accordance with—
(i) a standard published rate of interest, or
(ii) the retail prices index, or any similar general index of prices which is published by the government, or by an agent of the government, of the country or territory in whose currency the shares are denominated, and
(b) the company is not entitled by virtue of any term subject to which the shares are issued or held to reduce the amount of, or not to pay, any of the dividends.

(4) Condition C is that condition A or B would be met but for sub-paragraph (2)(b) or (3)(b), and—

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(a) the company is only entitled to reduce the amount of, or not to pay, any of the dividends in relevant circumstances, or

(b) having regard to all the circumstances, it is reasonable to assume that the company is only likely to reduce the amount of, or not to pay, any of the dividends in relevant circumstances.

(5) For the purposes of sub-paragraph (4) a company reduces the amount of, or does not pay, dividends "in relevant circumstances" if—

(a) at the time the dividend is or would be payable, the company is in severe financial difficulties, or

(b) it does so for the purpose of following a recommendation of a relevant regulatory body.

(6) The Treasury may by order specify circumstances in which a company is to be treated as in severe financial difficulties for the purposes of sub-paragraph (5)(a).

(7) In sub-paragraph (5)(b) "relevant regulatory body" means—

(a) in relation to a dividend paid by a company that is authorised for the purposes of the Financial Services and Markets Act 2000, the Financial Services Authority, and

(b) in relation to a dividend paid by any other company, a body discharging functions in relation to the company under the law of a country or territory outside the United Kingdom that correspond to functions discharged by the Financial Services Authority in relation to a company authorised as mentioned in paragraph (a).

(8) In this paragraph "new consideration" has the same meaning as in section 254.

2 (1) Subject to the following provisions of this Schedule, for the purposes of **[**F6157sections 403C and 413(7)**]** the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company means the percentage to which the first company would be so entitled in the relevant accounting period on a distribution in money to those equity holders of—

(a) an amount of profits equal to the total profits of the other company which arise in that accounting period (whether or not any of those profits are in fact distributed); or

(b) if there are no profits of the other company in that accounting period, profits of £100;

and in the following provisions of this Schedule that distribution is referred to as "the profit distribution".

[F6158(1A) The total profits of a non-resident company arising in an accounting period shall be determined for the purposes of sub-paragraph (1)(a) above as if it were resident in the United Kingdom in that accounting period.**]**

(2) For the purposes of the profit distribution, it shall be assumed that no payment is made by way of repayment of share capital or of the principal secured by any loan unless that payment is a distribution.

(3) Subject to sub-paragraph (2) above, where an equity holder is entitled as such to a payment of any description which, apart from this sub-paragraph, would not be

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treated as a distribution, it shall nevertheless be treated as an amount to which he is entitled on the profit distribution.

Textual Amendments

F6157 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F6158 Sch. 18 para. 2(1A) inserted (with effect in accordance with Sch. 27 para. 6(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 5(3)** (with Sch. 27 para. 6(1))

Modifications etc. (not altering text)

C1013 *See* 1990 s.32(12)(b).*Reference to* "section 413(7) to 9" *to be construed as a reference to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

3 (1) Subject to the following provisions of this Schedule, for the purposes of **[**[F6159]sections 403C and 413(7)**]** the percentage to which one company would be beneficially entitled of any assets of another company available for distribution to its equity holders on a winding-up means the percentage to which the first company would be so entitled if the other company were to be wound up and on that winding-up the value of the assets available for distribution to its equity holders (that is to say, after deducting any liabilities to other persons) were equal to—

(a) the excess, if any, of the total amount of the assets of the company, as shown in the balance sheet relating to its affairs as at the end of the relevant accounting period, over the total amount of those of its liabilities as so shown which are not liabilities to equity holders as such; or

(b) if there is no such excess or if the company's balance sheet is prepared to a date other than the end of the relevant accounting period, £100.

(2) In the following provisions of this Schedule a winding-up on the basis specified in sub-paragraph (1) above is referred to as "the notional winding-up".

(3) If, on the notional winding-up, an equity holder would be entitled as such to an amount of assets of any description which, apart from this sub-paragraph, would not be treated as a distribution of assets, it shall nevertheless be treated, subject to sub-paragraph (4) below, as an amount to which the equity holder is entitled on the distribution of assets on the notional winding up.

(4) If an amount ("the returned amount") which corresponds to the whole or any part of the new consideration provided by an equity holder of a company for any shares or securities in respect of which he is an equity holder is applied by the company, directly or indirectly, in the making of a loan to, or in the acquisition of any shares or securities in, the equity holder or any person connected with him, then, for the purposes of this Schedule—

(a) the total amount referred to in sub-paragraph (1)(a) above shall be taken to be reduced by a sum equal to the returned amount; and

(b) the amount of assets to which the equity holder is beneficially entitled on the notional winding-up shall be taken to be reduced by a sum equal to the returned amount.

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(5) In sub-paragraph (4) above "new consideration" has the same meaning as in section 254 and any question whether one person is connected with another shall be determined in accordance with section 839 .

Textual Amendments

F6159 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

Modifications etc. (not altering text)

C1014 *See* 1990 s.32(13)(b).*Reference to* "section 413(7) to 9" *to be construed as a reference to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C1015 *See* s.291(6)—para.3*applied for purposes of business expansion scheme.*

4 (1) This paragraph applies if any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are wholly or partly limited by reference to a specified amount or amounts (whether the limitation takes the form of the capital by reference to which a distribution is calculated or operates by reference to an amount of profits or otherwise).

(2) Where this paragraph applies there shall be determined—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if, to the extent that they are limited as mentioned in sub-paragraph (1) above, the rights of every equity holder falling within that sub-paragraph (including the first company concerned if it is such an equity holder) had been waived.

(3) If, on the profit distribution, the percentage of profits determined as mentioned in sub-paragraph (2)(a) above is less than the percentage of profits determined under paragraph 2(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of **[**F6160sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) If, on the notional winding-up, the percentage of assets determined as mentioned in sub-paragraph (2)(b) above is less than the percentage of assets determined under paragraph 3(1) above without regard to that sub-paragraph, the lesser percentage shall be taken for the purposes of **[**F6160sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

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[F6161(5) In determining in a case in which paragraph 5F below applies whether any rights in respect of dividend or interest or assets on a winding-up are limited as mentioned in sub-paragraph (1) above, the limitations so mentioned shall be treated as not including so much of any limitation as has effect as mentioned in sub-paragraph (2) of that paragraph.**]**

Textual Amendments

F6160 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F6161 Sch. 18 para. 4(5) inserted (with effect in accordance with Sch. 27 para 6(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 5(4)** (with Sch. 27 para. 6(1))

Modifications etc. (not altering text)

C1016 *See* 1990 s.32(12)(b).*References to* "section 413(7) to (9)" *construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C1017 *See* 1990 s.32(12)(b).*References to* "section 413(7) to (9)" *construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

F6162 5 (1) This paragraph applies if, at any time in the relevant accounting period, any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up,

holds, as such an equity holder, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which are of such a nature (as, for example, if any shares will cease to carry a right to a dividend at a future time) that if the profit distribution or the notional winding-up were to take place in a different accounting period the percentage to which, in accordance with paragraphs 1 to 4 above, that equity holder would be entitled of profits on the profit distribution or of assets on the notional winding-up would be different from the percentage determined in the relevant accounting period.

(2) Where this paragraph applies, there shall be determined—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if the rights of the equity holders in the relevant accounting period were the same as they would be in the different accounting period referred to in sub-paragraph (1) above.

(3) If in the relevant accounting period an equity holder holds, as such, any shares or securities in respect of which arrangements exist by virtue of which, in that or any subsequent accounting period, the equity holder's entitlement to profits on the profit distribution or to assets on the notional winding-up could be different as compared

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with his entitlement if effect were not given to the arrangements, then for the purposes of this paragraph—

(a) it shall be assumed that effect would be given to those arrangements in a later accounting period, and

(b) those shares or securities shall be treated as though any variation in the equity holder's entitlement to profits or assets resulting from giving effect to the arrangements were the result of the operation of such rights attaching to the shares or securities as are referred to in sub-paragraph (1) above.

In this sub-paragraph "arrangements" means arrangements of any kind whether in writing or not.

(4) Sub-paragraph (3) and (4) of paragraph 4 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph and, accordingly, references therein to sub-paragraphs (2)(a) and (2)(b) of that paragraph shall be construed as references to sub-paragraphs (2)(a) and (2)(b) of this paragraph.

Textual Amendments

F6162 Sch. 18 para. 5A substituted (16.7.1992 or as mentioned in Sch. 6 para. 6 of the amending Act) for para. 5(5) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras.1, **6**

[[F6163]5A(1) In a case where paragraphs 4 and 5 above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 4(2) above;

(b) the basis specified in paragraph 5(2) above;

(c) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above taken together;

(d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2) and 5(2) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of **[**[F6164]sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of **[**[F6164]sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.**]**

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Textual Amendments

F6163 Sch. 18 para. 5A substituted (16.7.1992 or as mentioned in Sch. 6 para. 6 of the amending Act) for para. 5(5) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras.1, **6**

F6164 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

[F6165**5B** (1) This paragraph applies if, at any time in the relevant accounting period, option arrangements exist; and option arrangements are arrangements of any kind (whether in writing or not) as regards which the two conditions set out below are fulfilled.

(2) The first condition is that the arrangements are ones by virtue of which there could be a variation in—

(a) the percentage of profits to which any of the equity holders is entitled on the profit distribution, or

(b) the percentage of assets to which any of the equity holders is entitled on the notional winding-up.

(3) The second condition is that, under the arrangements, the variation could result from the exercise of any of the following rights (option rights)—

(a) a right to acquire shares or securities in the second company referred to in paragraphs 2(1) and 3(1) above;

(b) a right to require a person to acquire shares or securities in that company.

(4) For the purposes of sub-paragraph (3) above—

(a) it is immaterial whether or not the shares or securities were issued before the arrangements came into existence;

(b) "shares" does not include fixed-rate preference shares;

(c) "securities" does not include normal commercial loans (within the meaning given by paragraph 1(5) above);

(d) "right" does not include a right of an individual to acquire shares, if the right was obtained by reason of his office or employment as a director or employee of the company and in accordance with the provisions of a share option scheme **[**F6166which was approved**]** at the time it was obtained.

[In sub-paragraph (4)(d) above—

F6167(4A)

"share option scheme" means—

(a) an SAYE option scheme within the meaning of the SAYE code (see section 516(4) of ITEPA 2003 (approved SAYE option schemes)), or

(b) a CSOP scheme within the meaning of the CSOP code (see section 521(4) of that Act (approved CSOP schemes)); and

"approved" means—

(a) in relation to an SAYE option scheme, approved under Schedule 3 to that Act (approved SAYE option schemes), and

(b) in relation to a CSOP scheme, approved under Schedule 4 to that Act (approved CSOP schemes).**]**

(5) As regards each point in time when option arrangements exist in the relevant accounting period—

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(a) there shall be taken each possible state of affairs that could then subsist if the outstanding option rights, or any of them or any combination of them, became effective at that point, and

(b) taking each such state of affairs, it shall be assumed that the rights and duties of the equity holders in the relevant accounting period were to be found accordingly.

(6) The following rules shall have effect—

(a) for the purposes of sub-paragraph (5) above outstanding option rights are all such option rights under the arrangements (or sets of arrangements if more than one) as exist at the point in time concerned but have not become effective at or before that point;

(b) for the purpose of applying sub-paragraph (5) above it is immaterial whether or not the rights are exercisable at or before the point in time concerned and it is immaterial whether or not they are capable of becoming effective at or before that point;

(c) for the purposes of sub-paragraph (5) above and this sub-paragraph an option right becomes effective when the shares or securities to which it relates are acquired in pursuance of it.

(7) The determination mentioned in sub-paragraph (8) below shall be made as regards each point in time when option arrangements exist in the relevant accounting period; and for each such point in time a separate determination shall be made for each of the possible states of affairs mentioned in sub-paragraph (5) above.

(8) The determination is a determination of—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

if the rights and duties of the equity holders in the relevant accounting period were found as mentioned in sub-paragraph (5) above.

(9) Where different determinations yield different percentages of profits and different percentages of assets, only one determination of each percentage (yielding the lowest figure) shall be treated as having been made.

(10) Sub-paragraphs (3) and (4) of paragraph 4 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph and, accordingly, references there to sub-paragraphs (2)(a) and (2)(b) of that paragraph shall be construed as references to sub-paragraphs (8)(a) and (8)(b) of this paragraph.**]**

Textual Amendments

F6165 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F6166 Words in Sch. 18 para. 5B(4)(d) substituted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 121(2)** (with Sch. 7)

F6167 Sch. 18 para. 5B(4A) inserted (6.4.2003 with effect in accordance with s. 723(1) of the amending Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 6 para. 121(3)** (with Sch. 7)

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Modifications etc. (not altering text)

C1018 Sch. 18 para. 5B excluded (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17(2)**

C1019 Sch. 18 para. 5B excluded (19.9.1994) by Coal Industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 16** (with s. 40(7)); S.I. 1994/2189, art. 2, **Sch.**

C1020 Sch. 18 para. 5B excluded (19.7.1995) by Crown Agents Act 1995 (c. 24), **s. 7(2)**

C1021 Sch. 18 para. 5B excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 8(2)**

C1022 Sch. 18 para. 5B excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 20(2)** (with s. 43)

F6168 5C (1) In a case where paragraphs 4 and 5B above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 4(2) above;

(b) the basis specified in paragraph 5B(8) above;

(c) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5B(8) above taken together;

(d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2) and 5B(8) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of **[**[F6169] sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of **[**[F6169] sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.

Textual Amendments

F6168 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F6169 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

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F6170 5D (1) In a case where paragraphs 5 and 5B above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 5(2) above;

(b) the basis specified in paragraph 5B(8) above;

(c) the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above taken together;

(d) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 5(2) and 5B(8) above.

(3) The lowest of the four percentages of profits so determined shall be taken for the purposes of **[**F6171 sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the four percentages of assets so determined shall be taken for the purposes of **[**F6171 sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.

Textual Amendments

F6170 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F6171 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F6172 5E (1) In a case where paragraphs 4 and 5 and 5B above apply, each of the following percentages, namely—

(a) the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled, and

(b) the percentage of assets to which, on the notional winding-up, the first company referred to in paragraph 3(1) above would be entitled,

shall be determined on each of the different bases set out in sub-paragraph (2) below.

(2) The bases are—

(a) the basis specified in paragraph 4(2) above;

(b) the basis specified in paragraph 5(2) above;

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(c) the basis specified in paragraph 5B(8) above;

(d) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above taken together;

(e) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5B(8) above taken together;

(f) the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above taken together;

(g) the basis specified in paragraph 4(2) above and the basis specified in paragraph 5(2) above and the basis specified in paragraph 5B(8) above all taken together;

(h) the basis specified in paragraph 2(1) or 3(1) above (according to the percentage concerned) without regard to paragraphs 4(2), 5(2) and 5B(8) above.

(3) The lowest of the eight percentages of profits so determined shall be taken for the purposes of **[**[F6173]sections 403C and 413(7)**]** to be the percentage of profits to which, on the profit distribution, the first company referred to in paragraph 2(1) above would be entitled as mentioned in that paragraph.

(4) The lowest of the eight percentages of assets so determined shall be taken for the purposes of **[**[F6173]sections 403C and 413(7)**]** to be the percentage to which, on the notional winding-up, the first company mentioned in paragraph 3(1) above would be entitled of any assets of the other company available for distribution to its equity holders on a winding-up.

(5) For the purposes of this paragraph the basis specified in paragraph 5B(8) above is such basis as gives the percentage of profits arrived at by virtue of paragraph 5B(9) above or (as the case may be) such basis as gives the percentage of assets arrived at by virtue of paragraph 5B(9) above.

Textual Amendments

F6172 Sch. 18 paras. 5B-5E inserted (16.7.1992 with application where the option arrangements are made on or after 15.11.1991) by Finance (No. 2) Act 1992 (c. 48), s. 24, Sch. 6 paras. 2, **7**

F6173 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

5F (1) This paragraph has effect, in the cases specified in sub-paragraphs (2) and (3) below, for the following purposes ("the relevant purposes")—

(a) the determination, in a case where the surrendering company or the claimant company is a non-resident company, of whether that company is a 75 per cent. or a 90 per cent. subsidiary of another company;

(b) the determination of a member's share in a consortium in any case where the surrendering company or the claimant company is a non-resident company owned by the consortium.

(2) The first case in which this paragraph applies is where any of the equity holders—

(a) to whom the profit distribution is made, or

(b) who is entitled to participate in the notional winding-up of that company,

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holds, as such an equity holder of the non-resident company, any shares or securities which carry rights in respect of dividend or interest or assets on a winding-up which have effect wholly or partly by reference to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(3) The second case in which this paragraph applies is where—

(a) option arrangements (within the meaning of paragraph 5B above) exist at any time in the relevant accounting period; and

(b) the percentage which, in any of the states of affairs referred to in sub-paragraph (5) of that paragraph, is—

(i) the percentage of profits to which any of the equity holders of the non-resident company would be entitled on the profit distribution, or

(ii) the percentage of assets to which any of the equity holders of that company would be entitled on the notional winding-up,

would differ, at any of the times so referred to, according to whether or not, or to what extent, the profits or assets distributed are referable to the non-resident company's UK trade.

(4) If the percentage of profits to which, on the profit distribution, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 2(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(5) If the percentage of assets to which, on the notional winding-up, a particular equity holder would be taken for the relevant purposes to be entitled would be less if the determination under paragraph 3(1) above were made on the basis specified in sub-paragraph (7) below, then that shall be the basis used for the relevant purposes in the case of that equity holder.

(6) If the percentage that falls to be taken for any of the purposes of section 403C or section 413(7) would, under any of paragraphs 4 to 5E above, be the lower or lowest of a number of percentages determined on different bases—

(a) each of the percentages falling to be compared for the purposes of that paragraph shall be determined both—

(i) on the basis specified in sub-paragraph (7) below, and

(ii) without making the assumption required for a determination on that basis;

and

(b) the comparison required by that paragraph, so far as made for the relevant purposes, shall be made using, in the case of each of the percentages to be compared, only the lower of the percentages determined under paragraph (a) above.

(7) That basis is the assumption—

(a) that the profit distribution or the distribution on the notional winding-up is confined to a distribution of profits or assets that are referable to the non-resident company's UK trade; and

(b) that the amount of the distribution does not exceed whichever is the greater of £100 and the following amount—

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(i) in the case of a profit distribution, the amount (if any) of so much of the company's chargeable profits for the relevant accounting period as is referable to its UK trade; and

(ii) in the case of a distribution on a notional winding-up, its net UK assets;

and

(c) that none of the ordinary equity holders has an entitlement to a proportion of the profits or assets mentioned in paragraph (a) above that is any greater than the proportion of the distribution to which he would be entitled if—

(i) the assumptions specified in paragraphs (a) and (b) above were disregarded; but

(ii) it were assumed, where it is less, that the distribution is equal to £100.

(8) In sub-paragraph (7) above—

"net UK assets", in relation to a non-resident company, means the excess, if any, of the total amount of the assets of the company that are referable to its UK trade (as shown in the relevant balance sheet), over the total amount of those of its liabilities (as so shown) which are so referable and are not liabilities to equity holders as such; and

"ordinary equity holder" means any equity holder whose entitlement on the profit distribution or the distribution on the notional winding-up does not differ according to whether or not, or the extent to which, the profits or assets distributed are referable to the non-resident company's UK trade.

(9) In sub-paragraph (8) above "relevant balance sheet", in relation to a company, means any balance sheet relating to its affairs as at the end of the relevant accounting period.

(10) For the purposes of this paragraph profits, assets or liabilities of a non-resident company shall be taken to be referable to its UK trade to the extent only that they—

(a) are attributable to, or used for the purposes of, activities the income and gains from which are, or (were there any) would be, brought into account in computing the company's chargeable profits for any accounting period, and

(b) are not attributable to, or used for the purposes of, any activities which (within the meaning of section 403D) are made exempt from corporation tax for any accounting period by any double taxation arrangements.

6 For the purposes of **[**F6174sections 403C and 413(7)**]** and paragraphs 2 to **[**F6175 5F**]** above—

(a) the percentage to which one company is beneficially entitled of any profits available for distribution to the equity holders of another company, and

(b) the percentage to which one company would be beneficially entitled of any assets of another company on a winding-up,

means the percentage to which the first company is, or would be, so entitled either directly or through another body corporate or other bodies corporate or partly directly and partly through another body corporate or other bodies corporate.

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Textual Amendments

F6174 Words in Sch. 18 paras. 1(1), 2(1), 3(1), 4(3)(4), 5A(3)(4), 5C(3)(4), 5D(3)(4), 5E(3)(4), 6 substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(a)(5)**

F6175 Words in Sch. 18 para. 6 substituted (with effect in accordance with Sch. 27 para. 6(3)(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 5(6)** (with Sch. 27 para. 6(1))

Modifications etc. (not altering text)

C1023 *See* 1990 s.32(12)(b):*references to* "section 413(7) to (9)" *and to* section 413(7)*construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

7 (1) In this Schedule "the relevant accounting period" means—

(a) in a case falling within subsection (7) of section 413 , the accounting period current at the time in question; and

(b) in a case falling within **[**F6176section 403C**]**, the accounting period in relation to which the share in the consortium falls to be determined .

(2) For the purposes of this Schedule, a loan to a company shall be treated as a security, whether or not it is a secured loan, and, if it is a secured loan, regardless of the nature of the security.

Textual Amendments

F6176 Words in Sch. 18 para. 7(1)(b) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(4)(b)**

Modifications etc. (not altering text)

C1024 *See* 1990 s.32(12)(b):*references to* "section 413(7) to (9)" *and to* section 413(7)*construed as references to* 1990 s.31(4)*where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

C1025 *See* 1990 s.32(12)(d). Para 7(1)(b)*omitted where* Sch.18*applies to disposals of shares to employee share ownership trusts.*

VALID FROM 19/07/2006

SCHEDULE 18A

Section 403F

GROUP RELIEF: OVERSEAS LOSSES OF NON-RESIDENT COMPANIES

. . . . . .

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F6177F6177SCHEDULE 19

. . . . . .

Textual Amendments

F6177 Sch. 19 repealed by Finance Act 1989 (c. 26), ss. 103, 187, **Sch. 17 Pt. V**, Notes 1, 3

[F6182SCHEDULE 19AA

Section 431]

OVERSEAS LIFE ASSURANCE FUND

Textual Amendments

F6182 Sch. 19AA inserted (for accounting periods beginning on or after 1 January 1990) by Finance Act 1990 (c. 29), Sch.7 paras. 6, **10**

1 (1) This Schedule shall have effect for determining for the purposes of this Chapter the assets of a company which are the assets of its overseas life assurance fund.

(2) The Treasury may by order amend any of the following provisions of this Schedule **[**F6183(including any modification of any of those provisions made by paragraph 14A of Schedule 19AC)**]**.

Textual Amendments

F6183 Words in Sch. 19AA para. 1(2) inserted (with effect in accordance with Sch. 8 para. 55 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 33**

2 (1) Assets of a company at the end of a period of account which—

(a) were assets of the overseas life assurance fund at the end of the immediately preceding period of account, and

(b) are assets of the **[**F6184long-term insurance fund**]** of the company throughout the period,

shall be assets of the overseas life assurance fund throughout the period .

(2) Where in a period of account assets of a company which were assets of the overseas life assurance fund at the end of the immediately preceding period of account are disposed of by the company, or otherwise cease to be assets of the **[**F6184long-term insurance fund**]** of the company, they shall be assets of the overseas life assurance fund from the beginning of the period until they are disposed of or, as the case may be, they cease to be assets of the **[**F6184long-term insurance fund**]**.

(3) Where—

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(a) in any period of account assets are acquired by a company as assets of the **[**F6184long-term insurance fund**]** , or otherwise become assets of that fund,

(b) the assets are disposed of by the company, or otherwise cease to be assets of that fund, later in the same period,

(c) throughout the part of the period during which the assets are assets of the **[**F6184long-term insurance fund**]** they are **[**F6185assets within paragraph 5(5)(a) or**]** assets within paragraph 5(5)(c) below, and

(d) it is appropriate having regard to all the circumstances (including a comparison between the relationship of the value of the assets of the overseas life assurance fund and the liabilities of the overseas life assurance business and that of the value of the assets of the **[**F6184long-term insurance fund**]** and the liabilities of the company's **[**F6186long-term**]** business) that they be assets of the overseas life assurance fund,

they shall be assets of the overseas life assurance fund for the part of the period during which they are assets of the **[**F6184long-term insurance fund**]**.

Textual Amendments

F6184 Words in Sch. 19AA para. 2(1)(b)(2)(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(k)(i)**

F6185 Words in Sch. 19AA para. 2(3)(c) substituted (10.1.1995 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 1994 (S.I. 1994/3278), **art. 3**

F6186 Words in Sch. 19AA para. 2(3)(d) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(m)(i)**

Modifications etc. (not altering text)

C1035 See 1990 s. 42 and Sch.7 para.10(2) regarding treatment of assets in relation to the first period of account of an insurance company

3 (1) Where the value of the assets mentioned in paragraph 2(1) above at the end of the period is less than the amount mentioned in paragraph 4 below (or where there are no assets within paragraph 2(1)), assets which—

(a) are assets of the **[**F6187long-term insurance fund**]** of the company at the end of the period,

(b) have a value at that time equal to the difference (or to that amount), and

(c) are designated in accordance with paragraph 5 below,

shall become assets of the overseas life assurance fund at the relevant time.

(2) In sub-paragraph (1) above "the relevant time" means—

(a) where the asset is not an asset of the **[**F6187long-term insurance fund**]** of the company throughout the period, the time when it became such an asset, and

(b) in any other case, the end of the period.

(3) Where the value of the assets mentioned in paragraph 2(1) above at the end of the period is greater than the amount mentioned in paragraph 4 below, assets which—

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(a) are assets of the **[**F6187long-term insurance fund**]** of the company at the end of the period,

(b) have a value at that time equal to the difference, and

(c) are designated in accordance with paragraph 5 below,

shall cease to be assets of the overseas life assurance fund at the end of the period.

Textual Amendments

F6187 Words in Sch. 19AA para. 3(1)(a)(2)(a)(3)(a) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(k)(ii)**

4 **[**F6188(1) The amount referred to in paragraph 3 above shall be determined by the formula—

$$A + B - C - D$$

where—

A is the liabilities of the company's overseas life assurance business at the end of the period of account,

[F6189B is the aggregate of—

(a) the appropriate part of the investment reserve at that time, and

(b) the appropriate part of any liabilities of the company's **[**F6190long-term insurance fund**]** at that time which represent a money debt,**]**

C is the value, at that time, of any land in the United Kingdom which is an asset linked solely to the company's overseas life assurance business, and

D is the relevant fraction of the value, at that time, of any land in the United Kingdom which is an asset linked both to the company's overseas life assurance business and to some other category of business.**]**

[F6191(2) In sub-paragraph (1) above, in B, the "appropriate part" of the company's investment reserve at the end of the period of account, or of any liabilities of its **[**F6190long-term insurance fund**]** at that time which represent a money debt, is—

(a) where none (or none but an insignificant proportion) of the liabilities of the company's **[**F6192long-term**]** business at that time are with-profits liabilities, the part which bears to the whole the proportion A/B; and

(b) in any other case, the part which bears to the whole the proportion C/D.

For this purpose—

A is the amount of the liabilities of the company's overseas life assurance business at the end of the period of account,

B is the whole amount of the liabilities of the company's **[**F6192long-term**]** business at that time,

C is the amount of the with-profits liabilities of the company's overseas life assurance business at that time, and

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D is the whole amount of the with-profits liabilities of the company's long-term business at that time.**]**

[F6193(3) In this Schedule "land" includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude, right or licence in or over land.

(4) In sub-paragraph (1) above, in D, "the relevant fraction" is the fraction of which—

(a) the numerator is the value, at the end of the period of account, of such of the liabilities of the company's overseas life assurance business as were liabilities in respect of benefits to be determined by reference to the value of the asset; and

(b) the denominator is the value, at that time, of all the liabilities of the company's **[**F6192long-term**]** business which were liabilities in respect of benefits to be so determined.**]**

[F6194(5) In this paragraph—

"investment reserve", in relation to an insurance company, means the excess of the value of the assets of the company's **[**F6192long-term**]** business over the aggregate of—

(a) **[**F6195the value of the liabilities of that business, and

(b) any money debts of the company not within paragraph (a) above which are owed in respect of that business;**]**

"money debt" has the same meaning as in Chapter II of Part IV of the Finance Act 1996 M1328.**]**

Textual Amendments

F6188 Sch. 19AA para. 4(1) substituted (10.1.1995 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 1994 (S.I. 1994/3278), **art. 4(1)**

F6189 Sch. 19AA para. 4(1): definition of "B" substituted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 3(2)**

F6190 Words in Sch. 19AA para 4(1)(2)(5) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(k)(iii)**

F6191 Sch. 19AA para. 4(2) substituted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 3(3)**

F6192 Words in Sch. 19AA para 4(2)(a)(b)(4)(b)(5) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(m)(ii)**

F6193 Sch. 19AA para. 4(3)(4) inserted (10.1.1995 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 1994 (S.I. 1994/3278), **art. 4(3)**

F6194 Sch. 19AA para. 4(5) inserted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 3(4)**

F6195 Words in Sch. 19AA para. 4(5) substituted (with effect in accordance with Sch. 33 para. 28 of the amending Act) by Finance Act 2003 (c. 14), **Sch. 33 para. 27**

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5 (1) Any designation of assets required for the purposes of paragraph 3 above shall be made by a company in accordance with the following provisions of this paragraph.

(2) When designating assets for the purposes of paragraph 3(1) above, a company shall not designate an asset falling within any paragraph of sub-paragraph (5) below unless it designates all assets falling within each of the preceding paragraphs of that sub-paragraph.

(3) When designating assets for the purposes of paragraph 3(3) above, a company shall not designate an asset falling within any paragraph of sub-paragraph (5) below unless it designates all assets falling within each of the succeeding paragraphs of that sub-paragraph.

(4) When an asset falls within more than one paragraph of sub-paragraph (5) below, it shall be taken for the purposes of this paragraph to fall only within the first of them.

(5) The categories of assets referred to in sub-paragraphs (2) and (3) above are—

(a) assets **[**F6196, other than land in the United Kingdom,**]** linked solely to overseas life assurance business;

(b) so many of any assets denominated in an overseas currency, other than any non-overseas linked assets, as have a value at the end of the period not exceeding the amount of the company's **[**F6197non-linked liabilities**]** in respect of benefits expressed in that currency so far as referable to overseas life assurance business;

[F6198(c) assets, other than land in the United Kingdom, which—

(i) are shown in the books of the company as being held as assets of a fund where all, or all but an insignificant part, of the liabilities of the fund are in respect of overseas life assurance business carried on by the company at or through a **[**F6199permanent establishment**]** outside the United Kingdom; or

(ii) are managed under the control of a person whose normal place of work is at a **[**F6199permanent establishment**]** outside the United Kingdom at or through which the company carries on overseas life assurance business;

(d) assets other than land in the United Kingdom;

(e) land in the United Kingdom;**]**

but assets linked solely to **[**F6200pension business, life reinsurance business or basic life assurance and general annuity business**]** are not within any paragraph of this sub-paragraph (and may not be designated for the purposes of paragraph 3 above).

[F6201(5A) For the purposes of sub-paragraph (5)(a) above, in determining whether assets are linked solely to overseas life assurance business, assets linked to policies or contracts which, by virtue of regulation 18 or 19 of the Insurance Companies (Overseas Life Assurance Business) (Compliance) Regulations 1995 M1329 are to be treated as referring to basic life assurance and general annuity business, shall be treated as linked solely to overseas life assurance business.**]**

(6) For the purposes of sub-paragraph (5)(b) above assets are "non-overseas linked assets" if they are linked assets and none of the policies or contracts providing for the benefits concerned are policies or contracts the effecting of which constitutes the carrying on of overseas life assurance business.

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[F6202(6A) For the purposes of sub-paragraph (5)(b) above "non-linked liabilities" means liabilities other than liabilities in respect of benefits to be determined by reference to the value of linked assets **[**F6203falling within sub-paragraph (5)(a) above**]**.**]**

(7) F6204 . . . . . .

Textual Amendments

F6196 Words in Sch. 19AA para. 5(5)(a) inserted (10.1.1995 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 1994 (S.I. 1994/3278), **art. 5(a)**

F6197 Words in Sch. 19AA para. 5(5)(a) substituted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 4(2)(a)**

F6198 Sch. 19AA para. 5(5)(c)-(e) substituted for para. 5(5)(c)-(g) (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 4(2)(b)**

F6199 Words in Sch. 19AA para. 5(5)(c) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F6200 Words in Sch. 19AA para. 5(5) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 8**

F6201 Sch. 19AA para. 5(5A) inserted (31.12.2004 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2004 (S.I. 2004/3275), **art. 3(2)**

F6202 Sch. 19AA para. 5(6A) inserted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 4(3)**

F6203 Words in Sch. 19AA para. 5(6A) inserted (31.12.2004 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2004 (S.I. 2004/3275), **art. 3(3)**

F6204 Sch. 19AA para. 5(7) omitted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by virtue of The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 4(4)**

Modifications etc. (not altering text)

C1036 Sch. 19AA para. 5 modified (20.3.1997 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), **reg. 31**

C1037 Sch. 19AA para. 5 modified (12.8.2005 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 2005 (S.I. 2005/2014), **regs. 1(1)**, 25; and that modifying reg. 25 is omitted (14.8.2007 with effect in accordance with reg. 1(2) of the revoking S.I.) by virtue of S.I. 2007/2134, **regs. 1(1)**, 23

C1038 Sch. 19AA para. 5(5) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 5**, 19

C1039 Sch. 19AA para. 5(5) modified (6.4.2005) by The Child Trust Funds (Insurance Companies) Regulations 2004 (S.I. 2004/2680), **regs. 1**, 4, 17; S.I. 2004/3369, **art. 2(1)**

Marginal Citations

M1329 S.I. 1995/3237

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F6205F6205[F6206
SCHEDULE 19AB]

. . . . . .

Textual Amendments

F6205 Sch. 19AB repealed (with effect in accordance with s. 87(2)-(5) of the repealing Act) by Finance Act 2001 (c. 9), s. 87(1), **Sch. 33 Pt. 2(12)**, Note (the provisions of Sch. 19AB not applying in relation to tax credits in respect of distributions made on or after 6th April 2004)

F6206 Sch. 19AB inserted (with effect in relation to accounting periods beginning on or after 2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49, **Sch. 8**; S.I. 1992/1746, **art. 2**

VALID FROM 27/12/2007

SCHEDULE 19ABA

Section 440D

MODIFICATION OF LIFE ASSURANCE PROVISIONS OF THE CORPORATION TAX ACTS IN RELATION TO BLAGAB GROUP REINSURERS

. . . . . .

[F6269SCHEDULE 19AC

Section 444B.]

MODIFICATION OF ACT IN RELATION TO OVERSEAS LIFE INSURANCE COMPANIES

Textual Amendments

F6269 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6270 1 In its application to an overseas life insurance company this Act shall have effect with the following modifications.

Textual Amendments

F6270 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

. . . . . .

F6271 2 F6272 . . . . . .

Textual Amendments

F6271 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

Status: *Point in time view as at 05/12/2005. This version of this Act contains provisions that are not valid for this point in time.*
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F6272 Sch. 19AC para. 2 repealed (with effect in accordance with Sch. 3 para. 13(14) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 13(2), **Sch. 8 Pt. 2(6)**, Note

F6273 3 (1) In subsection (2) of section 11, the following paragraphs shall be treated as inserted after paragraph (a)—

(“) where section 11B applies for an accounting period, any trading or other income arising in that period from assets which by virtue of that section are attributed to the branch or agency at the time the income arises (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and

(ab) where section 11C applies for an accounting period, any trading or other income falling within section 11C(2) in that period (but so that this paragraph shall not include distributions received from companies resident in the United Kingdom); and”.

(2) The following shall be treated as inserted after paragraph (b) of that subsection “and

(c) chargeable gains accruing to the company on the disposal of assets of the company’s **[**F6274long-term insurance fund**]** situated outside the United Kingdom and used or held for the purposes of the branch or agency immediately before the disposal; and

(d) where section 11B applies for an accounting period, chargeable gains accruing to the company in that period on the disposal of assets which by virtue of that section are attributed to the branch or agency immediately before the disposal; and

(e) where section 11C applies for an accounting period, chargeable gains accruing to the company in that period by virtue of section 11C(3).”

(3) The following subsection shall be treated as inserted after that subsection—

(“) For the purposes of subsection (2)(c) above—

(a) section 275 of the 1992 Act (location of assets) shall apply as it applies for the purposes of that Act;

(b) “ **[**F6274long-term insurance fund**]**” has the meaning given by section 431(2).”

(4) F6275 . . . . . .

Textual Amendments

F6273 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6274 Words in Sch. 19AC para. 3(2)(3) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(l)(i)**

F6275 Sch. 19AC para. 3(4) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F6276 4 (1) The following sections shall be treated as inserted after section 11—

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"**11A "Overseas life insurance companies: interpretation of sections 11B and 11C.**

(1) For the purposes of this section and sections 11B and 11C—

(a) an asset is at any time a section 11(2)(b) asset if, were it to be disposed of at that time, any chargeable gains accruing to the company on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b);

(b) an asset is at any time a section 11(2)(c) asset if, were it to be disposed of at that time, any chargeable gains accruing to the company on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(c);

(c) relevant contracts and policies are contracts and policies the effecting of which constitutes the carrying on of life assurance business;

and in this section and those sections any expression to which a meaning is given by section 431(2) has that meaning.

(2) For the purposes only of subsection (1)(a) and (b) above any enactment which—

(a) limits any chargeable gain on the disposal of an asset;

(b) treats any gain on the disposal of an asset as not being a chargeable gain; or

(c) treats any disposal of an asset as not giving rise to a chargeable gain,

shall be disregarded.

(3) For the purposes of sections 11B and 11C—

(a) the notional value at any time is the value at that time of the assets which the branch or agency would reasonably be expected to hold at that time in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency;

(b) the section 11B value at any time is the value at that time of such of the section 11(2)(b) and section 11(2)(c) assets as are assets held at that time in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency;

(c) the section 11C value at any time is the value at that time of—

(i) such of the section 11(2)(b) and section 11(2)(c) assets as are assets held at that time in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency; and

(ii) the assets which by virtue of section 11B are attributed to the branch or agency at that time;

(d) a relevant fund is a fund of assets of the company (wherever those assets may be situated) any part of which is held in consequence of any relevant contracts, and any relevant policies, which at any time in the accounting period concerned are carried out at the branch or agency.

(4) In applying subsection (3)(a) above as regards a particular time, it shall be assumed that—

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(a) at that time the branch or agency is a company resident in the United Kingdom, undertaking the activities it then actually undertakes;

(b) the terms of any dealings between the branch or agency and another part of the company are not (or not necessarily) their actual terms but are such as would be the terms if the branch or agency and the other part of the company were independent persons dealing at arm's length.

11B Overseas life insurance companies: attribution of assets.

(1) This section applies for an accounting period where the mean of the notional value at the beginning and end of the accounting period exceeds the mean of the section 11B value at those times.

(2) Where this section applies for an accounting period, assets shall be attributed to the branch or agency in that period in accordance with the following provisions of this section.

(3) There shall be attributed to the branch or agency in the accounting period such of the qualifying assets of the company as (having regard to the excess mentioned in subsection (1) above) it is just and reasonable to attribute to the branch or agency.

(4) For the purposes of subsection (3) above—

(a) where an asset is a qualifying asset for the whole of the accounting period it may, subject to paragraphs (c) and (d) below, be attributed to the branch or the agency for the whole or any part or parts of that period;

(b) where an asset is a qualifying asset for any portion of the accounting period it may, subject to paragraphs (c) and (d) below, be attributed to the branch or agency for the whole or any part or parts of that portion;

(c) an asset shall not be attributed to the branch or agency for any period of time during which it is a section 11(2)(b) or section 11(2)(c) asset;

(d) an asset shall not be attributed to the branch or agency at any particular time unless it is held in consequence of any relevant contracts, and any relevant policies, which at that time are carried out at the branch or agency.

(5) An asset of the company is a qualifying asset at any time if it is an asset of one or more of the following descriptions, that is to say—

(a) an asset which, in relation to any relevant contracts and any relevant policies which at that time are carried out at the branch or agency, is a linked asset within the meaning given by section 431(2);

(b) an asset which at that time is maintained in the United Kingdom as a result of a requirement imposed under section **[**F6277 43 of the Financial Services and Markets Act 2000 other than an asset not treated as so maintained under that requirement;**]**

(c) an asset which at that time is treated for the purposes of any such requirement as is mentioned in paragraph (b) above as maintained in the United Kingdom **[**F6278 under that requirement;**]**

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(d) an asset which at that time is held in respect of the business carried on by the branch or agency as a result of a condition of **[**F6279a direction under section 148 of the Financial Services and Markets Act 2000**]**;

(e) an asset which at that time is held in a fund which the company is required to maintain under the prudential legislation of a territory outside the United Kingdom in respect of the business carried on by the branch or agency;

(f) an asset which is identified in tax returns submitted to a taxing authority of a territory outside the United Kingdom as an asset which at that time is wholly referable to the business carried on by the branch or agency.

11C Overseas life insurance companies: additional income and gains.

(1) This section applies for an accounting period where the mean of the notional value at the beginning and end of the accounting period exceeds the mean of the section 11C value at those times.

(2) Where this section applies for an accounting period, the income which falls within this subsection in that period shall be the specified amount of each item of relevant income arising in that period from any assets of the relevant fund.

(3) Where this section applies for an accounting period, the chargeable gains accruing to the company in that period by virtue of this subsection shall be the specified amount of each relevant gain accruing to the company in that period on the disposal of any assets of the relevant fund.

(4) For the purposes of this section—

(a) relevant income is income other than income which falls within section 11(2)(a) or (aa);

(b) a relevant gain is a gain (other than a chargeable gain which falls within section 11(2)(b), (c) or (d)) which would be a chargeable gain if the company were resident in the United Kingdom.

(5) For the purposes of this section the specified amount of an item of relevant income arising in the accounting period from any assets of the relevant fund shall be determined by the formula—

$$SI = Iy \frac{(NV - CV)}{RF}$$

(6) For the purposes of this section the specified amount of a relevant gain accruing to the company in the accounting period on the disposal of any assets of the relevant fund shall be determined by the formula—

$$SG = Gy \frac{(NV - CV)}{RF}$$

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(7) In subsections (5) and (6) above—

SI is the specified amount of an item of relevant income arising in the accounting period from any assets of the relevant fund;

I is an item of relevant income arising in that period from any assets of the relevant fund;

NV is the mean of the notional value at the beginning and end of that period;

CV is the mean of the section 11C value at the beginning and end of that period;

RF (subject to subsection (8) below) is the mean of the value of the relevant fund at the beginning and end of that period;

SG is the specified amount of a relevant gain accruing to the company in that period on the disposal of any assets of the relevant fund;

G is a relevant gain accruing to the company in that period on the disposal of any assets of the relevant fund.

(8) Where the assets of the relevant fund at the beginning or end of the accounting period include—

(a) section 11(2)(b) or section 11(2)(c) assets; or

(b) assets which by virtue of section 11B are attributed to the branch or agency,

the value at that time of the relevant fund for the purposes of the definition of RF in subsection (7) above shall be reduced by the value at that time of those assets.

(9) Where in the accounting period the company has more than one relevant fund—

(a) in the definition of RF in subsection (7) above, the reference to the value of the relevant fund shall be treated as a reference to the value of the relevant funds; and

(b) any other reference in this section to the relevant fund shall be treated as a reference to the relevant funds.””

(2) F6280 . . . . . .

Textual Amendments

F6276 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para. 1**

F6277 Words in Sch. 19AC para. 4(1) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 49(5) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(2)(a)**

F6278 Words in Sch. 19AC para. 4(1) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 49(5) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(2)(b)**

F6279 Words in Sch. 19AC para. 4(1) substituted (1.12.2001 with effect in accordance with arts. 1(2)(a), 49(5) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(2)(c)**

F6280 Sch. 19AC para. 4(2) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

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4A (1) In section 12(7A), the reference to **[**F6281an insurance business transfer scheme**]** shall be treated as including a reference to a qualifying overseas transfer.

(2) In this paragraph "a qualifying overseas transfer" means so much of any transfer of the whole or any part of the business of an overseas life insurance company carried on through a branch or agency in the United Kingdom as takes place in accordance with any authorisation granted outside the United Kingdom for the purposes of Article 11 of the third **[**F6282life insurance**]** Directive.

[F6283(3) In sub-paragraph (2) above, "the third life insurance directive" means the Council Directive of 10th November 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (No.92/96/EEC) M1334.**]**

Textual Amendments

F6281 Words in Sch. 19AC para. 4A(1) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(3)(a)**

F6282 Words in Sch. 19AC para. 4A(2) substituted 1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(3)(b)**

F6283 Sch. 19AC para. 4A(3) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(3)(c)**

Marginal Citations

M1334 O.J. No. L360, 9.12.1992, pp. 1-27.

[F6284F6285 5 After subsection (3) of section 76 there shall be treated as inserted the following subsection—

"(3A) In its application to an overseas life insurance company subsection (3) shall have effect as if—

(a) in a case where the company is not an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, the reference to the Form 40 (revenue account) were a reference to the Form 40 relating only to the long-term business carried on by it at a permanent establishment in the UK, and

(b) in a case where it is an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Financial Services and Markets Act 2000, the reference to "expenses brought into account in line 12, 22 or 25 of Form 40 in the periodical return of the company for a period of account" were a reference to so much of the expenses included in Item II.8 or 9(a) of the Profit and Loss account included in accounts drawn up in accordance with the Council Directive of 19th December 1991 on the annual accounts and consolidated accounts of insurance undertakings (No.91/674/EEC) as are attributable to permanent establishment in the United Kingdom through which the company carries on life assurance business.".**]**

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Textual Amendments

F6284 Sch. 19AC paras. 5, 5ZA substituted for para. 5 (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 36(2)

F6285 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

Modifications etc. (not altering text)

C1041 Sch. 19AC para. 5 modified (23.3.1999 with effect in accordance with reg. 1 of the modifying S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), **regs. 3**, 8

5ZA After subsection (11) there shall be treated as inserted the following subsections—

"(11A) In subsection (11) the reference in paragraph (a) of the definition of "the relevant income" to income and gains shall be treated as a reference to so much of the income and gains mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2) [F6286], to the permanent establishment in the United Kingdom through which the company carries on life assurance business.

(11B) In that subsection the reference in paragraph (b) of that definition to distributions shall be treated as a reference to so much of the distributions mentioned in that paragraph as falls to be attributed, for the purposes of section 11AA(2), to the permanent establishment in the United Kingdom through which the company carries on life assurance business.".

Textual Amendments

F6286 This section was inserted by section 149 of the Finance Act 2003.

5A (1) Where an overseas life insurance company receives a qualifying distribution made by a company resident in the United Kingdom and the distribution (or part of the distribution)—

(a) would fall within paragraph (a), (aa) or (ab) of section 11(2) but for the exclusion contained in that paragraph, and

(b) is referable to life assurance business, but not to overseas life assurance business,

then the recipient shall be treated for the purposes of the Corporation Tax Acts as entitled to such a tax credit in respect of the distribution (or part of the distribution) as it would be entitled to under section 231 if it were resident in the United Kingdom.

(2) Where part only of a qualifying distribution would fall within paragraph (ab) of section 11(2) but for the exclusion contained in that paragraph, the tax credit to which the recipient shall be treated as entitled by virtue of sub-paragraph (1) above is the proportionate part of the tax credit to which the recipient would be so treated as entitled in respect of the whole of the distribution.

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[F6287(3) Nothing in this paragraph shall be taken to confer on an overseas life insurance company any entitlement to make a claim under section 231(3).**]**

Textual Amendments

F6287 Sch. 19AC para. 5A(3) inserted (with effect in accordance with Sch. 3 para. 13(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 13(4)**

5B (1) F6288 . . . . . .

(2) F6288 . . . . . .

(3) F6288 . . . . . .

(4) In this paragraph "UK distribution income" means income of an overseas life insurance company which consists of a distribution (or part of a distribution) in respect of which the company is entitled to a tax credit (and which accordingly represents income equal to the aggregate of the amount or value of the distribution (or part) and the amount of that credit).

Textual Amendments

F6288 Sch. 19AC para. 5B(1)-(3) repealed (with effect in accordance with Sch. 3 para. 13(14)(16) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 13(5), **Sch. 8 Pt. 2(6)**, Note

5C (1) This paragraph applies to income from the investments of an overseas life insurance company attributable to the basic life assurance and general annuity business of the branch or agency in the United Kingdom through which the company carries on life assurance business.

[F6289(2) Where, in computing the income to which this paragraph applies, any profits and gains arising from a FOTRA security, or from any loan relationship represented by it, are excluded by virtue of the tax exemption condition of that security, the amount which by virtue of section 76 is to be deductible by way of management expenses shall be reduced in accordance with sub-paragraph (3) below.

(3) That amount shall be reduced so that it bears to the amount which would be deductible apart from this sub-paragraph the same proportion as the amount of the income to which this paragraph applies (after applying the provisions of section 154(2) to (7) of the Finance Act 1996) bears to what would be the amount of that income if the tax exemption condition were disregarded.

(4) Subsection (8) of section 154 of the Finance Act 1996 (meaning of "FOTRA security" and "tax exemption condition") shall apply for the purposes of this paragraph as it applies for the purposes of that section.**]**

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Textual Amendments

F6289 Sch. 19AC para. 5C(2)-(4) substituted for Sch. 19AC para. 5C(2) (with effect in accordance with s. 154(9) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 28 para. 5**

F6290 6 (1) In subsection (2) of section 431, the following definition shall be treated as substituted for the definition of "investment reserve"—

" "investment reserve", in relation to an overseas life insurance company, means the excess of the value of the relevant assets over the relevant liabilities, and for the purposes of this definition—

(a) relevant assets are such assets of the company's **[**F6291 long-term insurance fund**]** as are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business; and

(b) relevant liabilities are such liabilities of the **[**F6292 long-term**]** business as are attributable to the branch or agency;

and in a case where section 11C applies, the value of the relevant assets shall be increased by the amount by which the notional value exceeds the section 11C value; and any expression used in this definition to which a meaning is given by section 11A has that meaning;."

(2) In that subsection, the following definition shall be treated as substituted for the definition of "liabilities"—

" "liabilities", where the company concerned is an overseas life insurance company, does not include excluded liabilities and (subject to that) means—

(a) liabilities as estimated for the purposes of the company's periodical return, or

(b) in the case of liabilities not estimated for the purposes of such a periodical return, liabilities as estimated for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident, or

(c) in the case of liabilities not estimated for the purposes of such a periodical return or equivalent return, liabilities as found from the company's records;

and excluded liabilities are any liabilities that have fallen due or been reinsured and any not arising under or in connection with policies or contracts effected as part of the company's insurance business;".

(3) F6293 . . . . . .

(4) F6293 . . . . . .

[F6294 (4A) In that subsection the following definition shall be inserted at the appropriate place—

"UK distribution income" has the meaning given by paragraph 5B(4) of Schedule 19AC;**]**

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(5) In that subsection, the following definition shall be treated as substituted for the definition of "value" —

" "value", in relation to assets and where the company concerned is an overseas life insurance company, means—

(a) their value as taken into account for the purposes of the company's periodical return, or

(b) where their value is not taken into account for the purposes of such a periodical return, their value as taken into account for the purposes of any return equivalent to a periodical return and required to be made by the company under the law of the territory in which the company is resident, or

(c) where their value is not taken into account for the purposes of such a periodical return or equivalent return, their value as found from the company's records;

and the reference in paragraph (c) above to the value of assets as found from the company's records is a reference to the market value as so found or, where applicable, the current value (within the meaning of the Directive of the Council of the European Communities dated 19th December 1991 No. 91/674/EEC (directive on the annual accounts and consolidated accounts of insurance undertakings)) as so found;".

F6295(6) . . . . . .

Textual Amendments

F6290 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6291 Words in Sch. 19AC para. 6(1)(a) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(l)(ii)**

F6292 Words in Sch. 19AC para. 6(1)(b) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(o)(i)**

F6293 Sch. 19AC para. 6(3)(4) repealed (with effect in accordance with Sch. 8 para. 55(1) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 para. 37, **Sch. 29 Pt. 8(5)**, Note 1

F6294 Sch. 19AC para. 6(4A) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 35(3)**

F6295 Sch. 19AC para. 6(6) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

6A In section 431D(1), the words "carried on through a branch or agency in the United Kingdom by an overseas life insurance company" shall be treated as inserted after the words "means life assurance business".

F6296F6297[(7) Section 432A has effect as if the references in subsections (3), (6) and (8) to assets were to such of the assets concerned as are—

(a) section 11(2)(b) assets,

(b) section 11(2)(c) assets, or

(c) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;

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and as if the references in subsections (6) and (8) to liabilities were to such of the liabilities concerned as are attributable to the branch or agency.

Expressions used in this sub-paragraph to which a meaning is given by section 11A have that meaning.

(2) For the purposes of section 432A as it applies in relation to an overseas life insurance company, income which falls within section 11(2)(aa) or (ab), and chargeable gains or allowable losses which fall within section 11(2)(d) or (e)—

(a) shall not be referable to **[**F6298long-term**]** business other than life assurance business; and

(b) shall be apportioned under subsections (5) and (6) of that section separately from other income, gains and losses.

(3) For the purposes of the application of section 432A(6) in relation to such income, gains or losses as are mentioned in sub-paragraph (2) above—

(a) "liabilities" does not includes liabilities of the **[**F6298long-term**]** business other than life assurance business;

(b) the **[**F6299net value**]** of assets directly referable to any category of business does not include assets directly referable to **[**F6298long-term**]** business other than life assurance business; and

(c) F6300 . . . . . .**]**

Textual Amendments

F6296 Sch. 19AC para. 7 substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 39**

F6297 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6298 Words in Sch.19AC para. 7(2)(a)(3)(a)(b) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(o)(ii)**

F6299 Words in Sch. 19AC para. 7(3)(b) substituted (with effect in accordance with s. 109(10) of the amending Act) by Finance Act 2000 (c. 17), **s. 109(9)(c)(i)**

F6300 Sch. 19AC para. 7(3)(c) repealed (with effect in accordance with s. 109(10) of the repealing Act) by Finance Act 2000 (c. 17), s. 109(9)(c)(ii), **Sch. 40 Pt. 2(16)**, Note 1

F6301 8 (1) In subsection (1) of section 432B, the words "or treated as brought into account by virtue of **[**F6302paragraph 1C**]** of Schedule 8A to the Finance Act 1989" shall be treated as inserted after **[**F6303the words 'brought into account, within the meaning of that section,'**]** .

(2) The following words shall be treated as inserted at the end of subsection (2) of that section " ; but this subsection shall not apply for a period of account in relation to which **[**F6304any provision of paragraph 1C**]** of Schedule 8A to the Finance Act 1989 applies. "

[F6305(3) Subsection (3) of section 432B shall have effect as if after the words "with which an account is concerned" there were inserted the words "or in respect of which items are treated as brought into account by virtue of paragraph 1C of Schedule 8A to the Finance Act 1989"; and that subsection and sections 432C to 432E shall have effect

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as if the reference to relevant business were to relevant business of the branch or agency in the United Kingdom through which the company carries on life assurance business.**]**

(4) F6306 . . . . . .

Textual Amendments

F6301 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6302 Words in Sch. 19AC para. 8(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 40(2)(a)**

F6303 Words in Sch. 19AC para. 8(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 40(2)(b)**

F6304 Words in Sch. 19AC para. 8(2) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 40(3)**

F6305 Sch. 19AC para. 8(3) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 40(4)**

F6306 Sch. 19AC para. 8(4) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F6307F6308**[**9(1) In section 434, the following subsections shall be treated as inserted after subsection (1B)—

(“) The exclusion from section 11(2)(a), (aa) or (ab) of distributions received from companies resident in the United Kingdom shall not apply in relation to—

(a) the charge to corporation tax on the life assurance profits of an overseas life insurance company computed in accordance with the provisions of this Act applicable to Case I of Schedule D; or

(b) any computation of such profits in accordance with those provisions.

(1D) Paragraph 2 of Schedule F shall not have effect for the purposes of subsection (1C) (a) or (b) above, **[**F6309but this subsection shall not apply in relation to distributions in respect of which an overseas life insurance company is entitled to a tax credit under section 441A**]**.

(1E) The reference in subsection (1C) above to the life assurance profits of an overseas life insurance company is a reference to the profits of the company—

(a) in respect of its life assurance business; or

(b) in respect of any category of life assurance business which it carries on.”**]**

(2) F6310 . . . . . .

(3) F6310 . . . . . .

Textual Amendments

F6307 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6308 Sch. 19AC para. 9(1) substituted (with effect in accordance with Sch. 3 para. 13(15) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 3 para. 13(6)**

F6309 Words in Sch. 19AC para. 9(1) repealed (with effect in accordance with Sch. 4 para. 29(4), Sch. 8 Pt. 2(10) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 29(2), **Sch. 8 Pt. 2(10)**

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F6310 Sch. 19AC para. 9(2)(3) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

Modifications etc. (not altering text)

C1042 Sch. 19AC para. 9(1) modified by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **reg. 21A** (as inserted (22.8.2000) by The Individual Savings Account (Insurance Companies) (Amendment) Regulations 2000 (S.I. 2000/2075), **reg. 5**)

C1043 Sch. 19AC para. 9 modified (31.7.1997) by 1992 (c. xx), s. 65(2)(ab) (as inserted) by Finance Act 1997 No. 2 (c. 58), Sch. 3 para. 15

. . . . . .

9A **F6311** . . . . . .

Textual Amendments

F6311 Sch. 19AC para. 9A repealed (with effect in accordance with Sch. 3 para. 13(14) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 13(7), **Sch. 8 Pt. 2(6)**, Note

9B **[F6312** The following section shall be treated as inserted after section 434A—

" **Treatment of annuities.**

An**]** overseas life insurance company shall not be entitled to treat as paid out of profits or gains brought into charge to income tax any part of the annuities paid by the company which is referable to its life assurance business."

Textual Amendments

F6312 Words in Sch. 19AC para. 9B substituted (with effect in accordance with s. 67(7) of the amending Act) by Finance Act 1997 (c. 16), **s. 67(5)**

. . . . . .

9C **F6313** . . . . . .

Textual Amendments

F6313 Sch. 19AC para. 9C repealed (with effect in accordance with s. 579(1) of the repealing Act) by Capital Allowances Act 2001 (c. 2), Sch. 2 para. 64(1), **Sch. 4** (with Sch. 3)

. . . . . .

10 **F6314** . . . . . .

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Textual Amendments

F6314 Sch. 19AC para. 10 repealed (with effect in accordance with Sch. 3 para. 13(14)(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 13(8)(9), **Sch. 8 Pt. 2(4)**, Note

. . . . . .

10A **F6315** . . . . . .

Textual Amendments

F6315 Sch. 19AC para. 10A repealed (with effect in accordance with Sch. 3 para. 13(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 13(10), **Sch. 8 Pt. 2(6)**, Note

10AA In section 440(2)(a), the reference to **[**F6316an insurance business transfer scheme**]** shall be treated as including a reference to a qualifying overseas transfer (within the meaning of paragraph 4A above).

Textual Amendments

F6316 Words in Sch. 19AC para. 10AA substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(4)**

10B (1) Where the company mentioned in section 440(1) is an overseas life insurance company, section 440 has effect with the following modifications.

(2) Subsection (4) shall be treated as if—

(a) in paragraphs (a), (b), (d), (e) and (f) the words "UK assets" were substituted for the words "assets"; and

(b) at the end there were inserted—

(") section 11C assets;

(h) non-UK assets.".

[F6317(2A) The following subsection shall be treated as inserted after subsection (4)—

(**[**F6318Section 13 of the Capital Allowances Act (use for qualifying activity of plant or machinery provided for other purposes)**]** shall apply in relation to any case in which an asset or part of an asset held by an overseas life insurance company—

(a) ceases to be within the category set out in paragraph (h) of subsection (4) above; and

(b) at the same time comes within another of the categories set out in that subsection..")**]**

(3) The following subsection shall be treated as inserted at the end of the section—

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(”) For the purposes of this section—

(a) UK assets are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;

(b) section 11C assets are assets—

(i) (in a case where section 11C (other than subsection (9)) applies) of the relevant fund, other than UK assets; or

(ii) (in a case where that section including that subsection applies) of the relevant funds, other than UK assets;

(c) non-UK assets are assets which are not UK assets or section 11C assets;

and any expression used in this subsection to which a meaning is given by section 11A has that meaning.”.

(4) Where one of the companies mentioned in section 440(2) is an overseas life insurance company, section 440(2)(b) shall have effect as if for the words “is within another of those categories” there were substituted “is not within the corresponding category”.

(5) Where the transferor company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately before the acquisition, with the modifications in sub-paragraphs (2) and (3) above.

(6) Where the acquiring company mentioned in section 440(2) is an overseas life insurance company, section 440 shall have effect, as regards the time immediately after the acquisition, with the modifications in sub-paragraphs (2) and (3) above.

Textual Amendments

F6317 Sch. 19AC para. 10B(2A) inserted (with effect in accordance with s. 75(6)(a) of the amending Act) by Finance Act 2000 (c. 17), **s. 75(4)**

F6318 Words in Sch. 19AC para. 10B(2A) substituted (with effect in accordance with s. 579(1) of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 64(2)** (with Sch. 3)

10C (1) In section 440B the following subsection shall be treated as substituted for subsection (3)—

(”) Section 440(1) and (2) have effect as if the only categories specified in subsection (4) of that section were—

(a) UK assets of the **[**F6319long-term insurance fund**]**,

(b) other UK assets,

(c) section 11C assets, and

(d) non-UK assets,

(those expressions having the meanings given by section 440(7)).”.

(2) The following subsection shall be treated as substituted for subsection (4) of that section—

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(”) Section 440A applies as if for paragraphs (a) to (e) of subsection (2) there were substituted—

(”) so many of the UK securities as are identified in the company’s records as securities by reference to the value of which there are to be determined benefits provided for under policies or contracts the effecting of all (or all but an insignificant proportion) of which constitutes the carrying on of **[**F6320long-term**]** business, shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,

(b) any remaining UK securities shall be treated for those purposes as a separate holding which is not of the description mentioned in the preceding paragraph,

(c) the section 11C securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs, and

(d) the non-UK securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.”.

Textual Amendments

F6319 Words in Sch. 19AC para. 10C(1) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(l)(iii)**

F6320 Words in Sch. 19AC para. 10C(2) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(o)(iii)**

[F6321**[**F6322(1) In section 440A(2), in paragraph (a) the words “UK securities” shall be treated as substituted for the word “securities” in the first place where it occurs.**]**

(2) F6323 . . . . . .

(3) In paragraphs (d) and (e) of that subsection, the words “UK securities”shall be treated as substituted for the word “securities”

(4) The following paragraphs shall be treated as inserted at the end of that subsection—

(“) the section 11C securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs; and

(g) the non-UK securities shall be treated for those purposes as a separate holding which is not of any of the descriptions mentioned in the preceding paragraphs.”

(5) The following subsection shall be treated as inserted after subsection (6) of that section—

[F6324(“)**]** For the purposes of this section—

(a) UK securities are such securities as are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

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(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;

(b) section 11C securities are securities—

(i) (in a case where section 11C (other than subsection (9)) applies) which are assets of the relevant fund, other than UK securities; or

(ii) (in a case where that section including that subsection applies) which are assets of the relevant funds, other than UK securities;

(c) non-UK securities are securities which are not UK securities or section 11C securities;

and any expression used in this subsection to which a meaning is given by section 11A has that meaning."

F6325(6) . . . . . .

Textual Amendments

F6321 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6322 Sch. 19AC para. 11(1) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 45(2)**

F6323 Sch. 19AC para. 11(2) repealed (with effect in accordance with Sch. 8 para. 55(1) of the repealing Act) by Finance Act 1995 (c. 4), Sch. 8 Para. 45(3), **Sch. 29 Pt. 8(5)**, Note 1

F6324 Words in Sch. 19AC para. 11(5) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 45(4)**

F6325 Sch. 19AC para. 11(6) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

11A (1) F6326 . . . . . .

(2) F6327 . . . . . .

Textual Amendments

F6326 Sch. 19AC para. 11A(1) repealed (with effect in accordance with Sch. 3 para. 13(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para 13(11), **Sch. 8 Pt. 2(6)**, Note

F6327 Sch. 19AC para. 11A(2) repealed (with effect in accordance with Sch. 4 para. 29(4), Sch. 8 Pt. 2(10) Note of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 4 para. 29(3), **Sch. 8 Pt. 2(10)**

11B In section 442A the following subsection shall be treated as inserted after subsection (6)—

(") In the case of an overseas life insurance company, the investment return treated as accruing under this section in any accounting period in relation to a policy or contract shall be treated as chargeable profits within section 11(2) of the Taxes Act 1988 where the policy or contract is one which in that accounting period gives rise, or but for the reinsurance arrangement would give rise, to such profits.".

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11C In sections 444A(1) and 460(10A), the references to **[**F6328an insurance business transfer scheme**]** shall be treated as including references to a qualifying overseas transfer (within the meaning of paragraph 4A above).

Textual Amendments

F6328 Words in Sch. 19AC para. 11C substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending Order) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 49(4)**

F6329 12 (1) F6330 . . . . . .

(2) F6331 . . . . . .

Textual Amendments

F6329 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6330 Sch. 19AC para. 12(1) repealed (with effect in accordance with Sch. 3 para. 13(14) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 3 para. 13(12), **Sch. 8 Pt. 2(6)**, Note

F6331 Sch. 19AC para. 12(2) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F6332 13 (1) F6333 . . . . . .

(2) The following **[**F6334subsection shall be treated as inserted after subsection (2) of section 794**]**—

"(3) F6335 . . . . . .

(4) In relation to any item of income falling within section 11(2)(ab), or any chargeable gain falling within section 11(2)(e), the reference in **[**F6336subsection (2)(bb)**]** above to tax paid shall be construed as a reference to that part of the tax paid which bears to the whole of the tax paid the same proportion as that item of income, or that chargeable gain, bears to the relevant income, or relevant gain, by reference to which that item of income, or that chargeable gain, is, by virtue of section 11C, calculated; and, in relation to any such item of income or any such chargeable gain, the reference in section 790(4) to tax paid shall be construed accordingly."

(3) F6337 . . . . . .

Textual Amendments

F6332 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6333 Sch. 19AC para. 13(1) repealed (with effect in accordance with Sch. 30 para. 4(14) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(13)(a), **Sch. 40 Pt. 2(13)**, Note

F6334 Words in Sch. 19AC para. 13(2) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(13)(b)**

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F6335 Words in Sch. 19AC para. 13(2) repealed (with effect in accordance with Sch. 30 para. 4(14) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 30 para. 4(13)(c), **Sch. 40 Pt. 2(13)**, Note

F6336 Words in Sch. 19AC para. 13(2) substituted (with effect in accordance with Sch. 30 para. 4(14) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 30 para. 4(13)(d)**

F6337 Sch. 19AC para. 13(3) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

F6338 14 (1) In subsection (1) of section 811, the words "subsections (1A) and (2)"shall be treated as substituted for the words "subsection (2)".

(2) The following subsection shall be treated as inserted after that subsection—

(") In relation to any item of income falling within section 11(2)(ab), the reference in subsection (1) above to any sum which has been paid in respect of tax on that income shall be construed as a reference to the part of that sum which bears to the whole of that sum the same proportion as that item of income bears to the relevant income by reference to which that item of income is, by virtue of section 11C, calculated."

(3) **F6339** . . . . . .

Textual Amendments

F6338 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6339 Sch. 19AC para. 14(3) repealed (with effect in accordance with Sch. 8 para. 57(1) of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 2

14A (1) In Schedule 19AA, paragraph 5(5)(c) (and the reference to it in paragraph 2(3) of that Schedule) shall be treated as omitted.

(2) The following paragraph shall be treated as inserted at the end of that Schedule—

"6 In its application to an overseas life insurance company this Schedule shall have effect as if—

(a) the references in paragraphs 2 and 3 to assets of the **[**F6340long-term insurance fund**]** were to such of the assets as are—

(i) section 11(2)(b) assets;

(ii) section 11(2)(c) assets; or

(iii) assets which by virtue of section 11B are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;F6341 . . .

(b) the references in paragraphs 2 and 4 to the liabilities of the company's **[**F6342long-term**]** business were to such of those liabilities as are attributable to the branch or agency;**[**F6343 and

(c) the references in paragraph 4 to any liabilities of the company's **[**F6340long-term insurance fund**]** which represent a money debt were to any such of those liabilities as are attributable to the branch or agency;**]**

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and any expression used in this paragraph to which a meaning is given by section 11A has that meaning..”

Textual Amendments

F6340 Words in Sch. 19AC para. 14A(2) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(1)(l)(iv)**

F6341 Word in Sch.19AC para. 14A(2) repealed (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 5(2)(a)**

F6342 Words in Sch. 19AC para. 14A(2) substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 52(2)(o)(iv)**

F6343 Words in Sch. 19AC para. 14A(2) inserted (1.9.2000 with effect in accordance with art. 1 of the amending S.I.) by The Overseas Life Assurance Fund (Amendment) Order 2000 (S.I. 2000/2188), **art. 5(2)(b)**

. . . . . .

F6344 15 F6345 . . . . . .

Textual Amendments

F6344 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, **Sch. 9 para.1**

F6345 Sch. 19AC para. 15 repealed (with effect in accordance with s. 87 of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(12)**, Note

[F6346F6347SCHEDULE 19A

Section 450.]

. . . . . .

Textual Amendments

F6346 Sch. 19A inserted (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 58(4)(a)(5), **Sch. 5**

F6347 Sch. 19A repealed and superseded (with Sch. 19 of the amending Act) (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, ss. 173(2), 213, **Sch. 23 Pt. III(12)** Note 5

[F6363SCHEDULE 19B

Section 496A

PETROLEUM EXTRACTION ACTIVITIES: EXPLORATION EXPENDITURE SUPPLEMENT

Textual Amendments

F6363 Sch. 19B inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 286(3), **Sch. 38**

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PART 1

INTRODUCTORY

About this Schedule

1 (1) This Schedule entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period ending on or after 1st January 2004, to a supplement (initially of 6%, but variable by Treasury order) in respect of—

(a) qualifying capital expenditure incurred before the trade is set up and commenced,

(b) losses incurred in the trade, determined by reference to allowances under Part 6 of the Capital Allowances Act (expenditure on research and development) in respect of qualifying capital expenditure, and

(c) some or all of the supplement allowed in respect of earlier periods.

(2) To qualify, the capital expenditure in question must be incurred on or after 1st January 2004 in respect of oil and gas exploration and appraisal (as well as satisfying other conditions).

(3) Part 2 makes provision about the application and interpretation of this Schedule.

(4) Part 3 makes provision about supplement in relation to expenditure incurred by the company—

(a) with a view to carrying on a ring fence trade, but

(b) in an accounting period before the company sets up and commences that trade.

(5) Part 4 makes provision about supplement in relation to losses incurred in carrying on the ring fence trade.

(6) There is a limit on the number of accounting periods (6) in respect of which a company may claim supplement.

(7) In determining the amount of supplement allowable, reductions fall to be made in respect of—

(a) disposal receipts by virtue of section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value),

(b) ring fence losses that could be set off under section 393A against ring fence profits of earlier periods,

(c) ring fence losses incurred in earlier periods that fall to be set off under section 393 against profits of succeeding periods,

(d) unrelieved group ring fence profits.

PART 2

APPLICATION AND INTERPRETATION

Qualifying companies

2 This Schedule applies in relation to any company which—

(a) carries on a ring fence trade, or

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(b) is engaged in oil and gas exploration and appraisal (see section 837B) with a view to carrying on a ring fence trade,

and in this Schedule any such company is referred to as a "qualifying company".

Accounting periods

3 (1) In this Schedule, in the case of any qualifying company,—

"the commencement period" means the accounting period in which the company sets up and commences its ring fence trade;

"post-commencement period" means any accounting period ending on or after 1st January 2004—

(a) which is the commencement period, or

(b) which ends after the commencement period;

"pre-commencement period" means any accounting period ending—

(a) on or after 1st January 2004, and

(b) before the commencement period.

(2) For the purposes of this Schedule a company not within the charge to corporation tax which incurs qualifying E&A expenditure is to be treated as having such accounting periods as it would have if—

(a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and

(b) it had started to carry on that trade when it started to carry on the research and development on which the expenditure is incurred.

The relevant percentage

4 (1) For the purposes of this Schedule, the relevant percentage for any accounting period ending on or after 1st January 2004 is 6%.

(2) The Treasury may by order vary the percentage for the time being specified in sub-paragraph (1) for such accounting periods as may be specified in the order.

Limit on number of accounting periods for which supplement may be claimed

5 (1) A company may claim supplement under this Schedule in respect of no more than 6 accounting periods.

(2) The accounting periods in respect of which claims are made need not be consecutive.

Qualifying E&A expenditure

6 (1) For the purposes of this Schedule "qualifying E&A expenditure"is any expenditure as respects which the following conditions are satisfied.

(2) Condition 1 is that the expenditure is incurred on or after 1st January 2004.

(3) Condition 2 is that, for the purposes of Part 6 of the Capital Allowances Act, the expenditure is qualifying expenditure incurred on research and development consisting of oil and gas exploration and appraisal (see section 437(2)(b) of that Act).

(4) Condition 3 is that an allowance under section 441 of that Act is claimed in respect of the expenditure.

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(5) Condition 4 is that the expenditure is incurred in the course of oil extraction activities.

(6) Condition 5 is that—

(a) those oil extraction activities are comprised in a ring fence trade, or

(b) after incurring the expenditure, the person incurring it sets up and commences a ring fence trade connected with the research and development.

Unrelieved group ring fence profits for accounting periods

7 (1) There is an amount of unrelieved group ring fence profits for an accounting period of a qualifying company ("company Q") in any case where—

(a) the company and any other company ("company X") are members of the same group of companies, within the meaning given by section 413(3)(a), and

(b) company X has an amount of taxable ring fence profits (see paragraph 8) for a corresponding accounting period.

(2) An accounting period of company X corresponds to an accounting period of company Q if—

(a) it coincides with, or falls wholly within, the accounting period of company Q, or

(b) it falls partly within the accounting period of company Q.

(3) Where an accounting period of company X—

(a) coincides with an accounting period of company Q, or

(b) falls wholly within an accounting period of company Q,

there is, for the accounting period of company Q, an amount of unrelieved group ring fence profits equal to the whole of company X's taxable ring fence profits for its accounting period.

(4) Where an accounting period of company X falls partly within an accounting period of company Q—

(a) there is an amount of unrelieved group ring fence profits for the accounting period of company Q, and

(b) that amount is an amount equal to the part of company X's taxable ring fence profits for its accounting period that is attributable, on an apportionment in accordance with section 834(4), to the part of that period which falls within the accounting period of company Q.

(5) This paragraph applies for the purposes of this Schedule.

Taxable ring fence profits of an accounting period

8 For the purposes of this Schedule, a company has taxable ring fence profits for an accounting period if it has an amount of ring fence profits which is chargeable to corporation tax for that accounting period after any group relief claimed under Chapter 4 of Part 10.

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PART 3

PRE-COMMENCEMENT SUPPLEMENT

Supplement in respect of a pre-commencement accounting period

9 (1) Where—

(a) a qualifying company claims an allowance under section 441 of the Capital Allowances Act (research and development allowances) for the commencement period, and

(b) the claim is for an allowance in respect of qualifying E&A expenditure incurred before that period,

the company may also claim supplement under this Part of this Schedule ("pre-commencement supplement") in respect of one or more pre-commencement periods.

(2) Any pre-commencement supplement allowed on a claim in respect of a pre-commencement period shall be treated as an allowance under Part 6 of the Capital Allowances Act for the commencement period in respect of qualifying E&A expenditure incurred by the company.

(3) The amount of the supplement for any pre-commencement period in respect of which a claim under this paragraph is made is the relevant percentage for that period of the reference amount for that period.

(4) If the pre-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.

(5) Paragraphs 10 to 13 have effect for the purpose of determining the reference amount for a pre-commencement period.

The mixed pool of qualifying E&A expenditure and supplement previously allowed

10 (1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company shall be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of qualifying E&A expenditure and pre-commencement supplement.

(2) The pool shall be taken to have consisted of—

(a) the company's qualifying E&A expenditure, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (3), and

(b) the company's pre-commencement supplement, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (4).

(3) To allocate qualifying E&A expenditure to the pool for any pre-commencement period, take the following steps—

(a) *Step 1:* count as eligible expenditure for that period so much of the qualifying E&A expenditure mentioned in paragraph 9(1)(b) as was incurred in that period,

(b) *Step 2:* find the total of all the eligible expenditure for that period (amount E),

(c) *Step 3:* if paragraph 11 applies, reduce amount E in accordance with that paragraph,

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(d) *Step 4:* if paragraph 12 applies, reduce (or, as the case may be, further reduce) amount E in accordance with that paragraph,

and so much of amount E as remains after making those reductions shall be taken to have been added to the pool in that period.

(4) If any pre-commencement supplement is allowed on a claim in respect of a pre-commencement period, the amount of that supplement shall be taken to have been added to the pool in that period.

Treatment of disposal value on disposal of oil licence with exploitation value

11 (1) This paragraph applies in any case where—

(a) the qualifying company disposes of an interest in an oil licence in a pre-commencement period,

(b) part of the value of the interest (the "deductible amount") is attributable to qualifying E&A expenditure incurred by the company, and

(c) section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value) has effect in relation to the disposal.

(2) For the purpose of allocating qualifying E&A expenditure to the pool for each pre-commencement period—

(a) find the total of the deductible amounts in the case of all such disposals made by the company (amount D), and

(b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.

(3) In this paragraph "oil licence" has the same meaning as in section 555 of the Capital Allowances Act (see section 552 (1) of that Act).

Reduction in respect of unrelieved group ring fence profits

12 (1) This paragraph applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.

(2) For the purpose of allocating qualifying E&A expenditure to the pool for that period—

(a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under paragraph 11, and

(b) reduce that amount (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

The reference amount for a pre-commencement period

13 For the purposes of this Part of this Schedule, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—

(a) after the addition to the pool of any qualifying E&A expenditure allocated to the pool for that period in accordance with paragraph 10(3), but

(b) before determining, and adding to the pool, the amount of any pre-commencement supplement claimed in respect of the period.

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Claims for pre-commencement supplement

14 (1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made at the same time as, and as if it were part of, the claim under section 441 of the Capital Allowances Act mentioned in paragraph 9(1)(a).

(2) Subsection (3) of that section (claim for reduced amount) applies in relation to any such claim.

PART 4

POST-COMMENCEMENT SUPPLEMENT

Supplement in respect of a post-commencement period

15 (1) A qualifying company which incurs a qualifying E&A loss (see paragraph 17) in a post-commencement period may claim supplement under this Part of this Schedule ("post-commencement supplement") in respect of—

(a) that period, or

(b) any subsequent accounting period in which it carries on its ring fence trade.

(2) Any post-commencement supplement allowed on a claim in respect of a post-commencement period shall be treated for the purposes of the Corporation Tax Acts (other than this Part of this Schedule) as if it were a loss—

(a) incurred in carrying on the ring fence trade in that period,

(b) which falls in whole to be set off under section 393 against trading income from the ring fence trade in succeeding accounting periods.

(3) Paragraph 74 of Schedule 18 to the Finance Act 1998 (company tax returns etc: time limit for claims for group relief) shall apply in relation to a claim for post-commencement supplement as it applies in relation to a claim for group relief.

Amount of post-commencement supplement for a post-commencement period

16 (1) The amount of the post-commencement supplement for any post-commencement period in respect of which a claim under paragraph 15 is made is the relevant percentage for that period of the reference amount for that period.

(2) If the post-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.

(3) Paragraphs 19 to 24 have effect for the purpose of determining the reference amount for a post-commencement period.

Ring fence losses and qualifying E&A losses

17 (1) Where—

(a) in any post-commencement period ("the period of the loss") a qualifying company carrying on a ring fence trade incurs a loss in the trade, and

(b) some or all of the loss falls to be set off under section 393 against trading income from the trade in succeeding accounting periods,

so much of the loss as falls to be so set off is a "ring fence loss" of the company.

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(2) In determining for the purposes of this Part of this Schedule how much of a loss incurred in a ring fence trade falls to be set off as mentioned in sub-paragraph (1)(b), it shall be assumed that every claim is made that could be made by the company under section 393A to set losses incurred in the ring fence trade against ring fence profits of earlier post-commencement periods.

(3) So much of a ring fence loss as is attributable to qualifying E&A allowances for the period of the loss is a "qualifying E&A loss".

(4) A ring fence loss is attributable to qualifying E&A allowances to the extent that the amount of the ring fence loss does not exceed the amount of the qualifying E&A allowances for the period of the loss.

(5) But a claim for post-commencement supplement may include an election for a ring fence loss to be treated—

(a) as attributable to qualifying E&A allowances for the period of the loss to such lesser extent as may be specified in the election, or

(b) as not attributable to such allowances.

(6) "Qualifying E&A allowances", in the case of an accounting period, means allowances for that period under Part 6 of the Capital Allowances Act in respect of qualifying E&A expenditure incurred by the company (including any pre-commencement supplement treated under paragraph 9(2) as such an allowance).

(7) This paragraph has effect for the purposes of this Part of this Schedule.

Ring fence losses and non-qualifying losses

18 (1) So much of a ring fence loss as is not a qualifying E&A loss is a non-qualifying loss.

(2) Where—

(a) a loss was incurred by a qualifying company in its ring fence trade in an accounting period ending on or before 31st December 2003, and

(b) some or all of that loss falls to be set off under section 393 against profits of that trade in accounting periods ending on or after that date,

so much of the loss as falls to be so set off is a ring fence loss and that loss is a non-qualifying loss.

(3) This paragraph has effect for the purposes of this Part of this Schedule.

VALID FROM 19/07/2006

Special rule for straddling periods

[F6364 18A (1) This paragraph applies in any case where the period of the loss in which a ring fence loss is incurred is the deemed accounting period under paragraph 3(3) ending before 1st January 2006.

(2) The following assumption shall be made for the purpose of calculating the amount of the qualifying E&A loss and the amount of the non-qualifying loss.

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(3) The assumption is that the loss made in the trade is taken to be the loss incurred in the accounting period beginning before 1st January 2006 and ending on or after that date (disregarding paragraph 3(3)).

(4) The amount of the non-qualifying loss (found in accordance with that assumption) is then reduced (but not below nil) by the following amount.

(5) The amount is the amount of the ring fence loss in the deemed accounting period beginning on 1st January 2006 determined under paragraph 18 of Schedule 19C for the purposes of Part 4 of that Schedule.**]**

Textual Amendments

F6364 Sch. 19B para. 18A inserted (19.7.2006) by Finance Act 2006 (c. 25), **s. 154(9)**

The pool of qualifying E&A losses and the pool of non-qualifying losses

19 (1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company shall be taken at all times in its post-commencement periods to have—

(a) a continuing pool of the company's non-qualifying losses (the "non-qualifying pool"), and

(b) a continuing mixed pool of the company's qualifying E&A losses and post-commencement supplement (the "qualifying pool").

(2) A pool continues even if the amount in it is nil.

The non-qualifying pool

20 (1) The non-qualifying pool consists of the company's non-qualifying losses, allocated to the pool in accordance with sub-paragraph (2).

(2) A non-qualifying loss is allocated to the pool by adding the amount of the non-qualifying loss to the pool in the period of the loss.

(3) In the case of a non-qualifying loss incurred in an accounting period ending on or before 31st December 2003, the period of the loss shall be taken for the purposes of sub-paragraph (2) to be the first accounting period of the company that ends on or after 1st January 2004.

(4) The amount in the non-qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.

(5) Where a reduction in the amount in the non-qualifying pool falls to be made in any accounting period—

(a) the reduction is to be made after the addition to the pool of any non-qualifying loss allocated to the pool in that period in accordance with sub-paragraph (2), and

(b) references to the amount in the non-qualifying pool shall be construed accordingly.

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The qualifying pool

21 (1) The qualifying pool consists of—

(a) the company's qualifying E&A losses, allocated to the pool in accordance with sub-paragraph (2)(a), and

(b) the company's post-commencement supplement, allocated to the pool in accordance with sub-paragraph (2)(b).

(2) The allocation of qualifying E&A losses and post-commencement supplement to the pool is as follows—

(a) the amount of a qualifying E&A loss is added to the pool in the period of the loss, and

(b) if any post-commencement supplement is allowed on a claim in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.

(3) The amount in the qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.

(4) Where a reduction in the amount in the qualifying pool falls to be made in any accounting period, the reduction is to be made—

(a) after the addition to the pool of the amount of any qualifying E&A losses allocated to the pool in that period in accordance with sub-paragraph (2)(a), but

(b) before determining, and adding to the pool, the amount of any supplement claimed in respect of the period,

and references to the amount in the pool shall be construed accordingly.

Reductions in respect of utilised ring fence losses

22 (1) If one or more ring fence losses are set off under section 393 against any profits of a post-commencement period, reductions shall be made in that period in accordance with this paragraph.

(2) The amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the total amount so set off.

(3) If any of that sum remains after being so set against the amount in the non-qualifying pool, the amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

Reductions in respect of unrelieved group ring fence profits

23 (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions shall be made in that period in accordance with this paragraph.

(2) In the following provisions of this paragraph, references to the remaining amount in a pool are references to so much (if any) of the amount in the pool as remains after making any reductions that fall to be made in accordance with paragraph 22.

(3) The remaining amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

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(4) If any of that sum remains after being so set against the remaining amount in the non-qualifying pool, the remaining amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

The reference amount for a post-commencement period

24 For the purposes of this Part of this Schedule the reference amount for a post-commencement period is so much of the amount in the qualifying pool as remains after making any reductions required by paragraph 22 or 23.**]**

VALID FROM 19/07/2006

SCHEDULE 19C Section 496B

PETROLEUM EXTRACTION ACTIVITIES: RING FENCE EXPENDITURE SUPPLEMENT

. . . . . .

SCHEDULE 20 Section 506.

CHARITIES: QUALIFYING INVESTMENTS AND LOANS [M1335]

Marginal Citations
M1335 Source—1986 c. 60 Sch. 7 Pts. II—IV.

PART I

QUALIFYING INVESTMENTS

1 Investments specified in any of the following paragraphs of this Part of this Schedule are qualifying investments for the purposes of section 506.

2 Any investment falling within Part I, Part II, apart from paragraph 13 (mortgages etc.) or Part III of Schedule 1 to the [M1336] Trustee Investments Act 1961.

Marginal Citations
M1336 1961 c. 62.

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3 Any investment in a common investment fund established under section 22 of the [M1337]Charities Act 1960 **[**[F6365], section 24 of the Charities Act 1993**]** or section 25 of the [M1338]Charities Act (Northern Ireland) 1964 or in any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charities.

Textual Amendments

F6365 Words in Sch. 20 para. 3 inserted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 25(a)**

Marginal Citations

M1337 1960 c. 58.

M1338 1964 c. 33 (N.I.).

[[F6366]3A Any investment in a common deposit fund established under section 22A of the Charities Act 1960 **[**[F6367]or section 25 of the Charities Act 1993**]** or in any similar fund established for the exclusive benefit of charities by or under any enactment relating to any particular charities or class of charities.**]**

Textual Amendments

F6366 Sch. 20 para. 3A inserted (1.9.1992) by Charities Act 1992 (c. 41), s. 78(1), **Sch. 6 para. 17**; S.I. 1992/1900, art. 2(1), **Sch. 1**

F6367 Words in Sch. 20 para. 3A inserted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), **Sch. 6 para. 25(b)**

4 Any interest in land, other than an interest held as security for a debt of any description.

5 Shares in, or securities of, a company which are **[**[F6368]listed**]** on a recognised stock exchange, or which are dealt in on the Unlisted Securities Market.

Textual Amendments

F6368 Word in Sch. 20 para. 5 substituted (with effect in accordance with Sch. 38 para. 6(11) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(l)**

6 Units, or other shares of the investments subject to the trusts, of a unit trust scheme within the meaning **[**[F6369]given by section 237(1) of the Financial Services and Markets Act 2000**]**.

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Textual Amendments

F6369 Words in Sch. 20 para. 6 substituted (1.12.2001 in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629), **art. 50**

6A Shares in an open-ended investment company.

7 (1) Deposits with **[**[F6370]a bank**]** in respect of which interest is payable at a commercial rate.

(2) A deposit mentioned in sub-paragraph (1) above is not a qualifying investment if it is made as part of an arrangement under which a loan is made by the authorised institution to some other person.

[[F6371](3) In this paragraph "bank" has the meaning given by section 840A.**]**

Textual Amendments

F6370 Words in Sch. 20 para. 7(1) substituted (with application in accordance with Sch. 37 para. 10 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 5**)

F6371 Sch. 20 para. 7(3) inserted (with application in accordance with Sch. 37 para. 10 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(3)**

7A Uncertificated eligible debt security units as defined in section 552(2) of ITTOIA 2005.

8 Certificates of deposit as defined **[**[F6372]for corporation tax purposes in section 56(5) above and for income tax purposes in section 552(2) of ITTOIA 2005**]**.

Textual Amendments

F6372 Words in Sch. 20 para. 8 substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by virtue of Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 347(3)** (with Sch. 2)

9 (1) Any loan or other investment as to which the Board are satisfied, on a claim made to them in that behalf, that the loan or other investment is made for the benefit of the charity and not for the avoidance of tax (whether by the charity or any other person).

(2) The reference in sub-paragraph (1) above to a loan includes a loan which is secured by a mortgage or charge of any kind over land.

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PART II

QUALIFYING LOANS

1 **[**F6373(1)**]** For the purposes of section 506, a loan which is not made by way of investment is a qualifying loan if it consists of—

(a) a loan made to another charity for charitable purposes only; or

(b) a loan to a beneficiary of the charity which is made in the course of carrying out the purposes of the charity; or

(c) money placed on current account with **[**F6374a bank**]** otherwise than as part of such an arrangement as is mentioned in paragraph 7(2) above; or

(d) any other loan as to which the Board are satisfied, on a claim made to them in that behalf, that the loan is made for the benefit of the charity and not for the avoidance of tax (whether by the charity or by some other person).

[F6375(2) In this paragraph "bank" has the meaning given by section 840A.**]**

Textual Amendments

F6373 Sch. 20 para. 10 renumbered as para. 10(1) (with application in accordance with Sch. 37 para. 10 of the amending Act) by virtue of Finance Act 1996 (c. 8), **Sch. 37 para. 2(4)**

F6374 Words in Sch. 20 para 10 substituted (with application in accordance with Sch. 37 para. 10 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 5**

F6375 Sch. 20 para. 10(2) inserted (with application in accordance with Sch. 37 para. 10 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 37 para. 2(4)**

PART III

ATTRIBUTION OF EXCESS NON-QUALIFYING EXPENDITURE TO EARLIER CHARGEABLE PERIODS

11 This Part of this Schedule applies in the circumstances specified in subsection (6) of section 506 and in this Part—

(a) "the primary period" means the chargeable period of the charity concerned in which there is such an excess as is mentioned in that subsection;

(b) "unapplied non-qualifying expenditure" means so much of the excess referred to in that subsection as does not exceed the non-qualifying expenditure of the primary period; and

(c) "earlier period", in relation to an amount of unapplied non-qualifying expenditure, means any chargeable period of the charity concerned which ended not more than six years before the end of the primary period.

12 (1) So much of the unapplied non-qualifying expenditure as is not shown by the charity to be the expenditure of non-taxable sums received by the charity in the primary period shall be treated in accordance with paragraph 13 below as non-qualifying expenditure of earlier periods.

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(2) In sub-paragraph (1) above "non-taxable sums" means donations, legacies and other sums of a similar nature which, apart from section 505(1) of this Act and section **[**F6376256 of the 1992**]** Act, are not within the charge to tax.

Textual Amendments

F6376 Words in Sch. 20 para. 12(2) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(59)** (with ss. 60, 101(1), 171, 201(3))

13 (1) Where, in accordance with paragraph 12 above, an amount of unapplied non-qualifying expenditure ("the excess expenditure") falls to be treated as non-qualifying expenditure of earlier periods—

(a) it shall be attributed only to those earlier periods (if any) which, apart from the attribution, (but taking account of any previous operation of this paragraph) the relevant income and gains exceed the aggregate of the qualifying and non-qualifying expenditure incurred in that period; and

(b) the amount to be attributed to any such earlier period shall not be greater than the excess of that period referred to in paragraph (a) above.

(2) Where there is more than one earlier period to which the excess expenditure can be attributed in accordance with sub-paragraph (1) above, it shall be attributed to later periods in priority to earlier periods.

(3) In so far as any of the excess expenditure cannot be attributed to earlier periods in accordance with this paragraph, it shall be disregarded for the purposes of section 506(6) (and this Part of this Schedule).

14 All such adjustments shall be made, whether by way of the making of assessments or otherwise, as may be required in consequence of the provisions of this Part of this Schedule.

SCHEDULE 21

Sections 570 and 572.

TAX RELIEF IN CONNECTION WITH SCHEMES FOR RATIONALIZING INDUSTRY AND OTHER REDUNDANCY SCHEMES M1339

Marginal Citations

M1339 Source—1970 c.10, **Sch.11**

PART I

PRELIMINARY

1 (1) In this Schedule—

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"scheme" means a scheme which is for the time being certified or has at any time been certified by the Secretary of State under section 568;

"payment" means a payment made under a scheme, being a payment made to a person carrying on a trade to which the scheme relates and not being a payment made by way of repayment of contributions;

"the person chargeable" means, in relation to any such payment, the person liable to pay any tax which may fall to be paid by reason of the receipt of the payment;

"damage" includes any loss, liability, expense or other burden, and references to the amount of any damage are references to the sum which would be fair compensation for that damage;

"contribution" includes part of a contribution, and "deductible contribution" means a contribution allowed to be deducted under section 568, any reduction under Part III of this Schedule being left out of account; and

"asset" includes part of an asset.

(2) For the purposes of this Schedule, a sum received by any person by way of repayment of contributions shall be deemed to be by way of repayment of the last contribution paid by him, and, if the sum exceeds the amount of that contribution, by way of repayment of the penultimate contribution so paid, and so on.

PART II

RELIEF IN RESPECT OF CERTAIN PAYMENTS

2 The question whether any, and if so, what, relief is to be given shall be determined separately in relation to each payment made under the scheme in respect of the trade, but for the purpose of determining that question regard shall be had, as provided by the following provisions of this Part of this Schedule, to the sum ("the total payment") produced by adding the amount of the payment to the amount of any payments previously so made.

3 **F6377** . . . . . .

Textual Amendments

F6377 Sch. 21 para. 3 repealed (with effect in accordance with s. 134(2) of the repealing Act) by Finance Act 1996 (c. 8), Sch. 20 para. 43, **Sch. 41 Pt. 5(10)**, Note

4 No relief shall be given in respect of the payment unless the total payment, or the amount of the damage in respect of which the total payment has been made, whichever is the smaller, exceeds the aggregate amount of the deductible contributions which have been paid in furtherance of the scheme in respect of the trade in question before the payment is made, exclusive of any contributions which have been repaid before the payment is made.

5 The amount of the reduction to be made in respect of the payment shall be arrived at by—

(a) ascertaining the sum which bears to the excess mentioned in paragraph 4 above the same proportion that the amount mentioned in paragraph 3(b) above bears to the amount mentioned in paragraph 3(a); and

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(b) deducting from that sum the total amount of any reductions which have been or fall to be made under this Schedule in respect of payments previously made under the scheme in respect of the trade.

6 (1) For the purposes of this Schedule, and subject to sub-paragraph (2) below, damage shall be deemed to be damage in respect of which relief may be given under the Tax Acts if and only if—

(a) the damage is attributable to any of the following events, that is to say, the demolition, destruction or putting out of use of any asset, or the disposition or termination of an interest in any asset, and, by reason of that event, an allowance falls to be made under **[**F6378Part 2 or 3 of the Capital Allowances Act in calculating the profits of a trade**]**; or

(b) the damage consists of any loss, liability, expense or other burden in respect of which an allowance may be made in computing the **[**F6379profits**]** of the trade for the purposes of the Tax Acts.

(2) F6380 . . . . . .

(3) Where any event occurs which would give rise to an allowance under the Tax Acts in respect of any asset in taxing, or computing the **[**F6379profits**]** of, a trade but for any of the following matters, that is to say—

(a) that there are no **[**F6379profits**]** against which the allowance could be made, or

(b) that account is required to be taken of allowances previously made or deemed to have been made in respect of the asset; or

(c) that account is required to be taken of any sum which falls to be written off the expenditure incurred on the asset for the purpose of determining whether any and if so what allowance may be given by reason of the event; or

(d) that account is required to be taken of any sum falling to be taken into account as sale, insurance, salvage or compensation moneys, the like consequences shall ensue under this Schedule as if an allowance had fallen to be made by reason of that event.

(4) Where any damage is attributable to a permanent change in the purposes for which an asset is used, or the temporary or permanent putting out of use of an asset, the question whether the damage is damage in respect of which relief may be given under the Tax Acts shall be determined as if the damage had been attributable to a sale of the asset on the date upon which the change or putting out of use took place.

Textual Amendments

F6378 Words in Sch. 21 para. 6(1)(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 65**

F6379 Words in Sch. 21 para. 6(1)(b)(3) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

F6380 Sch. 21 para. 6(2) repealed (with effect in accordance with s. 164(1)(2) of the repealing Act) by Capital Allowances Act 1990 (c. 1), s. 164(4)(5), **Sch. 2**

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PART III

EXCLUSION OF RELIEF IN RESPECT OF CONTRIBUTIONS PAID AFTER RELIEF HAS BEEN GIVEN UNDER PART II

7 The provisions of this Part of this Schedule shall have effect where—

(a) a contribution is paid under a scheme in respect of a trade; and

(b) before the contribution is paid, payments have been made under the scheme to the person carrying on the trade; and

(c) reductions have been made, under Part II of this Schedule, in the amounts which, by reason of those payments, are to be treated as trading receipts of the trade.

8 There shall be ascertained—

(a) the total amount of those reductions; and

(b) the sum by which that total would have been decreased if the contribution, and any previous contributions to which this Part of this Schedule applies, had been paid before any of the payments were made.

9 For the purpose of determining what deduction is to be made in respect of the contribution under section 568, the contribution shall be deemed to be reduced by the sum specified in paragraph 8(b) above, but—

(a) for the purpose of the application of paragraph 8 above in relation to contributions subsequently paid under the scheme in respect of the trade, the total amount of the reductions referred to in that paragraph shall be treated as decreased by that sum; and

(b) for the purpose of the application of paragraph 5 above in relation to payments subsequently made under the scheme in respect of the trade, the total amount of the reductions referred to in that paragraph shall be treated as decreased by that sum.

10 When two or more contributions are paid at the same time, the provisions of this Part of this Schedule shall have effect as if they were a single contribution.

SCHEDULE 22

Section 603.

REDUCTION OF PENSION FUND SURPLUSES [M1340]

Modifications etc. (not altering text)

C1045 Sch. 22 excluded (3.8.2005 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Pension Protection Fund (Tax) (2005-06) Regulations 2005 (S.I. 2005/1907), **regs. 1(1)**, 10

Marginal Citations

M1340 Source—1986 c. 53, **Sch.12 Pt.II**

1 (1) The Board may make regulations providing for this Schedule to apply, as from a prescribed date, in relation to any exempt approved scheme which is of a prescribed kind.

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(2) The Board may make regulations providing for prescribed provisions of this Schedule to apply, as from a prescribed date, in prescribed circumstances, and subject to any prescribed omissions or modifications, in relation to any exempt approved scheme of another prescribed kind.

(3) In this Schedule "prescribed" means prescribed by regulations made by the Board.

Modifications etc. (not altering text)
C1046*For regulations see* Part III Vol.5 (*under "Pension scheme surpluses: valuation"*).

2 (1) The administrator of a scheme in relation to which this Schedule applies shall, in prescribed circumstances and at a prescribed time, either produce to the Board a written valuation such as is mentioned in sub-paragraph (2) below or give to the Board a certificate such as is mentioned in sub-paragraph (3) below.

(2) The valuation must be a valuation of the assets held for the purposes of the scheme and the liabilities of the scheme, must be determined in accordance with prescribed principles and fulfil prescribed requirements, and must be signed by a person with qualifications of a prescribed kind.

(3) The certificate must state whether or not the value of the assets (as determined in accordance with prescribed principles) exceeds the value of the liabilities (as so determined) by a percentage which is more than a prescribed maximum, must be in a prescribed form, and must be signed by a person with qualifications of a prescribed kind.

3 (1) Subject to paragraph 4(4) below, where a valuation produced under paragraph 2 shows, or a certificate given under that paragraph states, that the value of the assets exceeds the value of the liabilities by a percentage which is more than the prescribed maximum, the administrator of the scheme shall within a prescribed period submit to the Board for their approval proposals which comply with sub-paragraph (2) below.

(2) The proposals must be proposals for reducing (or, subject to paragraph (b) below, eliminating) the excess in a way or ways set out in the proposals and falling within sub-paragraph (3) below; and they must be such as to secure that—

(a) by the end of a prescribed period the percentage (if any) by which the value of the assets exceeds the value of the liabilities is no more than the prescribed maximum; and

(b) if the way, or one of the ways, set out in the proposals falls within sub-paragraph (3)(a) below, there remains an excess which is of a level not less than the prescribed minimum.

(3) Subject to sub-paragraph (4) below, the permitted ways of reducing or eliminating the excess are—

(a) making payments to an employer;

(b) suspending for a period (of five years or less) set out in the proposals an employer's obligation to pay contributions under the scheme or reducing for such a period the amount of an employer's contributions under the scheme;

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(c) suspending for a period (of five years or less) set out in the proposals the obligation of employees to pay contributions under the scheme or reducing for such a period the amount of employees' contributions under the scheme;

(d) improving existing benefits provided under the scheme;

(e) providing new benefits under the scheme;

(f) such other ways as may be prescribed.

(4) In prescribed circumstances sub-paragraph (3) above shall apply subject to such omissions or modifications as may be prescribed.

(5) Subject to paragraph 4(4) below, if the administrator of the scheme fails to submit proposals to the Board within the period mentioned in subparagraph (1) above, or if the proposals submitted to them within that period are not approved by the Board within a further prescribed period, paragraph 7 below shall apply.

4 (1) Where a valuation has been produced under paragraph 2 above, the Board may serve on the administrator of the scheme a notice requiring him to furnish the Board, within a prescribed period, with such particulars relating to the valuation as may be specified in the notice.

(2) Where a certificate has been given under paragraph 2 above, the Board may serve on the administrator of the scheme a notice requiring him to produce to the Board, within a prescribed period, a written valuation such as is mentioned in paragraph 2(2) above.

(3) Where a valuation has been produced in compliance with a notice served under sub-paragraph (2) above, the Board may serve on the administrator of the scheme a further notice requiring him to furnish the Board, within a prescribed period, with such particulars relating to the valuation as may be specified in the notice.

(4) Where a notice is served on the administrator of a scheme under sub-paragraph (1) or (2) above, paragraph 3(1) and (5) above shall cease to apply.

5 (1) Where particulars have been furnished under paragraph 4 above, or a valuation has been produced under that paragraph, the Board shall, within a prescribed period, serve on the administrator of the scheme a notice—

(a) stating that they accept the valuation produced under paragraph 2 or, as the case may be, 4 above; or

(b) stating that they do not accept the valuation so produced, and specifying their estimate of the value of the liabilities of the scheme at the relevant time and their estimate of the value of the assets held for the purposes of the scheme at that time.

(2) For the purposes of sub-paragraph (1)(b) above, the relevant time is the time specified in the valuation produced under paragraph 2 or 4 above as the time by reference to which the values of the assets and liabilities are determined.

(3) Where—

(a) in a case falling within sub-paragraph (1)(a) above, the valuation shows that the value of the assets exceeds the value of the liabilities by a percentage which is more than the prescribed maximum; or

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(b) in a case falling within sub-paragraph (1)(b) above, the value of the assets as estimated by the Board exceeds the value of the liabilities as so estimated by a percentage which is more than the prescribed maximum;

the administrator of the scheme shall within a prescribed period submit to the Board for their approval proposals which comply with paragraph 3(2) to (4) above.

(4) If the administrator of the scheme fails to submit proposals to the Board within the period mentioned in sub-paragraph (3) above, or if proposals submitted to them within that period are not approved by the Board within a further prescribed period, paragraph 7 below shall apply.

6 (1) Where proposals are submitted to the Board under paragraph 3(1) or 5(3) above and they approve them within the further prescribed period mentioned in paragraph 3(5) or 5(4) above, the administrator of the scheme shall carry out the proposals within the period mentioned in paragraph 3(2) above.

(2) If the administrator fails to carry out the proposals within that period, paragraph 7 below shall apply.

7 (1) Where this paragraph applies the Board may specify a percentage equivalent to the fraction—

$$\frac{A}{B}$$

where—

A represents their estimate of the value of the liabilities of the scheme at the relevant time increased by a prescribed percentage; and

B represents their estimate of the value of the assets held for the purposes of the scheme at that time.

(2) For the purposes of this paragraph the relevant time is the time specified—

(a) in the valuation produced or certificate given under paragraph 2 above; or

(b) where a valuation has been produced under paragraph 4 above, in that valuation,

as the time by reference to which the values of the assets and liabilities are determined.

(3) Where a percentage has been so specified—

(a) section 592(2) shall apply only to that percentage of any income derived in the relevant period from the assets held for the purposes of the scheme;

(b) section 592(3) shall apply only to that percentage of any underwriting commissions applied in the relevant period for the purposes of the scheme;

(c) **[**[F6381]section 551 of ITTOIA 2005 shall by virtue of section 56(3)(b) of this Act**]** not apply only to that percentage of any profits or gains arising to the scheme in the relevant period; and

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(d) section **[**F6382271(1)(g) of the 1992**]** Act (capital gains tax exemption) shall apply only to that percentage of any gain accruing on the disposal in the relevant period of any of those assets.

(4) Sub-paragraphs (5) to (8) below shall apply where a percentage has been so specified, securities are transferred in the relevant period, and the transferor or transferee is such that, if he became entitled to any interest on them, exemption could be allowed under section 592(2).

(5) Section 715(1)(k) shall not apply.

(6) Where, in consequence of sub-paragraph (5) above, section 713(2)(a) or (3)(b) applies, the sum concerned shall be treated as reduced by an amount equal to the specified percentage of itself.

(7) Where, in consequence of sub-paragraph (5) above, section 713(2)(b) or (3)(a) applies, the relief concerned shall be treated as reduced by an amount equal to the specified percentage of itself.

(8) For the purposes of section 714(5), the amount of interest falling to be reduced by the amount of the allowance shall be treated as the amount found after applying section 592(2).

(9) In sub-paragraphs (4) to (8) above expressions which also appear in sections 710 to 728 have the same meanings as in those sections.

(10) In this paragraph "the relevant period" means the period begining at the relevant time and ending when it is proved to the satisfaction of the Board that the value of the assets (as determined in accordance with prescribed principles) exceeds the value of the liabilities (as so determined) by a percentage which is no more than the prescribed maximum.

Textual Amendments

F6381 Words in Sch. 22 para. 7(3)(c) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 348(2)** (with Sch. 2)

F6382 Words in Sch. 22 para. 7 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(60)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C1047 *See* S.I.1989 No.2290, regn.10(5)*in* Part III Vol.5.

C1048 Sch. 22 para. 7(3)(d) modified (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), **ss. 271(10)**, 289 (with ss. 60, 101(1), 171, 201(3))

C1049 *See* S.I.1989 No.2290, regn.10(5)*in* Part III Vol.5.

7A (1) This paragraph applies if a calculation falls to be made under paragraph 7 above in a case where—

(a) relief is to be given under section 454 of ITTOIA 2005 (listed deeply discounted securities held since 26th March 2003: relief for losses) in respect of a loss sustained on the disposal of securities, and

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(b) had there been a profit on the disposal it would have been eligible for relief from tax for the year of assessment in which the loss is sustained by virtue of section 592(2).

(2) That relief is to be given before the calculation under paragraph 7 above is made.

(3) Then the amount of income to which the specified percentage is applied by virtue of sub-paragraph (3)(a) of that paragraph is reduced by the amount of that relief.

(4) In this paragraph "disposal" has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005.

8 (1) The Board may make regulations providing that an appeal may be brought against a notice under paragraph 5(1)(b) above as if it were notice of the decision of the Board on a claim made by the administrator of the scheme concerned.

(2) Regulations under this paragraph may include—

(a) provision that bringing an appeal shall suspend the operation of paragraph 5(3) and (4) above; and

(b) other provisions consequential on the provision that an appeal may be brought (including provisions modifying this Schedule).

SCHEDULE 23

Section 609.

OCCUPATIONAL PENSION SCHEMES: SCHEMES APPROVED BEFORE 23RD JULY 1987 [M1341]

Marginal Citations

M1341 Source—1987 (No. 2) c. 51, Sch.3 Pt. II

Preliminary

1 (1) This Schedule shall be deemed to have come into force on 17th March 1987 and, subject to sub-paragraphs (2) and (3) below, applies in relation to any retirement benefits scheme approved by the Board before the passing of the Finance (No.2) Act 1987 (23rd July 1987).

[F6383(2) The Board may by regulations provide that, in circumstances prescribed in the regulations, this Schedule or any provision of it shall not apply or shall apply with such modifications as may be so prescribed.

(2A) Regulations under sub-paragraph (2) above—

(a) may include provision authorising the Board to direct that this Schedule or any provision of it shall not apply in any particular case where in the opinion of the Board the facts are such that its application would not be appropriate;

(b) may take effect (and may authorise any direction given under them to take effect) as from 17th March 1987 or any later date;

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(c) may make such supplementary provision as appears to the Board to be necessary or expedient.**]**

(3) This Schedule shall not apply to a retirement benefits scheme if, before the end of 1987, the administrator of the scheme gave notice to the Board that it is not to apply.

(4) Where a notice is given to the Board under sub-paragraph (3) above, the scheme shall, with effect from 17th March 1987 or (if later) the date with effect from which it was approved, cease to be approved.

Textual Amendments

F6383 1988(F) s.56.*Previously*

"(2) The Board may by regulations provide that this Schedule, or any provision of it, shall not apply in relation to a scheme or to an employee—(a) in circumstances prescribed in the regulations; (b) in any case where in the opinion of the Board the facts are such that it would be appropriate for this Schedule, or the provision in question, not to apply."

For regulations see Part III Vol.5*under "Retirement Benefit Schemes: transitional provisions"*.

Accelerated accrual

2 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987.

(2) Notwithstanding anything to the contrary in the rules of the scheme, they shall have effect as if they did not allow the provision for the employee of a pension exceeding one-thirtieth of his relevant annual remuneration for each year of service up to a maximum of 20.

Modifications etc. (not altering text)

C1050 *See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied and when* para.2*modified.*

3 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987 and the scheme allows him to commute his pension or part of it for a lump sum or sums.

(2) If the employee's full pension (that is, the pension before any commutation) is equal to or less than a basic rate commutable pension, the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow him to obtain by way of commutation a lump sum or sums exceeding in all a basic rate lump sum.

(3) If the employee's full pension is greater than a basic rate commutable pension but less than a maximum rate commutable pension, the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow him to obtain by way of commutation a lump sum or sums exceeding in all the aggregate of—

(a) a basic rate lump sum, and

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(b) an amount equal to the relevant percentage of the difference between a basic rate lump sum and a maximum rate lump sum.

(4) In this paragraph, as it applies in relation to an employee—

(a) a "basic rate commutable pension" means a pension of one-sixtieth of his relevant annual remuneration for each year of service up to a maximum of 40;

(b) a "maximum rate commutable pension" means a pension of one-thirtieth of his relevant annual remuneration for each year of service up to a maximum of 20;

(c) a "basic rate lump sum" means a lump sum of three-eightieths of his relevant annual remuneration for each year of service up to a maximum of 40;

(d) a "maximum rate lump sum" means a lump sum of such amount as may be determined by or under regulations made by the Board for the purposes of this paragraph and paragraph 4 below;

(e) "the relevant percentage" means the difference between a basic rate commutable pension and the employee's full pension expressed as a percentage of the difference between a basic rate commutable pension and a maximum rate commutable pension.

Modifications etc. (not altering text)

C1051*For regulations see* Part III Vol.5 (*under "Retirement benefit schemes: maximum lump sum"*).

C1052*See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

4 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987 and the scheme provides a lump sum or sums for him otherwise than by commutation of his pension or part of it.

(2) If the employee's pension is equal to or less than a basic rate non-commutable pension, the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to him, otherwise than by way of commutation, of a lump sum or sums exceeding in all a basic rate lump sum.

(3) If the employee's pension is greater than a basic rate non-commutable pension but less than a maximum rate non-commutable pension the rules of the scheme shall have effect (notwithstanding anything in them to the contrary) as if they did not allow the payment to him, otherwise than by way of commutation, of a lump sum or sums exceeding in all the aggregate of—

(a) a basic rate lump sum, and

(b) an amount equal to the relevant percentage of the difference between a basic rate lump sum and a maximum rate lump sum.

(4) In this paragraph, as it applies in relation to an employee—

(a) a "basic rate non-commutable pension" means a pension of one-eightieth of his relevant annual remuneration for each year of service up to a maximum of 40,

(b) a "maximum rate non-commutable pension" means a pension of one-fortieth of his relevant annual remuneration for each year of service up to a maximum of 20,

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(c) "basic rate lump sum" and "maximum rate lump sum" have the same meanings as in paragraph 3 above, and

(d) "the relevant percentage" means the difference between a basic rate non-commutable pension and the employee's actual pension expressed as a percentage of the difference between a basic rate non-commutable pension and a maximum rate non-commutable pension.

Modifications etc. (not altering text)
C1053*See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

Final remuneration

5 (1) his paragraph applies where an employee who is a member of the scheme retires on or after 17th March 1987.

(2) The rules of the scheme shall have effect as if they provided that in determining the employee's relevant annual remuneration for the purpose of calculating benefits, no account should be taken of anything excluded from the definition of "remuneration" in section 612(1).

(3) In the case of an employee—

(a) whose employer is a company and who at any time in the last ten years of his service is a controlling director of the company, or

(b) whose relevant annual remuneration for the purpose of calculating benefits, so far as the remuneration is ascertained by reference to years beginning on or after 6th April 1987, would (apart from this Schedule) exceed the permitted maximum,

the rules of the scheme shall have effect as if they provided that his relevant annual remuneration must not exceed his highest average annual remuneration for any period of three or more years ending within the period of ten years which ends with the date on which his service ends.

(4) In the case of an employee within paragraph (b) of sub-paragraph (3) above who retires before 6th April 1991, the rules of the scheme shall have effect as if they provided that his relevant annual remuneration must not exceed the higher of—

(a) the average annual remuneration referred to in that sub-paragraph, and

(b) his remuneration (within the meaning given by section 612(1)) assessable to income tax under Schedule E for the year of assessment 1986-87.

(5) For the purposes of this paragraph a person is a controlling director of a company if—

(a) he is a director (as defined in section 612), and

(b) he is within paragraph (b) of section 417(5),

in relation to the company.

Modifications etc. (not altering text)
C1054*See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

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C1055*See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4*and* 5(2), 5(3), 6*and* 7*disapplied, and when* paras.5(3), (4)*modified.*

Lump sums

6 (1) This paragraph applies where an employee becomes a member of the scheme on or after 17th March 1987.

(2) If the rules of the scheme allow the employee to obtain, (by commutation of his pension or otherwise), a lump sum or sums calculated by reference to his relevant annual remuneration, they shall have effect as if they included a rule that in calculating a lump sum any excess of that remuneration over the permitted maximum should be disregarded.

Modifications etc. (not altering text)
C1056*See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4*and* 5(2), 5(3), 6*and* 7*disapplied, and when* paras.5(3), (4)*modified.*

Additional voluntary contributions

7 (1) This paragraph applies where—

(a) the rules of the scheme make provision for the payment by employees of voluntary contributions, and

(b) on or after 8th April 1987 an employee enters into arrangements to pay such contributions.

(2) Notwithstanding anything in the rules of the scheme, they shall have effect as if they did not allow the payment to the employee of a lump sum in commutation of a pension if or to the extent that the pension is secured by the voluntary contributions.

Modifications etc. (not altering text)
C1057*See* S.I.1988 No.1436 (*in* Part III Vol.5)*for circumstances when* paras.2-4, 5(2), 5(3), 6*and* 7*disapplied.*

8 (1) *This paragraph applies where an employee who is a member of the scheme* ("*the main scheme*")*is also a member of an approved scheme* ("*the voluntary scheme*")*which provides additional benefits to supplement those provided by the main scheme and to which no contributions are made by any employer of his.*

(2) *Any rules of the main scheme imposing a limit on the amount of a benefit provided for the employee shall have effect* (*notwithstanding anything in them to the contrary*)*as if they provided for the limit to be reduced by the amount of any like benefit provided for the employee by the voluntary scheme*[F6384].

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Textual Amendments

F6384 *Repealed by* 1989 ss.75*and* 187*and* Sch.6 paras.17*and* 18(10)*and* Sch.17 Part IV.

Supplementary

9 In this Schedule "relevant annual remuneration" means final remuneration or, if the scheme provides for benefits to be calculated by reference to some other annual remuneration, that other annual remuneration.

SCHEDULE 23ZA

Section 631A.

CONVERSION OF CERTAIN APPROVED RETIREMENT BENEFITS SCHEMES

Interpretation

1 (1) In this Schedule—

"the date of the change" shall be construed in accordance with paragraph 3(2) below;

"eligible scheme" shall be construed in accordance with paragraph 2(4) below;

"the personal pension provisions of this Act" means this Schedule and the other provisions of Chapter IV of Part XIV;

"prescribed" (except in paragraph 2(3)(c)) means specified in, or determined in accordance with, regulations;

"regulations" means regulations made by the Board.

(2) Any power conferred by this Schedule to make regulations includes power to make different provision for different cases or different purposes.

Eligible schemes

2 (1) This Schedule applies to any retirement benefits scheme which is for the time being approved under Chapter I of Part XIV.

(2) Sub-paragraph (1) above is subject to the following provisions of this paragraph.

(3) This Schedule applies to a retirement benefits scheme only if—

(a) it is an occupational pension scheme, as defined in section 1 of the [M1342]Pension Schemes Act 1993 or section 1 of the [M1343]Pensions Schemes (Northern Ireland) Act 1993;

(b) it is a money-purchase scheme, as defined in section 181 of the [M1344]Pension Schemes Act 1993 or section 176 of the [M1345]Pensions Schemes (Northern Ireland) Act 1993;

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(c) any documents relating to the scheme which are prescribed under section 631(1) are such that, subject to approval under paragraph 3 below, the scheme is capable of being an approved personal pension scheme for the purposes of Chapter IV of Part XIV as from the date of the change; and

(d) such other conditions as may be prescribed are satisfied in the case of the scheme.

(4) Any retirement benefits scheme to which this Schedule applies is referred to in this Schedule as an "eligible scheme".

Marginal Citations

M1342 1993 c. 48.
M1343 1993 c. 49.
M1344 1993 c. 48.
M1345 1993 c. 49.

Approval of eligible schemes as approved personal pension schemes

3 (1) The trustees of an eligible scheme may at any time on or after 1st October 2000 apply to the Board for approval of the scheme under this paragraph.

(2) If an application under sub-paragraph (1) above is granted, the eligible scheme shall, as from such date as the Board may specify in granting the application (the "date of the change"),—

(a) irrevocably cease to be approved, and to be capable of approval, under Chapter I of Part XIV; and

(b) become an approved personal pension scheme (and subject accordingly to section 631(4) and the other provisions of Chapter IV of Part XIV).

(3) The date of the change must not be earlier than 6th April 2001.

(4) An application under sub-paragraph (1) above shall be in such form, shall contain such information, and shall be accompanied by such documents, in such form, and prepared as at such time, as the Board may prescribe.

(5) The Board may at their discretion grant or refuse an application under sub-paragraph (1) above.

(6) The Board's discretion under sub-paragraph (5) above shall be subject to the restrictions set out in sections 632 to 638A and this Schedule.

(7) The Board shall give notice to the applicant of the grant or refusal of an application.

(8) A notice under sub-paragraph (7) above shall, in the case of a refusal, state the grounds for the refusal.

(9) If, at any time after the making of an application under sub-paragraph (1) above, the eligible scheme concerned ceases to be approved under Chapter I of Part XIV otherwise than by virtue of the operation of sub-paragraph (2)(a) above, the scheme shall not, by virtue of that application, become an approved personal pension scheme.

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Excessive funding of certain individual members

4 (1) The Board may refuse or withhold approval under paragraph 3 above in the case of an eligible scheme of a prescribed description if or so long as they are not satisfied that prescribed requirements will be fulfilled with respect to—

(a) the value of any prescribed benefits which may be provided for or in respect of an individual member of a prescribed description, and

(b) the value of the assets held for the purpose of providing benefits for or in respect of that member,

if approval under paragraph 3 above is granted.

(2) Regulations may make provision for or in connection with cases where the value mentioned in paragraph (b) of sub-paragraph (1) above exceeds, or exceeds by more than a prescribed percentage, the value mentioned in paragraph (a) of that sub-paragraph.

(3) The provision that may be made by virtue of sub-paragraph (2) above includes provision for or in connection with eliminating or reducing any such excess within a prescribed period by one or more prescribed methods.

(4) Regulations may make provision for the purposes of this paragraph for or in connection with—

(a) the valuation of benefits; or

(b) the valuation of assets.

(5) The provision that may be made by virtue of sub-paragraph (4)(a) or (b) above includes provision with respect to, or in connection with,—

(a) the person by whom any such valuation is to be made;

(b) the method or principles of valuation to be used;

(c) certification of any such valuations and of any prescribed matters relating to or connected with them;

(d) any facts, matters or assumptions by reference to which any such valuation is to be made;

(e) any tables to be used for the purpose of making any such valuation;

(f) the basis on which any such tables are to be prepared;

(g) the manner in which any such tables are to be applied.

(6) The methods or principles of valuation and the tables that may be prescribed by virtue of sub-paragraph (5) above include methods or principles or, as the case may be, tables published by the Government Actuary for any purposes of the personal pension provisions of this Act.

Directions as to contributions between valuation and date of change etc.

5 (1) The Board may give directions for or in connection with—

(a) prohibiting the making of contributions during the post-valuation period, or

(b) restricting the amount of the contributions that may be made during that period,

by or in respect of members of a converting scheme.

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(2) Directions under sub-paragraph (1) above—

(a) may be given in respect of schemes generally, schemes of a particular description or any particular scheme or schemes; and

(b) may make different provision in relation to different schemes or different members.

(3) Any directions under sub-paragraph (1) above must be complied with by—

(a) the trustees and managers, or administrators, of any scheme to which the directions relate;

(b) any member of such a scheme to whom the directions relate; and

(c) any person who is the employer of such a member.

(4) If there is any contravention of, or failure to comply with, directions under sub-paragraph (1) above, the Board may—

(a) refuse or withhold approval of the conversion application in question; or

(b) revoke or vary any approval granted or any conditions pending the satisfaction of which approval is withheld.

(5) Sub-paragraph (4) above is without prejudice to any other powers of the Board.

(6) In this paragraph—

"conversion application", in the case of a converting scheme, means the application under paragraph 3(1) above in respect of the scheme;

"converting scheme" means a scheme in respect of which an application under paragraph 3(1) above has been made and not withdrawn or finally refused;

"the post-valuation period", in the case of a converting scheme, means the period which—

(a) begins with the day as at which any valuation for the purposes of paragraph 4 above is made in connection with the conversion application; and

(b) ends with the day preceding the date of the change (or, if earlier, the date on which the conversion application is withdrawn or finally refused).

(7) For the purposes of this paragraph, an application is "finally refused" when it has been refused by the Board and—

(a) the time for appealing under section 651 against the refusal has expired without such an appeal being made; or

(b) an appeal under that section against the refusal has been withdrawn or finally disposed of in a way which affirms refusal of the application.

(8) Any directions under this paragraph must be given in writing.

Scheme rules to allow changes for purpose of conversion

6 An approved retirement benefits scheme shall be taken to include provisions allowing the making of changes to any provisions of the scheme for the purpose of enabling the scheme to become an eligible scheme, notwithstanding anything to the contrary in any provision of the scheme.

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[F6385SCHEDULE 23A

Section 736A.]

MANUFACTURED DIVIDENDS AND INTEREST

Textual Amendments

F6385 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

Modifications etc. (not altering text)

C1058 Sch. 23A modified (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 7 para. 7(3)**

Interpretation

F6386 1 (1) In this Schedule—

F6387 . . . . . .

"dividend manufacturer" has the meaning given by paragraph 2(1) below;

"dividend manufacturing regulations" means regulations made by the Treasury under this Schedule;

F6388 . . . . . .

"interest manufacturer" has the meaning given by paragraph 3(1) below;

"manufactured dividend", "manufactured interest" and "manufactured overseas dividend" shall be construed respectively in accordance with paragraphs 2, 3 and 4 below, as shall references to the gross amount thereof;

F6387 . . . . . .

"overseas dividend" means any interest, dividend or other annual payment payable in respect of any overseas securities;

"overseas dividend manufacturer" has the meaning given by paragraph 4(1) below;

"overseas securities" means—

(a) shares, stock or other securities issued by a government or public or local authority of a territory outside the United Kingdom or by any other body of persons not resident in the United Kingdom;F6389 . . .

(b) F6389 . . . . . .

"overseas tax" means tax under the law of a territory outside the United Kingdom;

"overseas tax credit" means any such credit under the law of a territory outside the United Kingdom in respect of overseas tax as corresponds to a tax credit;

"prescribed" means prescribed in dividend manufacturing regulations;

F6387 . . . . . .

F6387 . . . . . .

"securities" includes any loan stock or similar security;

"transfer" includes any sale or other disposal;

F6387 . . . . . .

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F6387 . . . . . .

"United Kingdom equities" means shares of any company resident in the United Kingdom;

"United Kingdom securities" means securities of the government of the United Kingdom, of any public or local authority in the United Kingdom or of any company or other body resident in the United Kingdom, but does not include F6390 . . . United Kingdom equities.

(2) F6391 . . . . . .

Textual Amendments

F6386 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6387 Sch. 23A para. 1(1): definitions of "approved stock lending arrangement", "market maker", "recognised clearing house", "recognised investment exchange", "unapproved manufactured payment" and "unapproved stock lending arrangement" repealed (with effect in accordance with Sch. 18 Pt. 6(10), Notes 1, 2 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6388 Sch. 23A para. 1(1): definition of "foreign income dividend" repealed (with effect in accordance with Sch. 6 para. 17(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 17(2), **Sch. 8 Pt. 2(11)**, Note

F6389 Sch. 23A para. 1(1): in the definition of "overseas securities", para. (b) and preceding word repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**

F6390 Sch. 23A para. 1(1): words in definition of "UK securities" repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**

F6391 Sch. 23A para 1(2) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 2 of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

[F6392 Manufactured dividends on UK equities: general]

Textual Amendments

F6392 Sch. 23A paras. 2-2B and cross-headings substituted for Sch. 23A para. 2 and cross-heading (with effect in accordance with Sch. 10 para. 16 of the amending Act) by Finance Act 1997 c. 16, **Sch. 10 para. 10(1)**

[F6393F6394(1) This paragraph applies in any case where, under a contract or other arrangements for the transfer of United Kingdom equities, one of the parties (a "dividend manufacturer") is required to pay to the other ("the recipient") an amount (a "manufactured dividend") which is representative of a dividend on the equities.

[F6395(2) Where a manufactured dividend is paid by a dividend manufacturer who is a company resident in the United Kingdom, the Tax Acts shall have effect—

(a) in relation to the recipient, and persons claiming title through or under him, as if the manufactured dividend were a dividend on the UK equities in question; and

(b) in relation to the dividend manufacturer, as if the amount paid were a dividend of his.]

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(3) Where a manufactured dividend to which sub-paragraph (2) above does not apply is paid by any person—

(a) F6396 . . . . . .

(b) the Tax Acts shall have effect in relation to the recipient, and persons claiming title through or under him, as if the manufactured dividend were a dividend on the United Kingdom equities in question; and

(c) the Tax Acts shall have effect in relation to the dividend manufacturer subject to the provisions of paragraph 2A below.

(4) . . . . . .

F6397(5) . . . . . .

F6397(6) F6398. . . Where—

(a) a dividend manufacturer pays a manufactured dividend **[**F6399to which sub-paragraph (3) above applies**]**, F6400. . .

F6400(b) . . . . . .

the dividend manufacturer shall, on paying the manufactured dividend, provide the recipient with a statement in writing setting out the matters specified in sub-paragraph (7) below.

(7) Those matters are—

(a) the amount of the manufactured dividend;

(b) the date of the payment of the manufactured dividend; and

(c) the amount of the tax credit to which, by virtue of sub-paragraph (3)(b) above, the recipient or a person claiming title through or under him either—

(i) is entitled in respect of the manufactured dividend, or

(ii) would be so entitled were all the conditions of a right to a tax credit satisfied, in the case of the recipient or that person, as respects the dividend which the recipient is deemed to receive.

(8) The duty imposed by sub-paragraph (6) above shall be enforceable at the suit or instance of the recipient.**]**

Textual Amendments

F6393 Sch. 23A paras 2-2B and cross-headings substituted for Sch. 23A para. 2 and cross-heading (with effect in accordance with Sch. 10 para. 16 of the amending Act) by Finance Act 1997 c. 16, **Sch. 10 para. 10(1)**

F6394 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg. 2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs. 2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(b), 4)

F6395 Sch. 23A para. 2(2) substituted (with effect in accordance with s. 102(10) of the amending Act) by Finance Act 1998 (c. 36), **s. 102(5)**

F6396 Sch. 23A para. 2(3)(a) repealed (with effect in accordance with s. 102(10) of the repealing Act) by Finance Act 1998 (c. 36), s. 102(6), **Sch. 27 Pt. 3(24)**, Note

F6397 Sch. 23A para. 2(4)(5) repealed (with effect in accordance with s. 102(10) of the repealing Act) by Finance Act 1998 (c. 36), s. 102(8)(a), **Sch. 27 Pt. 3(24)**, Note

F6398 Words in Sch. 23A para. 2(6) repealed (with effect in accordance with Sch. 6 para. 17(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 17(3), **Sch. 8 Pt. 2(11)**, Note

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F6399 Words in Sch. 23A para. 2(6)(a) inserted (with effect in accordance with s. 102(10) of the amending Act) by Finance Act 1998 (c. 36), **s. 102(7)**

F6400 Sch. 23A para. 2(6)(b) and preceding word repealed (with effect in accordance with s. 102(10) of the repealing Act) by Finance Act 1998 (c. 36), s. 102(8)(a), **Sch. 27 Pt. 3(24)**, Note

Modifications etc. (not altering text)

C1059 Sch. 23A para. 2 modified (19.7.2006) by Finance Act 2006 (c. 25), ss. 134, 139(1)(2), **Sch. 17 para. 30** (as that affecting s. 139 is amended by Finance Act 2006 (c. 25), s. 1034(1), Sch. 1 para. 621, Sch. 3 Pt.1 (with **Sch. 2**) and S.I. 2009/2859, **arts. 1**, 3)

C1060 Sch. 23A para. 2(3)(c) extended (with effect in accordance with s. 24(15) of the extending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 24(13)**

Deductibility of manufactured payment in the case of the manufacturer

2A **[**F6401(1) Where, in the case of a manufactured dividend, the dividend manufacturer is resident in the United Kingdom but is not a company, an amount ("the relevant amount") equal to the lesser of—

(a) the amount of the manufactured dividend paid (so far as it is not otherwise deductible), and

(b) the amount of the dividend of which the manufactured dividend is representative,

shall be allowable as a deduction for the purposes of income tax only under sub-paragraph (1ZA) or (1A) below.**]**

[F6402(1ZA) The relevant amount shall be allowable under this sub-paragraph as a deduction for the purposes of income tax to the extent that the dividend manufacturer—

(a) receives the dividend on the equities which is represented by the manufactured dividend or receives a payment which is representative of that dividend, and

(b) is chargeable to income tax on the dividend or other payment so received;

and that deduction shall be made against the amount of the dividend or other payment so received on which the dividend manufacturer is chargeable to income tax.

(1ZB) Sub-paragraph (1ZA) above shall apply only if the amount of the dividend or other payment so received is received by the dividend manufacturer in—

(a) the year of assessment in which he pays the manufactured dividend, or

(b) the year of assessment immediately before, or immediately after, that year.**]**

[F6403(1A) **[**F6404The relevant amount shall be allowable under this sub-paragraph as a deduction for the purposes of income tax against the total income of the dividend manufacturer**]** to the extent that—

(a) F6405 . . . . . .

(b) the dividend manufacturer is treated under section 730A (repos) as receiving a payment of interest in respect of the equities and is chargeable to income tax on that payment; F6406. . .

(c) F6406 . . . . . .

F6407 . . . . . .

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(1B) Where an amount is allowable under **[**F6408sub-paragraph (1ZA) or (1A)**]** above by reference to the whole or any part of—

(a) a dividend or other payment falling within **[**F6409sub-paragraph (1ZA)**]** above **[**F6410, or**]**

(b) a payment of interest which a person is treated as receiving, as mentioned in **[**F6411sub-paragraph (1A) above**]**, F6412. . .

(c) F6412. . . . . .

(the "utilised portion" of the dividend **[**F6413or other payment**]**) no other amount shall be allowable under **[**F6408sub-paragraph (1ZA) or (1A)**]** above by reference to all or any of the utilised portion of the dividend **[**F6413or other payment**]**.**]**

(2) F6414. . . . . .

(3) F6415. . . . . .

(4) The references in this paragraph to an amount being deductible are references to its being either—

(a) deductible in computing the amount of any of the dividend manufacturer's profits or gains for the purposes of income tax F6416. . . ; or

(b) deductible for those purposes from the total income F6417. . . of the dividend manufacturer.

Textual Amendments

F6401 Sch. 23A para. 2A(1) substituted (with effect in accordance with Sch. 24 para. 2(7)-(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(2)**

F6402 Sch. 23A para. 2A(1ZA)(1ZB) inserted (with effect in accordance with Sch. 24 para. 2(7)(8)(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(3)**

F6403 Sch. 23A para. 2A(1A)(1B) inserted (with effect in accordance with s. 108(6) of the amending Act) by Finance Act 2002 (c. 23), **s. 108(3)**

F6404 Words in Sch. 23A para. 2A(1A) substituted (with effect in accordance with Sch. 24 para. 2(9)(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(4)(a)**

F6405 Sch. 23A para. 2A(1A)(a) repealed (with effect in accordance with Sch. 24 para. 2(7)(8)(10) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 24 para. 2(4)(b), **Sch. 42 Pt. 2(16)**, Note 1

F6406 Sch. 23A para. 2A(1A)(c) and preceding word repealed (with effect in accordance with Sch. 24 para. 2(11) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 24 para. 2(4)(c), **Sch. 42 Pt. 2(16)**, Note 2

F6407 Words in Sch. 23A para. 2A(1A) repealed (with effect in accordance with Sch. 24 para. 2(11) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 24 para. 2(4)(d), **Sch. 42 Pt. 2(16)**, Note 2

F6408 Words in Sch. 23A para. 2A(1B) substituted (with effect in accordance with Sch. 24 para. 2(7)-(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(5)(a)**

F6409 Words in Sch. 23A para. 2A(1B)(a) substituted (with effect in accordance with Sch. 24 para. 2(7)(8)(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(5)(b)**

F6410 Word at the end of Sch. 23A para. 2A(1B)(a) inserted (with effect in accordance with Sch. 24 para. 2(7)(8)(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(5)(b)**

F6411 Words in Sch. 23A para. 2A(1B)(b) substituted (with effect in accordance with Sch. 24 para. 2(9)(10) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(5)(c)**

F6412 Sch. 23A para. 2A(1B)(c) and preceding word repealed (with effect in accordance with Sch. 24 para. 2(11) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 24 para. 2(5)(d), **Sch. 42 Pt. 2(16)**, Note 2

F6413 Words in Sch. 23A para. 2A(1B) substituted (with effect in accordance with Sch. 24 para. 2(11) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 24 para. 2(5)(e)**

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F6414 Sch. 23A para. 2A(2) repealed (with effect in accordance with s. 24(15) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), s. 24(13), **Sch. 8 Pt. 2(8)**, Note 1
F6415 Sch. 23A para. 2A(3) repealed (with effect in accordance with s. 102(10) of the repealing Act) by Finance Act 1998 (c. 36), s. 102(8)(b), **Sch. 27 Pt. 3(24)**, Note
F6416 Words in Sch. 23A para. 2A(4)(a) repealed (22.7.2004) by Finance Act 2004 (c. 12), Sch. 24 para. 2(6)(a), **Sch. 42 Pt. 2(16)**
F6417 Words in Sch. 23A para. 2A(4)(b) repealed (22.7.2004) by Finance Act 2004 (c. 12), Sch. 24 para. 2(6)(b), **Sch. 42 Pt. 2(16)**

Manufactured dividends representative of foreign income dividends

. . . . . .

2B **F6418** . . . . . .

Textual Amendments
F6418 Sch. 23A para. 2B repealed (with effect in accordance with Sch. 6 para. 17(5) of the repealing Act) by Finance (No. 2) Act 1997 (c. 58), Sch. 6 para. 17(4), **Sch. 8 Pt. 2(11)**, Note

Manufactured interest on UK securities: general

3 (1) This paragraph applies (subject to paragraph 3A below) in any case where, under a contract or other arrangements for the transfer of United Kingdom securities, one of the parties (an "interest manufacturer") is required to pay to the other ("the recipient") an amount ("the manufactured interest") which is representative of a periodical payment of interest on the securities.

(2) For the relevant purposes of the Tax Acts, in their application in relation to the interest manufacturer—

(a) the manufactured interest shall be treated, except in determining whether it is deductible, as if it—

(i) were an annual payment to the recipient, but

(ii) were neither yearly interest nor an amount payable wholly out of profits or gains brought into charge for income tax;

(b) the gross amount of that deemed annual payment shall be taken—

(i) to be equal to the gross amount of the interest of which the manufactured interest is representative; and

(ii) to constitute income of the recipient falling within section 1A;

and

(c) an amount equal to so much of the gross amount of the manufactured interest as is not otherwise deductible shall be allowable as a deduction against the total income or, as the case may be, total profits of the interest manufacturer **[**F6419, but only to the extent that—

(i) it would be so allowable if it were interest, or

(ii) so far as not falling within sub-paragraph (i) above, it falls within sub-paragraph (2A) below**]**.

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[F6420(2A) An amount of manufactured interest falls within this sub-paragraph if and to the extent that the interest manufacturer—

(a) receives the periodical payment of interest on the securities which is represented by the manufactured interest, or receives a payment which is representative of that periodical payment of interest, and is chargeable to income tax **[**F6421(and see section 714(5) for the amount so chargeable in a case where section 714(4) applies)**]** on the periodical payment or representative payment so received;

[F6422(b) is, by virtue of section 714(2), chargeable to income tax on **[**F6423income**]** in respect of transfers of securities which are subject to the arrangement giving rise to the payment of manufactured interest; or**]**

(c) is treated under section 730A (repos) as receiving a payment of interest in respect of the securities and is chargeable to income tax on that payment.

(2B) Where an amount is allowable under sub-paragraph (2)(c) above by reference to the whole or any part of—

(a) a periodical payment of interest, or a payment representative of such a payment, falling within paragraph (a) of sub-paragraph (2A) above,

(b) a sum falling within paragraph (b) of that sub-paragraph, or

(c) a payment of interest which a person is treated as receiving, as mentioned in paragraph (c) of that sub-paragraph,

(the "utilised portion" of the interest, sum or other payment) no other amount shall be allowable under sub-paragraph (2)(c) above by reference to all or any of the utilised portion of the interest, sum or other payment.**]**

(3) For the relevant purposes of the Tax Acts, in their application in relation to the recipient and any persons claiming title through or under him—

(a) the manufactured interest shall be treated as if it were a periodical payment of interest on the securities in question; and

(b) the gross amount of that deemed periodical payment of interest shall be taken to be equal to the gross amount of the interest of which the manufactured interest is representative.

(4) Sub-paragraph (2) above shall not require any deduction of tax to be made by the interest manufacturer if—

(a) the interest manufacturer is not resident in the United Kingdom, and

(b) the manufactured interest is paid otherwise than in the course of a trade carried on by the interest manufacturer in the United Kingdom through a branch or agency.

(5) Where, in a case falling within sub-paragraph (4)(a) and (b) above, the recipient—

(a) is resident in the United Kingdom, or

(b) (without being so resident) receives the manufactured interest for the purposes of a trade carried on by him in the United Kingdom through a branch or agency,

the recipient shall be liable to account for income tax in respect of the manufactured interest.

(6) The amount of the income tax for which the recipient is liable to account under sub-paragraph (5) above is the amount equal to the income tax which the interest manufacturer, had he been resident in the United Kingdom, would have been

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required, in respect of the manufactured interest, to account for and pay by virtue of sub-paragraph (2) above.

(7) For the purposes of sub-paragraph (2) above, if the interest manufacturer is a company which—

(a) is not resident in the United Kingdom, but

(b) carries on a trade in the United Kingdom through a branch or agency,

Schedule 16 shall have effect in relation to the manufactured interest as it has effect in the case of a company which is resident in the United Kingdom but as if, in paragraph 7, the words "section 11(3)" were substituted for the words "section 7(2)".

(8) Where sub-paragraph (2) above has effect in the case of any manufactured interest so as to require any amount to be deducted by way of tax from the gross amount of the manufactured interest, the interest manufacturer shall, on paying the manufactured interest, provide the recipient with a statement in writing setting out—

(a) the gross amount of the manufactured interest;

(b) the amount deducted by way of tax by the interest manufacturer;

(c) the amount actually paid by the interest manufacturer; and

(d) the date of the payment by the interest manufacturer.

(9) The duty imposed by sub-paragraph (8) above shall be enforceable at the suit or instance of the recipient.

(10) The references in this paragraph to an amount being deductible are references to its being either—

(a) deductible in computing the amount of any of the interest manufacturer's profits or gains for the purposes of income tax or corporation tax; or

(b) deductible for those purposes from the total income or, as the case may be, total profits of the interest manufacturer.

(11) For the purposes of this paragraph "the relevant purposes of the Tax Acts" means all the purposes of those Acts except the purposes of Chapter II of Part IV of the [M1346]Finance Act 1996 (loan relationships).

(12) Without prejudice to the generality of section 80(5) of the Finance Act 1996 (matters to be brought into account only under that Chapter), this paragraph does not have effect for determining how any manufactured interest falls to be treated for any purpose in relation to a company in relation to which that interest falls to be treated in accordance with section 97 of that Act.

(13) For the purposes of this paragraph references to the gross amount of any interest or payment are references to the amount of the interest or payment before the making of any deduction of income tax that is required to be deducted from it on its being paid or made.

Textual Amendments

F6419 Words in s. 23A para. 3(2)(c) added (with effect in accordance with s. 108(7) of the amending Act) by Finance Act 2002 (c. 23), **s. 108(4)**

F6420 Sch. 23A para 3(2A)(2B) inserted (with effect in accordance with s. 108(7) of the amending Act) by Finance Act 2002 (c. 23, s. 108(5)

F6421 Words in Sch. 23A para. 2A(a) inserted (with effect in accordance with Sch. 7 para. 6(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 6(2)(a)**

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F6422 Sch. 23A para. 2A(b) substituted (with effect in accordance with Sch. 7 para. 6(5) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 6(2)(b)**

F6423 Word in Sch. 23A para. 2A(b) substituted (with effect in accordance with Sch. 7 para. 6(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 6(3)**

Modifications etc. (not altering text)

C1061 Sch. 23A paras. 3, 4 modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**

C1062 Sch. 23A para. 3(5) excluded (1.7.1997) by The Manufactured Interest (Tax) Regulations 1997 (S. I. 1997/992), **regs. 1**, 4

Marginal Citations

M1346 1996 c. 8.

Manufactured interest on gilt-edged securities etc.

3A (1) Where any manufactured interest is representative of interest on securities to which this paragraph applies—

(a) paragraph 3(2) above shall not require any deduction of tax to be made on the payment of that manufactured interest; and

(b) without prejudice to any other liability of his to income tax in respect of the manufactured interest, the recipient shall not by virtue of paragraph 3(5) above be liable to account for any income tax in respect of that manufactured interest.

(2) This paragraph applies to—

(a) gilt-edged securities (within the meaning of section **[**F6424 50**]**); and

(b) securities not falling within paragraph (a) above on which the interest is payable without deduction of tax.

Textual Amendments

F6424 Word in Sch. 23A para. 3A(2)(a) substituted (with effect in accordance with s. 37(8)-(13) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **s. 37(7)**

F6425 Manufactured overseas dividends

Textual Amendments

F6425 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6426 4 (1) This paragraph applies in any case where, under a contract or other arrangements for the transfer of overseas securities, one of the parties (the "overseas dividend manufacturer") is required to pay to the other ("the recipient") an amount

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representative of an overseas dividend on the overseas securities; and in this Schedule the "manufactured overseas dividend" means any payment which the overseas dividend manufacturer makes in discharge of that requirement.

[F6427(1A) Where a manufactured overseas dividend is paid as set out in sub-paragraph (1) above it shall be treated—

(a) as an expense of the trade where a company carries on a trade to which that payment relates;

(b) where a company has investment business to which the payment relates, for the purposes of section 75 as expenses of management;

(c) in the case of a company carrying on life assurance business—

(i) so far as the payment is referable to basic life assurance and general annuity business, for the purposes of section 76 as if it were an expense payable falling to be brought into account at Step 3 of subsection (7) of that section, and

(ii) the payment is to be treated as referable to basic life assurance and general annuity business to the extent that the overseas dividend of which it is representative is or would, if it were received by the company, be so referable by virtue of section 432A.**]**

(2) Subject to sub-paragraph (3) below, where this paragraph applies the gross amount of the manufactured overseas dividend shall be treated **[**F6428, except in determining whether it is deductible,**]** for all purposes of the Tax Acts as an annual payment, within section 349, but—

(a) the amount which is to be deducted from that gross amount on account of income tax shall be an amount equal to the relevant withholding tax on that gross amount; and

(b) in the application of **[**F6429section 350(4)**]** in relation to manufactured overseas dividends the **[**F6430reference**]** to Schedule 16 shall be taken as **[**F6430reference**]** to dividend manufacturing regulations;

and paragraph (a) above is without prejudice to any further amount required to be deducted under dividend manufacturing regulations by virtue of sub-paragraph (8) below.

[F6431(2A) Sub-paragraph (10) of paragraph 3 applies for the construction of the reference in sub-paragraph (2) above to an amount being deductible as it applies to references in that paragraph.**]**

(3) If, in a case where this paragraph applies, the overseas dividend manufacturer is not resident in the United Kingdom and the manufactured overseas dividend is paid by him otherwise than in the course of a trade which he carries on through a branch or agency in the United Kingdom, sub-paragraph (2) above shall not apply; but if the manufactured overseas dividend is received by **[**F6432a United Kingdom recipient, that recipient shall**]** account for and pay an amount of tax in respect of the manufactured overseas dividend equal to that which the overseas dividend manufacturer would have been required to account for and pay had he been resident in the United Kingdom; and any reference in this Schedule to an amount deducted under sub-paragraph (2) above includes a reference to an amount of tax accounted for and paid under this sub-paragraph.

[F6433(3A) For the purposes of sub-paragraph (3) above a person who receives a manufactured overseas dividend is a United Kingdom recipient if—

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(a) he is resident in the United Kingdom; or

(b) he is not so resident but receives that dividend for the purposes of a trade carried on through a branch or agency in the United Kingdom.

(3B) Dividend manufacturing regulations may make provision, in relation to cases falling within sub-paragraph (3) above, for the amount of tax required under that sub-paragraph to be taken to be reduced, to such extent and for such purposes as may be determined under the regulations, by reference to amounts of overseas tax charged on, or in respect of—

(a) the making of the manufactured overseas dividend; or

(b) the overseas dividend of which the manufactured overseas dividend is representative.**]**

(4) Where a manufactured overseas dividend is paid after deduction of the amount required by sub-paragraph (2) above, or where the amount of tax required under sub-paragraph (3) above in respect of such a dividend has been accounted for and paid, then for all purposes of the Tax Acts as they apply in relation to persons resident in the United Kingdom or to persons not so resident but carrying on business through a branch or agency in the United Kingdom—

(a) the manufactured overseas dividend shall be treated in relation to the recipient, and all persons claiming title through or under him, as if it were an overseas dividend of an amount equal to the gross amount of the manufactured overseas dividend, but paid after the withholding therefrom, on account of overseas tax, of the amount deducted under sub-paragraph (2) above; and

(b) the amount so deducted shall accordingly be treated in relation to the recipient, and all persons claiming title through or under him, as an amount so withheld instead of as an amount on account of income tax.

(5) For the purposes of this paragraph—

(a) "relevant withholding tax", in relation to the gross amount of a manufactured overseas dividend, means an amount of tax representative of—

(i) the amount (if any) that would have been deducted by way of overseas tax from an overseas dividend on the overseas securities of the same gross amount as the manufactured overseas dividend; and

(ii) the amount of the overseas tax credit (if any) in respect of such an overseas dividend;

(b) the gross amount of a manufactured overseas dividend is an amount equal to the gross amount of that overseas dividend of which the manufactured overseas dividend is representative, as mentioned in sub-paragraph (1) above; and

(c) the gross amount of an overseas dividend is an amount equal to the aggregate of—

(i) so much of the overseas dividend as remains after the deduction of the overseas tax (if any) chargeable on it;

(ii) the amount of the overseas tax (if any) so deducted; and

(iii) the amount of the overseas tax credit (if any) in respect of the overseas dividend.

(6) Dividend manufacturing regulations may make provision with respect to the rates of relevant withholding tax which are to apply in relation to manufactured overseas

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dividends in relation to different overseas territories, but in prescribing those rates the Treasury shall have regard to—

(a) the rates at which overseas tax would have fallen to be deducted, and

(b) the rates of overseas tax credits,

in overseas territories, or in the particular overseas territory, in respect of payments of overseas dividends on overseas securities.

(7) Dividend manufacturing regulations may make provision for a person who, in any chargeable period, is an overseas dividend manufacturer to be entitled in prescribed circumstances to set off **[**F6434in accordance with the regulations and to the prescribed extent, amounts falling within paragraph (a) of sub-paragraph (7AA) below against the sums falling within paragraph (b) of that sub-paragraph, and to account**]**to the Board for, or as the case may be, claim credit in respect of, the balance.

[F6435(7AA) Those amounts and sums are—

(a) amounts of overseas tax in respect of overseas dividends received by him in that chargeable period, amounts of overseas tax charged on, or in respect of, the making of manufactured overseas dividends so received by him and amounts deducted under sub-paragraph (2) above from any such manufactured overseas dividends; and

(b) the sums due from him on account of the amounts deducted by him under sub-paragraph (2) above from the manufactured overseas dividends paid by him in that chargeable period.**]**

[F6436(7A) F6437. . . . . .**]**

(8) F6438. . . . . .

[F6439(9) Without prejudice to section 97 of the Finance Act 1996 (manufactured interest), the references in this paragraph to all the purposes of the Tax Acts do not include the purposes of Chapter II of Part IV of that Act (loan relationships).**]**

Textual Amendments

F6426 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6427 Sch. 23A para. 4(1A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 37(3)

F6428 Words in Sch. 23A para. 4(2) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 37(4)(a)

F6429 Words in Sch. 23A para. 4(2)(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 37(4)(b)(i)

F6430 Words in Sch. 23A para. 4(2)(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 37(4)(b)(ii)

F6431 Sch. 23A para. 4(2A) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 37(5)

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F6432 Words in Sch. 23A para 4(3) substituted (with effect in accordance with s. 159(9) of the amending Act) by Finance Act 1996 (c. 8), **s. 159(4)**
F6433 Sch. 23A para 4(3A)(3B) inserted (with effect in accordance with s. 159(9) of the amending Act) by Finance Act 1996 (c. 8), **s. 159(5)**
F6434 Words in Sch. 23A para. 4(7) substituted (29.4.1996) by Finance Act 1996 (c. 8), **s. 159(6)**
F6435 Sch. 23A para. 4(7AA) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 159(6)**
F6436 Sch. 23A para. 4(7A) inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 124**
F6437 Sch. 23A para. 4(7A) repealed (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(21)**, Note 2
F6438 Sch. 23A para. 4(8) repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**
F6439 Sch. 23A para. 4(9) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 52(4)** (with Sch. 15)

Modifications etc. (not altering text)
C1063 Sch. 23A paras. 3, 4 modified (with effect in accordance with s. 153(4) of the modifying Act) by Finance Act 2003 (c. 14), **s. 153(2)(a)**
C1064 Sch. 23A para. 4(1) applied (1.10.1993) by S.I. 1993/2004, **reg.2**
C1065 Sch. 23A para. 4(2) restricted (1.10.1993) by S.I. 1993/2004, **reg.5(1)**
C1066 Sch. 23A para. 4(3) restricted (1.10.1993) by S.I. 1993/2004, **reg.7(1)** (as amended by S.I. 2011/1787, **regs. 1**, 7)

VALID FROM 21/07/2009

4A (1) A reference in paragraph 4(4)(a) or (b) to the relevant amount in relation to an amount deducted under section 922(2) of ITA 2007 is—

(a) where the deduction is made in respect of a manufactured overseas dividend that is treated as paid under paragraph 13(1) of Schedule 13 to FA 2007 (sale and repurchase of securities), to amount A, and

(b) otherwise, to the amount deducted under section 922(2) of ITA 2007.

(2) Amount A is—

(a) in a case to which sub-paragraph (3) applies, the amount deducted under section 922(2) of ITA 2007,

(b) in a case to which sub-paragraph (4) applies—

(i) the amount deducted under section 922(2) of ITA 2007, less

(ii) the excess mentioned in that sub-paragraph, and

(c) in any other case, nil.

(3) This sub-paragraph applies to a case in which—

(a) an amount is actually paid by way of manufactured overseas dividend,

(b) the amount so paid equals the relevant net amount, and

(c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.

(4) This sub-paragraph applies to a case in which—

(a) an amount is actually paid by way of manufactured overseas dividend,

(b) the amount so paid exceeds the relevant net amount, and

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(c) it is reasonable to assume that, in deciding the repurchase price of the securities, no account was taken of the fact that the amount would be so paid.

(5) In this paragraph "the repurchase price" of the securities means the price at which the payer of the manufactured overseas dividend is entitled or obliged to sell the securities, or similar securities, to the recipient of the manufactured overseas dividend.

(6) In this paragraph "the securities" means the securities in respect of which the overseas dividend of which the manufactured overseas dividend is representative is paid.

(7) In this paragraph "the relevant net amount" means—

(a) the gross amount of the overseas dividend of which the manufactured overseas dividend is representative, less

(b) the amount deducted under section 922(2) of ITA 2007.

F6440 *Dividends and interest passing through the market*

Textual Amendments

F6440 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs. 2**, 3(b),4)

. . . . . .

F6441 5 F6442 . . . . . .

Textual Amendments

F6441 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6442 Sch. 23A para. 5 repealed (with effect in accordance with Sch. 10 para. 16, Sch. 18 Pt. 6(10) Note 3 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 12, **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6443 *Unapproved manufactured payments*

Textual Amendments

F6443 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

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. . . . . .

F6444 6 F6445 . . . . . .

Textual Amendments

F6444 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6445 Sch. 23A para. 6 repealed (with effect in accordance with Sch. 10 para. 7(2), Sch. 18 Pt. 6(10) Note 2 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 4(a), **Sch 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6446 *Irregular manufactured payments*

Textual Amendments

F6446 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6447 7 (1) F6448 . . . In any case where (apart from this paragraph)—

(a) an amount paid by way of manufactured dividend would exceed the amount of the dividend of which it is representative, or

(b) the aggregate of—

(i) an amount paid by way of manufactured interest or manufactured overseas dividend, and

(ii) the tax required to be accounted for in connection with the making of that payment,

would exceed the gross amount (as determined in accordance with paragraph 3 or 4 above) of the interest or overseas dividend of which it is representative, as the case may be,

the payment shall, to the extent of an amount equal to the excess, not be regarded for the purposes of this Schedule as made in discharge of the requirement referred to in paragraph 2(1), 3(1) or 4(1) above, as the case may be, but shall instead to that extent be taken for all purposes of the Tax Acts to constitute a separate fee for entering into the contract or other arrangements under which it was made, **[**F6449 notwithstanding anything in paragraphs 2 or 3 above or anything in paragraph 4 other than in sub-paragraph (1A).**]**

[F6450 (1A) Sub-paragraph (1) above does not apply in the case of the amount of any manufactured interest or manufactured overseas dividend which falls in accordance with section 97 of the Finance Act 1996 to be treated for the purposes of Chapter II of Part IV of that Act as interest under a loan relationship.**]**

(2) F6451 . . . . . .

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(3) For the purpose of giving relief under any provision of the Tax Acts in a case falling within paragraph 3(1) or 4(1) above where (apart from this paragraph) the aggregate referred to in sub-paragraph (1)(b) above would be less than the gross amount there mentioned—

(a) the gross amount of the manufactured interest or manufactured overseas dividend shall be taken to be an amount equal to the aggregate referred to in sub-paragraph (1)(b) above, F6452. . .

(b) F6453. . . . . .

notwithstanding anything in paragraph **[**F6454**3 or 4]** above.

(4) In this paragraph "relief" means relief by way of—

(a) deduction in computing profits or gains; or

(b) deduction or set off against income or total profits.

Textual Amendments

F6447 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6448 Words in Sch. 23A para. 7(1) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Notes 3, 4(e) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6449 Words in Sch. 23A para. 7(1) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 37(7)

F6450 Sch. 23A para. 7(1A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 52(7)** (with Sch. 15)

F6451 Sch. 23A para. 7(2) repealed (with effect in accordance with Sch. 18 Pt. 6(10) Note 3(b) of the repealing Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6452 Words in Sch. 23A para. 7(3)(a) repealed (with effect in accordance with Sch. 10 para. 7(2), Sch. 18 Pt. 6(10) Note 2(c) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 4(b)(i), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6453 Sch. 23A para. 7(3)(b) repealed (with effect in accordance with Sch. 10 para. 7(2), Sch. 18 Pt. 6(10) Note 2(c) of the repealing Act) by Finance Act 1997 (c. 16), Sch. 10 para. 4(b)(ii), **Sch. 18 Pt. 6(10)**; S.I. 1997/991, **art. 2**

F6454 Words in Sch. 23A para. 7(3) substituted (with effect in accordance with Sch. 10 para. 7(2) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 4(b)(iii)**; S.I. 1997/991, **art. 2**

Manufactured payments under arrangements having an unallowable purpose

7A (1) This paragraph applies in any case where—

(a) a manufactured payment falls to be made by a company in an accounting period in pursuance of any arrangements (see sub-paragraphs (9) and (10) for definitions), and

(b) the arrangements have an unallowable purpose at any time (see sub-paragraphs (3) to (5)).

But this is subject to sub-paragraph (8) below (cases where tax relief is denied apart from this paragraph).

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(2) The company is not entitled, by virtue of anything in this Schedule or any provision of regulations under it, or otherwise, to any relevant tax relief (see sub-paragraph (10)), to the extent that the relief is in respect of, or referable to, the whole or any part of so much of the manufactured payment as, on a just and reasonable apportionment, is attributable to the unallowable purpose.

(3) Arrangements have an unallowable purpose at any time if at that time the purposes for which the company is a party to—

(a) the arrangements,

(b) any related transaction (see sub-paragraphs (6) and (7)), or

(c) any transaction in pursuance of the arrangements,

include a purpose ("the unallowable purpose") which is not among the business or other commercial purposes of the company.

(4) The business and other commercial purposes of a company do not include the purposes of any part of its activities in respect of which it is not within the charge to corporation tax.

(5) Where one of the purposes for which a company is at any time a party to—

(a) any arrangements,

(b) any related transaction in the case of any arrangements, or

(c) any transaction in pursuance of any arrangements,

is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.

(6) One or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—

(a) the likely effect of the transactions, and

(b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.

(7) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—

(a) are not between the same parties, or

(b) are not between the parties to the arrangements.

(8) This paragraph does not apply if, as a result of any of the following provisions—

(a) section 75(4)(b) (expenses of management of companies with investment business: unallowable purposes),

(b) section 76(4)(d) (expenses of insurance companies: unallowable purposes),

(c) paragraph 13 of Schedule 9 to the Finance Act 1996 (loan relationships with unallowable purposes),

the company in question is not entitled to a relevant tax relief in respect of, or referable to, the whole or any part of the manufactured payment.

The references to sections 75 and 76 are references to those provisions as they have effect in relation to accounting periods beginning on or after 1st April 2004.

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(9) Any reference in this paragraph to a manufactured payment falling to be made by a company includes a reference to a manufactured payment which is deemed by or under any provision of the Tax Acts to be made by a company (and references to a transaction, or to a company being party to a transaction, are to be construed accordingly).

(10) In this paragraph—

"arrangements" includes schemes, arrangements and understandings of any kind, whether or not legally enforceable, and shall be taken to include any related transactions;

"manufactured payment" means any of the following—

(a) any manufactured dividend;

(b) any manufactured interest;

(c) any manufactured overseas dividend;

"related transaction" shall be construed in accordance with sub-paragraphs (6) and (7) above;

"relevant tax relief" means any of the following—

(a) any deduction in computing profits or gains for the purposes of corporation tax;

(b) any deduction against total profits;

(c) the bringing into account of any debit for the purposes of Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships);

(d) the surrender of an amount by way of group relief;

"tax advantage" has the same meaning as in Chapter 1 of Part 17 (tax avoidance);

"tax avoidance purpose" means any purpose that consists in securing a tax advantage (whether for the company in question or any other person);

and sub-paragraphs (3) to (7) above have effect for the purposes of this paragraph.

F6455 *Dividend manufacturing regulations: general*

Textual Amendments

F6455 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para.1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6456 8 (1) Dividend manufacturing regulations may make provision for—

(a) such manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed,

[F6457(aa) such persons who receive, or become entitled to receive, manufactured dividends, manufactured interest or manufactured overseas dividends as may be prescribed,**]** or

(b) such dividend manufacturers, interest manufacturers or overseas dividend manufacturers as may be prescribed,

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to be treated in prescribed circumstances otherwise than as mentioned in **[**F6458paragraphs 2 to 4 above**]** for the purposes of such provisions of the Tax Acts as may be prescribed.

[F6459(1A) Dividend manufacturing regulations may provide, in relation to prescribed cases where a person makes or receives the payment of any amount representative of an overseas dividend, or is treated for any purposes of this Schedule or such regulations as a person making or receiving such a payment—

(a) for any entitlement of that person to claim relief under Part XVIII to be extinguished or reduced to such extent as may be found under the regulations; and

(b) for the adjustment, by reference to any provision having effect under the law of a territory outside the United Kingdom, of any amount falling to be taken, for any prescribed purposes of the Tax Acts or the 1992 Act, to be the amount paid or payable by or to any person in respect of any sale, repurchase or other transfer of the overseas securities to which the payment relates.**]**

(2) Dividend manufacturing regulations may make provision with respect to—

(a) the accounts and other records which are to be kept,

(b) the vouchers which are to be issued or produced,

(c) the returns which are to be made,

(d) the manner in which amounts required to be deducted or accounted for under or by virtue of this Schedule on account of tax are to be accounted for and paid,

[F6460by persons by or to whom manufactured dividends, manufactured interest or manufactured overseas dividends are paid.**]**

[F6461(2A) Dividend manufacturing regulations with respect to any liability to account for tax may contain any of the following, that is to say—

(a) provision for computing the amounts to be accounted for;

(b) provision, in relation to the determination of the amount to be paid on any occasion, for setting other amounts against the amounts to be accounted for;

(c) provision as to the liabilities against which amounts accounted for are to be, or are not to be, set for the purposes of income tax or corporation tax;

(d) provision modifying, or applying (with or without modifications), any enactments contained in the Tax Acts.**]**

(3) Dividend manufacturing regulations may—

(a) make provision for prescribed provisions of the Management Act to apply in relation to manufactured dividends, manufactured interest or manufactured overseas dividends with such modifications, specified in the regulations, as the Treasury think fit;

(b) make such further provision with respect to the administration, assessment, collection and recovery of amounts required to be deducted or accounted for under or by virtue of this Schedule on account of tax as the Treasury think fit.

(4) Dividend manufacturing regulations may make different provision for different cases.

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Textual Amendments

F6456 Sch. 23A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 58, **Sch. 13 para. 1** (with effect as mentioned in s. 58(3) in relation to payments made on or after such day as may be specified: 26.2.1992 specified for certain purposes by S.I. 1992/173, **reg.2**; 30.6.1992 specified for certain purposes by S.I. 1992/1346, **regs.2**, 3, 4; 21.4.1993 specified for certain purposes by S.I. 1993/933, **regs.2**, 3(b), 4)

F6457 Sch. 23A para. 8(1)(aa) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 159(7)(a)**

F6458 Words in Sch. 23A para. 8(1) substituted (with effect in accordance with Sch. 10 para. 16 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 13(1)**; S.I. 1997/991, **art. 2**

F6459 Sch. 23A para. 8(1A) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 159(8)**

F6460 Words in Sch 23A para. 8(2) substituted (with effect in accordance with Sch. 10 para. 16 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 13(2)**; S.I. 1997/991, **art. 2**

F6461 Sch. 23A para. 8(2A) inserted (with effect in accordance with Sch. 10 para. 16 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 13(3)**; S.I. 1997/991, **art. 2**

SCHEDULE 24

Section 747(6).

[M1347] ASSUMPTIONS FOR CALCULATING CHARGEABLE PROFITS, CREDITABLE TAX AND CORRESPONDING UNITED KINGDOM TAX OF FOREIGN COMPANIES

Modifications etc. (not altering text)

C1067 Sch. 24 modified (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 54(2)-(5)**

Marginal Citations

M1347 Source-1984 Sch. 16, 1985 Sch. 14 16

General

1 (1) The company shall be assumed to be resident in the United Kingdom.

(2) Nothing in sub-paragraph (1) above requires it to be assumed that there is any change in the place or places at which the company carries on its activities.

(3) For the avoidance of doubt, it is hereby declared that, if any sums forming part of the company's profits for an accounting period have been received by the company without any deduction of or charge to tax **[**[F6462] and have been so received by virtue of section 154(2) of the Finance Act 1996**]** the effect of the assumption in sub-paragraph (1) above is that those sums are to be brought within the charge to tax for the purposes of calculating the company's chargeable profits or corresponding United Kingdom tax.

[[F6463] (3A) In any case where—

(a) it is at any time necessary for any purpose of Chapter IV of Part XVII to determine **[**[F6464] in the case of any person**]** the chargeable profits of the company for an accounting period, and

(b) at that time—

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[F6465(i) it has not been established in the case of that person that that or any earlier accounting period of the company is an accounting period in respect of which an apportionment under section 747(3) falls to be made, and**]**

(ii) it has not been established **[**F6466in the case of that person**]** that that or any earlier accounting period of the company is an ADP exempt period,

[F6467in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above, it shall be assumed, for the purposes of those provisions of paragraphs 2 and 10 below which refer to the first accounting period in respect of which an apportionment under section 747(3) falls to be made or which is an ADP exempt period, that that period (but not any earlier period) is an accounting period in respect of which such an apportionment falls to be made or which is an ADP exempt period.**]]**

(4) In any case where—

(a) it is at any time necessary for any purpose of Chapter IV of Part XVII to determine **[**F6468in the case of any person**]** the chargeable profits of the company for an accounting period, and

[F6469(b) at that time it has not been established in the case of that person that that or any earlier accounting period of the company is an accounting period in respect of which an apportionment under section 747(3) falls to be made,**]**

[F6470in determining the chargeable profits of the company for the accounting period mentioned in paragraph (a) above, it shall be assumed, for the purposes of those provisions of paragraph 9 below which refer to the first accounting period in respect of which an apportionment under section 747(3) falls to be made, that such an apportionment falls to be made in respect of that period (but not in respect of any earlier period).**]**

(5) Nothing in this Schedule affects any liability for, or the computation of, corporation tax in respect of a trade which is carried on by a company resident outside the United Kingdom through a **[**F6471permanent establishment**]** in the United Kingdom.

[F6472(6) Any reference in this Schedule to an "ADP exempt period", in the case of any company, is a reference to an accounting period of the company—

(a) which begins on or after 28th November 1995; and

(b) in respect of which the company pursued, within the meaning of Part I of Schedule 25, an acceptable distribution policy.**]**

Textual Amendments

F6462 Words in Sch. 24 para. 1(3) substituted (with effect in accordance with s. 154(9) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 28 para. 6**

F6463 Sch. 24 para. 1(3A) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(2)**

F6464 Words in Sch. 24A para. 1(3A)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(3)**; S.I. 1998/3173, **art. 2**

F6465 Sch. 24 para. 1(3A)(b)(i) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(4)(a)**; S.I. 1998/3173, **art. 2**

F6466 Words in Sch. 24 para. 2(3A)(b)(ii) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(4)(b)**; S.I. 1998/3173, **art. 2**

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F6467 Words in Sch. 24 para. 1(3A) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(5)**; S.I. 1998/3173, **art. 2**
F6468 Words in Sch. 24 para. 1(4)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(7)**; S.I. 1998/3173, **art. 2**
F6469 Sch. 24 para. 1(4)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(8)**; S.I. 1998/3173, **art. 2**
F6470 Words in Sch. 24 para. 1(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 17(9)**; S.I. 1998/3173, **art. 2**
F6471 Words in Sch. 24 para. 1(5) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**
F6472 Sch. 24 para. 1(6) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(3)**

2 (1) The company shall be assumed to have become resident in the United Kingdom (and, accordingly, within the charge to corporation tax) at the beginning of the first accounting period—

[F6473(a) in respect of which **[**F6474an apportionment under section 747(3) falls to be made**]**, or

(b) which is an ADP exempt period,

and**]** that United Kingdom residence shall be assumed to continue throughout subsequent accounting periods of the company (whether or not **[**F6475an apportionment falls to be made**]** in respect of all or any of them) until the company ceases to be controlled by persons resident in the United Kingdom.

(2) Except in so far as the following provisions of this Schedule otherwise provide, for the purposes of calculating a company's chargeable profits or corresponding United Kingdom tax for any accounting period which is not the first such period referred to in sub-paragraph (1) above (and, in particular, for the purpose of applying any relief which is relevant to two or more accounting periods), it shall be assumed that a calculation of chargeable profits or, as the case may be, corresponding United Kingdom tax has been made for every previous accounting period throughout which the company was, by virtue of sub-paragraph (1) above, assumed to have been resident in the United Kingdom.

Textual Amendments

F6473 Words in Sch. 24 para. 2(1) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(4)**
F6474 Words in Sch. 24 para. 2(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 18(a)**; S.I. 1998/3173, **art. 2**
F6475 Words in Sch. 24 para. 2(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 18(b)**; S.I. 1998/3173, **art. 2**

3 The company shall be assumed not to be a close company.

4 (1) Subject to sub-paragraph (2) below, where any relief under the Corporation Tax Acts is dependent upon the making of a claim or election, the company shall be assumed to have made that claim or election which would give the maximum amount of relief and to have made that claim or election within any time limit applicable to it.

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[F6476(1A) Sub-paragraph (2) below applies to any accounting period of the company—

(a) in respect of which **[**F6477an apportionment under section 747(3) falls to be made**]**; or

(b) which is an ADP exempt period.**]**

(2) **[**F6478Where this sub-paragraph applies to an accounting period of the company, then**]** if, by notice **[**F6479given to an officer of the Board**]** at any time not later than the expiry of **[**F6480the period of twenty months following the end of the accounting period**]** or within such longer period as the Board may in any particular case allow, the United Kingdom resident company which has or, as the case may be, any two or more United Kingdom resident companies which together have, a majority interest in the company so request, the company shall be assumed—

(a) not to have made any claim or election specified in the notice; or

(b) to have made a claim or election so specified, being different from one assumed by sub-paragraph (1) above but being one which (subject to compliance with any time limit) could have been made in the case of a company within the charge to corporation tax; or

(c) to have disclaimed or required the postponement, in whole or in part, of an allowance if (subject to compliance with any time limit) a company within the charge to corporation tax could have disclaimed the allowance or, as the case may be, required such a postponement.

[F6481(2A) F6482. . . . . .**]**

(3) For the purposes of this paragraph, a United Kingdom resident company has, or two or more United Kingdom resident companies together have, a majority interest in the company if on the apportionment of the company's chargeable profits for the relevant accounting period under section 747(3) more than half of the amount of those profits—

(a) which are apportioned to all United Kingdom resident companies, and

(b) which give rise to **[**F6483any liability**]** on any such companies under subsection (4)(a) of that section,

are apportioned to the United Kingdom resident company or companies concerned.

[F6484(3A) Sub-paragraph (3) above shall apply in relation to an accounting period which is an ADP exempt period as it would apply if—

(a) that accounting period had instead been one in respect of which **[**F6485an apportionment under section 747(3) had fallen to be made**]**, and

[F6486(b) such apportionments as are mentioned in sub-paragraph (3) above had been made and such liabilities as are mentioned in that sub-paragraph had arisen.**]]**

(4) In sub-paragraph (3) above "the relevant accounting period" means the accounting period or, as the case may be, the first accounting period in which the relief in question is or would be available in accordance with sub-paragraph (1) above.

Textual Amendments

F6476 Sch. 24 para. 4(1A) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(5)**

F6477 Words in Sch. 24 para. 4(1A)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 19(2)**; S.I. 1998/3173, **art. 2**

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F6478 Words in Sch. 24 para. 4(2) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(6)(a)**

F6479 Words in Sch. 24 para. 4(2) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 19(3)(a)**; S.I. 1998/3173, **art. 2**

F6480 Words in Sch. 24 para. 4(2) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 19(3)(b)**; S.I. 1998/3173, **art. 2**

F6481 Sch. 24 para. 4(2A) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(7)**

F6482 Sch. 24 para. 4(2A) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act by Finance Act 1998 (c. 36), Sch. 17 para. 19(4), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F6483 Words in Sch. 24 para. 4(3)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 19(5)**; S.I. 1998/3173, **art. 2**

F6484 Sch. 24 para. 4(3A) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(8)**

F6485 Words in Sch. 24 para. 4(3A)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 19(6)(a)**; S.I. 1998/3173, **art. 2**

F6486 Sch. 24 para. 4(3A)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 19(6)(b)**; S.I. 1998/3173, **art. 2**

Modifications etc. (not altering text)

C1068 Sch. 24 para. 4(1) excluded (with effect in accordance with Sch. 29 Pt. 14 of the affecting Act) by Finance Act 2002 (c. 23), **Sch. 29 para. 116(3)**

C1069 Sch. 24 para. 4(1) restricted (1.4.2009 with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), **s. 870(4)(5)** (with Sch. 2 Pts. 1, 2)

C1070 Sch. 24 para. 4(2) modified (29.5.2001 with effect in accordance with reg. 1 of the modifying S.I.) by The General Insurance Reserves (Tax) Regulations 2001 (S.I. 2001/1757), **reg. 8(3)**

C1071 Sch. 24 para. 4(3)(4) applied (with modifications) (23.3.1995) by The Exchange Gains and Losses (Alternative Method of Calculation of Gain or Loss) Regulations 1994 (S.I. 1994/3227), **regs. 1(2)**, 6

[F6487 4A F6488 . . . . . .]

Textual Amendments

F6487 Sch. 24 para. 4A inserted (27.7.1993 with effect as mentioned in s. 96(2) of the amending act in relation to any accounting period on or after such day as may be appointed under s. 165(7)(b) of the amending Act) by 1993 c. 34, **ss. 96(1)(2)**, 165(7)(b)

F6488 Sch. 24 para. 4A deemed never to have been inserted, by virtue of Finance Act 1995 (c. 4), Sch. 25 para. 6(3), **Sch. 29 Pt. 8(18)**, Note

Group relief etc.

5[F6489(1)] The company shall be assumed to be neither a member of a group of companies nor a member of a consortium for the purposes of any provision of the Tax Acts.

[F6490(2) Where, under Chapter IV of Part X, any relief is in fact surrendered by the company and allowed to another company by way of group relief, it shall be assumed that the chargeable profits of the company, apart from this paragraph, are to be increased by an amount of additional profits equal to the amount of the relief so surrendered and allowed.]

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Textual Amendments

F6489 Sch. 24 para. 5 renumbered as para. 5(1) (with effect in accordance with Sch. 27 para. 12(1) of the amending Act) by virtue of Finance Act 2000 (c. 17), **Sch. 27 para. 10**

F6490 Sch. 24 para. 5(2) inserted (with effect in accordance with Sch. 27 para. 12(1) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 27 para. 10**

6 **F6491** . . . . . .

Textual Amendments

F6491 Sch. 24 para. 6 repealed (with application in accordance with Sch. 33 Pt. 2(10) Note of the repealing Act) by Finance Act 2001 (c. 9), **Sch. 33 Pt. 2(10)**

7 **F6492** . . . . . .

Textual Amendments

F6492 Sch. 24 para. 7 repealed (with effect in accordance with Sch. 3 para. 43(4) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 43(3), **Sch. 27 Pt. 3(2)**, Note

Company reconstructions

8 Without prejudice to the operation of section 343 in a case where the company is the predecessor, within the meaning of that section, and a company resident in the United Kingdom is the successor, within the meaning of that section—

(a) the assumption that the company is resident in the United Kingdom shall not be regarded as requiring it also to be assumed that the company is within the charge to tax in respect of a trade for the purposes of that section, and

(b) except in so far as the company is actually within that charge (by carrying on the trade through a **[**F6493permanent establishment**]** in the United Kingdom), it shall accordingly be assumed that the company can never be the successor, within the meaning of that section, to another company (whether resident in the United Kingdom or not).

Textual Amendments

F6493 Words in Sch. 24 para. 8(b) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

Losses in pre-direction accounting periods

9 (1) **F6494** . . . This paragraph applies in any case where the company incurred a loss in a trade in an accounting period—

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(a) which precedes the first accounting period in respect of which **[**F6495an apportionment under section 747(3) falls to be made**]** ("the starting period"); and

(b) which ended less than six years before the beginning of the starting period; and

(c) in which the company was not resident **[**F6496, and is not to be assumed by virtue of paragraph 2(1)(b) above to have been resident,**]** in the United Kingdom;

and in this paragraph any such accounting period is referred to as a "**[**F6497pre-apportionment**]** period".

(2) F6498. . . . . .

(3) If a claim is made for the purpose by the United Kingdom resident company or companies referred to in paragraph 4(2) above, the chargeable profits (if any) of the company for accounting periods beginning with that **[**F6497pre-apportionment**]** period which is specified in the claim and in which a loss is incurred as mentioned in sub-paragraph (1) above shall be determined (in accordance with the provisions of this Schedule other than this paragraph) on the assumption that that **[**F6497pre-apportionment**]** period was the first accounting period in respect of which **[**F6499an apportionment under section 747(3) fell to be made**]**.

[F6500(4) A claim under sub-paragraph (3) above shall be made by notice given to an officer of the Board within the period of twenty months following the end of the starting period or within such longer period as the Board may in any particular case allow.**]**

(5) F6498. . . . . .

(6) F6498. . . . . .

[F6501(7) Nothing in—

(a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (3) above.**]**

Textual Amendments

F6494 Words in Sch. 24 para. 9(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 20(3)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F6495 Words in Sch. 24 para. 9(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 20(3)(b)**; S.I. 1998/3173, **art. 2**

F6496 Words in Sch. 24 para. 9(1)(c) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(9)**

F6497 Words in Sch. 24 para. 9(1)(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 20(2)**; S.I. 1998/3173, **art. 2**

F6498 Sch. 24 para. 9(2)(5)(6) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 20(4)(7)(8), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F6499 Words in Sch. 24 para. 9(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 20(5)**; S.I. 1998/3173, **art. 2**

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F6500 Sch. 24 para. 9(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 20(6)**; S.I. 1998/3173, **art. 2**

F6501 Sch. 24 para. 9(7) added (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 20(9)**; S.I. 1998/3173, **art. 2**

*Capital allowances***[***F6502 and expenditure on car hire***]**

Textual Amendments

F6502 Words in cross-heading relating to Sch. 24 para. 11A inserted (with effect in accordance with s. 579 of the amending Act) by virtue of Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 66(3)(a)**

10 (1) **[**F6503Subject to paragraph 12 below,**]** if, in an accounting period falling before the beginning of the first accounting period—

[F6504(a) in respect of which **[**F6505an apportionment under section 747(3) falls to be made**]**, or

(b) which is an ADP exempt period,

the**]** company incurred any capital expenditure on the provision of **[**F6506plant or machinery for the purposes of its trade, that plant or machinery shall be assumed, for the purposes of Part 2 of the Capital Allowances Act**]**, to have been provided for purposes wholly other than those of the trade and not to have been brought into use for the purposes of that trade until the beginning of that first accounting period, and **[**F6507section 13 of that Act (use for qualifying activity of plant or machinery provided for other purposes)**]** shall apply accordingly.

(2) This paragraph shall be construed as one with **[**F6508Part 2 of the Capital Allowances Act**]**.

Textual Amendments

F6503 Words in Sch. 24 para. 10(1) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 21(a)**; S.I. 1998/3173, **art. 2**

F6504 Words in Sch. 24 para. 10(1) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 3(10)**

F6505 Words in Sch. 24 para. 10(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 21(b)**; S.I. 1998/3173, **art. 2**

F6506 Words in Sch. 24 para. 10(1) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 66(1)(a)**

F6507 Words in Sch. 24 para. 10(1) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 66(1)(b)**

F6508 Words in Sch. 24 para. 10(2) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 66(2)**

11 **F6509** . . . . . .

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Textual Amendments

F6509 Sch. 24 para. 11 repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 22, **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

[F6510 11A F6511 . . . . . .]

Textual Amendments

F6510 Sch. 24 para. 11A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 6(4)**

F6511 Sch. 24 para. 11A repealed (with effect in accordance with Sch. 4 para. 24(2) of the repealing Act) by Finance Act 2005 (c. 7), **Sch. 11 Pt. 2(6)**, Note

Unremittable overseas income

12 For the purposes of the application of section 584 to the company's income it shall be assumed—

(a) that any reference in paragraph (a) or paragraph (b) of subsection (1) of that section to the United Kingdom is a reference to both the United Kingdom and the territory in which the company is in fact resident; and

(b) that a notice under subsection (2) of that section (expressing a wish to be assessed in accordance with that subsection) may be given on behalf of the company by the United Kingdom resident company or companies referred to in paragraph 4(2) above.

[F6512 Exchange gains and losses

Textual Amendments

F6512 Sch. 24 paras. 13-19 and cross-heading inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 6(5)**

13 F6513 . . . . . .

Textual Amendments

F6513 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

14 F6514 . . . . . .

Textual Amendments

F6514 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

15 F6515 . . . . . .

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Textual Amendments

F6515 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

16 F6516 . . . . . .

Textual Amendments

F6516 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

17 F6517 . . . . . .

Textual Amendments

F6517 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

18 F6518 . . . . . .

Textual Amendments

F6518 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

19 F6519 . . . . . .]

Textual Amendments

F6519 Sch. 24 paras. 13-19 repealed (with effect in accordance with s. 79(3) of the repealing Act) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(10)**, Note

[F6520 *Transfer pricing*

Textual Amendments

F6520 Sch. 24 para. 20 and cross-heading inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 24**; S.I. 1998/3173, **art. 2**

20 F6521 . . . . . .]

Textual Amendments

F6521 Sch. 24 para. 20 repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 5 para. 4, **Sch. 42 Pt. 2(1)**, Note

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SCHEDULE 25

Section 748.

[F6522CASES WHERE SECTION 747(3) DOES NOT APPLY]

Textual Amendments

F6522 Sch. 25 heading substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 25**; S.I. 1998/3173, **art. 2**

PART I

ACCEPTABLE DISTRIBUTION POLICY

1 The provisions of this Part of this Schedule have effect for the purposes of paragraph (a) of subsection (1) of section 748 **[**F6523and the other provisions of Chapter IV of Part XVII which refer to a company pursuing an acceptable distribution policy**]**.

Textual Amendments

F6523 Words in Sch. 25 para. 1 inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 26**; S.I. 1998/3173, **art. 2**

2 (1) Subject to **[**F6524paragraph 2A**]** below, a controlled foreign company pursues an acceptable distribution policy in respect of a particular accounting period if, and only if—

(a) a dividend which is not paid out of specified profits is paid for that accounting period F6525. . . ; and

(b) the dividend is paid during, or not more than eighteen months after the expiry of, **[**F6526that period**]** or at such later time as the Board may, in any particular case, allow; and

(c) *the dividend is paid at a time when the company is not resident in the United Kingdom (whether or not it is at that time a controlled foreign company); and*

F6527(d) the **[**F6528amount**]** of the dividend or, if there is more than one, of the aggregate of those dividends which is paid to persons resident in the United Kingdom **[**F6528is not less than**][**F6529**]**90 per cent. of the company's net chargeable profits**]** for the accounting period referred to in paragraph (a) above or, where sub-paragraph (4) or (5) below applies, of the appropriate portion of those profits;

F6525 . . . . . .

[F6530(1A) A payment of dividend to a company shall not fall within sub-paragraph (1)(d) above unless it is taken into account in computing the company's income for corporation tax**[**F6531 and—

(a) it is chargeable neither under Case I of Schedule D nor under Case VI of that Schedule in circumstances where by virtue of section 436, 439B or 441

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profits are computed in accordance with the provisions of this Act applicable to Case I; or

(b) if it is chargeable under Case I, or under Case VI in the circumstances described in paragraph (a) above, it is not involved in a UK tax avoidance scheme;

and paragraph 2B below has effect for the purposes of paragraph (b) above.**]]**

[F6532(1B) A dividend paid by a company shall not fall within sub-paragraph (1)(d) above if, and to the extent that, the profits which are the relevant profits in relation to the dividend derive from dividends or other distributions paid to the company at any time which are dividends or other distributions—

(a) to which section 208 applied; or

(b) to which that section would have applied if the company had been resident in the United Kingdom at that time.

Subsections (3) and (4) of section 799 (double taxation relief: computation of underlying tax) apply for the purposes of this sub-paragraph as they apply for the purposes of subsection (1) of that section.**]**

(2) F6533 . . . . . .

[F6534(3) For the purposes of this paragraph and paragraph 2A below, a dividend which is not paid for the period or periods the profits of which are, in relation to the dividend, the relevant profits for the purposes of section 799 shall be treated (subject to sub-paragraph (3A) below) as so paid.

(3A) For the purposes of this paragraph and paragraph 2A below—

(a) where a dividend is paid for a period which is not an accounting period but falls wholly within an accounting period, it shall be treated as paid for that accounting period, and

(b) where a dividend ("the actual dividend") is paid for a period which falls within two or more accounting periods—

(i) it shall be treated as if it were a number of separate dividends each of which is paid for so much of the period as falls wholly within an accounting period, and

(ii) the necesssary apportionment of the amount of the actual dividend shall be made to determine the amount of the separate dividends.**]**

(4) This sub-paragraph applies where—

(a) throughout the accounting period in question all the issued shares of the controlled foreign company are of a single class, and

(b) at the end of that accounting period some of those shares are held by persons resident outside the United Kingdom, and

(c) at no time during that accounting period does any person have an interest in the company other than an interest derived from the issued shares of the company;

and in a case where this sub-paragraph applies the appropriate portion for the purposes of sub-paragraph (1)(d) above is the fraction of which the denominator is the total number of the issued shares of the company at the end of the accounting period in question and, subject to sub-paragraph (8) below, the numerator is the number of those issued shares by virtue of which persons resident in the United Kingdom have interests in the company at that time.

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(5) This sub-paragraph applies where—

(a) throughout the accounting period in question there are only two classes of issued shares of the controlled foreign company and, of those classes, one ("non-voting shares") consists of non-voting fixed-rate preference shares and the other ("voting shares") consists of shares which carry the right to vote in all circumstances at general meetings of the company; and

(b) at the end of that accounting period some of the issued shares of the company are held by persons resident outside the United Kingdom; and

(c) at no time during that accounting period does any person have an interest in the company other than an interest derived from non-voting or voting shares;

and in a case where this sub-paragraph applies the appropriate portion of the profits referred to in sub-paragraph (1)(d) above is the amount determined in accordance with sub-paragraph (6) below.

(6) The amount referred to in sub-paragraph (5) above is that given by the formula—

$$\frac{\mathrm{Py}Q}{R} + \frac{(X-P)yY}{Z}$$

where—

P is the amount of any dividend falling within (a) and (b) of sub-paragraph (1) above which is paid in respect of the non-voting shares or, if there is more than one such dividend, of the aggregate of them;

Q is, subject to sub-paragraph (8) below, the number of the non-voting shares by virtue of which persons resident in the United Kingdom have interests in the company at the end of the accounting period in question;

R is the total number at that time of the issued non-voting shares;

X is the **[**F6535net chargeable profits**]** for the accounting period in question;

Y is, subject to sub-paragraph (8) below, the number of voting shares by virtue of which persons resident in the United Kingdom have interests in the company at the end of that accounting period; and

Z is the total number at that time of the issued voting shares.

(7) For the purposes of sub-paragraph (5)(a) above, non-voting fixed-rate preference shares are shares—

(a) which are fixed-rate preference shares as defined in paragraph 1 of Schedule 18; and

(b) which either carry no right to vote at a general meeting of the company or carry such a right which is contingent upon the non-payment of a dividend on the shares and which has not in fact become exercisable at any time prior to the payment of a dividend for the accounting period in question.

(8) In any case where the immediate interests held by persons resident in the United Kingdom who have indirect interests in a controlled foreign company at the end of a particular accounting period do not reflect the proportion of the shares or, as the case may be, shares of a particular class in the company by virtue of which they have those interests (as in the case where they hold, directly or indirectly, part of the shares in a company which itself holds, directly or indirectly, some or all of the shares in the controlled foreign company) the number of those shares shall be treated

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as reduced for the purposes of sub-paragraph (4) or (6) above, as the case may be, to such number as may be appropriate having regard to—

(a) the immediate interests held by the persons resident in the United Kingdom; and

(b) any intermediate shareholdings between those interests and the shares in the controlled foreign company.

(9) The definition of "profits" in section 747(6)(b) does not apply to any reference in this paragraph to specified profits or to relevant profits for the purposes of section 799.

Textual Amendments

F6524 Words in Sch. 25 para. 2(1) substituted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 134(2)(a)(i)**

F6525 Words in Sch. 25 para. 2(1) repealed (with application in accordance with s. 134(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 134(2)(a)(ii)(v), **Sch. 26 Pt. 5(15)**, Note

F6526 Words in Sch. 25 para. 2(1)(b) substituted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 134(2)(a)(iii)**

F6527 *Repealed by* 1990 s.67(3)(a)*and* s.132*and* Sch.19 Part IV*in relation to dividends paid on or after* 20*March* 1990.

F6528 Words in Sch. 25 para. 2(1)(d) substituted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 134(2)(a)(iv)**

F6529 Words in Sch. 25 para. 2(1)(d) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 4(2)(a)**

F6530 1990 s.67(3)(b)*in relation to dividends paid on or after* 20*March* 1990.

F6531 Words in Sch. 25 para. 2(1A) added (with application in accordance with s. 82(8) of the amending Act) by Finance Act 2001 (c. 9), **s. 82(2)**

F6532 Sch. 25 para. 2(1B) inserted (with application in accordance with s. 88(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 88(1)**

F6533 Sch. 25 para. 2(2) repealed (with application in accordance with s. 134(5) of the repealing Act) by Finance Act 1994 (c. 9), s. 134(2)(b), **Sch. 26 Pt. 5(15)**, Note

F6534 Sch. 25 para. 2(3)(3A) substituted for para. 2(3) (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 134(2)(c)**

F6535 Words in Sch. 25 para. 2(6) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 4(2)(b)**

2A (1) Paragraph 2 above shall have effect in accordance with this paragraph to determine whether a controlled foreign company [F6536]. . . pursues an acceptable distribution policy in respect of a particular accounting period ("the relevant accounting period").

(2) Subject to sub-paragraph (4) below, where the distribution condition is satisfied in relation to the relevant accounting period, then, in addition to any dividend which falls within paragraph 2(1)(a) above apart from this paragraph—

(a) any dividend which is paid for the accounting period ("the preceding period") **[**[F6537]immediately preceding**]** the relevant accounting period and **[**[F6538]which is not an excluded dividend**]** shall be treated as falling within that paragraph, and

(b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period **[**[F6537]immediately

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preceding**]** the preceding period and **[**F6538which is not an excluded dividend**]** shall be treated as falling within that paragraph,

and so on; and in this sub-paragraph "dividend" means a dividend not paid out of specified profits.

(3) For the purposes of this paragraph, the distribution condition is satisfied in relation to any accounting period if—

(a) a dividend or dividends are paid for the period to persons resident in the United Kingdom,

(b) the amount or, as the case may be, aggregate amount of any dividends falling within paragraph (a) above is not less than—

(i) the relevant profits for that period, or

(ii) where paragraph 2(4) or (5) above applies (with the modifications of paragraph 2 made by sub-paragraph (5) below), the appropriate portion of those profits, and

(c) any dividends falling within that paragraph are paid not later than the time by which any dividend paid for the relevant accounting period is required by paragraph 2(1)(b) above to be paid;

or if there are no relevant profits for the period.

(4) Where, by reason only of the fact that a company pursued an acceptable distribution policy in respect of any accounting period ("the earlier period") earlier than the relevant accounting period, **[**F6539no apportionment under section 747(3) fell to be made in respect of the earlier period**]**, sub-paragraph (2) above shall apply to any dividend required to be taken into account for the purpose of showing that the company pursued an acceptable distribution policy in respect of the earlier period only to the extent (if any) to which that dividend was not required to be taken into account for that purpose.

(5) The modifications of paragraph 2 above referred to in sub-paragraph (3)(b) above are that—

(a) the references in sub-paragraphs (4) and (5) to the accounting period in question are to be read as references to the accounting period for which the dividend or dividends are paid,

(b) the references in those sub-paragraphs to sub-paragraph (1)(d) are to be read as references to sub-paragraph (3)(b) above, and

(c) the reference in the definition of "X" in sub-paragraph (6) to **[**F6540net chargeable profits**]** is to be read as a reference to relevant profits.

(6) F6541. . . . . .

(7) F6541. . . . . .

(8) For the purposes of this paragraph—

[F6542(aa) a dividend is an excluded dividend if it is paid, in whole or in part, out of the total profits from which (in accordance with section 747(6)(a)) the chargeable profits for an excluded period are derived,**]**

(a) a period is an excluded period if it is an accounting period in respect of which **[**F6543an apportionment under section 747(3) falls to be made**]**, and

(b) relevant profits for any accounting period are the profits which would be the relevant profits of that period for the purposes of section 799 if a dividend were actually paid for that period.

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Textual Amendments

F6536 Words in Sch. 25 para. 2A(1) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(3)(a), **Sch. 41 Pt. 5(34)**, Note

F6537 Words in Sch. 25 para. 2A(2)(a)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 27(2)(a)**; S.I. 1998/3173, **art. 2**

F6538 Words in Sch. 25 para. 2A(2)(a)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 27(2)(b)**; S.I. 1998/3173, **art. 2**

F6539 Words in Sch. 25 para. 2A(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 27(3)**; S.I. 1998/3173, **art. 2**

F6540 Words in Sch. 25 para. 2A(5)(c) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 4(3)(b)**

F6541 Sch. 25 para. 2A(6)(7) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(3)(c), **Sch. 41 Pt. 5(34)**, Note

F6542 Sch. 25 para. 2A(8)(aa) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 27(4)**; S.I. 1998/3173, **art. 2**

F6543 Words in Sch. 25 para. 2A(8)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 27(5)**; S.I. 1998/3173, **art. 2**

2B (1) This paragraph has effect for the purposes of paragraph 2(1A)(b) above.

(2) No payment of dividend by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period.

(3) "UK tax avoidance scheme" means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

(4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—

(a) would have been liable for any such tax or for a greater amount of any such tax; or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(5) In this paragraph—

"arrangement" means an arrangement of any kind, whether in writing or not;

"United Kingdom tax" means corporation tax or any tax chargeable as if it were corporation tax.

3 (1) F6544 . . . . . .

(2) F6544 . . . . . .

(3) F6544 . . . . . .

(4) F6544 . . . . . .

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[F6545(4A) Subject to sub-paragraph (5) below, for the purposes of this Part of this Schedule, the net chargeable profits of a controlled foreign company for any accounting period are—

(a) its chargeable profits for that period, less

(b) the amount (if any) which, if **[**F6546an apportionment under section 747(3) fell to be made**]** in respect of the period, would be the company's unrestricted creditable tax for that period;

and for the purposes of this sub-paragraph "unrestricted creditable tax" in relation to a company's accounting period means the amount which would be its creditable tax for that period if the reference in section 751(6)(a) to Part XVIII did not include section 797.**]**

(5) In any case where—

(a) a controlled foreign company pays a dividend for any period out of specified profits, and

(b) those profits represent dividends received by the company, directly or indirectly, from another controlled foreign company,

so much of those specified profits as is equal to the dividend referred to in paragraph (a) above shall be left out of account in determining, for the purposes of this Part of this Schedule,F6547. . . **[**F6548the chargeable profits**]** of the controlled foreign company referred to in that paragraph for any accounting period.

Textual Amendments

F6544 Sch. 25 para. 3(1)-(4) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(4)(a), **Sch. 41 Pt. 5(34)**, Note

F6545 Sch. 25 para. 3(4A) inserted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 134(4)(a)**

F6546 Words in Sch. 25 para. 3(4A)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 28**; S.I. 1998/3173, **art. 2**

F6547 Words in Sch. 25 para. 3(5) repealed (with effect in accordance with s. 182 of the repealing Act) by Finance Act 1996 (c. 8), Sch. 36 para. 4(4)(b), **Sch. 41 Pt. 5(34)**, Note

F6548 Words in Sch. 25 para. 3(5) inserted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 134(4)(b)**

4 (1) For the purposes of this Part of this Schedule, where—

(a) a controlled foreign company pays a dividend ("the initial dividend") to another company which is also not resident in the United Kingdom, and

(b) that other company or another company which is related to it pays a dividend ("the subsequent dividend") to a United Kingdom resident, and

(c) *the subsequent dividend is paid at a time when the company paying it is not resident in the United Kingdom; and*

F6549(d) the subsequent dividend is paid out of profits which are derived, directly or indirectly, from the whole or part of the initial dividend,

so much of the initial dividend as is represented by the subsequent dividend shall be regarded as paid to the United Kingdom resident **[**F6550and shall be taken to satisfy the conditions in paragraph 2(1A) above**]**.

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[F6551(1A) A payment to a company shall not be a subsequent dividend within the meaning of sub-paragraph (1)(b) above unless it is taken into account in computing the company's income for corporation tax**[**F6552 and—

(a) it is chargeable neither under Case I of Schedule D nor under Case VI of that Schedule in circumstances where by virtue of section 436, 439B or 441 profits are computed in accordance with the provisions of this Act applicable to Case I; or

(b) if it is chargeable under Case I, or under Case VI in the circumstances described in paragraph (a) above, it is not involved in a UK tax avoidance scheme;

and paragraph 4A below has effect for the purposes of paragraph (b) above.**]]**

(2) For the purposes of this paragraph, one company is related to another if **[**F6553neither is resident in the United Kingdom and**]** the other—

(a) controls directly or indirectly, or

(b) is a subsidiary of a company which controls directly or indirectly,

at least 10 per cent. of the voting power in the first-mentioned company; and where one company is so related to another and that other is so related to a third company, the first company is for the purposes of this paragraph related to the third, and so on where there is a chain of companies, each of which is related to the next.

Textual Amendments

F6549 *Repealed by* 1990 s.67(3)(a)*and* s.132*and* Sch.19 Part IV*in relation to dividends paid on or after* 20*March* 1990.

F6550 Words in Sch. 25 para. 4(1) inserted (with application in accordance with s. 82(8) of the amending Act) by Finance Act 2001 (c. 9), **s. 82(4)**

F6551 1990 s.67(3)(c)*in relation to dividends paid on or after* 20*March* 1990.

F6552 Words in Sch. 25 para. 4(1A) inserted (with application in accordance with s. 82(8) of the amending Act) by Finance Act 2001 (c. 9), **s. 82(5)**

F6553 Words in Sch. 25 para. 4(2) inserted (with application in accordance with s. 82(8) of the amending Act) by Finance Act 2001 (c. 9), **s. 82(6)**

4A (1) This paragraph has effect for the purposes of paragraph 4(1A)(b) above.

(2) No payment to a company resident in the United Kingdom which represents the whole or part of a dividend paid by a controlled foreign company for an accounting period shall be regarded as involved in a UK tax avoidance scheme by reason only that—

(a) there is no charge to tax under section 747(4)(a) if the controlled foreign company pursues an acceptable distribution policy for that accounting period, and

(b) so much of the dividend as is represented by that payment will (if paragraph 4(1) above has effect) fall to be brought into account in determining whether the controlled foreign company has done so.

(3) "UK tax avoidance scheme" means a scheme or arrangement the purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom tax.

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(4) A scheme or arrangement achieves a reduction in United Kingdom tax if, apart from the scheme or arrangement, any company—

(a) would have been liable for any such tax or for a greater amount of any such tax; or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(5) In this paragraph—

"arrangement" means an arrangement of any kind, whether in writing or not;

"United Kingdom tax" means corporation tax or any tax chargeable as if it were corporation tax.

PART II

EXEMPT ACTIVITIES

Modifications etc. (not altering text)
C1072 Sch. 25 Pt. 2 modified (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 16 para. 17** (with Sch. 16 paras. 13-16, 18-20)

5 (1) The provisions of this Part of this Schedule have effect for the purposes of paragraph (b) of subsection (1) of section 748.

(2) In the case of a controlled foreign company—

(a) which is, by virtue of section **[**F6554749(5)**]**, presumed to be resident in a territory in which it is subject to a lower level of taxation, and

(b) the business affairs of which are, throughout the accounting period in question, effectively managed in a territory outside the United Kingdom other than one in which companies are liable to tax by reason of domicile, residence or place of management,

references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to the territory falling within paragraph (b) above, or, if there is more than one, to that one of them which may be notified to the Board by the United Kingdom resident company or companies referred to in paragraph 4(2) of Schedule 24.

[F6555(3) In the case of a controlled foreign company—

(a) which is, by virtue of section 749(5), presumed to be resident in a territory in which it is subject to a lower level of taxation,

(b) the business affairs of which are, throughout the accounting period in question, effectively managed in a special administrative region, and

(c) which is liable to tax for that period in that region,

references in the following provisions of this Part of this Schedule to the territory in which that company is resident shall be construed as references to that region.

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(4) In sub-paragraph (3) above "special administrative region" means the Hong Kong or the Macao Special Administrative Region of the People's Republic of China.

(5) Where sub-paragraph (3) above applies, it applies in place of sub-paragraph (2).**]**

Textual Amendments

F6554 Words in Sch. 25 para. 5(2)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 29**; S.I. 1998/3173, **art. 2**

F6555 Sch. 25 para. 5(3)-(5) inserted (with effect in accordance with s. 201(2) of the amending Act) by Finance Act 2003 (c. 14), **s. 201(1)**

6 (1) Throughout an accounting period a controlled foreign company is engaged in exempt activities if, and only if, each of the following conditions is fulfilled—

(a) that, throughout that accounting period, the company has a business establishment in the territory in which it is resident; and

(b) that, throughout that accounting period, its business affairs in that territory are effectively managed there; and

(c) that any of sub-paragraphs **[**F6556(2), (3), (4) or (4A)**]** below applies to the company.

(2) This sub-paragraph applies to a company if—

(a) at no time during the accounting period in question does the main business of the company consist of either—

(i) investment business, or

(ii) dealing in goods for delivery to or from the United Kingdom or to or from connected or associated persons; and

(b) in the case of a company which is mainly engaged in wholesale, distributive **[**F6557financial or service**]** business in that accounting period, less than 50 per cent. of its gross trading receipts from that business is derived directly or indirectly from **[**F6558persons falling within sub-paragraph (2A) below.**]**

[F6559(2A) Those persons are—

(a) persons who are connected or associated with the company;

(b) persons who have a 25 per cent assessable interest in the company in the case of the accounting period in question; F6560. . .

(c) if the company is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, persons who are connected or associated with either or both of the two persons mentioned in that subsection **[**F6561;

(d) persons not falling within paragraphs (a) to (c) above which are companies resident in the United Kingdom;

(e) persons not falling within paragraphs (a) to (c) above which are companies not resident in the United Kingdom which carry on business through a **[**F6562permanent establishment**]** in the United Kingdom;

(f) persons not falling within paragraphs (a) to (c) above who are individuals habitually resident in the United Kingdom;

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but where the company is a controlled foreign company falling within sub-paragraph (2B) below, paragraphs (d) to (f) above shall be disregarded.**]]**

[F6563(2B) A controlled foreign company falls within this sub-paragraph if either—

(a) its main business is the effecting or carrying out of contracts of long-term insurance, other than protection business; or

(b) it is a member of an insurance group and its main business is insuring or reinsuring large risks.

Paragraph 11A below has effect for the interpretation of this sub-paragraph.

(2C) For the purposes of sub-paragraph (2)(b) above, a company's gross trading receipts from a business shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (2A)(e) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person's **[**F6562permanent establishment**]** in the United Kingdom.**]**

(3) This sub-paragraph applies to a company which is a holding company if at least 90 per cent. of its gross income during the accounting period in question **[**F6564is received by it in the territory in which it is resident and**]** is derived directly from companies which it controls and which, throughout that period—

(a) are resident in the territory in which the holding company is resident; and

(b) are not themselves holding companies **[**F6565or superior holding companies**]**, but otherwise are, in terms of this Schedule, engaged in exempt activities **[**F6566or are, in terms of sub-paragraph (5A) below, exempt trading companies**]** ;

and a holding company to which this sub-paragraph applies is in this Part of this Schedule referred to as a "local holding company".

(4) This sub-paragraph applies to a company which is a holding company, but not a local holding company, if at least 90 per cent. of its gross income during the accounting period in question **[**F6567falls within sub-paragraph (4ZA) below and**]** is derived directly from companies which it controls and which, throughout that period—

(a) are local holding companies; or

(b) are not themselves holding companies (whether local or not) **[**F6568or superior holding companies**]**, but otherwise are, in terms of this Schedule, engaged in exempt activities **[**F6569or are, in terms of sub-paragraph (5A) below, exempt trading companies**]**.

[F6570(4ZA) For the purposes of sub-paragraph (4) above, income of the holding company falls within this sub-paragraph if—

(a) the company from which the holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which the holding company is resident and the income is received by the holding company in that territory; or

(b) the income consists of qualifying dividends.**]**

[F6571(4A) This sub-paragraph applies to a company which is a superior holding company if at least 90 per cent. of its gross income during the accounting period in question—

(a) represents qualifying exempt activity income of its subsidiaries; and

(b) is derived directly from companies which it controls and which fall within sub-paragraph (4B) below**[**F6572; and

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(c) falls within sub-paragraph (4AA) below.**]**

[F6573(4AA) For the purposes of sub-paragraph (4A) above, income of the superior holding company falls within this sub-paragraph if—

(a) the company from which the superior holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which the superior holding company is resident and the income is received by the superior holding company in that territory; or

(b) the income consists of qualifying dividends.**]**

(4B) For the purposes of paragraph (b) of sub-paragraph (4A) above, a company falls within this sub-paragraph if—

(a) throughout the accounting period mentioned in that sub-paragraph, it is not itself a superior holding company but otherwise is, in terms of this Schedule, engaged in exempt activities or is, in terms of sub-paragraph (5A) below, an exempt trading company; or

(b) it is itself a superior holding company throughout that period and at least 90 per cent of its gross income during that period—

(i) represents qualifying exempt activity income of its subsidiaries, and

(ii) is derived directly from companies which it controls and which themselves fall within this paragraph or paragraph (a) above**[**F6574; and

(iii) falls within sub-paragraph (4BB) below**]**.**]**

[F6575(4BB) For the purposes of sub-paragraph (4B)(b) above, income of the superior holding company there mentioned falls within this sub-paragraph if—

(a) the company from which that superior holding company directly derives the income is, throughout the accounting period in question, resident in the territory in which that superior holding company is resident and the income is received by that superior holding company in that territory; or

(b) the income consists of qualifying dividends.**]**

[F6576(4C) For the purposes of sub-paragraph **[**F6577(2A)(b)**]** above, a person has a 25 per cent. assessable interest in a controlled foreign company in the case of an accounting period of the company if, on an apportionment of the chargeable profits and creditable tax (if any) of the company for that accounting period under section 747(3), at least 25 per cent. of the controlled foreign company's chargeable profits for the accounting period would be apportioned to that person.**]**

(5) Any reference in **[**F6578sub-paragraphs (3) to (4B)**]** above to a company which a holding company **[**F6579or superior holding company**]** controls includes a reference to a trading company **[**F6580to which sub-paragraph (5ZA) or (5ZB) below applies.

(5ZA) This sub-paragraph applies to a trading company**]** in which the holding company **[**F6579or superior holding company**]** holds the maximum amount of ordinary share capital which is permitted under the law of the territory—

(a) in which the trading company is resident; and

(b) from whose laws the trading company derives its status as a company.

[F6581(5ZB) This sub-paragraph applies to a trading company if—

(a) it is a controlled foreign company by virtue of subsection (1A) of section 747; and

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(b) the person who satisfies the requirement in paragraph (b) of that subsection in relation to the company also controls the holding company or superior holding company.**]**

[F6582(5A) For the purposes of sub-paragraphs (3) to (4B) above, a company is an exempt trading company throughout any period if—

(a) it is a trading company throughout each of its accounting periods which falls wholly or partly within that period; and

(b) each of those accounting periods is one as regards which—

(i) the condition in section 747(1)(c) is not satisfied; or

(ii) the conditions in section 748(1)(e) are satisfied; or

(iii) the conditions in section 748(3)(a) and (b) are satisfied.**]**

[F6583(5B) In this paragraph "qualifying dividend" means any dividend other than one for which the company paying the dividend is entitled to a deduction against its profits for tax purposes under the law of the territory in which it is resident.**]**

(6) The following provisions of this Part of this Schedule have effect in relation to sub-paragraphs (1) to **[**F6584(4BB)**]** above.

Textual Amendments

F6556 Words in Sch. 25 para. 6(1)(c) substituted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(2)**

F6557 Words in Sch. 25 para. 6(2)(b) substituted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 5(2)(a)**

F6558 Words in Sch. 25 para. 6(2)(b) substituted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 5(2)(b)**

F6559 Sch. 25 para. 6(2A) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 5(3)**

F6560 Word in Sch. 25 para. 6(2A) repealed (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the repealing Act) by Finance Act 2003 (c. 14), s. 200(4), Sch. 42 para. 2(3), **Sch. 43 Pt. 5(2)**

F6561 Sch. 25 para. 6(2A)(d)-(f) and words inserted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(3)**

F6562 Words in Sch. 25 para. 6(2A)(e)(2C) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

F6563 Sch. 25 para. 6(2B)(2C) inserted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(4)**

F6564 Words in Sch. 25 para. 6(3) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 6(2)**

F6565 Words in Sch. 25 para. 6(3)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(4)(a)**; S.I. 1998/3173, **art. 2**

F6566 Words in Sch. 25 para. 6(3)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(4)(b)**; S.I. 1998/3173, **art. 2**

F6567 Words in Sch. 25 para. 6(4) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(2)**

F6568 Words in Sch. 25 para. 6(4)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(5)(a)**; S.I. 1998/3173, **art. 2**

F6569 Words in Sch. 25 para. 6(4)(b) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para 30(5)(b)**; S.I. 1998/3173, **art. 2**

F6570 Sch. 25 para. 6(4ZA) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(3)**

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F6571 Sch. 25 para. 6(4A)(4B) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(6)**; S.I. 1998/3173, **art. 2**

F6572 Sch. 25 para. 6(4A)(c) and preceding word added (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(4)**

F6573 Sch. 25 para. 6(4AA) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(5)**

F6574 Sch. 25 para. 6(4B)(b)(iii) and preceding word added (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(6)**

F6575 Sch. 25 para. 6(4BB) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(7)**

F6576 Sch. 25 para. 6(4C) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(7)**; S.I. 1998/3173, **art. 2**

F6577 Words in Sch. 25 para. 6(4C) substituted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 2(5)**

F6578 Words in Sch. 25 para. 6(5) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(8)(a)**; S.I. 1998/3173, **art. 2**

F6579 Words in Sch. 25 para. 6(5) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(8)(b)**; S.I. 1998/3173, **art. 2**

F6580 Words in Sch. 25 para. 6 inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(8)**

F6581 Sch. 25 para. 6(5ZB) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(9)**

F6582 Sch. 25 para. 6(5A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 30(9)**; S.I. 1998/3173, **art. 2**

F6583 Sch. 25 para. 6(5B) inserted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(10)**

F6584 Word in Sch. 15 para. 6(6) substituted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 7(11)**

7 (1) For the purposes of paragraph 6(1)(a) above, a "business establishment", in relation to a controlled foreign company, means premises—

(a) which are, or are intended to be, occupied and used with a reasonable degree of permanence; and

(b) from which the company's business in the territory in which it is resident is wholly or mainly carried on.

(2) For the purposes of sub-paragraph (1) above the following shall be regarded as premises—

(a) an office, shop, factory or other building or part of a building; or

(b) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; or

(c) a building site or the site of a construction or installation project;

but such a site as is referred to in paragraph (c) above shall not be regarded as premises unless the building work or the project, as the case may be, has a duration of at least twelve months.

8 (1) Subject to sub-paragraph (4) below, the condition in paragraph 6(1)(b) above shall not be regarded as fulfilled unless—

(a) the number of persons employed by the company in the territory in which it is resident is adequate to deal with the volume of the company's business; and

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(b) any services provided by the company for persons resident outside that territory are not in fact performed in the United Kingdom.

(2) For the purposes of sub-paragraph (1)(a) above, persons who are engaged wholly or mainly in the business of the company and whose remuneration is paid by a person connected with, and resident in the same territory as, the company shall be treated as employed by the company.

(3) In the case of a holding company **[**F6585or superior holding company**]**, sub-paragraph (2) above shall apply with the omission of the words "wholly or mainly".

(4) For the purposes of sub-paragraph (1)(b) above, no account shall be taken of services—

(a) provided through a **[**F6586permanent establishment**]** of the controlled foreign company if the profits or gains of the business carried on through the **[**F6586permanent establishment**]** are within the charge to tax in the United Kingdom; or

(b) provided through any other person whose profits or gains from the provision of the services are within the charge to tax in the United Kingdom and who provides the services for a consideration which is, or which is not dissimilar from what might reasonably be expected to be, determined under a contract entered into at arm's length; or

(c) which are no more than incidental to services provided outside the United Kingdom.

Textual Amendments

F6585 Words in Sch. 25 para. 8(3) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 31(2)**; S.I. 1998/3173, **art. 2**

F6586 Words in Sch. 25 para. 8(4)(a) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

9 (1) Subject to sub-paragraph (3) below, for the purposes of paragraph 6(2)(a)(i) above, each of the following activities constitutes investment business—

(a) the holding of securities, **[**F6587or intellectual property**]**;

(b) dealing in securities, other than in the capacity of a broker;

(c) the leasing of any description of property or rights; and

(d) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of the controlled foreign company in question.

[F6588**[**F6589(1A) In sub-paragraph (1)(a) above "intellectual property" includes (in particular)—

(a) any industrial, commercial or scientific information, knowledge or expertise;

(b) any patent, trade mark, registered design, copyright or design right;

(c) any licence or other right in respect of intellectual property;

(d) any rights under the law of a country outside the United Kingdom which correspond or are similar to those falling within paragraph (b) or (c) above.**]]**

(2) In sub-paragraph (1)(b) above "broker" includes any person offering to sell securities to, or purchase securities from, members of the public generally.

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(3) For the purposes of paragraph 6(2) above, in the case of a company which is mainly engaged in **[**F6590business**]** falling within paragraph 11(1)(c) below, nothing in sub-paragraph (1) above shall require the main business of the company to be regarded as investment business.

Textual Amendments

F6587 Words in Sch. 25 para. 9(1)(a) substituted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), s. 305(3), **Sch. 7 para. 36(9)**; S.I. 1989/816, **art. 2**

F6588 Sch. 25 para. 9(1A) inserted (1.8.1989) by Copyright, Designs and Patents Act 1988 (c. 48), s. 305(3), **Sch. 7 para. 36(9)**; S.I. 1989/816, **art. 2**

F6589 Sch. 25 para. 9(1A) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 112(2)**

F6590 Word in Sch. 25 para. 9(3) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 112(4)(a)**

10 Goods which are actually delivered into the territory in which the controlled foreign company is resident shall not be taken into account for the purposes of paragraph 6(2)(a)(ii) above.

11 (1) For the purposes of paragraph 6(2)(b) above, each of the following activities constitutes wholesale, distributive **[**F6591financial or service**]** business—

(a) dealing in any description of goods wholesale rather than retail;

(b) the business of shipping or air transport, that is to say, the business carried on by an owner of ships or the business carried on by an owner of aircraft ("owner" including, for this purpose, any charterer);

[F6592(c) banking, deposit-taking, money-lending or debt-factoring, or any business similar to banking, deposit-taking, money-lending or debt-factoring;**]**

(d) the administration of trusts;

(e) dealing in securities in the capacity of a broker, as defined in paragraph 9(2) above;

(f) dealing in commodity or financial futures;F6593. . .

[F6594(g) the effecting or carrying out of contracts of insurance; and**]**

[F6595(h) the provision of services not falling within any of the preceding paragraphs.**]**

[F6596(1A) For the purposes of sub-paragraph (1)(g) above "contract of insurance" has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.**]**

(2) In a case where the gross trading receipts of a company include an amount in respect of the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall be a deduction in calculating the company's gross trading receipts for the purposes of paragraph 6(2)(b) above.

(3) In the case of a controlled foreign company engaged in a **[**F6597business**]** falling within sub-paragraph (1)(c) above—

[F6598(a) no payment of interest received from a company resident in the United Kingdom which is connected or associated with the controlled foreign company shall be regarded for the purposes of paragraph 6(2)(b) above as a

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receipt derived directly or indirectly from a person falling within paragraph 6(2A) above, but**]**

(b) it shall be conclusively presumed that the condition in paragraph 6(2)(b) above is not fulfilled if, at any time during the accounting period in question, the amount by which the aggregate value of the capital interests in the company held directly or indirectly by—

(i) the persons who have control of the company, and

(ii) any person connected or associated with those persons,

exceeds the value of the company's fixed assets is 15 per cent. or more of the amount by which the company's outstanding capital exceeds that value **[**F6599, and

(c) it shall also be conclusively presumed that the condition in paragraph 6(2)(b) is not fulfilled if 10% or more of the company's gross trading receipts from all businesses carried on by it in the accounting period in question, taken together, are receipts other than interest and are directly or indirectly derived from persons—

(i) which are companies resident in the United Kingdom,

(ii) which are companies not resident in the United Kingdom but which carry on business through a **[**F6600permanent establishment**]** in the United Kingdom, or

(iii) who are individuals habitually resident in the United Kingdom,

but for this purpose a company's gross trading receipts shall be regarded as directly or indirectly derived from a person falling within sub-paragraph (ii) above only to the extent that they are derived directly or indirectly from contracts or other arrangements relating to that person's **[**F6600permanent establishment**]** in the United Kingdom.**]**

(4) For the purposes of this paragraph, in relation to a controlled foreign company—

(a) "capital interest" means an interest in the issued share capital or reserves of the company or in a loan to or deposit with the company or the liability of a guarantor under a guarantee given to or for the benefit of the company;

(b) except in the case of the liability of a guarantor, the value of a capital interest is its value as shown in the company's accounts;

(c) in the case of the liability of a guarantor, the value shall be taken to be the market value of the benefit which the controlled foreign company derives from the provision of the guarantee;

(d) the value of the company's fixed assets means the value, as shown in the company's accounts, of the plant, premises and trade investments employed in the company's business; and

(e) "outstanding capital" means the total value of all the capital interests in the company, less the value, as shown in the company's accounts, of any advances made by the company to persons resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above.

(5) For the purposes of sub-paragraph (4) above—

(a) "trade investments", in relation to a controlled foreign company, means securities any profit on the sale of which would not be brought into account as a trading receipt in computing the chargeable profits of an accounting period in which that profit arose; and

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(b) the reference in paragraph (e) to advances made to a person by the controlled foreign company includes, in the case of a company which is a person resident outside the United Kingdom and falling within paragraph (i) or paragraph (ii) of sub-paragraph (3)(b) above, any securities of that company which are held by the controlled foreign company but are not trade investments, as defined in paragraph (a) above;

and in this sub-paragraph "securities" includes stocks and shares.

(6) In the application of paragraph 6(2)(b) above in the case of a controlled foreign company engaged in insurance business of any kind—

(a) the reference to gross trading receipts which are derived directly or indirectly from connected or associated persons is a reference to those which, subject to sub-paragraph (7) below, are attributable, directly or indirectly, to liabilities undertaken in relation to any of those persons or their property;

(b) the only receipts to be taken into account are commissions and premiums received under insurance contracts;

(c) so much of any such commission or premium as is returned is not to be taken into account; and

(d) when a liability under an insurance contract is reinsured, in whole or in part, the amount of the premium which is attributable, directly or indirectly, to that liability shall be treated as reduced by so much of the premium under the reinsurance contract as is attributable to that liability.

(7) In determining, in relation to a controlled foreign company to which sub-paragraph (6) above applies, the gross trading receipts referred to in paragraph (a) of that sub-paragraph, there shall be left out of account any receipts under a local reinsurance contract which are attributable to liabilities which—

(a) are undertaken under an insurance contract made in the territory in which the company is resident; and

(b) are not reinsured under any contract other than a local reinsurance contract; and

(c) relate either to persons who are resident in that territory and are neither connected nor associated with the company or to property which is situated there and belongs to persons who are not so connected or associated;

and in paragraph (a) above "insurance contract" does not include a reinsurance contract.

(8) In sub-paragraph (7) above "local reinsurance contract" means a reinsurance contract—

(a) which is made in the territory in which the controlled foreign company is resident; and

(b) the parties to which are companies which are resident in that territory.

(9) For the purposes of sub-paragraphs (7) and (8) above, any question as to the territory in which a company is resident shall be determined in accordance with section 749 and, where appropriate, paragraph 5(2) above; and, for the purpose of the application of those provisions in accordance with this sub-paragraph, the company shall be assumed to be a controlled foreign company.

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Textual Amendments

F6591 Words in Sch. 25 para. 11(1) substituted (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 8(2)(a)**

F6592 Sch. 25 para. 11(1)(c) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 112(3)**

F6593 Word preceding Sch. 25 para. 11(1)(g) repealed (with effect in accordance with Sch. 31 para. 9(4) of the repealing Act) by Finance Act 2000 (c. 17), Sch. 31 para. 8(2)(b), **Sch. 40 Pt. 2(14)**, Note

F6594 Sch. 25 para. 11(1)(g) substituted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2000/3629), **art. 51(2)**

F6595 Sch. 25 para. 11(1)(h) and preceding word added (with effect in accordance with Sch. 31 para. 9(4) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 31 para. 8(2)(c)**

F6596 Sch. 25 para. 11(1A) inserted (1.12.2001 with effect in accordance with art. 1(2)(a) of the amending S.I.) by The Financial Services and Markets Act 2000 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2000/3629), **art. 51(3)**

F6597 Word in s. 11(3) substituted (with effect in accordance with s. 112(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 112(4)(b)**

F6598 Sch. 25 para. 11(3)(a) substituted (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 3(2)**

F6599 Sch. 25 para. 11(3)(c) and preceding word added (retrospective to 27.11.2002 with effect in accordance with s. 200(2)(3) of the amending Act) by Finance Act 2003 (c. 14), s. 200(4), **Sch. 42 para. 3(3)**

F6600 Words in Sch. 25 para. 11(3)(c) substituted (with effect in accordance with s. 153(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 153(1)(a)**

11A (1) This paragraph has effect for the interpretation of paragraph 6(2B) above.

(2) "Contract of long-term insurance" means any contract falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

(3) "Protection business" means contracts of long-term insurance where—

(a) either—

(i) the contract has no surrender value; or

(ii) the consideration consists of a single premium and the surrender value does not exceed the amount of that premium; and

(b) the contract makes no provision for its conversion or extension in a manner which would result in its ceasing to fall within paragraph (a) above;

and references to protection business include a reference to reinsurance of protection business.

(4) "Insurance group" shall be construed in accordance with section 255A(5) of the Companies Act 1985 (meaning of "insurance group" in Part 7) but reading Part 7 of that Act—

(a) as if it extended to Northern Ireland, and

(b) as if any reference to a company (within the meaning of that Act) included a reference to a company as defined in Article 3 of the Companies (Northern Ireland) Order 1986,

but does not include such an insurance group if it falls within sub-paragraph (5) below.

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(5) Such an insurance group falls within this sub-paragraph if (within the meaning of that Part as so read) the parent company is a subsidiary undertaking of a parent company which is neither—

(a) the parent company of an insurance group; nor

(b) a subsidiary undertaking of the parent company of an insurance group.

(6) A controlled foreign company is, in accordance with sub-paragraphs (4) and (5) above, a "member of an insurance group" if (within the meaning of that Part as so read) it is the parent company, or a subsidiary undertaking of the parent company, of an insurance group which is by virtue of sub-paragraph (4) above an insurance group for the purposes of paragraph 6(2B) above.

(7) A company's main business is "insuring or reinsuring large risks" if (and only if)—

(a) the company's main business is the effecting or carrying out of contracts of insurance; and

(b) 50% or more of its gross trading receipts from that business are derived from insuring or reinsuring large risks.

"Large risks" is defined in paragraph 11B below.

(8) In this paragraph—

"contract of insurance" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"contract of long-term insurance" has the meaning given by sub-paragraph (2) above.

11B (1) In paragraph 11A above "large risks" means—

(a) risks falling within classes 4, 5, 6, 7, 11 and 12 of Part I of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

(b) risks falling within classes 14 and 15 of that Part which relate to a business carried on by the policy holder;

(c) risks falling within classes 3, 8, 9, 10, 13 and 16 of that Part where the policy holder carries on a business in respect of which the condition specified in sub-paragraph (2) below is satisfied.

(2) The condition referred to in sub-paragraph (1)(c) above is that, in the case of that business of the policy holder, at least two of the three following criteria were exceeded in the most recent financial year beginning on or after 1st January 1999 for which the information is available—

(a) balance sheet total: 6.2 million euros;

(b) net turnover: 12.8 million euros;

(c) number of employees: 250.

(3) For the purposes of sub-paragraph (2) above as it applies where the policy holder is a company, within the meaning of section 735(1) of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986,—

(a) "balance sheet total" has the meaning given by section 247(5) of that Act or Article 255(5) of that Order;

(b) "net turnover" has the meaning given to "turnover" by section 262(1) of that Act or Article 270(1) of that Order; and

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(c) "number of employees" has the meaning given by section 247(6) of that Act or Article 255(6) of that Order;

and for a financial year which is a company's financial year but not in fact a year, the net turnover of the company shall be proportionately reduced.

(4) Where the policy holder is a member of a group for which consolidated accounts (within the meaning of Directive 83/349/EEC) are drawn up, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to those accounts.

(5) For the purposes of sub-paragraph (1)(c) above as it applies where the policy holder is a professional association, joint venture or temporary grouping, the question whether the condition in sub-paragraph (2) above is met shall be determined by reference to the aggregate of the figures of the description in question for all the members of the professional association, joint venture or temporary grouping.

(6) In sub-paragraphs (1) to (5) above "business" includes a trade or profession and, for the purposes of sub-paragraph (1)(c) above, any activity of a professional association, joint venture or temporary grouping.

(7) For the purposes of this paragraph, where an amount is denominated in any accounts in a currency other than the euro, it shall be converted into its equivalent in euros using the London closing exchange rate for that currency and the euro for the last day of the period to which the accounts relate.

(8) In this paragraph—

"euro" means the single currency adopted or proposed to be adopted as its currency by a member State in accordance with the Treaty establishing the European Community;

"financial year", in relation to any person, means the period (not exceeding 12 months) for which that person makes up accounts.

12 (1) Subject to sub-paragraph (2) below, in paragraphs 6 and 8(3) above and **[**[F6601]paragraph 12A below and in**]** sub-paragraphs (4) and (5) below "holding company" means—

(a) a company the business of which consists wholly or mainly in the holding of shares or securities of companies which are either local holding companies and its 90 per cent. subsidiaries or trading companies and either its 51 per cent. subsidiaries or companies falling within paragraph 6(5) above; or

(b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.

(2) In determining whether a company is a holding company for the purposes of paragraph 6(3) above (and, accordingly, whether the company is or may be a local holding company), sub-paragraph (1) above shall have effect with the omission from paragraph (a) thereof of the words "either local holding companies and its 90 per cent. subsidiaries or".

(3) In its application for the purposes of this paragraph, section 838 shall have effect with the omission of—

(a) in subsection (1)(a), the words "or indirectly"; and

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(b) subsection (2).

(4) For the purposes of sub-paragraph (3) or (4), as the case may be, of paragraph 6 above, as it applies in relation to a holding company part of whose business consists of activities other than the holding of shares or securities or the holding of property or rights as mentioned in paragraph (a) or (b) of sub-paragraph (1) above, the company's gross income during any accounting period shall be determined as follows—

(a) there shall be left out of account so much of what would otherwise be the company's gross income as is derived from any activity which, if it were the business in which the company is mainly engaged, would be such that paragraph 6(2) above would apply to the company; and

(b) to the extent that the receipts of the company from any other activity include receipts from the proceeds of sale of any description of property or rights, the cost to the company of the purchase of that property or those rights shall (to the extent that the cost does not exceed the receipts) be a deduction in calculating the company's gross income, and no other deduction shall be made in respect of that activity.

(5) For the purposes of sub-paragraphs (3) and (4) of paragraph 6 above, so much of the income of a holding company as—

(a) is derived directly from another company which it controls and which is not a holding company **[**F6602or superior holding company**]** but otherwise is, in terms of this Schedule, engaged in exempt activities **[**F6603or, in terms of sub-paragraph (5A) of that paragraph, is an exempt trading company**]**, and

(b) was or could have been paid out of any non-trading income of that other company which is derived directly or indirectly from a third company connected or associated with it,

shall be treated, in relation to the holding company, as if it were not derived directly from companies which it controls.

(6) The reference in sub-paragraph (5) above to the non-trading income of a company is a reference to so much of its income as, if the company were carrying on its trade in the United Kingdom, would not be within the charge to corporation tax under Case I of Schedule D.

Textual Amendments

F6601 Words in Sch. 25 para. 12(1) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 32(2)**; S.I. 1998/3173, **art. 2**

F6602 Words in Sch. 25 para. 12(5)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 32(3)(a)**; S.I. 1998/3173, **art. 2**

F6603 Words in Sch. 25 para. 12(5)(a) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 32(3)(b)**; S.I. 1998/3173, **art. 2**

12A (1) In paragraphs 6, 8(3) and 12(5) above and this paragraph, "superior holding company" means—

(a) a company whose business consists wholly or mainly in the holding of shares or securities of companies which—

(i) are holding companies or local holding companies; or

(ii) are themselves superior holding companies; or

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(b) a company which would fall within paragraph (a) above if there were disregarded so much of its business as consists in the holding of property or rights of any description for use wholly or mainly by companies which it controls and which are resident in the territory in which it is resident.

(2) For the purposes of sub-paragraphs (4A) and (4B) of paragraph 6 above, the income of a company during any period which "represents qualifying exempt activity income of its subsidiaries" is any income of the company during that period which is directly or indirectly derived from companies—

(a) which it controls, and

(b) which, throughout that period, fall within sub-paragraph (4B)(a) of that paragraph, but

(c) which are not holding companies other than local holding companies.

(3) In determining for the purposes of sub-paragraph (4A) or (4B) of paragraph 6 above the companies from which, and the proportions in which, different descriptions of income of a company are derived (whether directly or indirectly), any dividend shall be taken to be paid out of the appropriate profits.

(4) Subsections (3) and (4) of section 799 (which provide rules for determining the profits out of which a dividend is to be regarded as paid for the purpose of subsection (1) of that section) shall apply for determining the appropriate profits for the purposes of subsection (3) above as they apply for determining the relevant profits for the purposes of subsection (1) of that section.

(5) Sub-paragraphs (4) to (6) of paragraph 12 above shall apply in relation to sub-paragraph (4A) or (4B) of paragraph 6 above and a superior holding company as they apply in relation to sub-paragraph (3) or (4) of paragraph 6 above and a holding company, but taking the reference in sub-paragraph (4) of paragraph 12 above to paragraph (a) or (b) of sub-paragraph (1) of that paragraph as a reference to paragraph (a) or (b) of sub-paragraph (1) above.

VALID FROM 19/07/2011

[F6604 PART 2A

TRADING COMPANIES WITH LIMITED UK CONNECTION

Textual Amendments

F6604 Sch. 25 Pts. 2A, 2B (paras. 12B-12N) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 3**

Introductory

12B (1) For the purposes of section 748(1)(ba), a controlled foreign company ("C") is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.

(2) The requirements are those imposed as to C's—

(a) business establishment (see paragraph 12C),

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(b) business activities (see paragraph 12D),
(c) UK connection (see paragraph 12E), and
(d) finance income and relevant IP income (see paragraph 12F).

Business establishment

12C (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.

(2) For the purposes of sub-paragraph (1)—
(a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and
(b) paragraph 7 (meaning of "business establishment") applies as it applies for the purposes of paragraph 6(1)(a).

Business activities

12D (1) The requirement of this paragraph is that—
(a) C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities, or
(b) if C is wholly engaged in business falling within paragraph 11(1)(c) (banking etc), C's business does not, at any time during the accounting period, include to a substantial extent non-exempt activities which do not constitute investment business.

(2) For this purpose—
"non-exempt activities" means—
(a) the holding or managing of shares or securities,
(b) the holding of intellectual property,
(c) dealing in securities, other than in the capacity of a broker,
(d) the leasing of any description of property or rights,
(e) the investment in any manner of funds which would otherwise be available, directly or indirectly, for investment by or on behalf of any person (whether resident in the United Kingdom or not) who has, or is connected or associated with a person who has, control, either alone or together with other persons, of C, and
(f) if C is not a member of an insurance group throughout the accounting period, the effecting or carrying out of contracts of insurance between C and persons related to C;
"investment business" means activities within paragraphs (a) to (d) of paragraph 9(1).

(3) For the purposes of sub-paragraph (2)(f), a person is "related" to C if—
(a) the person is connected or associated with C,
(b) the person has a 25 per cent assessable interest in C in the case of the accounting period in question (within the meaning of paragraph 6(4C)), or
(c) if C is a controlled foreign company in that accounting period by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.

(4) In sub-paragraph (2)—

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"broker" includes any person offering to sell securities to, or purchase securities from, members of the public generally;

"contract of insurance" has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

"insurance group" has the meaning given by paragraph 11A(4);

"intellectual property" is to be construed in accordance with paragraph 9(1A);

"member of an insurance group" has the meaning given by paragraph 11A(6).

UK connection

12E (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.

(2) C has a significant connection with the United Kingdom during the accounting period if Condition A or B is met.

(3) Condition A is that—

(a) the UK-connected gross income of C's business for that period exceeds 10% of the gross income of that business for that period, and

(b) sub-paragraph (4) does not apply.

(4) This sub-paragraph applies if—

(a) at all times in the accounting period there are sufficient individuals working for C in the territory in which it is resident, or in any other territory outside of the United Kingdom, who have the competence and authority to undertake all, or substantially all, of C's business,

(b) C's relevant profits for the accounting period do not exceed 10% of C's relevant operating expenses for that period, and

(c) the UK-connected gross income of C's business for that period does not exceed 50% of the gross income of that business for that period.

(5) Condition B is that—

(a) the UK-connected related-party business expenditure of C's business for that period exceeds 50% of the total related-party business expenditure of C's business for that period, and

(b) during the accounting period C has been involved in a scheme where the main purpose, or one of the main purposes, of any party to the scheme in entering into the scheme is to achieve a reduction in corporation tax or any tax chargeable as if it were corporation tax.

(6) For the purposes of sub-paragraph (4)(a), individuals are not to be regarded as working for C in any territory unless—

(a) they are employed by C in the territory, or

(b) they are otherwise directed by C to perform duties on its behalf in the territory.

(7) In this paragraph—

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"related-party business expenditure" means any expenditure, other than capital expenditure, which gives rise, directly or indirectly, to income of a person related to C;

"relevant profits", for an accounting period, means the total profits of C for that period calculated in accordance with generally accepted accounting practice (disregarding any capital gains or losses), but before any deduction for interest or tax;

"relevant operating expenses" of C means operating expenses of C other than—

(a) the cost of goods sold, and

(b) related-party business expenditure;

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;

"UK-connected gross income" means the gross income derived, directly or indirectly, from persons who are within the charge to United Kingdom tax for all or part of the accounting period;

"UK-connected related-party business expenditure" means related-party business expenditure which gives rise, directly or indirectly, to income of a person within the charge to United Kingdom tax in respect of that income;

"United Kingdom tax" means income tax or corporation tax;

and paragraph 12D(3) (persons "related" to C) applies for the purposes of this paragraph as it applies for the purposes of paragraph 12D(2)(f).

(8) In the case of a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there, for the purposes of sub-paragraph (7)—

(a) the gross income derived from that company is so much of the gross income as is attributable to that establishment, and

(b) the income received by that company is such of its income as is attributable to that establishment.

Finance income and relevant IP income

12F (1) The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period falls within sub-paragraph (2).

(2) Gross income falls within this sub-paragraph to the extent that it is—

(a) finance income, or

(b) relevant IP income.

(3) "Finance income" means—

(a) any amount which in accordance with UK generally accepted accounting practice falls to be recognised as arising from a financial asset, and

(b) any return, in relation to an amount, which—

(i) is produced for C by an arrangement to which C is party, and

(ii) is economically equivalent to interest,

except to the extent that the return is taken into account in determining an amount within paragraph (a).

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(4) "Relevant IP income" means royalties and receipts of a similar nature arising from intellectual property.

(5) For the purposes of sub-paragraph (3)(b), the amount of a return is the amount which by virtue of the return would, in calculating C's chargeable profits, be treated under section 486B of CTA 2009 (disguised interest to be regarded as profit from loan relationship) as a profit arising to C from a loan relationship.

(6) But, in calculating that profit for the purposes of sub-paragraph (5), sections 486B(7) and 486C to 486E of CTA 2009 are to be ignored.

(7) In this paragraph—

"economically equivalent to interest" is to be construed in accordance with section 486B(2) and (3) of CTA 2009;

"financial asset" means a financial asset as defined for the purposes of UK generally accepted accounting practice or international accounting standards;

"intellectual property" is to be construed in accordance with paragraph 9(1A).

Gross income

12G (1) References in this Part of this Schedule to C's gross income are to be construed in accordance with this paragraph.

(2) C's gross income for an accounting period does not include—

(a) any distribution that would not be included in C's chargeable profits by reason of it being exempt for the purposes of Part 9A of CTA 2009 (see section 931A of that Act), or

(b) any amount that would be taken into account in computing chargeable gains if C were within the charge to corporation tax.

(3) C's gross income for an accounting period includes—

(a) any income which accrues during that period to the trustees of a settlement in relation to which C is a settlor or a beneficiary, and

(b) any income which accrues during that period to a partnership of which C is a partner, apportioned between C and the other partners on a just and reasonable basis.

(4) Where there is more than one settlor or beneficiary in relation to the settlement mentioned in sub-paragraph (3)(a), the income is to be apportioned between C and the other settlors or beneficiaries on a just and reasonable basis.

(5) In this paragraph—

"distribution" has the same meaning as in the Corporation Tax Acts (see Part 23 of CTA 2010);

"partnership" includes an entity established under the law of a country or territory outside the United Kingdom of a similar character to a partnership; and "partner" is to be read accordingly.

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PART 2B

COMPANIES EXPLOITING INTELLECTUAL PROPERTY WITH LIMITED UK CONNECTION

Introductory

12H (1) For the purposes of section 748(1)(bb), a company ("C") is exempt for an accounting period if the requirements of this Part of this Schedule are satisfied.

(2) The requirements are those imposed as to C's—

(a) business establishment (see paragraph 12I),

(b) intellectual property business (see paragraph 12J),

(c) other business activities (see paragraph 12K),

(d) UK connection (see paragraph 12L), and

(e) finance income (see paragraph 12M).

Business establishment

12I (1) The requirement of this paragraph is that throughout the accounting period C has a business establishment in the territory in which it is resident.

(2) For the purposes of sub-paragraph (1)—

(a) paragraph 5(2) to (5) (special rules about residence of the company) applies as it applies for the purposes of Part 2 of this Schedule, and

(b) paragraph 7 (meaning of "business establishment") applies as it applies for the purposes of paragraph 6(1)(a).

Intellectual property business

12J (1) The requirement of this paragraph is that C's main business, throughout the accounting period, consists of the exploitation of intellectual property which does not have a relevant UK connection.

(2) For the purposes of sub-paragraph (1), if any part of C's main business consists of the exploitation of intellectual property which has a relevant UK connection, that part is to be ignored if it is an insignificant part of C's main business.

(3) Intellectual property has a relevant UK connection if—

(a) at any time during the accounting period or the 6 years immediately preceding that period, it has been held by a person resident in the United Kingdom, or

(b) activities relating to the creation, maintenance or enhancement of the intellectual property (other than activities of an incidental or insignificant nature) have been carried on by a person who for some or all of the period—

(i) beginning when the activities were first carried on by the person, and

(ii) ending at the end of the accounting period,

was related to C and within the charge to United Kingdom tax.

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Other business activities

12K (1) The requirement of this paragraph is that—

(a) C does not, at any time during the accounting period, carry on any activities otherwise than in the course of its main business, or

(b) if it carries on any such activities ("secondary activities"), the secondary activities condition is met.

(2) The secondary activities condition is that either—

(a) the secondary activities do not, at any time during the accounting period, constitute a substantial part of the activities of C's business taken as a whole, or

(b) section 748(1)(b) or (ba) would apply to prevent an apportionment under section 747(3) falling to be made as regards that period, if C's business consisted only of the secondary activities carried on by it during the accounting period.

UK connection

12L (1) The requirement of this paragraph is that C does not have a significant connection with the United Kingdom during the accounting period.

(2) C has a significant connection with the United Kingdom during the accounting period if—

(a) all or a substantial proportion of C's gross income for that period consists of income from the exploitation of intellectual property which derives from persons within the charge to United Kingdom tax, or

(b) during that period C incurs expenditure (other than expenditure of an incidental or insignificant nature) on—

(i) R&D sub-contractor payments, or

(ii) the creation, development or maintenance of relevant intellectual property,

and that expenditure forms part of the income of a person who for some or all of that period is related to C and within the charge to United Kingdom tax.

(3) In this paragraph—

"R&D sub-contractor payment" means a payment made by C to another person in respect of research and development contracted out by C to that person;

"relevant intellectual property" means intellectual property which does not have a relevant UK connection (see paragraph 12J(3)) and which C exploits in the course of its main business.

Finance income

12M The requirement of this paragraph is that not more than 5% of C's gross income for the accounting period consists of finance income (within the meaning of paragraph 12F(3)).

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Interpretation of Part 2B

12N (1) For the purpose of this Part of this Schedule—

"intellectual property" is to be construed in accordance with paragraph 9(1A);

"United Kingdom tax" means corporation tax or income tax;

and paragraph 12G (meaning of "gross income") applies as it applies for the purposes of Part 2A of this Schedule.

(2) For the purposes of this Part of this Schedule a person is "related" to C at a particular time if at that time—

(a) the person is connected or associated with C,

(b) the person has a 25 per cent assessable interest in C in the case of the accounting period of C in which that time falls (within the meaning of paragraph 6(4C)), or

(c) if C is a controlled foreign company in the accounting period in which that time falls by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.

(3) In the case of a company which is within the charge to United Kingdom tax only because it carries on a trade in the United Kingdom through a permanent establishment there—

(a) for the purposes of paragraph 12J(3)(b), the activities carried on by the company are such of the activities as are carried on through that establishment,

(b) for the purposes of paragraph 12L(2)(a), the income derived from that company is such of the income so derived as is attributable to that establishment, and

(c) for the purposes of paragraph 12L(2)(b), the income of that company is such of its income as is attributable to that establishment.**]**

PART III

THE PUBLIC QUOTATION CONDITION

13 (1) The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(c).

(2) Subject to paragraph 14 below, a controlled foreign company fulfils the public quotation condition with respect to a particular accounting period if—

(a) shares in the company carrying not less than 35 per cent. of the voting power in the company (and not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) have been allotted unconditionally to, or acquired unconditionally by, the public and, throughout that accounting period, are beneficially held by the public; and

(b) within the period of 12 months ending at the end of the accounting period, any such shares have been the subject of dealings on a recognised stock exchange situated in the territory in which the company is resident; and

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(c) within that period of 12 months the shares have been **[**[F6605]listed**]** in the official list of such a recognised stock exchange.

Textual Amendments

F6605 Word in Sch. 25 para. 13(2)(c) substituted (with effect in accordance with Sch. 38 para. 6(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 6(1)(2)(m)**

14 (1) The condition in paragraph 13(2) above is not fulfilled with respect to an accounting period of a controlled foreign company if at any time in that period the total percentage of the voting power in the company possessed by all of the company's principal members exceeds 85 per cent.

(2) For the purposes of paragraph 13(2) above shares in a controlled foreign company shall be deemed to be beneficially held by the public if they are held by any person other than—

(a) a person connected or associated with the company; or

(b) a principal member of the company;

and a corresponding construction shall be given to the reference to shares which have been allotted unconditionally to, or acquired unconditionally by, the public.

15 (1) References in this Part of this Schedule to shares held by any person include references to any shares the rights or powers attached to which could, for the purposes of section 416, be attributed to that person under subsection (5) of that section.

(2) For the purposes of this Part of this Schedule—

(a) a person is a principal member of a controlled foreign company if he possesses a percentage of the voting power in the company of more than 5 per cent. and—

(i) where there are more than five such persons, if he is one of the five persons who possess the greatest percentages, or

(ii) if, because two or more persons possess equal percentage of the voting power in the company, there are no such five persons, he is one of six or more persons (so as to include those two or more who possess the equal percentages) who possess the greatest percentages; and

(b) a principal member's holding consists of the shares which carry the voting power possessed by him.

(3) In arriving at the voting power which a person possesses, there shall be attributed to him any voting power which, for the purposes of section 416, would be attributed to him under subsection (5) or (6) of that section.

(4) In this Part of this Schedule "shares" include "stock".

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VALID FROM 19/07/2011

[F6606 PART 3A

EXEMPT PERIODS

Textual Amendments

F6606 Sch. 25 Pt. 3A (paras. 15A-15G) inserted (with effect in accordance with Sch. 12 para. 14(2) of the amending Act) by Finance Act 2011 (c. 11), **Sch. 12 para. 8**

Introductory

15A The provisions of this Part of this Schedule have effect for the purposes of section 748(1)(f).

Beginning of exempt period

15B (1) An exempt period begins in relation to a company ("X") at a time ("the relevant time") when—

(a) X is resident outside the United Kingdom,

(b) X is controlled by persons resident in the United Kingdom,

(c) there is at least one relevant UK corporate investor in X, and

(d) the requirements of paragraph 15C or 15D are met.

(2) There is a "relevant UK corporate investor in X" at a particular time if, at that time, there is a company which—

(a) is resident in the United Kingdom, and

(b) would, on the assumptions set out in sub-paragraph (3), be a company to which an apportionment of X's chargeable profits for the relevant accounting period would fall to be made in circumstances where section 747(5) would not prevent tax being chargeable on the company under section 747(4).

(3) The assumptions are—

(a) X has chargeable profits for the relevant accounting period,

(b) an apportionment of those profits falls to be made under section 747(3) for that period, and

(c) no reduction of those profits arises under section 751A, 751AA or 751AB.

(4) "The relevant accounting period" means the accounting period of X in which the time mentioned in sub-paragraph (2) falls.

15C (1) The requirements of this paragraph are that—

(a) no company was, at any time before the relevant time, a relevant UK corporate investor in X,

(b) no asset owned by X, or part of the business carried on by X, at the relevant time was previously owned, or carried on, by a company which—

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(i) was under the control of persons resident in the United Kingdom at any time it owned the asset or carried on the part of the business, and

(ii) is or has been related to X,

(c) condition A, B, C or D is met, and

(d) no disqualifying relevant transaction occurs (see paragraph 15E).

(2) Condition A is that, immediately before the relevant time, X—

(a) was in existence, but

(b) was not a member of the same group of companies as any person who, at the relevant time, was a controlling UK person.

(3) Condition B is that—

(a) at the relevant time X is controlled by a company which is resident in the United Kingdom, and

(b) immediately before that time, X was controlled by that same company but that company was not then resident in the United Kingdom.

(4) Condition C is that—

(a) at the relevant time—

(i) X is controlled by a company which is resident in the United Kingdom ("the intermediate parent"), and

(ii) the intermediate parent is controlled by a company which is not resident in the United Kingdom ("the parent"), and

(b) immediately before that time X was controlled by the parent but not the intermediate parent.

(5) Condition D is that X—

(a) is a controlled foreign company at the time it is formed, and

(b) is formed by one or more persons for the purpose of controlling one or more companies in circumstances where it is expected that an exempt period will begin in relation to one or more of those companies at the time when X begins to control the company or companies.

(6) In this paragraph "controlling UK person" means a person resident in the United Kingdom who alone, or together with other such persons, controls X.

15D (1) The requirements of this paragraph are that—

(a) the relevant time falls after 23 March 2011,

(b) X has an accounting period during which 23 March 2011 falls,

(c) no company was, at any time during that accounting period, a relevant UK corporate investor in X,

(d) no company was, immediately before the relevant time, a relevant UK corporate investor in X,

(e) at the relevant time X is controlled by a company which—

(i) is resident in the United Kingdom, and

(ii) is not under the control of another body corporate, or two or more other bodies corporate taken together, and

(f) no disqualifying relevant transaction occurs (see paragraph 15E).

(2) In determining for the purposes of sub-paragraph (1)(e)(ii) whether a company is under the control of two or more bodies corporate taken together, a body corporate

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which holds less than 10% of the issued ordinary shares of that company is to be disregarded.

(3) For the purposes of sub-paragraph (2), a body corporate is treated as holding any shares held by persons who are connected or associated with the body corporate.

Disqualifying relevant transactions

15E (1) This paragraph applies for the purposes of paragraph 15C and 15D.

(2) A disqualifying relevant transaction occurs if—

(a) a relevant transaction occurs at the relevant time (whether or not the transaction occurs pursuant to an agreement entered into by X before that time), or

(b) a relevant transaction occurs on or after 9 December 2010 but before the relevant time and that transaction forms part of an avoidance scheme.

(3) "Relevant transaction" means—

(a) the making by X of a loan or advance of an amount (other than a negligible amount) to a person who, at the time it is made, is related to X and subject to United Kingdom tax,

(b) an increase (other than an increase of a negligible amount) in the amount of an existing loan or advance made by X to a person who, at the time of the increase, is related to X and subject to United Kingdom tax,

(c) a change in the terms or conditions of an existing loan or advance made by X where—

(i) the loan or advance is to a person who, at the time the change is made, is related to X and subject to United Kingdom tax, and

(ii) the change has an effect (other than a negligible effect) on the amount of interest payable, or

(d) a transaction to which sub-paragraph (4) applies.

(4) This sub-paragraph applies to a transaction if—

(a) it is referable to an activity carried on by X as part, or the whole, of any non-exempt activities carried on by X,

(b) the results of the transaction are reflected in the profits arising in an accounting period of X and are not negligible in value, and

(c) the results of the transaction alone, or together with the results of one or more other transactions, achieves a reduction in United Kingdom tax.

(5) A transaction achieves, or two or more transactions together achieve, a reduction in United Kingdom tax if, had the transaction or transactions not been effected, any person—

(a) would have been liable for any such tax or for a greater amount of any such tax, or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(6) In this paragraph—

"avoidance scheme" means a scheme the main purpose, or one of the main purposes, of any party to which in entering into the scheme is to secure

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that section 748(1)(f) prevents an apportionment falling to be made under section 747(3) as regards an accounting period, or accounting periods, of X;

"non-exempt activities" has the meaning given by paragraph 12D(2);

"scheme" means any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving one or more transactions;

"United Kingdom tax" means corporation tax (or any tax chargeable as if it were corporation tax) or income tax.

Ending of exempt period

15F (1) An exempt period ends on the expiry of the period of 24 months which begins immediately after the first accounting period of X to end after the relevant time, unless sub-paragraph (2) applies.

(2) If an early termination event occurs after the relevant time but before the time the exempt period would end under sub-paragraph (1), the exempt period ends immediately before that event.

(3) An early termination event occurs if and when—

(a) a relevant transaction occurs, whether or not the transaction occurs pursuant to an agreement entered into by X before that time, or

(b) where the exempt period began because Condition D was met, X's business does not consist wholly in the holding of shares of companies which X controls, together with activities incidental to the holding of such shares.

Interpretation of Part 3A

15G (1) In this Part of this Schedule—

"group" means a company and any other companies it controls;

"the relevant time" has the meaning given by paragraph 15B;

"relevant transaction" has the meaning given by paragraph 15E;

"relevant UK corporate investor in X" has the meaning given by paragraph 15B(2);

"X" is to be construed in accordance with paragraph 15B.

(2) For the purposes of this Part of this Schedule a person is "related" to X at a particular time if—

(a) the person is connected or associated with X at that time,

(b) the person has a 25 per cent assessable interest in X in the case of the accounting period in which that time falls (within the meaning of paragraph 6(4C)), or

(c) if X is a controlled foreign company in the accounting period in which that time falls by virtue of subsection (1A) of section 747, the person is connected or associated with either or both of the two persons mentioned in that subsection.**]**

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PART IV

REDUCTIONS IN UNITED KINGDOM TAX AND DIVERSION OF PROFITS

16 (1) The provisions of this Part of this Schedule have effect for the purposes of section 748(3).

(2) Any reference in paragraphs 17 and 18 below to a transaction—

(a) is a reference to a transaction **[**F6607the results of which are**]** reflected in the profits arising in an accounting period of a controlled foreign company; and

(b) includes a reference to **[**F6608two or more transactions taken together, the results of at least one of which are so reflected**]**.

Textual Amendments

F6607 Words in Sch. 25 para. 16(2)(a) inserted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 4(6)(a)**

F6608 Words in Sch. 25 para. 16(2)(b) substituted (with effect in accordance with s. 182 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 36 para. 4(6)(b)**

17 (1) A transaction achieves a reduction in United Kingdom tax if, had the transaction not been effected, any person—

(a) would have been liable for any such tax or for a greater amount of any such tax; or

(b) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

(2) In this Part of this Schedule and section 748(3) "United Kingdom tax" means income tax, corporation tax or capital gains tax.

18 It is the main purpose or one of the main purposes of a transaction to achieve a reduction in United Kingdom tax if this is the purpose or one of the main purposes—

(a) of the controlled foreign company concerned; or

(b) of a person who has an interest in that company at any time during the accounting period concerned.

19 (1) The existence of a controlled foreign company achieves a reduction in United Kingdom tax by a diversion of profits from the United Kingdom in an accounting period if it is reasonable to suppose that, had neither the company nor any company related to it been in existence—

(a) the whole or a substantial part of the receipts which are reflected in the controlled foreign company's profits in that accounting period would have been received by a company or individual resident in the United Kingdom; and

(b) that company or individual or any other person resident in the United Kingdom either—

(i) would have been liable for any United Kingdom tax or for a greater amount of any such tax; or

(ii) would not have been entitled to a relief from or repayment of any such tax or would have been entitled to a smaller relief from or repayment of any such tax.

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(2) For the purposes of sub-paragraph (1) above, a company is related to a controlled foreign company if—

(a) it is resident outside the United Kingdom; and

(b) it is connected or associated with the controlled foreign company; and

(c) in relation to any company or companies resident in the United Kingdom, it fulfils or could fulfil, directly or indirectly, substantially the same functions as the controlled foreign company.

(3) Any reference in sub-paragraph (1) above to a company resident in the United Kingdom includes a reference to such a company which, if the controlled foreign company in question were not in existence, it is reasonable to suppose would have been established.

SCHEDULE 26

Section 754(5).

RELIEFS AGAINST LIABILITY FOR TAX IN RESPECT OF CHARGEABLE PROFITS

Trading losses and group relief etc. [M1348]

Marginal Citations

M1348 Source—1984 Sch.18.

1 (1) In any case where—

(a) an amount of chargeable profits is apportioned to a company resident in the United Kingdom, and

(b) the company is entitled, or would on the making of a claim be entitled, in computing its profits for the appropriate accounting period, to a deduction in respect of any relevant allowance, [F6609]. . .

(c) [F6609] . . . . . .

then, on the making of a claim, a sum equal to corporation tax at the appropriate rate on so much of the relevant allowance [F6610]. . . as is specified in the claim shall be set off against the company's liability to tax under section 747(4)(a) in respect of the chargeable profits apportioned to it.

(2) In this paragraph—

(a) "the appropriate accounting period" means the accounting period for which, by virtue of section 754(2), the company is **[**[F6611]chargeable to tax by virtue of this Chapter**]** in respect of the chargeable profits concerned; and

(b) "the appropriate rate" means the rate of corporation tax applicable to profits of the appropriate accounting period or, if there is more than one such rate, the average rate over the whole accounting period.

(3) In this paragraph "relevant allowance" means—

(a) any loss to which **[**[F6612]section 392A(1) or 393A(1)**]** applies;

(b) any charge on income to which section 338(1) applies;

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(c) any expenses of management to which section 75(1) applies;

[F6613(cc) any expenses deduction under section 76(1);**]**

(d) so much of any allowance to which section 74 of the 1968 Act applies as falls within subsection (3) of that section; F6614. . .

(e) any amount available to the company by way of group relief; **[**F6615and

(f) any non-trading deficit on its loan relationships.**]**

(4) F6616. . . . . .

(5) Where, by virtue of sub-paragraph (1) above, a sum is set off against a liability to tax, so much of the relevant allowance as gives rise to the amount set off shall be regarded for the purposes of the Tax Acts as having been allowed as a deduction against the company's profits in accordance with the appropriate provisions of those Acts.

(6) F6616. . . . . .

Textual Amendments

F6609 Sch. 26 para. 1(1)(c) and preceding word repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 34(2)(a), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F6610 Words in Sch. 26 para. 1(1) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 34(2)(b), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

F6611 Words in Sch. 26 para. 1(2)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 34(3)**; S.I. 1998/3173, **art. 2**

F6612 Words in Sch. 26 para. 1(3)(a) substituted (with effect in accordance with s. 38(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 46** (with Sch. 5 para. 73)

F6613 Sch. 26 para. 1(3)(cc) inserted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 38(2)

F6614 Word at the end of Sch. 26 para. 1(3)(d) repealed (with effect in accordance with s. 105(1) of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(3)**, Note (with Sch. 15)

F6615 Sch. 26 para. 1(3)(f) and preceding word inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 53** (with Sch. 15)

F6616 Sch. 26 para. 1(4)(6) repealed (with effect in accordance with Sch. 17 para. 37 of the repealing Act) by Finance Act 1998 (c. 36), Sch. 17 para. 34(4)(5), **Sch. 27 Pt. 3(27)**, Note; S.I. 1998/3173, **art. 2**

Advance corporation tax

2 F6617. . . . . .

Textual Amendments

F6617 Sch. 26 para. 2 repealed (with effect in accordance with Sch. 3 para. 44(3) of the repealing Act) by Finance Act 1998 (c. 36), Sch. 3 para. 44(2), **Sch. 27 Pt. 3(2)**, Note (with Sch. 3 para. 44(4))

Gains on disposal of shares in controlled foreign companies

3 (1) This paragraph applies in any case where—

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[F6618(a) an accounting period of a controlled foreign company ("the apportionment period") is one in respect of which an apportionment under section 747(3) falls to be made; and**]**

(b) the company's chargeable profits for **[**F6619the apportionment period**]** have been apportioned among the persons in subsection (3) of that section; and

(c) a company resident in the United Kingdom ("the claimant company") disposes of—

(i) shares in the controlled foreign company, or

(ii) shares in another company which, in whole or in part, give rise to the claimant company's interest in the controlled foreign company,

being, in either case, shares acquired before the end of **[**F6619the apportionment period**]**; and

(d) by virtue of the apportionment referred to in paragraph (b) above, a sum is, under section 747(4)(a), **[**F6620chargeable on**]** the claimant company as if it were an amount of corporation tax; and

(e) the claimant company makes a claim for relief under this paragraph;

and in this paragraph the disposal mentioned in paragraph (c) above is referred to as "the relevant disposal".

(2) Subject to the following provisions of this paragraph, in the computation under Chapter **[**F6621III of Part II of the 1992**]** Act of the gain accruing on the relevant disposal, the appropriate fraction of the sum referred to in sub-paragraph (1)(d) above shall be allowable as a deduction; but to the extent that any sum has been allowed as a deduction under this sub-paragraph it shall not again be allowed as a deduction on any claim under this paragraph (whether made by the claimant company or another company).

(3) In relation to the relevant disposal, the appropriate fraction is—

$$\frac{A}{B}$$

where—

A is the average market value in **[**F6622the apportionment period**]** of the shares disposed of, and

B is the average market value in that period of the interest in the controlled foreign company which, in the case of the claimant company, was taken into account in the apportionment referred to in sub-paragraph (1)(b) above.

(4) Where, before the relevant disposal—

(a) a dividend is paid by the controlled foreign company, and

(b) the profits out of which the dividend is paid are those from which the chargeable profits referred to in sub-paragraph (1)(b) above are derived, and

(c) at least one of the two conditions in sub-paragraph (5) below is fulfilled,

this paragraph does not apply in relation to a sum **[**F6623chargeable under section 747(4)(a)**]** in respect of so much of the chargeable profits as corresponds to the profits which the dividend represents.

(5) The conditions referred to in sub-paragraph (4) above are—

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(a) that the effect of the payment of the dividend is such that the value of the shares disposed of by the relevant disposal is less after the payment than it was before it; and

(b) that, in respect of a dividend paid or payable on the shares disposed of by the relevant disposal, the claimant company is, by virtue of paragraph 4(2) below, entitled under Part XVIII to relief (by way of underlying tax) by reference to sums which include the sum referred to in sub-paragraph (1)(d) above.

(6) A claim for relief under this paragraph shall be made before the expiry of the period of three months beginning—

(a) at the end of the accounting period in which the relevant disposal occurs; or

(b) if it is later, on the date on which the assessment to tax for which the claimant company is liable by virtue of section 747(4)(a) becomes final and conclusive.

[F6624(6A) Nothing in—

(a) paragraph 10 of Schedule 18 to the Finance Act 1998 (claims or elections in company tax returns), or

(b) Schedule 1A to the Management Act (claims or elections not included in returns),

shall apply, whether by virtue of section 754 or otherwise, to a claim under sub-paragraph (6) above.**]**

(7) In identifying for the purposes of this paragraph shares in a company with shares of the same class which are disposed of by the relevant disposal, shares acquired at an earlier time shall be deemed to be disposed of before shares acquired at a later time.

Textual Amendments

F6618 Sch. 26 para. 3(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(2)**; S.I. 1998/3173, **art. 2**

F6619 Words in Sch. 26 para. 3(1)(b)(c) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(3)**; S.I. 1998/3173, **art. 2**

F6620 Words in Sch. 26 para. 3(1)(d) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(4)**; S.I. 1998/3173, **art. 2**

F6621 Words in Sch. 26 para. 3 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(62)** (with ss. 60, 101(1), 171, 201(3))

F6622 Words in Sch. 26 para. 3(3) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(5)**; S.I. 1998/3173, **art. 2**

F6623 Words in Sch. 26 para. 3(4) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(6)**; S.I. 1998/3173, **art. 2**

F6624 Sch. 26 para. 3(6A) inserted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 35(7)**; S.I. 1998/3173, **art. 2**

Dividends from the controlled foreign company

4 (1) This paragraph applies in any case where—

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[F6625(a) an accounting period of a controlled foreign company is one in respect of which an apportionment under subsection (3) of section 747 falls to be made; and**]**

(b) the company's chargeable profits for that period have been apportioned among the persons referred to in **[**F6626that subsection**]**, and

(c) the controlled foreign company pays a dividend in whole or in part out of the total profits from which (in accordance with subsection (6)(a) of that section) those chargeable profits are derived.

(2) Subject to paragraphs 5 and 6 below, where this paragraph applies, the aggregate of the sums **[**F6627chargeable on**]** companies resident in the United Kingdom in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1)(b) above shall be treated for the purposes of Part XVIII as if it were an amount of tax paid in respect of the profits concerned under the law of the territory in which the controlled foreign company was resident and, accordingly, as underlying tax for the purposes of Chapter II of that Part.

(3) In the following provisions of this paragraph and in paragraphs 5 and 6 below, the aggregate of the sums which, under sub-paragraph (2) above, fall to be treated as underlying tax is referred to as the "gross attributed tax".

(4) If, in the case of a person who receives the dividend, section 796 or section 797 has the effect of reducing the amount which (apart from that section) would have been the amount of the credit for foreign tax which is to be allowed to that person, then, for the purposes of sub-paragraph (5) below, the amount of that reduction shall be determined and so much of it as does not exceed the amount of the foreign tax, exclusive of underlying tax, for which credit is to be allowed in respect of the dividend is in that sub-paragraph referred to as "the wasted relief".

(5) Except for the purpose of determining the amount of the wasted relief, the gross attributed tax shall be treated as reduced by the aggregate of the wasted relief arising in the case of all the persons falling within sub-paragraph (4) above and, on the making of a claim by any of the companies referred to in sub-paragraph (2) above—

(a) the amount of tax **[**F6627chargeable on**]** the company in accordance with section 747(4)(a) in respect of the chargeable profits referred to in sub-paragraph (1) (b) above shall, where appropriate, be reduced; and

(b) all such adjustments (whether by repayment of tax or otherwise) shall be made as are appropriate to give effect to any reduction under paragraph (a) above.

Textual Amendments

F6625 Sch. 26 para. 4(1)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 36(2)**; S.I. 1998/3173, **art. 2**

F6626 Words in Sch. 26 para. 4(1)(b) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 36(3)**; S.I. 1998/3173, **art. 2**

F6627 Words in Sch. 26 para. 4(2)(5)(a) substituted (with effect in accordance with Sch. 17 para. 37 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 17 para. 36(4)(5)**; S.I. 1998/3173, **art. 2**

5 (1) In so far as any provision of—

(a) arrangements having effect by virtue of section 788, or

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(b) section 790,

makes relief which is related to foreign dividends received by a company resident in the United Kingdom conditional upon that company either having a particular degree of control of the company paying the dividend or being a subsidiary of another company which has that degree of control, that condition shall be treated as fulfilled in considering whether any such company is by virtue of paragraph 4(2) above entitled to relief under Part XVIII in respect of any of the gross attributed tax.

(2) Notwithstanding anything in paragraph 4(2) above, in section 795(2)(b) the expression "underlying tax" does not include gross attributed tax.

(3) In a case where the controlled foreign company pays a dividend otherwise than out of specified profits and, on the apportionment referred to in paragraph 4(1) above, less than the whole of the chargeable profits of the controlled foreign company concerned is apportioned to companies which are resident in the United Kingdom and liable for tax thereon as mentioned in section 747(4)(a)—

(a) the gross attributed tax shall be regarded as attributable to a corresponding proportion of the profits in question, and in this sub-paragraph the profits making up that proportion are referred to as "taxed profits";

(b) so much of the dividend as is received by, or by a successor in title of, any such company shall be regarded as paid primarily out of taxed profits; and

(c) so much of the dividend as is received by any other person shall be regarded as paid primarily out of profits which are not taxed profits.

(4) The reference in sub-paragraph (3)(b) above to a successor in title of a company resident in the United Kingdom is a reference to a person who is such a successor in respect of the whole or any part of that interest in the controlled foreign company by virtue of which an amount of its chargeable profits was apportioned to that company.

6 (1) In any case where—

(a) on a claim for relief under paragraph 3 above, the whole or any part of any sum has been allowed as a deduction on a disposal of shares in any company; and

(b) that sum forms part of the gross attributed tax in relation to a dividend paid by that company; and

(c) a person receiving the dividend in respect of the shares referred to in paragraph (a) above ("the primary dividend") or any other relevant dividend is, by virtue of paragraph 4(2) above, entitled under Part XVIII to relief (by way of underlying tax) by reference to the whole or any part of the gross attributed tax;

the amount which, apart from this paragraph, would be available by way of any such relief to the person referred to in paragraph (c) above shall be reduced or, as the case may be, extinguished by deducting therefrom the amount allowed by way of relief as mentioned in paragraph (a) above.

(2) For the purposes of sub-paragraph (1)(c) above, in relation to the primary dividend, another dividend is a relevant dividend if—

(a) it is a dividend in respect of shares in a company which is resident outside the United Kingdom; and

(b) it represents profits which, directly or indirectly, consist of or include the primary dividend.

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SCHEDULE 27

Section 760.

DISTRIBUTING FUNDS [M1349]

Modifications etc. (not altering text)

C1073 Sch. 27 applied (with modifications) (22.10.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Offshore Funds Regulations 2004 (S.I. 2004/2572), **regs. 1(1)**, 4

Marginal Citations

M1349 Source—[1984 Sch.19; 1986 s.50; 1987 (No.2) s.66]

PART I

THE DISTRIBUTION TEST

Requirements as to distributions

1 (1) For the purposes of this Chapter, an offshore fund pursues a full distribution policy with respect to an account period if—

(a) a distribution is made for that account period or for some other period which, in whole or in part, falls within that account period; and

(b) subject to Part II of this Schedule, the amount of the distribution which is paid to the holders of material and other interests in the fund—

(i) represents at least 85 per cent. of the income of the fund for that period, and

(ii) is not less than 85 per cent. of the fund's United Kingdom equivalent profits for that period; and

(c) the distribution is made during that account period or not more than six months, or such longer period as the Board may in any particular case allow, after the expiry of it; and

[[F6628](d) the form of the distribution is such that—

(i) if any sum forming part of it were received in the United Kingdom by an individual resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005, or

(ii) if any sum forming part of it were received in the United Kingdom by a company resident there and did not form part of the profits of a trade, profession or vocation, that sum would fall to be chargeable to tax in accordance with section 18 of ICTA (Schedule D)—

(a) under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom, or

(b) under Case V of Schedule D;**]**

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and any reference in this sub-paragraph to a distribution made for an account period includes a reference to any two or more distributions so made or, in the case of paragraph (b), the aggregate of them.

(2) Subject to sub-paragraph (3) below, with respect to any account period for which—

[[F6629](a) there is no income of the fund and there are no United Kingdom equivalent profits of the fund, or

(b) the amount of the gross income of the fund does not exceed 1 per cent. of the average value of the fund's assets held during the account period,**]**

the fund shall be treated as pursuing a full distribution policy notwithstanding that no distribution is made as mentioned in sub-paragraph (1) above.

(3) For the purposes of this Chapter, an offshore fund shall be regarded as not pursuing a full distribution policy with respect to an account period for which the fund does not make up accounts.

(4) For the purposes of this paragraph—

(a) where a period for which an offshore fund makes up accounts includes the whole or part of two or more account periods of the fund, then, subject to paragraph (c) below, income shown in those accounts shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the accounts are made up;

(b) where a distribution is made for a period which includes the whole or part of two or more account periods of the fund, then, subject to sub-paragraph (5) below, the distribution shall be apportioned between those account periods on a time basis according to the number of days in each period which are comprised in the period for which the distribution is made;

(c) where a distribution is made out of specified income but is not made for a specified period, that income shall be attributed to the account period of the fund in which it in fact arose and the distribution shall be treated as made for that account period; and

(d) where a distribution is made neither for a specified period nor out of specified income, then, subject to sub-paragraph (5) below, it shall be treated as made for the last account period of the fund which ended before the distribution was made.

(5) If, apart from this sub-paragraph, the amount of a distribution made, or treated by virtue of sub-paragraph (4) above as made, for an account period would exceed the income of that period, then, for the purposes of this paragraph—

(a) if the amount of the distribution was determined by apportionment under sub-paragraph (4)(b) above, the excess shall be re-apportioned, as may be just and reasonable, to any other account period which, in whole or in part, falls within the period for which the distribution was made or, if there is more than one such period, between those periods; and

(b) subject to paragraph (a) above, the excess shall be treated as an additional distribution or series of additional distributions made for preceding account periods in respect of which the distribution or, as the case may be, the aggregate distributions would otherwise be less than the income of the period, applying the excess to later account periods before earlier ones, until it is exhausted.

(6) In any case where—

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(a) for a period which is or includes an account period, an offshore fund is subject to any restriction as regards the making of distributions, being a restriction imposed by the law of any territory outside the United Kingdom; and

(b) the fund is subject to that restriction by reason of an excess of losses over profits (applying the concepts of "profits" and "losses" in the sense in which and to the extent to which they are relevant for the purposes of the law in question);

then in determining for the purposes of the preceding provisions of this paragraph the amount of the fund's income for that account period, there shall be allowed as a deduction any amount which, apart from this sub-paragraph, would form part of the income of the fund for that account period and which cannot be distributed by virtue of the restriction.

Textual Amendments

F6628 Sch. 27 para. 1(1)(d) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(2)**

F6629 Sch. 27 para. 1(2)(a)(b) substituted (with effect in accordance with s. 134(9) of the amending Act) by Finance Act 1995 (c. 4), **s. 134(4)**

Funds operating equalisation arrangements

2 (1) In the case of an offshore fund which throughout any account period operates equalisation arrangements, on any occasion in that period when there is a disposal to which this sub-paragraph applies, the fund shall be treated for the purposes of this Part of this Schedule as making a distribution of an amount equal to so much of the consideration for the disposal as, in accordance with this paragraph, represents income accrued to the date of the disposal.

(2) Sub-paragraph (1) above applies to a disposal—

(a) which is a disposal of a material interest in the offshore fund concerned; and

(b) which is a disposal to which this Chapter applies (whether by virtue of section 758(3) or otherwise) or is one to which this Chapter would apply if subsections (5) and (6) of that section applied generally and not only for the purpose of determining whether, by virtue of subsection (3) of that section, there is a disposal to which this Chapter applies; and

(c) which is not a disposal with respect to which the conditions in subsection (4) of that section are fulfilled; and

(d) which is a disposal to the fund itself or to the persons concerned in the management of the fund ("the managers") in their capacity as such.

(3) On a disposal to which sub-paragraph (1) above applies, the part of the consideration which represents income accrued to the date of the disposal is, subject to sub-paragraph (4) and paragraph 4(4) below, the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the material interest which is disposed of were acquired by another person by way of initial purchase.

(4) If, after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (3) above is calculated, the material interest disposed of by a

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disposal to which sub-paragraph (1) above applies was acquired by way of initial purchase (whether or not by the person making the disposal)—

(a) there shall be deducted from the amount which, in accordance with sub-paragraph (3) above, would represent income accrued to the date of the disposal, the amount which on that acquisition was credited to the equalisation account of the fund in respect of accrued income; and

(b) if in that period there has been more than one such acquisition of that material interest by way of initial purchase, the deduction to be made under this sub-paragraph shall be the amount so credited to the equalisation account on the latest such acquisition prior to the disposal in question.

(5) Where, by virtue of this paragraph, an offshore fund is treated for the purposes of this Part of this Schedule as making a distribution on the occasion of a disposal, the distribution shall be treated for those purposes—

(a) as complying with paragraph 1(1)(d) above; and

(b) as made out of the income of the fund for the account period in which the disposal occurs; and

(c) as paid, immediately before the disposal, to the person who was then the holder of the interest disposed of.

(6) In any case where—

(a) a distribution in respect of an interest in an offshore fund is made to the managers of the fund, and

(b) their holding of that interest is in their capacity as such, and

(c) at the time of the distribution, the fund is operating equalisation arrangements,

the distribution shall not be taken into account for the purposes of paragraph 1(1) above except to the extent that the distribution is properly referable to that part of the period for which the distribution is made during which that interest has been held by the managers of the fund in their capacity as such.

(7) Subsection (2) of section 758 applies for the purposes of this paragraph as it applies for the purposes of that section.

Income taxable under Case IV or Case V of Schedule D

3 (1) Sub-paragraph (2) below applies if any sums which form part of the income of an offshore fund falling within **[**F6630section 756A(1)(b) or (c)**]** are of such a nature that—

[F6631(a) the holders of interests in the fund who are individuals domiciled and resident in the United Kingdom—

(i) are chargeable to tax under a provision specified in section 830(2) of ITTOIA 2005 in respect of such of those sums as are referable to their interests; or

(ii) if any of that income is derived from assets within the United Kingdom, would be so chargeable had the assets been outside the United Kingdom;

(aa) the holders of interests in the fund which are companies resident in the United Kingdom—

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(i) are chargeable to tax under Case III of Schedule D in respect of income arising from securities out of the United Kingdom or from possessions out of the United Kingdom;

(ii) are chargeable to tax under Case V of Schedule D; or

(iii) if any of that income is derived from assets within the United Kingdom, would have been chargeable under sub-paragraph (i) or (ii) had the assets been outside the United Kingdom; and**]**

(b) the holders of interests who are not such companies or individuals would be chargeable as mentioned in **[**F6632paragraph (a) or (aa)**]** above if they were resident in the United Kingdom or, in the case of individuals, if they were domiciled and both resident and ordinarily resident there.

(2) To the extent that sums falling within sub-paragraph (1) above do not actually form part of a distribution complying with paragraphs 1(1)(c) and (d) above, they shall be treated for the purposes of this Part of this Schedule—

(a) as a distribution complying with those paragraphs and made out of the income of which they form part; and

(b) as paid to the holders of the interests to which they are referable.

Textual Amendments

F6630 Words in Sch. 27 para. 3(1) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 8(2)** (with Sch. 26 para. 17)

F6631 Sch. 27 para. 3(1)(a)(aa) substituted for para. 3(1)(a) (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(3)**

F6632 Words in Sch. 27 para. 3(1)(b) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **s. 23(4)**

Commodity income

4 (1) To the extent that the income of an offshore fund for any account period includes profits from dealing in commodities, one half of those profits shall be left out of account in determining for the purposes of paragraphs 1(1)(b) and 5 below—

(a) the income of the fund for that period; and

(b) the fund's United Kingdom equivalent profits for that period;

but in any account period in which an offshore fund incurs a loss in dealing in commodities the amount of that loss shall not be varied by virtue of this paragraph.

(2) In this paragraph "dealing in commodities" shall be construed as follows—

(a) "commodities" does not include currency, securities, debts or other assets of a financial nature but, subject to that, means tangible assets which are dealt with on a commodity exchange in any part of the world; and

(b) "dealing" includes dealing by way of futures contracts and traded options.

(3) Where the income of an offshore fund for any account period consists of profits from dealing in commodities and other income, then—

(a) in determining whether the condition in paragraph 1(1)(b) above is fulfilled with respect to that account period, the expenditure of the fund shall be apportioned in such manner as is just and reasonable between the profits from dealing in commodities and the other income; and

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(b) in determining whether, and to what extent, any expenditure is deductible under section [75 F6633] in computing the fund's United Kingdom equivalent profits for that period, so much of the business of the fund as does not consist of dealing in commodities shall be treated as a business carried on by a separate company.

(4) Where there is a disposal to which paragraph 2(1) above applies, then, to the extent that any amount which was or would be credited to the equalisation account in respect of accrued income, as mentioned in sub-paragraph (3) or (4) of that paragraph, represents profits from dealing in commodities, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the part of the consideration for the disposal which represents income accrued to the date of the disposal.

Textual Amendments

F6633 1988(F) s.146*and* Sch.13 para.12 (*deemed always to have had effect*).

United Kingdom equivalent profits

5 (1) Any reference in this Schedule to the United Kingdom equivalent profits of an offshore fund for an account period is a reference to the amount which, on the assumptions in sub-paragraph (3) below, would be the total profits of the fund for that period on which, after allowing for any deductions available against those profits, corporation tax would be chargeable.

(2) In this paragraph the expression "profits" does not include chargeable gains.

[F6634**[**F6635F6636(2A) . . . . . .**]]**

(3) The assumptions referred to in sub-paragraph (1) above are—

(a) that the offshore fund is a company which, in the account period in question, but not in any other account period, is resident in the United Kingdom; and

(b) that the account period is an accounting period of that company; and

(c) that any dividends or distributions which, by virtue of section 208, should be left out of account in computing income for corporation tax purposes are nevertheless to be brought into account in that computation in like manner as if they were dividends or distributions of a company resident outside the United Kingdom **[**F6637; and

(d) that the provisions of the Corporation Tax Acts relating to profits, gains or losses arising from a creditor relationship (within the meaning of Chapter 2 of Part 4 of the Finance Act 1996) apply as if the offshore fund were an authorised unit trust;**][**F6638and

(e) that the provisions of the Corporation Tax Acts relating to profits or losses arising from a derivative contract (within the meaning of Schedule 26 to the Finance Act 2002) apply as if the offshore fund were an authorised unit trust.**]**

(4) Without prejudice to any deductions available apart from this sub-paragraph, the deductions referred to in sub-paragraph (1) above include—

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(a) a deduction equal to any amount which, by virtue of paragraph 1(6) above, is allowed as a deduction in determining the income of the fund for the account period in question; and

(b) a deduction equal to any amount of tax (paid under the law of a territory outside the United Kingdom) which was taken into account as a deduction in determining the income of the fund for the account period in question but which, because it is referable to capital rather than income, does not fall to be taken into account by virtue of section 811.

(5) For the avoidance of doubt it is hereby declared that, if any sums forming part of the offshore fund's income for any period have been received by the fund without any deduction of or charge to tax **[**F6639and have been so received by virtue of section 154(2) of the Finance Act 1996**][**F6640or section 714 or 715 of ITTOIA 2005**]**, the effect of the assumption in sub-paragraph (3)(a) above is that those sums are to be brought into account in determining the total profits referred to in sub-paragraph (1) above.

Textual Amendments

F6634 Sch. 27 para. 5(2A) inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 170, **Sch. 18 para.6**

F6635 Sch. 27 para. 5(2A) substituted (3.5.1994) by Finance Act 1994 (c. 9), **s. 176(2)**

F6636 Sch. 27 para. 5(2A) repealed (with effect in accordance with Sch. 40 Pt. 3(10) Note, Sch. 40 Pt. 3(13) Note of the repealing Act) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(10), **Sch. 40 Pt. 3(13)**

F6637 Sch. 27 para. 5(3)(d) and preceding word inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 1(1)** (with Sch. 26 paras. 1(3)-(6), 17)

F6638 Sch. 27 para. 5(3)(e) and preceding word inserted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 1(1)** (with Sch. 26 paras. 2(3)-(6), 17)

F6639 Words in Sch. 27 para. 5(5) substituted (with effect in accordance with s. 154(9) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 28 para. 6**

F6640 Words in Sch. 27 para. 5(5) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 350(4)** (with Sch. 2)

Modifications etc. (not altering text)

C1074 Sch. 27 para. 5(1) modified (with effect in accordance with s. 105(1) of the modifying Act) by Finance Act 1996 (c. 8), **Sch. 10 para. 3** (with Sch. 15) (and as that para. 3 is substituted (with effect in accordance with s. 82(2) of the 2002 amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 39**)

C1075 Sch. 27 para. 5(1) modified (with effect in accordance with s. 83(3) of the modifying Act) by Finance Act 2002 (c. 23), **Sch. 26 para. 35** (with Sch. 28)

PART II

MODIFICATIONS OF CONDITIONS FOR CERTIFICATION IN CERTAIN CASES

Exclusion of investments in distributing offshore funds

6 (1) In any case where—

(a) in an account period of an offshore fund (in this Part of this Schedule referred to as the "primary fund"), the assets of the fund consist of or include interests in another offshore fund; and

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(b) **[**F6641those interests are such that, by virtue of section 760(3)(a)**]**, the primary fund could not, apart from this paragraph, be certified as a distributing fund in respect of that account period; and

(c) without regard to the provisions of this paragraph, that other fund could be certified as a distributing fund in respect of its account period or, as the case may be, each of its account periods which comprises the whole or any part of the account period of the primary fund;

then, in determining whether anything in **[**F6642section 760(3)(a)**]** prevents the primary fund being certified as mentioned in paragraph (b) above, the interests of the primary fund in that other fund shall be left out of account except for the purposes of determining the total value of the assets of the primary fund.

(2) In this Part of this Schedule an offshore fund falling within sub-paragraph (1)(c) above is referred to as a "qualifying fund".

(3) In a case falling within sub-paragraph (1) above—

(a) **[**F6643section 760(3)(a)**]** shall have effect in relation to the primary fund with the modification in paragraph 7 below (in addition to that provided for by sub-paragraph (1) above); and

(b) Part I of this Schedule shall have effect in relation to the primary fund with the modification in paragraph 8 below.

Textual Amendments

F6641 Words in Sch. 27 para. 6(1)(b) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 14(2)(a)** (with Sch. 26 para. 17)

F6642 Words in Sch. 27 para. 6(1) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 14(2)(b)** (with Sch. 26 para. 17)

F6643 Words in Sch. 27 para. 6(3)(a) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 14(2)(c)** (with Sch. 26 para. 17)

7 The modification referred to in paragraph 6(3)(a) above is that, in any case where—

(a) at any time in the account period referred to in paragraph 6(1) above, the assets of the primary fund include an interest in an offshore fund or in any company (whether an offshore fund or not); and

(b) that interest falls to be taken into account in determining whether anything in **[**F6644section 760(3)(a)**]** prevents the primary fund being certified as a distributing fund in respect of that account period; and

(c) at any time in that account period the assets of the qualifying fund include an interest in the offshore fund or company referred to in paragraph (a) above;

for the purposes of the application in relation to the primary fund of **[**F6644section 760(3)(a)**]**, at any time when the assets of the qualifying fund include the interest referred to in paragraph (c) above, the primary fund's share of that interest shall be treated as an additional asset of the primary fund.

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Textual Amendments

F6644 Words in Sch. 27 para. 7 substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 14(3)** (with Sch. 26 para. 17)

8 (1) The modification referred to in paragraph 6(3)(b) above is that, in determining whether the condition in paragraph 1(1)(b)(ii) above is fulfilled with respect to the account period of the primary fund referred to in paragraph 6(1) above, the United Kingdom equivalent profits of the primary fund for that period shall be treated as increased by the primary fund's share of the excess income (if any) of the qualifying fund which is attributable to that period.

(2) For the purposes of this paragraph, the excess income of the qualifying fund for any account period of that fund is the amount (if any) by which its United Kingdom equivalent profits for that account period exceed the amount of the distributions made for that period, as determined for the purposes of the application of paragraph 1(1) above to the qualifying fund.

(3) If an account period of the qualifying fund coincides with an account period of the primary fund, then the excess income (if any) of the qualifying fund for that period is the excess income which is attributable to that period of the primary fund.

(4) In a case where sub-paragraph (3) above does not apply, the excess income of the qualifying fund which is attributable to an account period of the primary fund is the appropriate fraction of the excess income (if any) of the qualifying fund for any of its account periods which comprises the whole or any part of the account period of the primary fund and, if there is more than one such account period of the qualifying fund, the aggregate of the excess income (if any) of each of them.

(5) For the purposes of sub-paragraph (4) above, the appropriate fraction is—

$$\frac{A}{B}$$

where—

A is the number of days in the account period of the primary fund which are also days in an account period of the qualifying fund; and

B is the number of days in that account period of the qualifying fund or, as the case may be, in each of those account periods of that fund which comprises the whole or any part of the account period of the primary fund.

9 (1) The references in paragraphs 7 and 8(1) above to the primary fund's share of—

(a) an interest forming part of the assets of the qualifying fund, or

(b) the excess income (as defined in paragraph 8 above) of the qualifying fund,

shall be construed as references to the fraction specified in sub-paragraph (2) below of that interest or excess income.

(2) In relation to any account period of the primary fund, the fraction referred to in sub-paragraph (1) above is—

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$$\frac{C}{D}$$

where—

C is the average value of the primary fund's holding of interests in the qualifying fund during that period; and

D is the average value of all the interests in the qualifying fund held by any persons during that period.

Offshore funds investing in trading companies

. . . . . .

10 F6645 . . . . . .

Textual Amendments

F6645 Sch. 27 para. 10 repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 14(4), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

Offshore funds with wholly-owned subsidiaries

11 (1) In relation to an offshore fund which has a wholly-owned subsidiary which is a company the provisions of F6646. . . Part I of this Schedule shall have effect subject to the modifications in **[**F6647sub-paragraph (4)**]** below.

(2) Subject to sub-paragraph (3) below, for the purposes of this paragraph, a company is a wholly-owned subsidiary of an offshore fund if and so long as the whole of the issued share capital of the company is—

(a) in the case of an offshore fund falling within **[**F6648section 756A(1)(a)**]**, directly and beneficially owned by the fund; and

(b) in the case of an offshore fund falling within **[**F6649section 756A(1)(b)**]**, directly owned by the trustees of the fund for the benefit of the fund; and

(c) in the case of an offshore fund falling within **[**F6650section 756A(1)(c)**]**, owned in a manner which, as near as may be, corresponds either to paragraph (a) or paragraph (b) above.

(3) In the case of a company which has only one class of issued share capital, the reference in sub-paragraph (2) above to the whole of the issued share capital shall be construed as a reference to at least 95 per cent. of that share capital.

(4) The modifications referred to in sub-paragraph (1) above are that, for the purposes of F6646. . . Part I of this Schedule—

(a) that percentage of the receipts, expenditure, assets and liabilities of the subsidiary which is equal to the percentage of the issued share capital of the company concerned which is owned as mentioned in sub-paragraph (2)

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above shall be regarded as the receipts, expenditure, assets and liabilities of the fund; and

(b) there shall be left out of account the interest of the fund in the subsidiary and any distributions or other payments made by the subsidiary to the fund or by the fund to the subsidiary.

Textual Amendments

F6646 Words in Sch. 27 para. 11(1)(4) repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 14(5)(a), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

F6647 Words in Sch. 27 para. 11(1) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 14(5)(b)** (with Sch. 26 para. 17)

F6648 Words in Sch. 27 para. 11(2)(a) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 8(3)(a)** (with Sch. 26 para. 17)

F6649 Words in Sch. 27 para. 11(2)(b) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 8(3)(b)** (with Sch. 26 para. 17)

F6650 Words in Sch. 27 para. 11(2)(c) substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 8(3)(c)** (with Sch. 26 para. 17)

Offshore funds with interests in dealing and management companies

. . . . . .

12 **F6651** . . . . . .

Textual Amendments

F6651 Sch. 27 paras. 12, 13 repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 14(6), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

Disregard of certain investments forming less than 5 per cent. of a fund

. . . . . .

13 **F6652** . . . . . .

Textual Amendments

F6652 Sch. 27 paras. 12, 13 repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 14(6), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

Power of Board to disregard certain breaches of conditions

14 If, in the case of any account period of an offshore fund ending after the passing of the **M1350**Finance (No. 2) Act 1987 (23rd July 1987), it appears to the Board that there has been a failure to comply with **[**[F6653]the condition in section 760(3)(a)**]**

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(as modified, where appropriate, by the preceding provisions of this Part of this Schedule) but the Board are satisfied—

(a) that the failure occurred inadvertently; and

(b) that the failure was remedied without unreasonable delay,

the Board may disregard the failure in determining whether to certify the fund as a distributing fund in respect of that account period.

Textual Amendments

F6653 Words in Sch. 27 para. 14 substituted (with effect in accordance with s. 145(2) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 26 para. 14(7)** (with Sch. 26 para. 17)

Marginal Citations

M1350 1987 c. 51.

PART III

CERTIFICATION PROCEDURE

Application for certification

15 (1) The Board shall, in such manner as they think appropriate, certify an offshore fund as a distributing fund in respect of an account period if—

(a) an application in respect of that period is made under this paragraph; and

(b) the application is accompanied by the accounts of the fund for, or for a period which includes, the account period to which the application relates; and

(c) there is furnished to the Board such information as they may reasonably require for the purpose of determining whether the fund should be so certified; and

(d) they are satisfied that nothing in section 760(2) or (3) prevents the fund being so certified.

(2) An application under this paragraph shall be made to the Board by the fund or by a trustee or officer thereof on behalf of the fund and may be so made—

(a) before the expiry of the period of six months beginning at the end of the account period to which the application relates; or

(b) at such later time as the Board may in any particular case allow.

(3) In any case where, on an application under this paragraph, the Board determine that the offshore fund concerned should not be certified as a distributing fund in respect of the account period to which the application relates, they shall give notice of that fact to the fund.

(4) If at any time it appears to the Board that the accounts accompanying an application under this paragraph in respect of any account period of an offshore fund or any information furnished to the Board in connection with such an application is or are not such as to make full and accurate disclosure of all facts and considerations relevant to the application, they shall give notice to the fund accordingly, specifying the period concerned.

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(5) Where a notice is given by the Board under sub-paragraph (4) above, any certification by them in respect of the account period in question shall be void.

Appeals

16 (1) An appeal to the Special Commissioners—

(a) against such a determination as is referred to in paragraph 15(3) above, or

(b) against a notification under paragraph 15(4) above,

may be made by the offshore fund or [F6654]. . . on behalf of the fund, and shall be so made by notice specifying the grounds of appeal and given to the Board within 90 days of the date of the notice under paragraph 15(3) or (4), as the case may be.

(2) The jurisdiction of the Special Commissioners on an appeal under this paragraph shall include jurisdiction to review any decision of the Board which is relevant to a ground of the appeal.

Textual Amendments

F6654 Words in Sch. 27 para. 16(1) repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 26 para. 14(8), **Sch. 42 Pt. 2(18)**, Note 1 (with Sch. 26 para. 17)

PART IV

SUPPLEMENTARY

Assessment: effect of non-certification

17 No appeal may be brought against an assessment to tax on the ground that an offshore fund should have been certified as a distributing fund in respect of an account period of the fund.

18 (1) Without prejudice to paragraph 17 above, in any case where no application has been made under paragraph 15 above in respect of an account period of an offshore fund, any person who is assessed to tax for which he would not be liable if the offshore fund were certified as a distributing fund in respect of that period may by notice in writing require the Board to take action under this paragraph with a view to determining whether the fund should be so certified.

(2) Subject to sub-paragraphs (3) and (5) below, if the Board receive a notice under sub-paragraph (1) above, they shall by notice invite the offshore fund concerned to make an application under paragraph 15 above in respect of the period in question.

(3) Where sub-paragraph (2) above applies, the Board shall not be required to give notice under that sub-paragraph before the expiry of the account period to which the notice is to relate nor if an application under paragraph 15 above has already been made; but where notice is given under that sub-paragraph, an application under paragraph

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15 above shall not be out of time under paragraph 15(2)(a) above if it is made within 90 days of the date of that notice.

(4) If an offshore fund to which notice is given under sub-paragraph (2) above does not, within the time allowed by sub-paragraph (3) above or, as the case may be, paragraph 15(2)(a) above, make an application under paragraph 15 above in respect of the account period in question, the Board shall proceed to determine the question of certification in respect of that period as if such an application had been made.

(5) Where the Board receive more than one notice under sub-paragraph (1) above with respect to the same account period of the same offshore fund, their obligations under sub-paragraphs (2) and (4) above shall be taken to be fulfilled with respect to each of those notices if they are fulfilled with respect to any one of them.

(6) Notwithstanding anything in sub-paragraph (5) above, for the purpose of a determination under sub-paragraph (4) above with respect to an account period of an offshore fund, the Board shall have regard to accounts and other information furnished by all persons who have given notice under sub-paragraph (1) above with respect to that account period; and paragraph 15 above shall apply as if accounts and information so furnished had been furnished in compliance with sub-paragraph (1) of that paragraph.

(7) Without prejudice to sub-paragraph (5) above, in any case where—

(a) at a time after the Board have made a determination under sub-paragraph (4) above that an offshore fund should not be certified as a distributing fund in respect of an account period, notice is given under sub-paragraph (1) above with respect to that period; and

(b) the person giving that notice furnishes the Board with accounts or information which had not been furnished to the Board at the time of the earlier determination;

the Board shall reconsider their previous determination in the light of the new accounts or information and, if they consider it appropriate, may determine to certify the fund accordingly.

(8) Where any person has given notice to the Board under sub-paragraph (1) above with respect to an account period of an offshore fund and no application has been made under paragraph 15 above with respect to that period—

(a) the Board shall notify that person of their determination with respect to certification under sub-paragraph (4) above; and

(b) paragraph 16 above shall not apply in relation to that determination.

Postponement of tax pending determination of question as to certification

19 (1) In any case where—

(a) an application has been made under paragraph 15 above with respect to an account period of an offshore fund and that application has not been finally determined; or

(b) paragraph (a) above does not apply but notice has been given under paragraph 18(1) above in respect of an account period of an offshore fund and the Board have not yet given notice of their decision as to certification under paragraph 18(4) above;

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any person who has been assessed to tax and considers that, if the offshore fund were to be certified as a distributing fund in respect of the account period in question, he would be overcharged to tax by the assessment may, by notice given to the inspector within 30 days after the date of the issue of the notice of assessment, apply to the General Commissioners for a determination of the amount of tax the payment of which should be postponed pending the determination of the question whether the fund should be so certified.

(2) A notice of application under sub-paragraph (1) above shall state the amount in which the applicant believes that he is over-charged to tax and his grounds for that belief.

(3) Subsections (3A) onwards of section 55 of the Management Act (recovery of tax not postponed) shall apply with any necessary modifications in relation to an application under sub-paragraph (1) above as if it were an application under subsection (3) of that section and as if the determination of the question as to certification (whether by the Board or on appeal) were the determination of an appeal.

Information as to decisions on certification etc.

20 No obligation as to secrecy imposed by statute or otherwise shall preclude the Board or an inspector from disclosing to any person appearing to have an interest in the matter—

(a) any determination of the Board or (on appeal) the Special Commissioners whether an offshore fund should or should not be certified as a distributing fund in respect of any account period; or

(b) the content and effect of any notice given by the Board under paragraph 15(4) above.

Application of this Schedule in relation to umbrella funds and funds comprising more than one class of interest

21 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.

(2) Regulations under this paragraph may—

(a) make different provision for different cases, and

(b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.

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SCHEDULE 28

Section 761(1).

COMPUTATION OF OFFSHORE INCOME GAINS [M1351]

Modifications etc. (not altering text)

C1076 Sch. 28 applied (with modifications) (22.10.2004 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Offshore Funds Regulations 2004 (S.I. 2004/2572), **regs. 1(1)**, 5

Marginal Citations

M1351 Source—[1984 Sch.20.]

PART I

DISPOSALS OF INTERESTS IN NON-QUALIFYING FUNDS

Interpretation

1 In this Part of this Schedule "material disposal" means a disposal to which this Chapter applies, otherwise than by virtue of section 758.

Calculation of unindexed gain

2 (1) Where there is a material disposal, there shall first be determined for the purposes of this Part of this Schedule the amount (if any) which, in accordance with the provisions of this paragraph, is the unindexed gain accruing to the person making the disposal.

(2) Subject to section 757(3) to (6) and paragraph 3 below, the unindexed gain accruing on a material disposal is the amount which would be the gain on that disposal for the purposes of the **[**[F6655]1992**]** Act if it were computed—

(a) without regard to any charge to income tax or corporation tax by virtue of section 761; and

(b) without regard to any indexation allowance on the disposal under **[**[F6655]the 1992 Act**]**.

Textual Amendments

F6655 Words in Sch. 28 para. 2 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(a)** (with ss. 60, 101(1), 171, 201(3))

3 (1) If the amount of any chargeable gain or allowable loss which (apart from section 763) would accrue on the material disposal would fall to be determined in a way which, in whole or in part, would take account of the indexation allowance on an earlier

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disposal to which **[**F6656section 56(2) of the 1992 Act**]** (disposals on a no gain/no loss basis) applies, the unindexed gain on the material disposal shall be computed as if—

(a) no indexation allowance had been available on any such earlier disposal; and

(b) subject to that, neither a gain nor a loss had accrued to the person making such an earlier disposal.

(2) If the material disposal forms part of a transfer to which section **[**F6656162 of the 1992 Act**]** (roll-over relief on transfer of business) applies, the unindexed gain accruing on the disposal shall be computed without regard to any deduction which falls to be made under that section in computing a chargeable gain.

(3) If the material disposal is made otherwise than under a bargain at arm's length and a claim for relief is made in respect of that disposal under **[**F6656section 165 or 260 of the 1992 Act (relief for gifts) the claim shall**]** not affect the computation of the unindexed gain accruing on the disposal.

(4) . . . . . .

(5) Notwithstanding section **[**F6656116 of the 1992 Act**]** (losses determined in like manner as gains) if, apart from this sub-paragraph, the effect of any computation under the preceding provisions of this Part of this Schedule would be to produce a loss, the unindexed gain on the material disposal shall be treated as nil; and accordingly for the purposes of this Part of this Schedule no loss shall be treated as accruing on a material disposal.

(6) Section 431 has effect in relation to sub-paragraph (4) above as if it were included in Chapter I of Part XII.

Textual Amendments

F6656 Words in Sch. 28 para. 3 substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(b)** (with ss. 60, 101(1), 171, 201(3))

Modifications etc. (not altering text)

C1077 Sch. 28 para. 3(4) repealed (with effect in accordance with Sch. 8 para. 55 of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(5)**, Note 1

Gains since 1st January 1984

4 (1) This paragraph applies where—

(a) the interest in the offshore fund which is disposed of by the person making a material disposal was acquired by him before 1st January 1984; or

(b) he is treated by virtue of any provision of sub-paragraphs (3) and (4) below as having acquired the interest before that date.

(2) Where this paragraph applies, there shall be determined for the purposes of this Part of this Schedule the amount which would have been the gain on the material disposal—

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(a) on the assumption that, on 1st January 1984, the interest was disposed of and immediately reacquired for a consideration equal to its market value at that time; and

(b) subject to that, on the basis that the gain is computed in like manner as, under paragraphs 2 and 3 above, the unindexed gain on the material disposal is determined;

and that amount is in paragraph 5 below referred to as the "post-1983 gain" on the material disposal.

(3) Where the person making the material disposal acquired the interest disposed of—

(a) on or after 1st January 1984, and

(b) in such circumstances that, by virtue of any enactment other than section **[**F6657 56, 57, 131 or 145 of the 1992 Act**]** (indexation provisions), he and the person from whom he acquired it ("the previous owner") fell to be treated for the purposes of the **[**1992**]** Act as if his acquisition were for a consideration of such an amount as would secure that, on the disposal under which he acquired it, neither a gain nor a loss accrued to the previous owner,

the previous owner's acquisition of the interest shall be treated as his acquisition of it.

(4) If the previous owner acquired the interest disposed of on or after 1st January 1984 and in circumstances similar to those referred to in sub-paragraph (3) above, his predecessor's acquisition of the interest shall be treated for the purposes of this paragraph as the previous owner's acquisition, and so on back through previous acquisitions in similar circumstances until the first such acquisition before 1st January 1984 or, as the case may be, until an acquisition on a material disposal on or after that date.

Textual Amendments

F6657 Words in Sch. 28 para. 4(3)(b) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(c)** (with ss. 60, 101(1), 171, 201(3))

The offshore income gain

5 (1) Subject to sub-paragraph (2) below, a material disposal gives rise to an offshore income gain of an amount equal to the unindexed gain on that disposal.

(2) In any case where—

(a) paragraph 4 above applies, and

(b) the post-1983 gain on the material disposal is less than the unindexed gain on the disposal,

the offshore income gain to which the disposal gives rise is an amount equal to the post-1983 gain.

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PART II

DISPOSALS INVOLVING AN EQUALISATION ELEMENT

6 (1) Subject to paragraph 7 below, a disposal to which this Chapter applies by virtue of section 758(3) gives rise to an offshore income gain of an amount equal to the equalisation element relevant to the asset disposed of.

(2) Subject to sub-paragraphs (4) to (6) below, the equalisation element relevant to the asset disposed of by a disposal falling within sub-paragraph (1) above is the amount which would be credited to the equalisation account of the offshore fund concerned in respect of accrued income if, on the date of the disposal, the asset which is disposed of were acquired by another person by way of initial purchase.

(3) In the following provisions of this Part of this Schedule, a disposal falling within sub-paragraph (1) above is referred to as a "disposal involving an equalisation element".

(4) Where the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal after the beginning of the period by reference to which the accrued income referred to in sub-paragraph (2) above is calculated, the amount which, apart from this sub-paragraph, would be the equalisation element relevant to that asset shall be reduced by the following amount, that is to say—

(a) if that acquisition took place on or after 1st January 1984, the amount which, on that acquisition, was credited to the equalisation account of the offshore fund concerned in respect of accrued income or, as the case may be, would have been so credited if that acquisition had been an acquisition by way of initial purchase; and

(b) in any other case, the amount which would have been credited to that account in respect of accrued income if that acquisition had been an acquisition by way of initial purchase taking place on 1st January 1984.

(5) In any case where—

(a) the asset disposed of by a disposal involving an equalisation element was acquired by the person making the disposal at or before the beginning of the period by reference to which the accrued income referred to in sub-paragraph (2) above is calculated, and

(b) that period began before 1st January 1984 and ends after that date,

the amount which, apart from this sub-paragraph, would be the equalisation element relevant to that asset shall be reduced by the amount which would have been credited to the equalisation account of the offshore fund concerned in respect of accrued income if the acquisition referred to in paragraph (a) above had been an acquisition by way of initial purchase taking place on 1st January 1984.

(6) Where there is a disposal involving an equalisation element, then, to the extent that any amount which was or would be credited to the equalisation account of the offshore fund in respect of accrued income, as mentioned in any of sub-paragraphs (2) to (5) above, represents profits from dealing in commodities, within the meaning of paragraph 4 of Schedule 27, one half of that accrued income shall be left out of account in determining under those sub-paragraphs the equalisation element relevant to the asset disposed of by that disposal.

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7 (1) For the purposes of this Part of this Schedule, there shall be determined, in accordance with paragraph 8 below, the Part I gain (if any) on any disposal involving an equalisation element.

(2) Notwithstanding anything in paragraph 6 above—

(a) if there is no Part I gain on a disposal involving an equalisation element, that disposal shall not give rise to an offshore income gain; and

(b) if, apart from this paragraph, the offshore income gain on a disposal involving an equalisation element would exceed the Part I gain on that disposal, the offshore income gain to which that disposal gives rise shall be reduced to an amount equal to that Part I gain.

8 (1) On a disposal involving an equalisation element, the Part I gain is the amount (if any) which, by virtue of Part I of this Schedule (as modified by sub-paragraphs (2) to (5) below), would be the offshore income gain on that disposal if it were a material disposal within the meaning of that Part.

(2) For the purposes only of the application of Part I of this Schedule to determine the Part I gain (if any) on a disposal involving an equalisation element, subsections (5) and (6) of section 758 shall have effect as if, in subsection (5), the words "by virtue of subsection (3) above" were omitted.

(3) If a disposal involving an equalisation element is one which, by virtue of any enactment other than section **[**F6658 56, 57, 131 or 145 of the 1992 Act**]**, is treated for the purposes of the **[**F6658 1992**]** Act as one on which neither a gain nor a loss accrues to the person making the disposal, then, for the purpose only of determining the Part I gain (if any) on the disposal, that enactment shall be deemed not to apply to it (but without prejudice to the application of that enactment to any earlier disposal).

F6659 (4) . . . . . .

F6659 (5) . . . . . .

Textual Amendments

F6658 Words in Sch. 28 para. 8(3) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 14(63)(c)** (with ss. 60, 101(1), 171, 201(3))

F6659 Sch. 28 para. 8(4)(5) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

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PART 3

SUPPLEMENTARY

Application of this Schedule in relation to umbrella funds and funds comprising more than one class of interest

9 (1) The Treasury may make provision by regulations as to the application of the provisions of this Schedule in relation to—

(a) a part of an umbrella fund which is treated as an offshore fund under section 756B, or

(b) a class of interest in an offshore fund which is treated as an offshore fund under section 756C.

(2) Regulations under this paragraph may—

(a) make different provision for different cases, and

(b) include such supplementary, incidental, consequential or transitional provisions (including provisions modifying the effect of other enactments) as appear to the Treasury to be necessary or expedient.

SCHEDULE 28A

[[F6660]CHANGE IN OWNERSHIP OF COMPANY WITH INVESTMENT BUSINESS: DEDUCTIONS**]**

Textual Amendments

F6660 Sch. 28A heading substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(11)

Modifications etc. (not altering text)

C1078 Sch. 28A modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**

PART I

SIGNIFICANT INCREASE IN COMPANY CAPITAL

General

1 The provisions referred to in section 768B(2) for determining whether there is a significant increase in the amount of a company's capital after a change in the ownership of the company are as follows.

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The basic rule

2 There is a significant increase in the amount of a company's capital if amount B—

(a) exceeds amount A by at least £1 million; or

(b) is at least twice amount A.

Amount A

3 (1) Amount A is the lower of—

(a) the amount of the company's capital immediately before the change in the ownership; and

(b) the highest 60 day minimum amount for the pre-change year, found in accordance with sub-paragraphs (2) to (6) below.

(2) Find the daily amounts of the company's capital over the pre-change year.

(3) Take the highest of the daily amounts.

(4) Find out whether there was in the pre-change year a period of 60 days or more in which there was no daily amount lower than the amount taken.

(5) If there was, the amount taken is the highest 60 day minimum amount for the pre-change year.

(6) If there was not, take the next highest of the daily amounts and repeat the process in sub-paragraph (4) above; and so on, until the highest 60 day minimum amount for the pre-change year is found.

(7) In this Part of this Schedule "the pre-change year" means the period of one year ending immediately before the change in the ownership of the company in question.

Amount B

4 (1) Amount B is the highest 60 day minimum amount for the post-change period (finding that amount for that period in the same way as the highest 60 day minimum amount for the pre-change year is found).

(2) In this paragraph "the post-change period" means the period of three years beginning with the change in the ownership of the company in question.

Capital and amounts of capital

5 (1) The capital of a company consists of the aggregate of—

(a) the amount of the paid up share capital of the company;

(b) the amount outstanding of any debts incurred by the company which are of a description mentioned in any of paragraphs (a) to (c) of section 417(7); and

(c) the amount outstanding of any redeemable loan capital issued by the company.

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(2) For the purposes of sub-paragraph (1) above—

(a) the amount of the paid up share capital includes any amount in the share premium account of the company (construing "share premium account" in the same way as in section 130 of the [M1352]Companies Act 1985); and

(b) the amount outstanding of any debts includes any interest due on the debts.

(3) Amounts of capital shall be expressed in sterling and rounded up to the nearest pound.

Marginal Citations

M1352 1985 c. 6.

PART II

AMOUNTS IN ISSUE FOR PURPOSES OF SECTION 768B

6 The amounts in issue referred to in section 768B(4)(c) are—

(a) **[**[F6661]the amount of any expenses of management referable to the accounting period (within the meaning of section 75)**]** being divided, except any such expenses as would (apart from section 768B) be deductible in computing profits otherwise than under section 75;

(b) the amount of any charges which are paid in that accounting period wholly and exclusively for the purposes of the company's business;

(c) the amount of any excess carried forward under **[**[F6662]section 75(9)**]** to the accounting period being divided;

(d) the amount of any allowances falling to be made for that accounting period by virtue of **[**[F6663]section 253 of the Capital Allowances Act**]** which would (apart from section 768B) be added to the expenses of management for that accounting period by virtue of **[**[F6664]section 75(7)**]**;

[[F6665](da) the amount (if any) of the adjusted Case III profits and gains or non-trading deficit of the company for that accounting period **[**[F6666](other than one within sub-paragraph (dc) below)**]** ;

(db) the amount of any non-trading debit (other than one within sub-paragraph [F6667]. . . (dd) below) that falls to be brought into account for that accounting period for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of any debtor relationship of the company;

(dc) the amount of any non-trading **[**[F6668]deficit carried forward to that accounting period under**]** section **[**[F6669]83(3A)**]** of the Finance Act 1996 (carried forward deficit not set off against profits);

(dd) the amount of any non-trading debit given for that accounting period by paragraph 13 of Schedule 15 to the Finance Act 1996 (transitional adjustment for past interest) in respect of any debtor relationship of the company;**]**

[[F6670](de) the amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for that period under paragraph 34 of Schedule 29 to the Finance Act 2002;

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(df) the amount of any non-trading loss on intangible fixed assets carried forward to that accounting period under paragraph 35(3) of that Schedule;**]**

(e) any other amounts by reference to which the profits or losses of that accounting period would (apart from section 768B) be calculated.

Textual Amendments

F6661 Words in Sch. 28A para. 6(a) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(2)

F6662 Words in Sch. 28A para. 6(c) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(3)

F6663 Words in Sch. 28A para. 6(d) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 67(1)**

F6664 Words in Sch. 28A para. 6(d) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(4)

F6665 Sch. 28A para. 6(da)-(dd) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(1)** (with Sch. 15)

F6666 Words in Sch. 28A para. 6(da) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(a)(4)**

F6667 Words in Sch. 28A para. 6(db) repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(3)(b)(4), **Sch. 27 Pt. 3(17)**, Note

F6668 Words in Sch. 28A para. 6(dc) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(c)(4)**

F6669 Words in Sch. 28A para. 6(dc) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 58(2)**

F6670 Sch. 28A para. 6(de)(df) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(4)**

6A For the purposes of paragraph 6(da) above, the amount for any accounting period of the adjusted Case III profits and gains or non-trading deficit of a company is the amount which, as the case may be, would be—

(a) the amount of the profits and gains chargeable under Case III of Schedule D as profits and gains arising from the company's loan relationships, or

(b) the amount of the company's non-trading deficit on those relationships for that period,

if, in computing that amount, amounts for that period falling within paragraph 6(db) to (dd) above were disregarded.

PART III

APPORTIONMENT FOR PURPOSES OF SECTION 768B

7 (1) Subject to paragraph 8 below, the apportionment required by section 768B(4)(c) shall be made—

[F6671(a) in the case of the sums mentioned in paragraph 6(a) above, by apportioning to each accounting period the amounts that would fall to be brought into account in that period as such sums, if it were a period of account for which

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accounts were drawn up in accordance with generally accepted accounting practice;

(aa) in the case of the charges mentioned in paragraph 6(b) above, by reference to the time when the charge is due to be paid;**]**

(b) in the case of the excess mentioned in paragraph 6(c) above, **[**F6672or in the case of the non-trading **[**F6673deficit**]** mentioned in paragraph 6(dc) above,**]** by apportioning the whole amount of the excess **[**F6674or, as the case may be, of the deficit**]** to the first part of the accounting period being divided;

(c) in the case of the amounts mentioned in paragraph 6(d) **[**F6675, (da)**]** and (e) above, by reference to the respective lengths of the parts of the accounting period being divided;

[F6676(d) in the case of any such debit as—

(i) is mentioned in paragraph 6(db) above,

(ii) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in accordance with an **[**F6677amortised cost**]** basis of accounting, F6678. . .

(iii) so falls to be brought into account otherwise than on the assumption, specified in paragraph 2(2) of Schedule 9 to that Act, that the interest to which it relates does not accrue until it is paid **[**F6679, and

(iv) so falls to be brought into account without any adjustment under paragraph 17 or 18 of that Schedule (debit relating to amount of discount referable to the relevant accounting period to be brought into account instead for the accounting period in which the security is redeemed),**]**

by reference to the time of accrual of the amount to which the debit relates;

(e) in the case of any such debit as—

(i) is mentioned in paragraph 6(db) above,

(ii) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in accordance with an **[**F6677amortised cost**]** basis of accounting, F6680. . . **[**F6681and

(iii) so falls to be brought into account—

— on the assumption mentioned in paragraph (d)(iii) above, or

— with such an adjustment as is mentioned in paragraph (d)(iv) above,**]**

by apportioning the whole amount of the debit to the first part of the accounting period being divided;

(f) in the case of any such debit as is mentioned in paragraph 6(dd) above, by apportioning the whole amount of the debit to the first part of the accounting period being divided.**]**

[F6682(g) in the case of any such credit or debit as is mentioned in paragraph 6(de), by apportioning to each accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;

(h) in the case of any such loss as is mentioned in paragraph 6(df) above, by apportioning the whole amount of the loss to the first part of the accounting period being divided.**]**

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(2) F6683 . . . . . .

Textual Amendments

F6671 Sch. 28A para. 7(1)(a)(aa) substituted for para. 7(1)(a) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(5)

F6672 Words in Sch. 28A para. 7(1)(b) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(3)(a)** (with Sch. 15)

F6673 Words in Sch. 28A para. 7(1)(b) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(d)(4)**

F6674 Words in Sch. 28A para. 7(1)(b) inserted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(4)**

F6675 Words in Sch. 28A para. 7(1)(c) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(3)(b)** (with Sch. 15)

F6676 Sch. 28A para. 7(1)(d)-(f) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(3)(c)** (with Sch. 15)

F6677 Words in Sch. 28A para. 7(1)(d)(ii)(e)(ii) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 45**

F6678 Word preceding Sch. 28A para. 7(1)(d)(iii) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 58(3), **Sch. 40 Pt. 3(12)**, Note

F6679 Sch. 28A para. 7(1)(d)(iv) and preceding word inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 58(3)**

F6680 Word preceding Sch. 28A para. 7(1)(e)(iii) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 58(4), **Sch. 40 Pt. 3(12)**, Note

F6681 Sch. 28A para. 7(1)(e)(iii) and preceding word substituted for para. 7(1)(e)(iii)(iv) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(6)

F6682 Sch. 28A para. 7(1)(g)(h) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(5)**

F6683 Sch. 28A para. 7(2) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 58(5), **Sch. 40 Pt. 3(12)**, Note

8 If it appears that any method of apportionment given by paragraph 7 above would work unreasonably or unjustly for any case for which it is given, such other method shall be used for that case as appears just and reasonable.

PART IV

[F6684 DISALLOWED DEBITS AND NON-TRADING DEFICITS]

Textual Amendments

F6684 Sch. 28A Pt. 4 title substituted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(8)**

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9 (1) This paragraph has effect in a case to which section 768B applies for determining the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) for—

(a) the accounting period beginning immediately after the change in the ownership of the company; and

(b) any subsequent accounting period.

(2) The debits so brought into account shall not include the debits falling within paragraph 11 below to the extent (if at all) that the aggregate of—

(a) the amount of those debits, and

(b) the amount of any debits falling within that paragraph which have been brought into account for the purposes of that Chapter for any previous accounting period ending after the change in the ownership,

exceeds the profits for the accounting period ending with the change in the ownership.

(3) The reference in sub-paragraph (2) above to the profits is a reference to profits after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given against the profits, including deductions and reliefs which under any provision are treated as reducing them for those purposes.

9A (1) This paragraph has effect in any case to which section 768B applies where the non-trading deficit mentioned in paragraph 6(dc) above is apportioned by paragraph 7(b) above to the first part of the accounting period being divided.

(2) In any such case, none of that non-trading deficit shall be carried forward to—

(a) the accounting period beginning immediately after the change in the ownership of the company, or

(b) any subsequent accounting period.

10 (1) This paragraph has effect in a case to which section 768C applies for determining the debits to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) for—

(a) the accounting period beginning immediately after the change in the ownership of the relevant company; and

(b) any subsequent accounting period.

(2) The debits so brought into account for any such accounting period shall not include the debits falling within paragraph 11 below to the extent (if at all) that the amount of those debits exceeds the modified total profits for the accounting period.

(3) The reference in sub-paragraph (2) above to the modified total profits for an accounting period is a reference to the total profits for that period—

(a) reduced, if that period is the period in which the relevant gain accrues, by an amount equal to the amount of the total profits for that period which represents the relevant gain; and

(b) after making all deductions and giving all reliefs that for the purposes of corporation tax are made or given against the profits, including deductions and reliefs which under any provision are treated as reducing them for those

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purposes, other than any reduction by virtue of paragraph 1(2) of Schedule 8 to the Finance Act 1996.

(4) Where by virtue of sub-paragraph (2) above a debit is to any extent not brought into account for an accounting period, that debit may (to that extent) be brought into account for the next accounting period, but this is subject to the application of sub-paragraphs (1) to (3) above to that next accounting period.

10A (1) This paragraph has effect in any case to which section 768C applies where the non-trading deficit mentioned in paragraph 13(1)(ec) below is apportioned by paragraph 16(1)(b) below to the first part of the accounting period being divided.

(2) In any such case, none of that non-trading deficit shall be carried forward to—

(a) the accounting period beginning immediately after the change in the ownership of the company, or

(b) any subsequent accounting period.

11 (1) A debit falls within this paragraph if it is a non-trading debit which—

(a) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in accordance with an **[**F6685amortised cost**]** basis of accounting;

[F6686(b) so falls to be brought into account—

(i) with an adjustment under paragraph 17 or 18 of Schedule 9 to that Act (debit relating to amount of discount referable to the relevant accounting period to be brought into account instead for the accounting period in which the security is redeemed); or

(ii) on the assumption, specified in sub-paragraph (2) of paragraph 2 of that Schedule, that the interest to which it relates does not accrue until it is paid; and**]**

(c) **[**F6687apart from paragraphs 2(2), 17 and 18 of that Schedule,**]** would have fallen to be brought into account for those purposes for an accounting period ending before or with the change in the ownership of the company or, as the case may be, the relevant company.

(2) The debits that fall within this paragraph also include—

(a) F6688 . . . . . .

(b) any non-trading debit given by paragraph 13 of Schedule 15 to the Finance Act 1996 (transitional adjustment for past interest) in respect of any debtor relationship of the company or, as the case may be, the relevant company.

(3) The debits that fall within this paragraph also include any non-trading debit which—

(a) is not such a debit as is mentioned in sub-paragraph (1) or (2) above;

(b) is a debit in respect of a debtor relationship of the company or, as the case may be, the relevant company;

(c) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in accordance with an **[**F6685amortised cost**]** basis of accounting; and

(d) relates to an amount that accrued before the change in the ownership of that company.

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(4) In this paragraph "post-change accounting period" means the accounting period beginning immediately after the change in the ownership of the company or, as the case may be, the relevant company.

Textual Amendments

F6685 Words in Sch. 28A para. 11(1)(a)(3)(c) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 45**

F6686 Sch. 28A para. 11(1)(b) substituted for para. 11(1)(b)(bb) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(7)

F6687 Words in Sch. 28A para. 11(1)(c) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 58(6)(b)**

F6688 Sch. 28A para. 11(2)(a) repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(3)(e)(4), **Sch. 27 Pt. 3(17)**, Note

12 Expressions used both in this Part of this Schedule and in Chapter II of Part IV of the Finance Act 1996 have the same meanings in this Part of this Schedule as in that Chapter.

PART V

AMOUNTS IN ISSUE FOR PURPOSES OF SECTION 768C

13 (1) The amounts in issue referred to in section 768C(3)(c) are—

(a) the amount which would in accordance with the relevant provisions of the 1992 Act (and apart from section 768C) be included in respect of chargeable gains in the total profits for the accounting period being divided;

(b) **[**F6689the amount of any expenses of management referable to the accounting period (within the meaning of section 75)**]** being divided except any such expenses as would (apart from section 768C) be deductible in computing total profits otherwise than under section 75;

(c) the amount of any charges which are paid in that accounting period wholly and exclusively for the purposes of the company's business;

(d) the amount of any excess carried forward under **[**F6690section 75(9)**]** to the accounting period being divided;

(e) the amount of any allowances falling to be made for that accounting period by virtue of **[**F6691section 253 of the Capital Allowances Act**]** which would (apart from section 768C) be added to the expenses of management for that accounting period by virtue of **[**F6692section 75(7)**]**;

[F6693(ea) the amount (if any) of the adjusted Case III profits and gains or non-trading deficit of the company for that accounting period **[**F6694(other than one within paragraph (ec) below)**]**;

(eb) the amount of any non-trading debit (other than one within paragraph F6695 . . . (ed) below) that falls to be brought into account for that accounting period

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for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships) in respect of any debtor relationship of the company;

(ec) the amount of any non-trading **[**F6696deficit carried forward to that accounting period under**]** section **[**F6697(3A)**]** of the Finance Act 1996 (carried forward deficit not set off against profits);

(ed) the amount of any non-trading debit given for that accounting period by paragraph 13 of Schedule 15 to the Finance Act 1996 (transitional adjustment for past interest) in respect of any debtor relationship of the company;**]**

[F6698(ee) the amount of any non-trading credits or debits in respect of intangible fixed assets that fall to be brought into account for that period under paragraph 34 of Schedule 29 to the Finance Act 2002;

(ef) the amount of any non-trading loss on intangible fixed assets carried forward to that accounting period under paragraph 35(3) of that Schedule;**]** and

(f) any other amounts by reference to which the profits or losses of the accounting period being divided would (apart from section 768C) be calculated.

(2) In sub-paragraph (1)(a) above "the relevant provisions of the 1992 Act" means section 8(1) of and Schedule 7A to that Act.

Textual Amendments

F6689 Words in Sch. 28A para. 13(1)(b) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(8)(a)

F6690 Words in Sch. 28A para. 13(1)(d) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(8)(b)

F6691 Words in Sch. 28A para. 13(1)(e) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 67(2)**

F6692 Words in Sch. 28A para. 13(1)(e) substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(8)(c)

F6693 Sch. 28A para. 13(1)(ea)-(ed) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(5)** (with Sch. 15)

F6694 Words in Sch. 28A para. 13(1)(ea) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(f)(4)**

F6695 Words in Sch. 28A para. 13(1)(eb) repealed (retrospectively) by Finance Act 1998 (c. 36), s. 82(3)(g)(4), **Sch. 27 Pt. 3(17)**, Note

F6696 Words in Sch. 28A para. 13(1)(ec) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(h)(4)**

F6697 Words in Sch. 28A para. 13(1)(ec) substituted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 58(7)**

F6698 Sch. 28A para. 13(1)(ee)(ef) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(6)**

13A Paragraph 6A above shall apply for the purposes of paragraph 13(1)(ea) above as it applies for the purposes of paragraph 6(da) above.

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PART VI

APPORTIONMENT FOR PURPOSES OF SECTION 768C

14 The apportionment required by section 768C(3)(c) shall be made as follows.

15 In the case of the amount mentioned in paragraph 13(1)(a) above—

(a) if it does not exceed the amount of the relevant gain, the whole of it shall be apportioned to the second part of the accounting period being divided;

(b) if it exceeds the amount of the relevant gain, the excess shall be apportioned to the first part of the accounting period being divided and the relevant gain shall be apportioned to the second part.

16 (1) Subject to paragraph 17 below, the apportionment shall be made—

[F6699(a) in the case of the sums mentioned in paragraph 13(1)(b) above, by apportioning to each accounting period the amounts that would fall to be brought into account in that period as such sums, if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;

(aa) in the case of the charges mentioned in paragraph 13(1)(c) above, by reference to the time when the charge is due to be paid;**]**

(b) in the case of the excess mentioned in paragraph 13(1)(d) above, **[**F6700or in the case of the non-trading **[**F6701deficit**]** mentioned in paragraph 13(1)(ec) above,**]** by apportioning the whole amount of the excess **[**F6702or, as the case may be, of the deficit**]** to the first part of the accounting period being divided;

(c) in the case of the amounts mentioned in paragraph 13(1)(e) **[**F6703, (ea)**]** and (f) above, by reference to the respective lengths of the parts of the accounting period being divided;

[F6704(d) in the case of any such debit as—

(i) is mentioned in paragraph 13(1)(eb) above,

(ii) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in accordance with an **[**F6705amortised cost**]** basis of accounting, F6706. . .

(iii) so falls to be brought into account otherwise than on the assumption, specified in paragraph 2(2) of Schedule 9 to that Act, that the interest to which it relates does not accrue until it is paid **[**F6707, and

(iv) so falls to be brought into account without any adjustment under paragraph 17 or 18 of that Schedule (debit relating to amount of discount referable to the relevant accounting period to be brought into account instead for the accounting period in which the security is redeemed),**]**

by reference to the time of accrual of the amount to which the debit relates;

(e) in the case of any such debit as—

(i) is mentioned in paragraph 13(1)(eb) above,

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(ii) falls to be brought into account for the purposes of Chapter II of Part IV of the Finance Act 1996 in accordance with an **[**F6705amortised cost**]** basis of accounting, F6708. . . **[**F6709and

(iii) so falls to brought into account—

— on the assumption mentioned in paragraph (d)(iii) above, or

— with such an adjustment as is mentioned in paragraph (d)(iv) above,**]**

by apportioning the whole amount of the debit to the first part of the accounting period being divided;

(f) in the case of any such debit as is mentioned in paragraph 13(1)(ed) above, by apportioning the whole amount of the debit to the first part of the accounting period being divided;**]**

[F6710(g) in the case of any such credit or debit as is mentioned in paragraph 13(ee), by apportioning to each accounting period the credits or debits that would fall to be brought into account in that period if it were a period of account for which accounts were drawn up in accordance with generally accepted accounting practice;

(h) in the case of any such loss as is mentioned in paragraph 13(ef), by apportioning the whole amount of the loss to the first part of the accounting period being divided.**]**

(2) F6711. . . . . .

Textual Amendments

F6699 Sch. 28A para. 16(1)(a)(aa) substituted for para. 16(1)(a) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(9)

F6700 Words in Sch. 28A para. 16(1)(b) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(7)(a)** (with Sch. 15)

F6701 Words in Sch. 28A para. 16(1)(b) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(i)(4)**

F6702 Words in Sch. 28A para. 16(1)(b) inserted (with effect in accordance with Sch. 7 para. 3(9) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 3(7)**

F6703 Words in Sch. 28A para. 16(1)(c) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(7)(b)** (with Sch. 15)

F6704 Sch. 28A para. 16(1)(d)-(f) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 54(7)(c)** (with Sch. 15)

F6705 Words in Sch. 28A para. 16(1)(d)(ii)(e)(ii) substituted (with effect in accordance with s. 52(3) of the amending Act (as amended (retrospectively) by 2005 c. 7, Sch. 4 para. 50, **Sch. 11 Pt. 2(7)**) by Finance Act 2004 (c. 12), **Sch. 10 para. 45**

F6706 Word preceding Sch. 28A para. 16(1)(d)(iii) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 58(8), **Sch. 40 Pt. 3(12)**, Note

F6707 Sch. 28A para. 16(1)(d)(iv) and preceding word inserted (with effect in accordance with s. 82(2) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 25 para. 58(8)**

F6708 Word preceding Sch. 28A para. 16(1)(e)(iii) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 58(9), **Sch. 40 Pt. 3(12)**, Note

F6709 Sch. 28A para. 16(1)(e)(iii) and preceding word substituted for para. 16(1)(e)(iii)(iv) (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 39(10)

F6710 Sch. 28A para. 16(1)(g)(h) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(7)**

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F6711 Sch. 28A para. 16(2) repealed (with effect in accordance with s. 82(2) of the repealing Act) by Finance Act 2002 (c. 23), Sch. 25 para. 58(10), **Sch. 40 Pt. 3(12)**, Note

17 If it appears that any method of apportionment given by paragraph 16 above would work unreasonably or unjustly for any case for which it is given, such other method shall be used for that case as appears just and reasonable.

SCHEDULE 28AA

PROVISION NOT AT ARM'S LENGTH

Modifications etc. (not altering text)

C1079 Sch. 28AA modified (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 58(1)** (as amended by 2004 c. 12, s. 37, **Sch. 5 para. 12**) (with Sch. 22 para. 58(3))

C1080 Sch. 28AA applied (with modifications) (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 59(1)(2)** (as amended by 2004 c. 12, s. 37, **Sch. 5 para. 13**) (with Sch. 22 para. 59(4))

C1081 Sch. 28AA applied by Finance Act 1996 (c. 8), **s. 100** (as substituted (with effect in accordance with s. 79(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), Sch. 23 para. 6 (with s. 81(4)(5), **Sch. 23 para. 25**))

C1082 Sch. 28AA modified by Finance Act 1996 (c. 8), **Sch. 9 para. 11A(1)** (as inserted (with effect in accordance with s. 79(3) of the 2002 amending Act) by Finance Act 2002 (c. 23), Sch. 23 para. 11 (with s. 81(4)(5), **Sch. 23 para. 25**))

C1083 Sch. 28AA excluded by Finance Act 1996 (c. 8), **Sch. 9 para. 12(2ZA)** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 7(2)**)

C1084 Sch. 28AA modified by Finance Act 1996 (c. 8), **Sch. 9 para. 16** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 8**)

C1085 Sch. 28AA excluded by Finance Act 2002 (c. 23), **Sch. 26 para. 28(3A)** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 15(2)**)

C1086 Sch. 28AA modified by Finance Act 2002 (c. 23), **Sch. 26 para. 31A** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 15(3)**)

C1087 Sch. 28AA excluded by Finance Act 2002 (c. 23), **Sch. 29 para. 55(1A)** (as inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 5 para. 16(2)**)

C1088 Sch. 28AA excluded (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **ss. 340(7)**, 625(7), 694(8)-(10), 775(3) (with ss. 628, 629, 636, Sch. 2 Pts. 1, 2)

C1089 Sch. 28AA applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **ss. 445-447** (with Sch. 2 Pts. 1, 2)

C1090 Sch. 28AA excluded (1.12.2009 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 (S.I. 2009/2971), **regs. 1(1)**, 19(6), 22(6) (with regs. 19(7)(10)(11), 22(7)(9)(10))

C1091 Sch. 28AA excluded (1.1.2010) by The Northern Rock plc (Tax Consequences) Regulations 2009 (S.I. 2009/3227), regs. 1, 4(3), 6(2)

Basic rule on transfer pricing etc.

1 (1) This Schedule applies where—

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(a) provision ("the actual provision") has been made or imposed as between any two persons ("the affected persons") by means of a transaction or series of transactions, and

(b) at the time of the making or imposition of the actual provision—

(i) one of the affected persons was directly or indirectly participating in the management, control or capital of the other; or

(ii) the same person or persons was or were directly or indirectly participating in the management, control or capital of each of the affected persons.

(2) Subject to paragraphs **[**F6712 5A, 5B,**]** 8, 10 and 13 below, if the actual provision—

(a) differs from the provision ("the arm"s length provision') which would have been made as between independent enterprises, and

(b) confers a potential advantage in relation to United Kingdom taxation on one of the affected persons, or (whether or not the same advantage) on each of them,

the profits and losses of the potentially advantaged person or, as the case may be, of each of the potentially advantaged persons shall be computed for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision.

(3) For the purposes of this Schedule the cases in which provision made or imposed as between any two persons is to be taken to differ from the provision that would have been made as between independent enterprises shall include the case in which provision is made or imposed as between any two persons but no provision would have been made as between independent enterprises; and references in this Schedule to the arm's length provision shall be construed accordingly.

Textual Amendments

F6712 Words in Sch. 28AA para. 1(2) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 31(2)**

Provision in relation to securities: determination of arm's length provision

1A (1) This paragraph applies where—

(a) both of the affected persons are companies, and

(b) the actual provision is provision in relation to a security issued by one of those companies ("the issuing company").

(2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the loan would have been made at all in the absence of the special relationship (see sub-paragraph (6) below),

(b) the amount which the loan would have been in the absence of the special relationship, and

(c) the rate of interest and other terms which would have been agreed in the absence of the special relationship,

but this is subject to the following provisions of this paragraph.

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(3) In a case where—

(a) a company makes a loan to another company with which it has a special relationship, and

(b) it is not part of the first company's business to make loans generally,

the fact that it is not part of the first company's business to make loans generally shall be disregarded in construing sub-paragraph (2) above.

(4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship (see sub-paragraphs (7) and (8) below).

(5) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(6) In this paragraph "special relationship" means any relationship by virtue of which the condition in paragraph 1(1)(b) above is satisfied in the case of the affected persons.

(7) In this paragraph any reference to a guarantee includes a reference to a surety and to any other relationship, arrangements, connection or understanding (whether formal or informal) such that the person making the loan to the issuing company has a reasonable expectation that in the event of a default by the issuing company he will be paid by, or out of the assets of, one or more companies.

(8) For the purposes of this paragraph, the cases where one company has a "participatory relationship"with another are those where—

(a) one of them is directly or indirectly participating in the management, control or capital of the other; or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of them.

(9) In this paragraph "security" includes securities not creating or evidencing a charge on assets.

(10) For the purposes of this paragraph—

(a) interest payable by a company on money advanced without the issue of a security for the advance, or

(b) other consideration given by a company for the use of money so advanced,

shall be treated as if payable or given in respect of a security issued for the advance by the company, and references in this paragraph to a security shall be construed accordingly.

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Guarantees etc

1B (1) This paragraph applies where the actual provision is made or imposed by means of a series of transactions which include—

(a) the issuing of a security by a company which is one of the affected persons ("the issuing company"), and

(b) the provision of a guarantee by a company which is the other of those persons.

(2) Paragraph 1(2)(a) above shall be construed as requiring account to be taken of all factors, including—

(a) the question whether the guarantee would have been provided at all in the absence of the special relationship,

(b) the amount that would have been guaranteed in the absence of the special relationship, and

(c) the consideration for the guarantee and other terms which would have been agreed in the absence of the special relationship,

but this is subject to the following provisions of this paragraph.

(3) In a case where—

(a) a company provides a guarantee in respect of another company with which it has a special relationship, and

(b) it is not part of the first company's business to provide guarantees generally,

the fact that it is not part of the first company's business to provide guarantees generally shall be disregarded in construing sub-paragraph (2) above.

(4) Paragraph 1(2)(a) above shall be construed as requiring no account to be taken, in the determination of any of the matters mentioned in sub-paragraph (5) below, of (or of any inference capable of being drawn from) any guarantee provided by a company with which the issuing company has a participatory relationship.

(5) The matters are—

(a) the appropriate level or extent of the issuing company's overall indebtedness;

(b) whether it might be expected that the issuing company and a particular person would have become parties to a transaction involving the issue of a security by the issuing company or the making of a loan, or a loan of a particular amount, to the issuing company;

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(6) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (6) (meaning of special relationship);

(b) sub-paragraph (7) (construction of references to a guarantee);

(c) sub-paragraph (8) (meaning of participatory relationship);

(d) sub-paragraph (9) (meaning of security);

(e) sub-paragraph (10) (extended meaning of security).

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Principles for construing rules in accordance with OECD principles

2 (1) This Schedule shall be construed (subject to paragraphs 8 to 11 below) in such manner as best secures consistency between—

(a) the effect given to paragraph 1 above; and

(b) the effect which, in accordance with the transfer pricing guidelines, is to be given, in cases where double taxation arrangements incorporate the whole or any part of the OECD model, to so much of the arrangements as does so.

(2) In this paragraph "the OECD model" means—

(a) the rules which, at the passing of this Act, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the Organisation for Economic Co-operation and Development; or

(b) any rules in the same or equivalent terms.

(3) In this paragraph "the transfer pricing guidelines" means—

(a) all the documents published by the Organisation for Economic Co-operation and Development, at any time before 1st May 1998, as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations; and

(b) such documents published by that Organisation on or after that date as may for the purposes of this Schedule be designated, by an order made by the Treasury, as comprised in the transfer pricing guidelines.

Meaning of "transactio"n and "series of transaction"s

3 (1) In this Schedule "transaction" includes arrangements, understandings and mutual practices (whether or not they are, or are intended to be, legally enforceable).

(2) References in this Schedule to a series of transactions include references to a number of transactions each entered into (whether or not one after the other) in pursuance of, or in relation to, the same arrangement.

(3) A series of transactions shall not be prevented by reason only of one or more of the matters mentioned in sub-paragraph (4) below from being regarded for the purposes of this Schedule as a series of transactions by means of which provision has been made or imposed as between any two persons.

(4) Those matters are—

(a) that there is no transaction in the series to which both those persons are parties;

(b) that the parties to any arrangement in pursuance of which the transactions in the series are entered into do not include one or both of those persons; and

(c) that there is one or more transactions in the series to which neither of those persons is a party.

(5) In this paragraph, "arrangement" means any scheme or arrangement of any kind (whether or not it is, or is intended to be, legally enforceable).

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Modifications etc. (not altering text)
C1092 Sch. 28AA para. 3 applied (with effect in accordance with Sch. 17 para. 13 of the affecting Act) by Finance Act 2009 (c. 10), **Sch. 17 para. 12(5)**

Participation in the management, control or capital of a person

4 (1) For the purposes of this Schedule a person is directly participating in the management, control or capital of another person at a particular time if, and only if, that other person is at that time—

(a) a body corporate or a partnership; and

(b) controlled by the first person.

(2) For the purposes of this Schedule a person ("the potential participant") is indirectly participating in the management, control or capital of another person at a particular time if, **[**F6713and (subject to paragraphs 4A and 6(4C) below) only if**]**—

(a) he would be taken to be directly so participating at that time if the rights and powers attributed to him included all the rights and powers mentioned in sub-paragraph (3) below that are not already attributed to him for the purposes of sub-paragraph (1) above; or

(b) he is, at that time, one of a number of major participants in that other person's enterprise.

(3) The rights and powers referred to in sub-paragraph (2)(a) above are—

(a) rights and powers which the potential participant is entitled to acquire at a future date or which he will, at a future date, become entitled to acquire;

(b) rights and powers of persons other than the potential participant to the extent that they are rights or powers falling within sub-paragraph (4) below;

(c) rights and powers of any person with whom the potential participant is connected; and

(d) rights and powers which for the purposes of sub-paragraph (2)(a) above would be attributed to a person with whom the potential participant is connected if that connected person were himself the potential participant.

(4) Rights and powers fall within this sub-paragraph to the extent that they—

(a) are required, or may be required, to be exercised in any one or more of the following ways, that is to say—

(i) on behalf of the potential participant;

(ii) under the direction of the potential participant; or

(iii) for the benefit of the potential participant;

and

(b) are not confined, in a case where a loan has been made by one person to another, to rights and powers conferred in relation to property of the borrower by the terms of any security relating to the loan.

(5) In sub-paragraphs (3)(b) to (d) and (4) above, the references to a person's rights and powers include references to any rights or powers which he either—

(a) is entitled to acquire at a future date, or

(b) will, at a future date, become entitled to acquire.

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(6) In paragraph (d) of sub-paragraph (3) above, the reference to rights and powers which would be attributed to a connected person if he were the potential participant includes a reference to rights and powers which, by applying that paragraph wherever one person is connected with another, would be so attributed to him through a number of persons each of whom is connected with at least one of the others.

(7) For the purposes of this paragraph a person ("the potential major participant") is a major participant in another person's enterprise at a particular time if at that time—

(a) that other person ("the subordinate") is a body corporate or partnership; and

(b) the 40 per cent. test is satisfied in the case of each of two persons who, taken together, control the subordinate and of whom one is the potential major participant.

(8) For the purposes of this paragraph the 40 per cent. test is satisfied in the case of each of two persons wherever each of them has interests, rights and powers representing at least 40 per cent. of the holdings, rights and powers in respect of which the pair of them fall to be taken as controlling the subordinate.

(9) For the purposes of this paragraph—

(a) the question whether a person is controlled by any two or more persons taken together, and

(b) any question whether the 40 per cent. test is satisfied in the case of a person who is one of two persons,

shall be determined after attributing to each of the persons all the rights and powers attributed to a potential participant for the purposes of sub-paragraph (2)(a) above.

(10) References in this paragraph—

(a) to rights and powers of a person, or

(b) to rights and powers which a person is or will become entitled to acquire,

include references to rights or powers which are exercisable by that person, or (when acquired by that person) will be exercisable, only jointly with one or more other persons.

(11) For the purposes of this paragraph two persons are connected with each other if—

(a) one of them is an individual and the other is his spouse **[**F6714or civil partner**]**, a relative of his or of his spouse **[**F6714or civil partner**]**, or the spouse **[**F6714or civil partner**]** of such a relative; or

(b) one of them is a trustee of a settlement and the other is—

(i) a person who in relation to that settlement is a settlor; or

(ii) a person who is connected with a person falling within sub-paragraph (i) above.

(12) In sub-paragraph (11) above—

"relative" means brother, sister, ancestor or lineal descendant; and

"settlement" and "settlor" have the same meanings as in Chapter IA of Part XV.

Textual Amendments

F6713 Words in Sch. 28AA para. 4(2) substituted (with effect in accordance with Sch. 8 para. 4 of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 8 para. 1(2)**

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F6714 Words in Sch. 28AA para. 4(11)(a) inserted (5.12.2005) by The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), **regs. 1(1)**, 103

Persons acting together in relation to financing arrangements

4A (1) A person ("P") shall be treated for the purposes of paragraph 1(1)(b)(i) above (but subject to sub-paragraph (7) below) as indirectly participating in the management, control or capital of another ("A") at the time of the making or imposition of the actual provision if—

(a) the actual provision relates, to any extent, to financing arrangements for A;

(b) A is a body corporate or partnership;

(c) P and other persons acted together in relation to the financing arrangements; and

(d) P would be taken to have control of A if, at any relevant time, there were attributed to P the rights and powers of each of the other persons mentioned in paragraph (c) above.

(2) A person ("Q") shall be treated for the purposes of paragraph 1(1)(b)(ii) above (but subject to sub-paragraph (7) below) as indirectly participating in the management, control or capital of each of the affected persons at the time of the making or imposition of the actual provision if—

(a) the actual provision relates, to any extent, to financing arrangements for one of the affected persons ("B");

(b) B is a body corporate or partnership;

(c) Q and other persons acted together in relation to the financing arrangements; and

(d) Q would be taken to have control of both B and the other affected person if, at any relevant time, there were attributed to Q the rights and powers of each of the other persons mentioned in paragraph (c) above.

(3) It is immaterial for the purposes of sub-paragraph (1)(c) or (2)(c) above whether P or Q and the other persons acting together in relation to the financing arrangements did so at the time of the making or imposition of the actual provision or at some earlier time.

(4) In sub-paragraph (1)(d) or (2)(d) "relevant time" means—

(a) a time when P or Q and the other persons were acting together in relation to the financing arrangements; or

(b) a time in the period of six months beginning with the day on which they ceased so to act.

(5) In determining for the purposes of sub-paragraph (1)(d) or (2)(d) whether P or Q would be taken to have control of another person, the rights and powers of any person (and not just P or Q) shall be taken to include those that would be attributed to that person in determining under paragraph 4 above whether he is indirectly participating in the management, control or capital of the other person.

(6) In this paragraph "financing arrangements" means arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital or other form of finance.

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(7) Where the condition in paragraph 1(1)(b) above would not be satisfied but for this paragraph, paragraph 1(2) above applies only to the extent that the actual provision relates to the financing arrangements in question.

Financing arrangements: anticipatory provision

4B (1) To the extent that it applies to provision relating to financing arrangements, this Schedule has effect as if in paragraph 1(1)(b) above the words "or within the period of six months beginning with the day on which the actual provision was made or imposed" were inserted immediately before sub-paragraph (i).

(2) In this paragraph "financing arrangements" has the same meaning as in paragraph 4A above.

Advantage in relation to United Kingdom taxation

5 (1) For the purposes of this Schedule [F6715]. . . the actual provision confers a potential advantage on a person in relation to United Kingdom taxation wherever, disregarding this Schedule, the effect of making or imposing the actual provision, instead of the arm's length provision, would be one or both of the following, that is to say—

(a) that a smaller amount (which may be nil) would be taken for tax purposes to be the amount of that person's profits for any chargeable period; or

(b) that a larger amount (or, if there would not otherwise have been losses, any amount of more than nil) would be taken for tax purposes to be the amount for any chargeable period of any losses of that person.

(2) [F6716] . . . . . .

(3) [F6717] . . . . . .

(4) [F6718] . . . . . .

(5) [F6719] . . . . . .

(6) [F6720] . . . . . .

[F6721](7) In determining for the purposes of sub-paragraph (1) above the amount that would be taken for tax purposes to be the amount of the profits or losses for a year of assessment in the case of a person who is not resident in the United Kingdom, there shall be left out of account any income of that person which is—

(a) excluded income for the purposes of section 128 of the Finance Act 1995 (limit on income chargeable on non-residents: income tax), or

(b) income to which section 151 of the Finance Act 2003 applies (non-resident companies: extent of charge to income tax).**]**

Textual Amendments

F6715 Words in Sch. 28AA para. 5(1) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(2)(a), **Sch. 42 Pt. 2(1)**, Note

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F6716 Sch. 28AA para. 5(2)-(6) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(2)(b), **Sch. 42 Pt. 2(1)**, Note
F6717 Sch. 28AA para. 5(2)-(6) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(2)(b), **Sch. 42 Pt. 2(1)**, Note
F6718 Sch. 28AA para. 5(2)-(6) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(2)(b), **Sch. 42 Pt. 2(1)**, Note
F6719 Sch. 28AA para. 5(2)-(6) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(2)(b), **Sch. 42 Pt. 2(1)**, Note
F6720 Sch. 28AA para. 5(2)-(6) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(2)(b), **Sch. 42 Pt. 2(1)**, Note
F6721 Sch. 28AA para. 5(7) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(2)(c)**

Exemption for dormant companies

5A (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a company which satisfies the condition in sub-paragraph (2) below.

(2) The condition is that—

(a) the company was dormant throughout the pre-qualifying period, and

(b) apart from paragraph 1 above, the company has continued to be dormant at all times since the end of the pre-qualifying period.

(3) In sub-paragraph (2) above "the pre-qualifying period" means—

(a) if there is an accounting period of the company that ends on 31st March 2004, that accounting period, or

(b) if there is no such accounting period, the period of 3 months ending with that date.

(4) In this paragraph "dormant" has the same meaning as in section 249AA of the Companies Act 1985 (see subsections (4) to (7) of that section).

Exemption for small or medium-sized enterprises

5B (1) Paragraph 1(2) above does not apply in computing for any chargeable period the profits and losses of a potentially advantaged person if that person is a small or medium-sized enterprise for that chargeable period (see paragraph 5D below).

(2) Exceptions to sub-paragraph (1) above are provided—

(a) in the case of a small enterprise, by sub-paragraphs (3) and (4) below, and

(b) in the case of a medium-sized enterprise, by sub-paragraphs (3) and (4) and paragraph 5C below.

(3) The first exception is where the small or medium-sized enterprise elects for sub-paragraph (1) above not to apply in relation to the chargeable period.

Any such election is irrevocable.

(4) The second exception is where, at the time when the actual provision is or was made or imposed,—

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(a) the other affected person, or

(b) a party to a relevant transaction (see sub-paragraph (5) below),

is a resident (see sub-paragraph (6) below) of a non-qualifying territory (whether or not that person is also a resident of a qualifying territory).

(5) For the purposes of sub-paragraph (4) above, a "party to a relevant transaction" is a person who, in a case where the actual provision is or was imposed by means of a series of transactions, is or was a party to one or more of those transactions.

(6) In this paragraph "resident", in relation to a territory,—

(a) means a person who, under the laws of that territory, is liable to tax there by reason of his domicile, residence or place of management, but

(b) does not include a person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated there.

(7) The definitions of "qualifying territory" and "non-qualifying territory" are in paragraph 5E below.

Modifications etc. (not altering text)

C1093 Sch. 28AA paras. 5B, 5C excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(6), **Sch. 17 para. 12(2)(3)**

C1094 Sch. 28AA paras. 5B, 5C excluded by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69X(6)** (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1**, 5)

Additional provisions for medium-sized enterprises

5C (1) Paragraph 5B(1) above does not apply as respects any provision made or imposed if—

(a) the potentially advantaged person in question is a medium-sized enterprise for the chargeable period in question, and

(b) the Board gives that person a notice under this sub-paragraph (a "transfer pricing notice") requiring him to compute the profits and losses of that chargeable period in accordance with paragraph 1(2) above in the case of that provision.

(2) A transfer pricing notice may be given in respect of —

(a) any provision specified, or of a description specified, in the notice, or

(b) every provision in relation to which the assumption in paragraph 1(2) above would fall to be made apart from paragraph 5B(1) above.

(3) A transfer pricing notice may be given only after a notice of enquiry has been given to the potentially advantaged person in respect of his tax return for the chargeable period.

(4) A transfer pricing notice must identify the officer of the Board to whom any notice of appeal under this paragraph is to be given.

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(5) A person to whom a transfer pricing notice is given may appeal against the decision to give the notice, but only on the grounds that the condition in sub-paragraph (1)(a) above is not satisfied.

(6) Any such appeal must be brought by giving written notice of appeal to the officer of the Board identified for the purpose in the transfer pricing notice in accordance with sub-paragraph (4) above.

(7) The notice of appeal must be given before the end of the period of 30 days beginning with the day on which the transfer pricing notice is given.

(8) A person to whom a transfer pricing notice is given may amend his tax return for the purpose of complying with the notice at any time before the end of the period of 90 days beginning with—

(a) the day on which the notice is given, or

(b) if he appeals against the notice, the day on which the appeal is finally determined or abandoned.

(9) Where a transfer pricing notice is given in the case of any tax return, no closure notice may be given in relation to that tax return until—

(a) the end of the period of 90 days specified in sub-paragraph (8) above, or

(b) the earlier amendment of the tax return for the purpose of complying with the notice.

(10) So far as relating to any provision made or imposed by or in relation to a person—

(a) who is a medium-sized enterprise for a chargeable period,

(b) who does not make an election under paragraph 5B(3) above for that period, and

(c) who is not excepted from paragraph 5B(1) above by virtue of paragraph 5B(4) above in relation to that provision for that period,

the tax return required to be made for that period is a return that disregards paragraph 1(2) above.

(11) Sub-paragraph (10) above does not prevent a tax return for a period becoming incorrect if, in the case of any provision made or imposed,—

(a) a transfer pricing notice is given which has effect in relation to that provision for that period,

(b) the return is not amended in accordance with sub-paragraph (8) above for the purpose of complying with the notice, and

(c) the return ought to have been so amended.

(12) In this paragraph—

"closure notice" means a notice under—

(a) section 28A or 28B of the Management Act, or

(b) paragraph 32 of Schedule 18 to the Finance Act 1998;

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule;

"notice of enquiry" means a notice under—

(a) section 9A or 12AC of the Management Act, or

(b) paragraph 24 of Schedule 18 to the Finance Act 1998;

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"tax return" means—

(a) a return under section 8, 8A or 12AA of the Management Act, or

(b) a company tax return.

Modifications etc. (not altering text)

C1095 Sch. 28AA paras. 5B, 5C excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(6), **Sch. 17 para. 12(2)(3)**

C1096 Sch. 28AA paras. 5B, 5C excluded by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69X(6)** (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1**, 5)

Meaning of "small enterprise" and "medium-sized enterprise"

5D (1) In this Schedule—

(a) "small enterprise" means a small enterprise as defined in the Annex to the Commission Recommendation,

(b) "medium-sized enterprise" means an enterprise which—

(i) falls within the category of micro, small and medium-sized enterprises as defined in that Annex, and

(ii) is not a small enterprise as defined in that Annex,

but for these purposes that Annex has effect with the modifications set out in sub-paragraphs (3) to (6) of this paragraph.

(2) In this paragraph—

"the Annex" means the Annex to the Commission Recommendation;

"the Commission Recommendation" means Commission Recommendation 2003/361/EC of 6th May 2003 (concerning the definition of micro, small and medium-sized enterprises).

(3) Where any enterprise is in liquidation or administration, the rights of the liquidator or administrator (in that capacity) shall be left out of account when applying Article 3(3)(b) of the Annex in determining for the purposes of this Schedule whether—

(a) that enterprise, or

(b) any other enterprise (including that of the liquidator or administrator),

is a small or medium-sized enterprise.

(4) Article 3 of the Annex shall have effect with the omission of paragraph 5 (declaration in good faith where control cannot be determined etc).

(5) The first sentence of Article 4(1) of the Annex shall have effect as if the data to apply to—

(a) the headcount of staff, and

(b) the financial amounts,

were the data relating to the chargeable period in paragraph 5B(1) above (instead of the period described in that sentence) and calculated on an annual basis.

(6) Article 4 of the Annex shall have effect with the omission of the following provisions—

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(a) the second sentence of paragraph 1 (data to be taken into account from date of closure of accounts);

(b) paragraph 2 (no change of status unless ceilings exceeded for two consecutive periods);

(c) paragraph 3 (bona fide estimate in case of newly established enterprise).

Meaning of "qualifying territory" and "non-qualifying territory"

5E (1) In this Schedule—

"non-qualifying territory" means any territory which is not a qualifying territory;

"qualifying territory" means—

(a) the United Kingdom, or

(b) any territory as respects which Condition 1 or Condition 2 below is satisfied.

(2) Condition 1 is that—

(a) arrangements to which section 788 applies (double taxation relief by agreement with other territories) have been made in relation to the territory;

(b) those arrangements contain a non-discrimination provision (see sub-paragraphs (4) and (5) below); and

(c) the territory is not designated as a non-qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.

(3) Condition 2 is that—

(a) arrangements to which section 788 applies have been made in relation to the territory; and

(b) the territory is designated as a qualifying territory for the purposes of this sub-paragraph in regulations made by the Treasury.

(4) For the purposes of this paragraph a "non-discrimination provision", in relation to any arrangement to which section 788 applies, is a provision to the effect that nationals of a state which is a party to those arrangements (a "contracting state") are not to be subject in any other contracting state to—

(a) any taxation, or

(b) any requirement connected with taxation,

which is other or more burdensome than the taxation and connected requirements to which nationals of that other state in the same circumstances (in particular with respect to residence) are or may be subjected.

(5) In this paragraph, "national", in relation to a contracting state, includes—

(a) any individual possessing the nationality or citizenship of the contracting state,

(b) any legal person, partnership or association deriving its status as such from the laws in force in that contracting state.

(6) A statutory instrument containing regulations under this paragraph shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.

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Elimination of double counting

6 **[**F6722(1) This paragraph applies where—

(a) only one of the affected persons ("the advantaged person") is a person on whom a potential advantage in relation to United Kingdom taxation is conferred by the actual provision; and

(b) the other affected person ("the disadvantaged person") is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities.**]**

(2) Subject to sub-paragraphs (3) to (6) and **[**F6723paragraphs**][**F6724 6C, 6D,**]** 7 **[**F6725and 8**]** below, on the making of a claim by the disadvantaged person for the purposes of this paragraph—

(a) **[**F6726the profits and losses of the disadvantaged person shall be computed**]** for tax purposes as if the arm's length provision had been made or imposed instead of the actual provision; and

(b) notwithstanding any limit in the Tax Acts on the time within which any adjustment may be made, all such adjustments shall be made in his case as may be required to give effect to the assumption that the arm's length provision was made or imposed instead of the actual provision.

(3) A claim made by the disadvantaged person for the purposes of this paragraph—

(a) shall not be made unless a computation has been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision; and

(b) must be consistent with the computation made on that basis in the case of the advantaged person.

(4) For the purposes of sub-paragraph (3) above a computation shall be taken to have been made in the case of the advantaged person on the basis that the arm's length provision was made or imposed instead of the actual provision if, and only if—

(a) the computations made for the purposes of any return by the advantaged person have been made on that basis by virtue of this Schedule; or

(b) a relevant notice given to the advantaged person takes account of a determination in pursuance of this Schedule of an amount falling to be brought into account for tax purposes on that basis.

[F6727(4A) A claim by the disadvantaged person for the purposes of this paragraph shall not be made where—

(a) the condition in paragraph 1(1)(b) above would not be satisfied but for paragraph 4A above;

(b) the actual provision is provision in relation to a security issued by one of the affected persons ("the issuer");

(c) a guarantee is provided in relation to the security by a person with whom the issuer has a participatory relationship.

In this sub-paragraph "security" and "guarantee" have the same meaning as in paragraph 1A above.

(4B) For the purposes of sub-paragraph (4A) above, the cases where one person has a "participatory relationship" with another are those where—

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(a) one of them is directly or indirectly participating in the management, control or capital of the other; or

(b) the same person or persons is or are directly or indirectly participating in the management, control or capital of each of them.

(4C) Paragraph 4A above applies for the purposes of sub-paragraph (4B) above as it applies for the purposes of paragraph 1(1)(b) above.**]**

(5) Subject to section 111(3)(b) of the Finance Act 1998 (which provides for the extension of the period for making a claim), a claim for the purposes of this paragraph shall not be made except within one of the following periods—

(a) in a case where a return has been made by the advantaged person on the basis mentioned in sub-paragraph (3)(a) above, the period of two years beginning with the day of the making of the return; and

(b) in any case where a relevant notice taking account of such a determination as is mentioned in sub-paragraph (4)(b) above has been given to the advantaged person, the period of two years beginning with the day on which that notice was given.

(6) Subject to section 111(3)(b) of the Finance Act 1998, where—

(a) a claim for the purposes of this paragraph is made by the disadvantaged person in relation to a return made on the basis mentioned in sub-paragraph (3)(a) above, and

(b) a relevant notice taking account of such a determination as is mentioned in sub-paragraph (4)(b) above is subsequently given to the advantaged person,

the disadvantaged person shall be entitled, within the period mentioned in sub-paragraph (5)(b) above, to make any such amendment of the claim as may be appropriate in consequence of the determination contained in that notice.

(7) In this paragraph—

"relevant notice" means—

(a) **[**F6728a closure notice under section 28A(1) or 28B(1) of the Management Act in relation to an enquiry into a return under section 8 or 8A of that Act or into a partnership return;

(b) a closure notice under paragraph 32 of Schedule 18 to the Finance Act 1998 in relation to an enquiry into a company tax return;

(c) a notice of an assessment under section 29 of the Management Act;

(d) a notice of any discovery assessment or discovery determination under paragraph 41 of Schedule 18 to the Finance Act 1998 (including any notice of an assessment by virtue of paragraph 52 of that Schedule);

(e) a notice under section 30B(1) of the Management Act amending a **[**F6729partnership return**]**;

"return" means any return required to be made under the Management Act or Schedule 18 to the Finance Act 1998 for income tax or corporation tax purposes or any voluntary amendment of such a return; and

"voluntary amendment", in relation to a return, means **[**F6730—

(a) an amendment under section 9ZA or 12ABA of the Management Act (amendment of personal, trustee or partnership return by taxpayer), or

(b) an amendment under Schedule 18 to the Finance Act 1998 other than one made in response to the giving of a relevant notice.**]]**

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Textual Amendments

F6722 Sch. 28AA para. 6(1) substituted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(4)**

F6723 Word in Sch. 28AA para. 6(2) substituted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(5)(a)(i)**

F6724 Words in Sch. 28AA para. 6(2) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 35(2)**

F6725 Words in Sch. 28AA para. 6(2) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(5)(a)(ii)**

F6726 Words in Sch. 28AA para. 6(2)(a) substituted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(5)(b)**

F6727 Sch. 28AA para. 6(4A)-(4C) inserted (with effect in accordance with Sch. 8 para. 4 of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 8 para. 1(5)**

F6728 Sch. 28AA para. 6(7): in definition of "relevant notice", para. (a) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 29 para. 35(3)(a)**

F6729 Sch. 28AA para. 6(7): in definition of "relevant notice", words in para. (e) substituted (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 29 para. 35(3)(b)**

F6730 Sch. 28AA para. 6(7): in definition of "voluntary amendment", paras. (a)(b) substituted for words (with effect in accordance with s. 88(3) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 29 para. 35(4)**

Modifications etc. (not altering text)

C1097 Sch. 28AA paras. 6, 7 modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 87(1)-(3)** (with s. 87(4))

Application of paragraph 6 in relation to transfers of trading stock etc

6A (1) Paragraph 6(2)(a) above does not affect the credits to be brought into account by the disadvantaged person in respect of—

(a) closing trading stock, or

(b) closing work in progress in a trade,

for accounting periods ending on or after the last day of the relevant accounting period of the advantaged person.

(2) For the purposes of sub-paragraph (1) above, the relevant accounting period of the advantaged person is the accounting period in which the actual provision was made or imposed.

(3) For the purposes of this paragraph "trading stock", in relation to any trade, has the same meaning as it has for the purposes of section 100 **[**[F6731]above (see subsection (2) of that section) or Chapter 12 of Part 2 of ITTOIA 2005 (see section 174 of that Act) (valuation of trading stock at discontinuance of trade)**]**.

Textual Amendments

F6731 Words in Sch. 28AA para. 6A(3) substituted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 351(2)** (with Sch. 2)

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Compensating adjustment where advantaged person is a controlled foreign company

6B (1) This paragraph applies in any case where—

(a) the actual provision is provision made or imposed in relation to a controlled foreign company,

(b) in determining for the purposes of Chapter 4 of Part 17 the amount of that company's chargeable profits for an accounting period, its profits and losses fall to be computed in accordance with paragraph 1(2) above in the case of that provision,

(c) the whole of those chargeable profits fall to be apportioned under section 747(3) to one or more companies resident in the United Kingdom, and

(d) tax is chargeable by virtue of section 747(4) in respect of the whole of those chargeable profits, as so apportioned to those companies.

(2) Where this paragraph applies, paragraph 6 above shall have effect as if the controlled foreign company were a person on whom a potential advantage in relation to United Kingdom taxation were conferred by the actual provision.

(3) In the application of paragraph 6 above by virtue of this paragraph—

(a) references to the advantaged person in sub-paragraphs (4)(a) and (b), (5)(a) and (b) and (6)(b) of that paragraph include a reference to any of the companies mentioned in sub-paragraph (1)(c) above, and

(b) references to corporation tax include a reference to tax chargeable by virtue of section 747(4).

(4) In this paragraph—

"controlled foreign company" has the same meaning as in Chapter 4 of Part 17;

"accounting period", in relation to a controlled foreign company, has the same meaning as in Chapter 4 of Part 17.

Claims under paragraph 6 where paragraph 1A applies

6C (1) Where paragraph 1A above applies in relation to any provision, this paragraph has effect in relation to that provision.

(2) A claim under paragraph 6(2) above may be made in accordance with this paragraph.

For the purposes of this Schedule a "paragraph 6C claim" is a claim under paragraph 6(2) above made in accordance with this paragraph.

(3) A paragraph 6C claim may be made by—

(a) the disadvantaged person, or

(b) the advantaged person,

but any such claim made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(4) A paragraph 6C claim may be made before or after a computation falling within paragraph 6(3)(a) above has been made.

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(5) A paragraph 6C claim must be made either—

(a) at any time before the end of the period mentioned in paragraph 6(5)(a) above, or

(b) within the period mentioned in paragraph 6(5)(b) above,

but this is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making a claim).

(6) A paragraph 6C claim is not a claim within paragraph 57 or 58 of Schedule 18 to the Finance Act 1998 (company tax returns, assessments and related matters).

Accordingly, paragraph 59 of that Schedule (application of Schedule 1A to the Management Act) has effect in relation to a paragraph 6C claim.

(7) Where—

(a) a paragraph 6C claim is made before a computation falling within paragraph 6(3)(a) above has been made,

(b) such a computation is subsequently made, and

(c) the claim is not consistent with the computation,

the affected persons shall be treated as if (instead of the claim actually made) a claim had been made that was consistent with the computation.

(8) All such adjustments shall be made (whether by discharge or repayment of tax, the making of assessments or otherwise) as are required to give effect to sub-paragraph (7) above.

(9) Sub-paragraph (8) above has effect notwithstanding any limit on the time within which any adjustment may be made.

(10) Where—

(a) a paragraph 6C claim is made,

(b) a return is subsequently made by the advantaged person on the basis mentioned in paragraph 6(3)(a) above, and

(c) a relevant notice (within the meaning of paragraph 6 above) taking account of such a determination as is mentioned in paragraph 6(4)(b) above is subsequently given to the advantaged person,

sub-paragraph (11) below applies.

(11) Where this sub-paragraph applies, any such amendment of the paragraph 6C claim as may be appropriate in consequence of the determination contained in the relevant notice may be made by—

(a) the disadvantaged person, or

(b) the advantaged person,

but any such amendment made by the advantaged person shall be taken to be made on behalf of the disadvantaged person.

(12) Any such amendment must be made within the period mentioned in paragraph 6(5)(b) above.

But that is subject to section 111(3)(b) of the Finance Act 1998 (extension of period for making amendment).

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Compensating adjustment for guarantor company etc where paragraph 1B applies

6D (1) This paragraph applies in any case where—

(a) a company ("the issuing company") has liabilities under a security issued by the company,

(b) those liabilities are to any extent the subject of a guarantee provided by a company ("the guarantor company"), and

(c) in computing the profits and losses of the issuing company for tax purposes, the amounts to be deducted in respect of interest or other amounts payable under the security fall to be reduced (whether or not to nil) under paragraph 1(2) above by virtue of paragraph 1B above.

(2) On the making of a claim in any such case, the guarantor company shall, to the extent of that reduction, be treated for all purposes of the Taxes Acts as if it (and not the issuing company)—

(a) had issued the security,

(b) owed the liabilities under it, and

(c) had paid any interest or other amounts paid under it by the issuing company,

and in computing the profits and losses of the guarantor company for those purposes amounts shall be brought into account accordingly.

This sub-paragraph is subject to the following provisions of this paragraph.

(3) Where the issuing company's liabilities under the security are the subject of two or more guarantees (whether or not provided by the same person) TD must not exceed TR, where—

TD is the total of the amounts brought into account by the guarantor companies by virtue of sub-paragraph (2) above, and

TR is the total amount of the reductions that fall within sub-paragraph (1)(c) above.

(4) In this paragraph "the loan provision" means the actual provision made or imposed between—

(a) the issuing company, and

(b) another company ("the lending company"),

which is provision in relation to the security.

(5) Where—

(a) the guarantor company makes a claim under sub-paragraph (2) above, and

(b) the lending company makes a claim under paragraph 6 above in respect of the loan provision,

sub-paragraphs (6) and (7) below apply.

(6) In determining, in a case where this sub-paragraph applies, the arm's length provision for the purposes of paragraph 6(2)(a) above in relation to the lending company's claim, additional amounts shall be brought into account as credits corresponding to the debits that fall to be brought into account by virtue of sub-paragraph (2) above in relation to the guarantor company.

(7) If, in a case where this sub-paragraph applies,—

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(a) the lending company makes its claim under paragraph 6 above before the guarantor company makes its claim under sub-paragraph (2) above, and

(b) the computation on which the lending company's claim is based does not comply with sub-paragraph (6) above,

the guarantor company's claim shall be disallowed.

(8) A claim under sub-paragraph (2) above may be made by—

(a) the guarantor company,

(b) where there are two or more guarantor companies, those companies acting together, or

(c) the issuing company,

but any claim made by the issuing company shall be taken to be made on behalf of the guarantor company or companies.

(9) Sub-paragraphs (3) to (6) of paragraph 6 above (claims and time limits) shall apply in relation to a claim under sub-paragraph (2) above made by or on behalf of any person or persons as they apply in relation to a claim under that paragraph made by the disadvantaged person, but taking references in those sub-paragraphs—

(a) to the advantaged person, as references to the issuing company, and

(b) to the disadvantaged person, as references to the guarantor company or companies.

(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (7) (construction of references to a guarantee);

(b) sub-paragraph (9) (meaning of security);

(c) sub-paragraph (10) (extended meaning of security).

(11) In this paragraph "the Taxes Acts" has the meaning given in section 118(1) of the Management Act.

Certain interest not to be regarded as chargeable under Case III of Schedule D

6E Where—

(a) interest is paid by any person under the actual provision,

(b) paragraph 1(2) above applies in relation to the actual provision,

(c) the amount of interest that would have been payable under the arm's length provision is less than the amount of interest paid under the actual provision (or there would not have been any interest payable),

(d) the person receiving the interest makes a claim under paragraph 6 above or a paragraph 6C claim,

the interest paid under the actual provision, to the extent that it exceeds the amount of interest that would have been payable under the arm's length provision, shall not be regarded as chargeable under Case III of Schedule D **[**[F6732]or Chapter 2 of Part 4 of ITTOIA 2005**]**.

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Textual Amendments

F6732 Words in Sch. 28AA para. 6E inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 351(3)** (with Sch. 2)

Adjustment of disadvantaged person's double taxation relief

7 (1) Subject to sub-paragraph (4) below, where—

(a) a claim is made for the purposes of paragraph 6 above, and

(b) the disadvantaged person is entitled, on that claim, to make a computation, or to have an adjustment made in his case, on the basis that the arm's length provision was made or imposed instead of the actual provision,

the assumptions specified in sub-paragraph (2) below shall apply, in the disadvantaged person's case, as respects any credit for foreign tax which the disadvantaged person has been or may be given in pursuance of any double taxation arrangements or under section 790(1).

(2) Those assumptions are—

(a) that the foreign tax paid or payable by the disadvantaged person does not include any amount of foreign tax which would not be or have become payable were it to be assumed for the purposes of that tax that the arm's length provision had been made or imposed instead of the actual provision; and

(b) that the amount of the relevant profits of the disadvantaged person in respect of which he is given credit for foreign tax does not include the amount (if any) by which his relevant profits are treated as reduced in accordance with paragraph 6 above.

(3) Sub-paragraph (4) below applies if—

(a) a claim is made for the purposes of paragraph 6 above;

(b) the disadvantaged person is entitled, on that claim, to make a computation, or to have an adjustment made in his case, on the basis that the arm's length provision was made or imposed instead of the actual provision;

(c) the application of that basis in the computation of the disadvantaged person's profits or losses for any chargeable period involves a reduction in the amount of any income; and

(d) that income is also income that falls to be treated as reduced in accordance with section 811(1).

(4) Where this sub-paragraph applies—

(a) the reduction mentioned in sub-paragraph (3)(c) above shall be treated as made before any reduction under section 811(1); and

(b) tax paid, in the place in which any income arises, on so much of that income as is represented by the amount of the reduction mentioned in sub-paragraph (3)(c) above shall be disregarded for the purposes of section 811(1).

(5) Where, in a case in which a claim has been made for the purposes of paragraph 6 above, any adjustment is required to be made for the purpose of giving effect to any of the preceding provisions of this paragraph—

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(a) it may be made in any case by setting the amount of the adjustment against any relief or repayment to which the disadvantaged person is entitled in pursuance of that claim; and

(b) nothing in the Tax Acts limiting the time within which any assessment is to be or may be made or amended shall prevent that adjustment from being so made.

(6) References in this paragraph to relevant profits of the disadvantaged person are references to profits arising to the disadvantaged person from the carrying on of the relevant activities.

Modifications etc. (not altering text)

C1098 Sch. 28AA paras. 6, 7 modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 87(1)-(3)** (with s. 87(4))

Balancing payments between affected persons: no charge to, or relief from, tax

7A (1) This paragraph applies where—

(a) the circumstances are as described in paragraph 6(1) above,

(b) one or more payments (the "balancing payments") are made to the advantaged person by the disadvantaged person, and

(c) the sole or main reason for making those payments is that paragraph 1(2) above applies.

(2) To the extent that the balancing payments do not in the aggregate exceed the amount of the available compensating adjustment, those payments—

(a) shall not be taken into account in computing profits or losses of either of the affected persons for the purposes of income tax or corporation tax, and

(b) shall not for any of the purposes of the Corporation Tax Acts be regarded as distributions [F6733]. . . .

(3) In this paragraph "the available compensating adjustment" means the difference between PL1 and PL2 where—

PL1 is the profits and losses of the disadvantaged person computed for tax purposes on the basis of the actual provision, and

PL2 is the profits and losses of the disadvantaged person as they fall (or would fall) to be computed for tax purposes on a claim under paragraph 6 above,

for this purpose taking PL1 or PL2 as a positive amount if it is an amount of profits and as a negative amount if it is an amount of losses.

Textual Amendments

F6733 Words in Sch. 28AA para. 7A(2)(b) repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

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Securities: election to discharge tax liability instead of making balancing payments

7B (1) This paragraph applies in any case where—

(a) both of the affected persons are companies,

(b) the circumstances are as described in paragraph 6(1) above, and

(c) the actual provision is provision in relation to a security (the "relevant security").

(2) The disadvantaged person may make an election under this paragraph in respect of the relevant security if the condition in sub-paragraph (3) below is satisfied.

(3) The condition is that—

(a) the actual provision forms part of a capital market arrangement,

(b) the capital market arrangement involves the issue of a capital market investment,

(c) the securities that represent the capital market investment are issued wholly or mainly to independent persons (see sub-paragraph (9) below), and

(d) the total value of the capital market investments made under the capital market arrangement is at least £50 million.

(4) An election under this paragraph in respect of the relevant security is an election for the disadvantaged person—

(a) to make no balancing payment within paragraph 7A above to the advantaged person in respect of the application of paragraph 1(2) above in relation to the relevant security in a chargeable period by virtue of paragraph 1A above, but

(b) instead, to undertake sole responsibility for discharging the advantaged person's liability to tax for that period so far as resulting from the application of paragraph 1(2) above in relation to the relevant security by virtue of paragraph 1A above.

(5) Where an election under this paragraph has effect in relation to an accounting period of the advantaged person, the tax mentioned in sub-paragraph (4)(b) above—

(a) shall be recoverable from the disadvantaged person as if it were an amount of corporation tax due and owing from that person, and

(b) shall not be recoverable from the advantaged person.

(6) Any election under this paragraph in respect of the relevant security—

(a) must be made by being included (whether by amendment or otherwise) in the disadvantaged person's company tax return for the chargeable period in which the relevant security is issued,

(b) has effect in relation to each of the affected persons for the chargeable period in which the relevant security is issued and all subsequent chargeable periods, and

(c) is irrevocable.

For the purposes of this sub-paragraph a security issued in a chargeable period beginning before 1st April 2004 shall be treated as if it had been issued in the chargeable period beginning on that date.

(7) An election under this paragraph by a person is of no effect if the Board give that person a notice under this sub-paragraph refusing to accept the election.

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(8) A notice under sub-paragraph (7) above may be given only after a notice of enquiry in respect of the company tax return containing the election has been given to the disadvantaged person.

(9) In this paragraph—

"capital market arrangement" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act);

"capital market investment" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraphs 2 and 3 of Schedule 2A to that Act);

"company tax return" means the return required to be delivered pursuant to a notice under paragraph 3 of Schedule 18 to the Finance Act 1998, as read with paragraph 4 of that Schedule;

"independent person" means a person—

(a) who is not the disadvantaged person, and

(b) who does not have a participatory relationship with either of the affected persons.

(10) The following provisions of paragraph 1A above also apply for the purposes of this paragraph—

(a) sub-paragraph (8) (meaning of participatory relationship);

(b) sub-paragraph (9) (meaning of security);

(c) sub-paragraph (10) (extended meaning of security).

Balancing payments by guarantor to issuer: no charge to, or relief from, tax

7C (1) This paragraph applies in any case where—

(a) the circumstances are as described in paragraph 6D(1) above,

(b) one or more payments (the "balancing payments") are made by the guarantor company to the issuing company, and

(c) the sole or main reasons for making those payments are that paragraph 1(2) above applies by virtue of paragraph 1B above or that paragraph 6D above applies.

(2) To the extent that the balancing payments made by all the guarantor companies do not in the aggregate exceed the amount TR in paragraph 6D(3) above (total reductions within paragraph 6D(1)(c) above), those payments—

(a) shall not be taken into account in computing for the purposes of corporation tax the profits or losses of the guarantor company or companies or the issuing company, and

(b) shall not for any purpose of the Corporation Tax Acts be regarded as distributions [F6734]. . . .

Textual Amendments

F6734 Words in Sch. 28AA para. 7C(2)(b) repealed (with effect in accordance with s. 38 of the repealing Act) by Finance (No. 2) Act 2005 (c. 22), **Sch. 11 Pt. 2(7)**, Note

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Guarantees: election to discharge tax liability instead of making balancing payments

7D (1) This paragraph applies where the following conditions are satisfied—

(a) both of the affected persons are companies,

(b) the circumstances are as described in paragraph 6(1) above,

(c) the actual provision falls within paragraph 1B(1) above.

(2) Sub-paragraphs (2) to (8) of paragraph 7B above apply in a case where this paragraph applies as they apply in a case where that paragraph applies, but with the modifications in sub-paragraphs (3) and (4) below.

(3) The relevant security is the security in paragraph 1B(1)(a) above.

(4) In sub-paragraph (4) (nature of the election)—

(a) for "paragraph 7A above" substitute paragraph 7C below;

(b) for "paragraph 1A", in both places, substitute paragraph 1B.

Foreign exchange gains and losses and financial instruments

8 (1) **[**F6735Subject to sub-paragraph (3)**][**F6736and sub-paragraph (4)**]** below, this Schedule shall not require the amounts brought into account in any person's case under—

[F6737(a) Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) in respect of exchange gains or losses from loan relationships (as defined in section 103(1A) and (1B) of that Act), or**]**

[F6738(b) Schedule 26 to the Finance Act 2002 (derivative contracts) in respect of exchange gains and losses (as defined in paragraph 54 of that Schedule),**]**

to be computed in that person's case on the assumption that the arm's length provision had been made or imposed instead of the actual provision.

[F6739(3) Sub-paragraph (1) above shall not affect so much of paragraph 11A of Schedule 9 to the Finance Act 1996 (loan relationships: exchange gains or losses where loan not on arm's length terms) as has effect by reference to whether profits or losses fall to be computed by virtue of this Schedule as if the whole or any part of a loan had not been made.**]**

[F6740(4) Sub-paragraph (1) above shall not affect so much of paragraph 27 of Schedule 26 to the Finance Act 2002 (derivative contracts: exchange gains or losses where derivative contract not on arm's length terms) as has effect by reference to whether profits or losses fall to be computed by virtue of this Schedule as if a company were not party to a derivative contract or as if the terms of the contract to which it is party were different.**]**

Textual Amendments

F6735 Words in Sch. 28AA para. 8(1) substituted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 21(2)(a)** (with s. 81(4)(5), Sch. 23 para. 25)

F6736 Words in Sch. 28AA para. 8(1) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 15(2)(a)** (with Sch. 28)

F6737 Sch. 28AA para. 8(1)(a) substituted (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 21(2)(b)** (with s. 81(4)(5), Sch. 23 para. 25)

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F6738 Sch. 28AA para. 8(1)(b) substituted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 15(2)(b)** (with Sch. 28)

F6739 Sch. 28AA para. 8(3) substituted for para. 8(2) (with effect in accordance with s. 79(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 23 para. 21(3)** (with s. 81(4)(5), Sch. 23 para. 25)

F6740 Sch. 28AA para. 8(4) inserted (with effect in accordance with s. 83(3) of the amending Act) by Finance Act 2002 (c. 23), **Sch. 27 para. 15(3)** (with Sch. 28)

Special rules for sales etc. of oil

9 (1) Subject to paragraph 10 below, this paragraph applies to provision made or imposed by or in relation to the terms of a sale of oil if—

(a) the oil sold is oil which has been, or is to be, extracted under rights exercisable by a company ("the producer") which (although it may be the seller) is not the buyer; and

(b) at the time of the sale not less than 20 per cent. of the producer's ordinary share capital is owned directly or indirectly by one or more of the following, that is to say, the buyer and the companies (if any) that are linked to the buyer.

(2) Where this paragraph applies to provision made or imposed by or in relation to the terms of a sale of oil, this Schedule shall have effect as respects that provision as if the buyer, the seller and (if it is not the seller) the producer were all controlled by the same person at the time of the making or imposition of that provision.

(3) For the purposes of this paragraph two companies are linked if—

(a) one is under the control of the other; or

(b) both are under the control of the same person or persons.

(4) For the purposes of this paragraph—

(a) any question whether ordinary share capital is owned directly or indirectly by a company shall be determined as for section 838;

(b) rights to extract oil shall be taken to be exercisable by a company even if they are exercisable by that company only jointly with one or more other companies; and

(c) a sale of oil shall be deemed to take place at the time of the completion of the sale or when possession of the oil passes, whichever is the earlier.

(5) In this paragraph "oil" includes any mineral oil or relative hydrocarbon, as well as natural gas.

Transactions and deemed transactions involving oil

10 This Schedule does not apply in relation to provision made or imposed by means of any transaction or deemed transaction in the case of which the price or consideration is determined in accordance with any of subsections (1) to (4) of section 493 (transactions and deemed transactions involving oil treated as made at market value).

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Special provision for companies carrying on ring fence trades

11 (1) This paragraph applies where any person ("the taxpayer") carries on as, or as part of, a trade any activities ("the ring fence trade") which, in accordance with section 492(1) **[**F6741above or section 16(1) of ITTOIA 2005**]** either—

(a) fall to be treated for any tax purposes as a separate trade, distinct from all other activities carried on by him as part of the trade; or

(b) would so fall if the taxpayer did carry on any other activities as part of that trade.

(2) F6742. . . . . .

(3) Subject to paragraph 10 above and sub-paragraph (4) below, this Schedule shall have effect as respects any provision made or imposed by the taxpayer as between the ring fence trade and any other activities carried on by him as if—

(a) that trade and those activities were carried on by two different persons;

(b) that provision were made or imposed as between those two persons by means of a transaction;

(c) a potential advantage in relation to United Kingdom taxation were conferred by that provision on each of those two persons; **[**F6743and**]**

(d) those two persons were both controlled by the same person at the time of the making or imposition of that provision; F6744. . .

(e) F6745. . . . . .

(4) This Schedule shall apply in accordance with this paragraph in relation to any provision mentioned in sub-paragraph F6746. . . (3) above only where the effect of its application in relation to that provision is either—

(a) that a larger amount (including, if there would not otherwise have been profits, an amount of more than nil) is taken for tax purposes to be the amount of the profits of the ring fence trade for any chargeable period; or

(b) that a smaller amount (including nil) is taken for tax purposes to be the amount for any chargeable period of any losses of that trade.

Textual Amendments

F6741 Words in Sch. 28AA para. 11(1) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 351(4)** (with Sch. 2)

F6742 Sch. 28AA para. 11(2) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(1)**, Note

F6743 Word at the end of Sch. 28AA para. 11(3)(c) inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(7)(a)**

F6744 Sch. 28AA para. 11(3)(e) and preceding word repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(7)(b), **Sch. 42 Pt. 2(1)**, Note

F6745 Sch. 28AA para. 11(3)(e) and preceding word repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), s. 30(7)(b), **Sch. 42 Pt. 2(1)**, Note

F6746 Words in Sch. 28AA para. 11(4) repealed (with effect in accordance with s. 37 of the repealing Act) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 2(1)**, Note

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Appeals

12 (1) In so far as the question in dispute on any appeal falling within sub-paragraph (2) below—

(a) is or involves a determination of whether this Schedule has effect as respects any provision made or imposed as between any two persons, or of how it so has effect, and

(b) is not a question that would fall to be determined by the Special Commissioners apart from this sub-paragraph,

that question shall be determined by them.

(2) The appeals falling within this sub-paragraph are—

(a) any appeal under section 31 of, or Schedule 1A to, the Management Act;

(b) any appeal under paragraph 34(3) of Schedule 18 to the Finance Act 1998 against an amendment of a company's return; and

(c) any appeal under paragraph 48 of that Schedule against a discovery assessment or a discovery determination.

(3) Sub-paragraph (4) below applies where—

(a) any such question as is mentioned in sub-paragraph (1) above falls to be determined by the Special Commissioners for the purposes of any proceedings before them; and

(b) that question relates to any provision made or imposed as between two persons **[**F6747each of whom is within the charge to income tax or corporation tax in respect of profits arising from the relevant activities**]**.

(4) Where this sub-paragraph applies—

(a) each of the persons as between whom the actual provision was made or imposed shall be entitled to appear and be heard by the Special Commissioners, or to make representations to them in writing;

(b) the Special Commissioners shall determine that question separately from any other questions in those proceedings; and

(c) their determination on that question shall have effect as if made in an appeal to which each of those persons was a party.

(5) In this paragraph—

"discovery assessment" means a discovery assessment under paragraph 41 of Schedule 18 to the Finance Act 1998 (including one by virtue of paragraph 52 of that Schedule); and

"discovery determination" means a discovery determination under paragraph 41 of that Schedule.

Textual Amendments

F6747 Words in Sch. 28AA para. 12(3)(b) substituted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 30(8)**

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Saving for the provisions relating to capital allowances and capital gains

1 **[**F6748(1)**]** Nothing in this Schedule shall be construed as affecting—

(a) the computation of the amount of any capital allowance or balancing charge made under **[**F6749the Capital Allowances Act**]**; or

(b) the computation in accordance with the 1992 Act of the amount of any chargeable gain or allowable loss;

and nothing in this Schedule shall require the profits or losses of any person to be computed for tax purposes as if, in his case, instead of income or losses falling to be brought into account in connection with the taxation of income, there were gains or losses falling to be brought into account in accordance with the 1992 Act.

[F6750(2) Nothing in sub-paragraph (1) above applies to paragraph 6 above.**]**

Textual Amendments

F6748 Sch. 28AA para. 13 renumbered as para. 13(1) (with effect in accordance with s. 37 of the amending Act) by virtue of Finance Act 2004 (c. 12), **s. 32(4)**

F6749 Words in Sch. 28AA para. 13(a) substituted (with effect in accordance with s. 579 of the amending Act) by Capital Allowances Act 2001 (c. 2), **Sch. 2 para. 68**

F6750 Sch. 28AA para. 13(2) added (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 32(4)**

General interpretation etc.

14 (1) In this Schedule—

"the actual provision" and "the affected persons" shall be construed in accordance with paragraph 1(1) above;

"the arm"s length provision' shall be construed in accordance with paragraph 1(2) and (3) above;

"double taxation arrangements" means arrangements having effect by virtue of section 788;

"foreign tax" means any tax under the law of a territory outside the United Kingdom or any amount which falls for the purposes of any double taxation arrangements to be treated as if it were such tax;

"insurance company" has the same meaning as in Chapter I of Part XII;

"losses" includes amounts which are not losses but in respect of which relief may be given in accordance with any of the following enactments—

(a) **[**F6751section 75(9)**]** (excess of management expenses);

(b) section 468L(5) (allowance for interest distributions of a unit trust);

(c) Part X (loss relief and group relief);

(d) section 83 of and Schedule 8 to the M1353Finance Act 1996 or paragraph 4 of Schedule 11 to that Act (deficits on loan relationships);

[F6752"medium-sized enterprise" shall be construed in accordance with paragraph 5D above;**]**

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[F6753"non-qualifying territory" has the meaning given by paragraph 5E above;**]**

[F6754"paragraph 6C claim" has the meaning given by paragraph 6C(2) above;**]**

"profits" includes income;

[F6755"qualifying territory" has the meaning given by paragraph 5E above;**]**

"the relevant activities", in relation to a person who is one of the persons as between whom any provision is made or imposed, means such of his activities as—

(i) comprise the activities in the course of which, or with respect to which, that provision is made or imposed; and

(ii) are not activities carried on either separately from those activities or for the purposes of a different part of that person's business;

[F6756"small enterprise" shall be construed in accordance with paragraph 5D above;**]**

"transaction" and "series of transactions" shall be construed in accordance with paragraph 3 above.

(2) Without prejudice to paragraphs 9(2) and 11(3) above, references in this Schedule to a person controlling a body corporate or a partnership shall be construed in accordance with section 840.

(3) In determining for the purposes of this Schedule whether a person has an entitlement, in pursuance of any double taxation arrangements or under section 790(1), to be given credit for foreign tax, any requirement that a claim is made before such a credit is given shall be disregarded.

(4) Any adjustments required to be made by virtue of this Schedule may be made by way of discharge or repayment of tax, by the modification of any assessment or otherwise.

(5) This Schedule shall have effect as if—

(a) a unit trust scheme were a company that is a body corporate;

(b) the rights of the unit holders under such a scheme were shares in the company that the scheme is deemed to be;

(c) rights and powers of a person in the capacity of a person entitled to act for the purposes of the scheme were rights and powers of the scheme; and

(d) provision made or imposed as between any person in such a capacity and another person were made or imposed as between the scheme and that other person.

Textual Amendments

F6751 Sch. 28AA para. 14(1): words in definition of "losses" substituted (28.9.2004 with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 (Consequential Amendment of Enactments) Order 2004 (S.I. 2004/2310), art. 2, Sch. para. 40(2)

F6752 Sch. 28AA para. 14(1): definition of "medium-sized enterprise" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 31(5)**

F6753 Sch. 28AA para. 14(1): definition of "non-qualifying territory" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 31(5)**

F6754 Sch. 28AA para. 14(1): definition of "paragraph 6C claim" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 35(5)**

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F6755 Sch. 28AA para. 14(1): definition of "qualifying territory" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 31(5)**

F6756 Sch. 28AA para. 14(1): definition of "small enterprise" inserted (with effect in accordance with s. 37 of the amending Act) by Finance Act 2004 (c. 12), **s. 31(5)**

Marginal Citations

M1353 1996 c. 8.

SCHEDULE 28AB

SECTION 804ZA: PRESCRIBED SCHEMES AND ARRANGEMENTS

Introductory

1 (1) A scheme or arrangement, other than a scheme or arrangement falling within sub-paragraph (3), is a prescribed scheme or arrangement if one or more of paragraphs 2 to 6 apply to it.

(2) A scheme or arrangement falling within sub-paragraph (3) is a prescribed scheme or arrangement if one or more of paragraphs 2 to 6 would, on the assumption in sub-paragraph (4), apply to it.

(3) A scheme or arrangement falls within this sub-paragraph if its main purpose, or one of its main purposes, is to cause an amount of underlying tax allowable in respect of a dividend paid by a body corporate resident in a territory outside the United Kingdom to be taken into account in the case of a person.

(4) The assumption is that the body corporate is resident in the United Kingdom.

(5) Nothing in sub-paragraph (4) requires it to be assumed that there is any change in the place or places at which the body corporate carries on its activities.

Attribution of foreign tax

2 This paragraph applies to a scheme or arrangement if the scheme or arrangement enables a person who is party to, or concerned in, the scheme or arrangement to pay, in respect of a source of income or chargeable gain, an amount of foreign tax all or part of which is properly attributable to another source of income or chargeable gain (or to more than one such other source).

Effect of paying foreign tax

3 (1) This paragraph applies to a scheme or arrangement if, under the scheme or arrangement, sub-paragraph (2) is satisfied in relation to a person who has claimed, or is in a position to claim, for a chargeable period an allowance under any arrangements by way of credit for foreign tax ("the claimant").

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(2) This sub-paragraph is satisfied if—

(a) an amount of foreign tax is paid by the claimant, and

(b) at the time when the claimant entered into the scheme or arrangement, it could reasonably be expected that the effect of the payment of that amount of foreign tax on the foreign tax total would be to increase it by less than the amount allowable to the claimant as a credit in respect of the payment of that amount of foreign tax.

(3) The foreign tax total is the amount found by—

(a) aggregating the amounts of foreign tax paid or payable in respect of the transaction or transactions forming part of the scheme or arrangement by persons party to, or concerned in, the scheme or arrangement, and

(b) taking into account any reliefs, deductions, reductions or allowances against or in respect of any tax that arise to the persons party to, or concerned in, the scheme or arrangement (including any reliefs, deductions, reductions or allowances arising to any one or more of those persons as a consequence of the payment by the claimant of that amount of foreign tax).

Effect of claim, election or other arrangement

4 (1) This paragraph applies to a scheme or arrangement if under the scheme or arrangement—

(a) a step is taken by a person who is party to, or concerned in, the scheme or arrangement, or

(b) a step that could have been taken by such a person is not taken,

and that action or that failure to act has the effect of increasing a claim made by a person who is party to, or concerned in, the scheme or arrangement for an allowance by way of credit in accordance with this Part or of giving rise to such a claim.

(2) The steps mentioned in sub-paragraph (1) are steps that may be made—

(a) under the law of any territory, or

(b) under arrangements made in relation to any territory.

(3) The steps mentioned in sub-paragraph (1) include—

(a) claiming, or otherwise securing the benefit of, reliefs, deductions, reductions or allowances;

(b) making elections for tax purposes.

Effect attributable to scheme or arrangement

5 (1) This paragraph applies to a scheme or arrangement if, under the scheme or arrangement, sub-paragraph (2) is satisfied in relation to a person who has claimed, or is in a position to claim, for a chargeable period an allowance under any arrangements by way of credit for foreign tax.

(2) This sub-paragraph is satisfied if amount A is less than amount B.

(3) Amount A is the amount of United Kingdom taxes payable by the person in respect of income and chargeable gains arising in the chargeable period.

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(4) Amount B is the amount of United Kingdom taxes that would be payable by the person in respect of income and chargeable gains arising in the chargeable period if, in determining that amount, the transactions forming part of the scheme or arrangement were disregarded.

Tax deductible payments

6 (1) This paragraph applies to a scheme or arrangement if the scheme or arrangement includes—

(a) the making by a person ("A") of a relevant payment or payments, and

(b) the giving, in respect of that payment or payments, of consideration that satisfies the requirements of sub-paragraph (3).

(2) A payment made by A is a relevant payment if all or part of it may be brought into account in computing A's income for the purposes of United Kingdom taxes.

(3) Consideration given in respect of a payment or payments made by A satisfies the requirements of this sub-paragraph if—

(a) all or part of it consists of a payment or payments made to A or a person connected with A, and

(b) tax is chargeable in respect of the payment or payments under the law of a territory outside the United Kingdom.

(4) In this paragraph references to a payment include references to a transfer of money's worth.

(5) Section 839 applies for the purposes of this paragraph.

SCHEDULE 28B

VENTURE CAPITAL TRUSTS: MEANING OF "QUALIFYING HOLDINGS"

Modifications etc. (not altering text)

C1099 Sch. 28B applied (17.9.2004 with effect in accordance with reg. 1(2)(b) of the affecting S.I.) by The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (S.I. 2004/2199), **regs. 1(1)**, 12(1)

C1100 Sch. 28B modified (17.9.2004 with effect in accordance with reg. 1(2)(b) of the modifying S.I.) by The Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004 (S.I. 2004/2199), **regs. 1(1)**, 13(5)(6)(8)

Introductory

1 (1) This Schedule applies, where any shares in or securities of any company ("the relevant company") are at any time held by another company ("the trust company"), for determining whether and to what extent those shares or securities ("the relevant

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holding") are, for the purposes of section 842AA, to be regarded as at that time comprised in the trust company's qualifying holdings.

(2) The relevant holding shall be regarded as comprised in the trust company's qualifying holdings at any time if—

(a) all the requirements of the following provisions of this Schedule are satisfied at that time in relation to the relevant company and the relevant holding; and

(b) the relevant holding consists of shares or securities which were first issued by the relevant company to the trust company and have been held by the trust company ever since.

(3) Subject to paragraph 6(3) below, where the requirements of paragraph 6 or 7 below would be satisfied as to only part of the money raised by the issue of the relevant holding and that holding is not otherwise capable of being treated as comprising separate holdings, this Schedule shall have effect in relation to that holding as if it were two holdings consisting of—

(a) a holding from which that part of the money was raised; and

(b) a holding from which the remainder was raised;

and section 842AA shall have effect as if the value of the holding were to be apportioned accordingly between the two holdings which are deemed to exist in pursuance of this sub-paragraph.

Requirement that company must be unquoted company

2 (1) The requirement of this paragraph is that the relevant company (whether or not it is resident in the United Kingdom) must be an unquoted company.

(2) In this paragraph "unquoted company" means a company none of whose shares, stocks, debentures or other securities is marketed to the general public.

(3) For the purposes of this paragraph shares, stocks, debentures or other securities are marketed to the general public if they are—

(a) listed on a recognised stock exchange,

(b) listed on a designated exchange in a country outside the United Kingdom, or

(c) dealt in on the Unlisted Securities Market or dealt in outside the United Kingdom by such means as may be designated.

(4) In sub-paragraph (3) above "designated" means designated by an order made by the Board for the purposes of that sub-paragraph; and an order made for the purposes of paragraph (b) of that sub-paragraph may designate an exchange by name, or by reference to any class or description of exchanges, including a class or description framed by reference to any authority or approval given in a country outside the United Kingdom.

(5) Section 828(1) does not apply to an order made for the purposes of sub-paragraph (3) above.

(6) Where a company any shares in or securities of which are included in the qualifying holdings of the trust company ceases at any time while the trust company is approved as a venture capital trust to be an unquoted company, the requirements of this paragraph shall be deemed, in relation to shares or securities acquired by the trust

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company before that time, to continue to be satisfied for a period of five years after that time.

Requirements as to company's business

3 (1) The requirements of this paragraph are as follows.

(2) The relevant company must be one of the following, that is to say—

(a) a company which exists wholly for the purpose of carrying on one or more qualifying trades or which so exists apart from purposes capable of having no significant effect (other than in relation to incidental matters) on the extent of the company's activities; **[**F6757 or

(aa) the parent company of a trading group.**]**

(3) Subject to sub-paragraph (4) below, **[**F6758when the relevant holding was issued and at all times since, a qualifying company (whether or not the same such company at every such time) must**]** have been either—

(a) carrying on a qualifying trade wholly or mainly in the United Kingdom; or

(b) preparing to carry on a qualifying trade which at the time when the relevant holding was issued **[**F6759was intended to be carried**]** on wholly or mainly in the United Kingdom **[**F6760by a qualifying company**]**,

[F6761F6762. . . . . **]**

(4) The requirements of sub-paragraph (3) above shall not be capable of being satisfied by virtue of paragraph (b) of that sub-paragraph at any time after the end of the period of two years beginning with the issue of the relevant holding unless—

(a) **[**F6763the intended trade was begun to be carried on by a qualifying company**]** before the end of that period, and

(b) **[**F6764at all times since the end of that period, a qualifying company (whether or not the same such company at every such time) has**]** been carrying on a qualifying trade wholly or mainly in the United Kingdom.

(5) The requirements of that sub-paragraph shall also be incapable of being so satisfied at any time after the abandonment, within the period mentioned in sub-paragraph (4) above, of the intention in question.

[F6765(5A) In sub-paragraphs (3) and (4) above, "qualifying company" means the relevant company or any relevant qualifying subsidiary of that company.

(5B) In determining for the purposes of sub-paragraph (4)(a) above when the intended trade was begun to be carried on by a qualifying company which is a relevant qualifying subsidiary of the relevant company there shall be disregarded any carrying on of the trade by it before it became such a subsidiary of the relevant company.**]**

[F6766(6) For the purposes of this paragraph a company is the parent company of a trading group if—

(a) it has one or more subsidiaries;

(b) each of its subsidiaries is a qualifying subsidiary of the company; and

(c) the requirements of sub-paragraph (7) below are fulfilled by what would be the business of the company and its qualifying subsidiaries if all the

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activities, taken together, of the company and its qualifying subsidiaries were regarded as one business.

(7) A business fulfils the requirements of this sub-paragraph if neither the business nor a substantial part of it consists in, or in either of, the following, that is to say—

(a) activities falling within paragraph 4(2)(a) to (f) below but not within sub-paragraph (8) below; and

(b) activities carried on otherwise than in the course of a trade.

(8) The activities falling within this sub-paragraph are—

(a) the receiving of royalties or licence fees in circumstances where **[**F6767the requirement mentioned in paragraph 4(5) below is**]** satisfied in relation to the company receiving them;

(b) the letting of ships, other than **[**F6768offshore installations**]** or pleasure craft, on charter in circumstances where the requirements mentioned in paragraphs (a) to (d) of paragraph 4(7) below are satisfied in relation to the company so letting them.

(9) Activities of a company or of any of its qualifying subsidiaries shall be disregarded for the purposes of sub-paragraphs (6) to (8) above to the extent that they consist in—

(a) the holding of shares in or securities of, or the making of loans to, one or more of the company's qualifying subsidiaries; or

(b) the holding and managing of property used by the company or any of its qualifying subsidiaries for the purposes of—

(i) research and development from which it is intended that a qualifying trade to be carried on by the company or any of its qualifying subsidiaries will be derived; or

(ii) one or more qualifying trades so carried on.

(10) Activities of a qualifying subsidiary of a company shall also be disregarded for the purposes of sub-paragraphs (6) to (8) above to the extent that they consist in—

(a) the making of loans to the company; or

(b) in the case of a mainly trading subsidiary, activities carried on in pursuance of its insignificant purposes (within the meaning given by sub-paragraph (11) below).

(11) In sub-paragraph (10) above "mainly trading subsidiary" means a qualifying subsidiary which, apart from purposes ("its insignificant purposes") which are capable of having no significant effect (other than in relation to incidental matters) on the extent of its activities, exists wholly for the purpose of carrying on one or more qualifying trades.**]**

Textual Amendments

F6757 Sch. 28B para. 3(2)(aa) and preceding word substituted for para. 2(2)(b)(c) (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 2(1)**

F6758 Words in Sch. 28B para. 3(3) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 9(a)(i)**

F6759 Words in Sch. 28B para. 3(3)(b) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 9(a)(ii)(a)**

F6760 Words in Sch. 28B para. 3(3)(b) inserted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 9(a)(ii)(b)**

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F6761 Words in Sch. 28B para. 3 inserted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(3)**

F6762 Words in Sch. 28B para. 3(3) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 9(a)(iii), **Sch. 42 Pt. 2(13)**, Note 2

F6763 Words in Sch. 28B para. 3(4)(a) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 9(b)(i)**

F6764 Words in Sch. 28B para. 3(4)(b) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 9(b)(ii)**

F6765 Sch. 28B para. 3(5A)(5B) inserted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 9(c)**

F6766 Sch. 28B para. 3(6)-(11) inserted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 2(2)**

F6767 Words in Sch. 28B para. 3(8)(a) substituted (with effect in accordance with Sch. 16 para. 1(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 16 para. 1(1)**

F6768 Words in Sch. 28B para. 3(8)(b) substituted (with effect in accordance with Sch. 27 para. 5(5) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 5(2)** (with Sch. 27 para. 5(6))

Meaning of "qualifying trade"

4 (1) For the purposes of this Schedule—

(a) a trade is a qualifying trade if it is a trade complying with this paragraph; and

(b) the carrying on of any activities of research and development from which it is intended that there will be derived a trade that—

(i) will comply with this paragraph, and

(ii) will be carried on wholly or mainly in the United Kingdom,

shall be treated as the carrying on of a qualifying trade.

(2) Subject to sub-paragraphs (3) to (9) below, a trade complies with this paragraph if neither that trade nor a substantial part of it consists in one or more of the following activities, that is to say—

(a) dealing in land, in commodities or futures or in shares, securities or other financial instruments;

(b) dealing in goods otherwise than in the course of an ordinary trade of wholesale or retail distribution;

(c) banking, insurance, money-lending, debt-factoring, hire-purchase financing or other financial activities;

(d) leasing (including letting ships on charter or other assets on hire) or receiving royalties or licence fees;

(e) providing legal or accountancy services;

[[F6769](ea) property development;

(eb) farming or market gardening;

(ec) holding, managing or occupying woodlands, any other forestry activities or timber production;

(ed) operating or managing hotels or comparable establishments, or managing property used as an hotel or comparable establishment;

(ee) operating or managing nursing homes or residential care homes, or managing property used as a nursing home or residential care home;**]**

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(f) providing services or facilities for any such trade carried on by another person (not being a company of which the company providing the services or facilities is a subsidiary) as—

(i) consists, to a substantial extent, in activities within any of paragraphs (a) to **[**F6770(ee)**]** above; and

(ii) is a trade in which a controlling interest is held by a person who also has a controlling interest in the trade carried on by the company providing the services or facilities.

(3) For the purposes of sub-paragraph (2)(b) above—

(a) a trade of wholesale distribution is one in which the goods are offered for sale and sold to persons for resale by them, or for processing and resale by them, to members of the general public for their use or consumption;

(b) a trade of retail distribution is one in which the goods are offered for sale and sold to members of the general public for their use or consumption; and

(c) a trade is not an ordinary trade of wholesale or retail distribution if—

(i) it consists, to a substantial extent, in dealing in goods of a kind which are collected or held as an investment, or in that activity and any other activity of a kind falling within sub-paragraph (2)(a) to (f) above, taken together; and

(ii) a substantial proportion of those goods are held by the company for a period which is significantly longer than the period for which a vendor would reasonably be expected to hold them while endeavouring to dispose of them at their market value.

[F6771(3A) For the purposes of this Schedule the activities of a person shall not be taken to fall within paragraph (ed) or (ee) of sub-paragraph (2) above except where that person has an estate or interest in, or is in occupation of, the hotels or comparable establishments or, as the case may be, the nursing homes or residential care homes.**]**

(4) In determining for the purposes of this paragraph whether a trade carried on by any person is an ordinary trade of wholesale or retail distribution, regard shall be had to the extent to which it has the following features, that is to say—

(a) the goods are bought by that person in quantities larger than those in which he sells them;

(b) the goods are bought and sold by that person in different markets;

(c) that person employs staff and incurs expenses in the trade in addition to the cost of the goods and, in the case of a trade carried on by a company, to any remuneration paid to any person connected with it;

(d) there are purchases or sales from or to persons who are connected with that person;

(e) purchases are matched with forward sales or vice versa;

(f) the goods are held by that person for longer than is normal for goods of the kind in question;

(g) the trade is carried on otherwise than at a place or places commonly used for wholesale or retail trade;

(h) that person does not take physical possession of the goods;

and for the purposes of this sub-paragraph the features specified in paragraphs (a) to (c) above shall be regarded as indications that the trade is such an ordinary trade and those in paragraphs (d) to (h) above shall be regarded as indications of the contrary.

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[F6772(5) A trade shall not be treated as failing to comply with this paragraph by reason only that it consists to a substantial extent in the receiving of royalties or licence fees if the royalties and licence fees (or all but for a part that is not a substantial part in terms of value) are attributable to the exploitation of relevant intangible assets.

(6) For this purpose an intangible asset is a "relevant intangible asset" if the whole or greater part (in terms of value) of it has been created—

(a) by the company carrying on the trade, or

(b) by a company which at all times during which it created the intangible asset was—

(i) the parent company of the company carrying on the trade, or

(ii) a qualifying subsidiary of that parent company.

(6A) In the case of a relevant asset that is intellectual property, references in sub-paragraph (6) above to the creation of the asset by a company are to its creation in circumstances in which the right to exploit it vests in the company (whether alone or jointly with others).

(6B) For the purposes of sub-paragraphs (5) to (6A) above "intangible asset" means any asset which falls to be treated as an intangible asset in accordance with **[**F6773generally accepted accounting practice**]**.

F6774 . . . . . .

(6C) For the purposes of sub-paragraph (6) above

(a) "parent company" means a company that—

(i) has one or more 51% subsidiaries, but

(ii) is not itself a 51% subsidiary of another company; and

(b) paragraph 10 below (meaning of "qualifying subsidiary") shall apply as if the references in that paragraph to the relevant company were references to the parent company referred to in sub-paragraph (6)(b) above.

(6D) For the purposes of sub-paragraph (6A) above "intellectual property" means—

(a) any patent, trade mark, registered design, copyright, design right, performer's right or plant breeder's right; and

(b) any rights under the law of a country or territory outside the United Kingdom which correspond or are similar to those falling within paragraph (a) above.**]**

(7) A trade shall not be treated as failing to comply with this paragraph by reason only of its consisting in letting ships, other than **[**F6775offshore installations**]** or pleasure craft, on charter if—

(a) every ship let on charter by the company carrying on the trade is beneficially owned by the company;

(b) every ship beneficially owned by the company is registered in the United Kingdom;

(c) the company is solely responsible for arranging the marketing of the services of its ships; and

(d) the conditions mentioned in sub-paragraph (8) below are satisfied in relation to every letting of a ship on charter by the company;

but where any of the requirements mentioned in paragraphs (a) to (d) above are not satisfied in relation to any lettings, the trade shall not thereby be treated as failing to comply with this paragraph if those lettings and any other activity of a kind falling

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within sub-paragraph **[**F6776(2)(a) to (f)**]** above do not, when taken together, amount to a substantial part of the trade.

(8) The conditions are that—

(a) the letting is for a period not exceeding 12 months and no provision is made at any time (whether in the charterparty or otherwise) for extending it beyond that period otherwise than at the option of the charterer;

(b) during the period of the letting there is no provision in force (whether by virtue of being contained in the charterparty or otherwise) for the grant of a new letting to end, otherwise than at the option of the charterer, more than 12 months after that provision is made;

(c) the letting is by way of a bargain made at arm's length between the company and a person who is not connected with it;

(d) under the terms of the charter the company is responsible as principal—

(i) for taking, throughout the period of the charter, management decisions in relation to the ship, other than those of a kind generally regarded by persons engaged in trade of the kind in question as matters of husbandry; and

(ii) for defraying all expenses in connection with the ship throughout that period, or substantially all such expenses, other than those directly incidental to a particular voyage or to the employment of the ship during that period;

and

(e) no arrangements exist by virtue of which a person other than the company may be appointed to be responsible for the matters mentioned in paragraph (d) above on behalf of the company;

but this sub-paragraph shall have effect, in relation to any letting between one company and another where one of those companies is the relevant company and the other is a qualifying subsidiary of that company, or where both companies are qualifying subsidiaries of the relevant company, as if paragraph (c) were omitted.

(9) A trade shall not comply with this paragraph unless it is conducted on a commercial basis and with a view to the realisation of profits.

Textual Amendments

F6769 Sch. 28B para. 4(2)(ea)-(ee) inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 3(1)**

F6770 Words in Sch. 28B para. 4(2)(f) substituted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 3(2)**

F6771 Sch. 28B para. 4(3A) inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 3(3)**

F6772 Sch. 28B para. 4(5)-(6D) substituted for para. 4(5)(6) (with effect in accordance with Sch. 18 para. 5(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 5(1)**

F6773 Words in Sch. 28B para. 4(6B) substituted (24.7.2002) by Finance Act 2002 (c. 23), **s. 103(4)(a)**

F6774 Words in Sch. 28B para. 4(6B) repealed (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 40 Pt. 3(16)**

F6775 Words in Sch. 28B para. 4(7) substituted (with effect in accordance with Sch. 27 para. 5(5) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 27 para. 5(3)** (with Sch. 27 para. 5(6))

F6776 Words in Sch. 28B para. 4(7) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 3**

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Provisions supplemental to paragraph 4

5 (1) In paragraph 4 above—

"film" means an original master negative of a film, an original master film disc or an original master film tape;

[F6777"nursing home" means any establishment which exists wholly or mainly for the provision of nursing care for persons suffering from sickness, injury or infirmity or for women who are pregnant or have given birth to children;

F6778. . . . . .

"pleasure craft" means any ship of a kind primarily used for sport or recreation;

[F6779"property development" means the development of land—

(a) by a company which has, or at any time has had, an interest in the land, and

(b) with the sole or main object of realising a gain from the disposal of an interest in the land when it is developed;**]**

[F6780"research and development" has the meaning given by section 837A;**]**

[F6781"residential care home" means any establishment which exists wholly or mainly for the provision of residential accommodation, together with board and personal care, for persons in need of personal care by reason of old age, mental or physical disabilities, past or present dependence on alcohol or drugs or any past illnesses or past or present mental disorders;**]** and

"sound recording", in relation to a film, means its sound track, original master audio disc or original master audio tape.

(2) For the purposes of paragraph 4 above, in the case of a trade carried on by a company, a person has a controlling interest in that trade if—

(a) he controls the company;

(b) the company is a close company and he or an associate of his, being a director of the company, either—

(i) is the beneficial owner of more than 30 per cent. of the ordinary share capital of the company, or

(ii) is able, directly or through the medium of other companies or by any other indirect means, to control more than 30 per cent. of that share capital;

or

(c) not less than half of the trade could, in accordance with section 344(2), be regarded as belonging to him for the purposes of section 343;

and, in any other case, a person has a controlling interest in a trade if he is entitled to not less than half of the assets used for, or of the income arising from, the trade.

(3) For the purposes of sub-paragraph (2) above there shall be attributed to any person any rights or powers of any other person who is an associate of his.

(4) References in paragraph 4 above or this paragraph to a trade, except the references in paragraph 4(2)(f) to the trade for which services or facilities are provided, shall be construed without reference to so much of the definition of trade in section 832(1)

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as relates to adventures or concerns in the nature of trade; and those references in paragraph 4(2)(f) above to a trade shall have effect, in relation to cases in which what is carried on is carried on by a person other than a company, as including references to any business, profession or vocation.

(5) In this paragraph—

"associate" has the meaning given in subsections (3) and (4) of section 417, except that in those subsections, as applied for the purposes of this paragraph, "relative" shall not include a brother or sister; and

"director" shall be construed in accordance with subsection (5) of that section;

[F6782"interest in land" means (subject to sub-paragraph (6) below)—

(a) any estate, interest or right in or over land, including any right affecting the use or disposition of land; or

(b) any right to obtain such an estate, interest or right from another which is conditional on the other's ability to grant the estate, interest or right.

[F6783(6) References in paragraph 4 above, in relation to an hotel, to a comparable establishment are references to a guest house, hostel or other establishment the main purpose of maintaining which is the provision of facilities for overnight accommodation (whether with or without catering services).

(7) References in this paragraph to an interest in land do not include references to—

(a) the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of mortgage, an agreement for a mortgage or a charge of any kind over land; or

(b) in the case of land in Scotland, the interest of a creditor in a charge or security of any kind over land.**]]]**

Textual Amendments

F6777 Sch. 28B para. 5(1): definition of "nursing home" inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(1)**

F6778 Sch. 28B para. 5(1): definition of "oil rig" repealed (with effect in accordance with Sch. 27 para. 5(5) of the repealing Act) by Finance Act 2004 (c. 12), Sch. 27 para. 5(4), **Sch. 42 Pt. 2(19)**, Note 2 (with Sch. 27 para. 5(6))

F6779 Sch. 28B para. 5(1): definition of "property development" inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(2)**

F6780 Sch. 28B para. 5(1): definition of "research and development" substituted (with effect in accordance with Sch. 18 para. 6(2) of the amending Act) by Finance Act 2000 (c. 17), **Sch. 18 para. 6(1)** (with Sch. 18 para. 6(3))

F6781 Sch. 28B para. 5(1): definition of "residential care home" inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(3)**

F6782 Sch. 28B para. 5(5): definition of "interest in land" inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(4)**

F6783 Sch. 28B para. 5(6)(7) inserted (with effect in accordance with Sch. 12 para. 5(2)(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 12 para. 4(5)**

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Meaning of "relevant qualifying subsidiary"

5A (1) For the purposes of this Schedule, a company ("the subsidiary") is a relevant qualifying subsidiary of the relevant company at any time when it falls within sub-paragraph (2) below.

(2) The subsidiary falls within this sub-paragraph if—

(a) the relevant company possesses not less than 90 per cent. of the issued share capital of, and not less than 90 per cent. of the voting power in, the subsidiary;

(b) the relevant company would—

(i) in the event of a winding up of the subsidiary, or

(ii) in any other circumstances,

be beneficially entitled to receive not less than 90 per cent. of the assets of the subsidiary which would then be available for distribution to the equity holders of the subsidiary;

(c) the relevant company is beneficially entitled to not less than 90 per cent. of any profits of the subsidiary which are available for distribution to the equity holders of the subsidiary;

(d) no person other than the relevant company has control of the subsidiary within the meaning of section 840; and

(e) no arrangements are in existence by virtue of which any of the conditions in paragraphs (a) to (d) above would cease to be met.

(3) Sub-paragraphs (4) to (4C) and (5) of paragraph 10 below apply in relation to sub-paragraph (2) of this paragraph as they apply in relation to sub-paragraph (3) of that paragraph, but with the following modification.

(4) That modification is that sub-paragraph (5) of that paragraph is to be read as if the words "or (as the case may be) by another subsidiary of that company" were omitted.

(5) For the purposes of this paragraph—

(a) the persons who are equity holders of the subsidiary, and

(b) the percentage of the assets of the subsidiary to which an equity holder would be entitled,

shall be determined in accordance with paragraphs 1 and 3 of Schedule 18.

(6) But in making that determination—

(a) references in paragraph 3 of that Schedule to the first company are to be read as references to an equity holder, and

(b) references in that paragraph to a winding up are to be read as including references to any other circumstances in which assets of the subsidiary are available for distribution to its equity holders.

Requirements as to the money raised by the investment in question

6 **[**[F6784](1) The requirements of this paragraph are that either—

(a) at least 80% of the money raised by the issue of the relevant holding must—

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(i) have been employed wholly for the purposes of the trade by reference to which the requirements of paragraph 3(3) above are satisfied; or

(ii) be money which **[**F6785is intended to be employed**]** wholly for the purposes of that trade; or

(b) all of the money so raised must have been employed as mentioned in paragraph (a)(i) above.

(2) For the purposes of this Schedule—

(a) the requirements of sub-paragraph (1) above shall not be capable of being satisfied by virtue of paragraph (a)(ii) of that sub-paragraph at any time after 12 months have expired from the trading time, and

(b) the requirements of that sub-paragraph shall not be capable of being satisfied by virtue of paragraph (a)(i) of that sub-paragraph at any time after 24 months have expired from the trading time.

(2AA) In sub-paragraph (2) above, "the trading time" means whichever is applicable of the following—

(a) in a case where the requirements of sub-paragraph (3) of paragraph 3 above were satisfied in relation to the time when the relevant holding was issued by virtue of paragraph (a) of that sub-paragraph, that time; and

(b) in a case where they were satisfied in relation to that time by virtue of paragraph (b) of that sub-paragraph, the time when **[**F6786the condition in paragraph 3(4)(a) above was satisfied**]**.**]**

[F6787**[**F6788(2AB) The requirements of this paragraph are not satisfied if either of the following, namely—

(a) the trade by reference to which the requirements of paragraph 3(3) above are satisfied, and

(b) any preparations for that trade falling within paragraph 3(3)(b) above,

are carried on, at any time after the issue of the relevant holding, by a person other than the relevant company or a relevant qualifying subsidiary of that company.

(2AC) Sub-paragraph (2AD) below applies where preparations mentioned in sub-paragraph (2AB)(b) above are carried on by the relevant company or a relevant qualifying subsidiary of that company at any time after the issue of the relevant holding.

(2AD) Where this sub-paragraph applies, the requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied by reason only of the carrying on of the trade mentioned in sub-paragraph (2AB)(a) above by a person other than—

(a) the relevant company, or

(b) a qualifying subsidiary of that company,

at any time after the issue of the relevant holding but before the relevant company or any relevant qualifying subsidiary of that company carries on that trade.

(2AE) The requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied by reason only of the carrying on of the trade mentioned in sub-paragraph (2AB)(a) above—

(a) by the partners in a partnership of which the relevant company, or a relevant qualifying subsidiary of that company, is a member, or

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(b) by the parties to a joint venture to which the relevant company, or a relevant qualifying subsidiary of that company, is a party.

(2AF) The requirements of this paragraph are not to be regarded, by virtue of sub-paragraph (2AB) above, as failing to be satisfied if—

(a) by reason only of anything done as a consequence of the relevant company or any other company being in administration or receivership, or

(b) by reason only of the relevant company or any other company being wound up or dissolved without winding up,

the trade mentioned in sub-paragraph (2AB)(a) above ceases to be carried on by the relevant company or a relevant qualifying subsidiary of that company and is subsequently carried on by a person who has not been connected, at any time after the date which is one year before the issue of the relevant holding, with the relevant company.

(2AG) Sub-paragraph (2AF) above applies only if (as the case may be)—

(a) the entry into administration or receivership and everything done as a consequence of the company concerned being in administration or receivership, or

(b) the winding up or dissolution,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.

(2AH) Sub-paragraph (2) of paragraph 11A below applies for the purposes of sub-paragraphs (2AF) and (2AG) above as it applies for the purpose of that paragraph.**]]**

(3) For the purposes of this paragraph money shall not be treated as employed otherwise than wholly for the purposes of a trade if the only amount employed for other purposes is an amount which is not a significant amount; and nothing in paragraph 1(3) above shall require any money whose use is disregarded by virtue of this sub-paragraph to be treated as raised by a different holding.

(4) References in this paragraph to employing money for the purposes of a trade shall include references to employing it for the purpose of preparing for the carrying on of the trade.

[F6789(5) F6790. . . . . .**]**

Textual Amendments

F6784 Sch. 28B para. 6(1)(2)(2AA) substituted for para. 6(1)(2) (with effect in accordance with Sch. 16 para. 2(2) of the amending Act) by Finance Act 2001 (c. 9), **Sch. 16 para. 2(1)**

F6785 Words in Sch. 28B para. 6(1)(a)(ii) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 11(a)**

F6786 Words in Sch. 28B para. 6(2AA)(b) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 11(b)**

F6787 Sch. 28B para. 6(2A)-(2C) inserted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 4**

F6788 Sch. 28B para. 6(2AB)-(2AH) substituted for para. 6(2A)-(2C)(with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 11(c)**

F6789 Sch. 28B para. 6(5) inserted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(4)**

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F6790 Sch. 28B para. 6(5) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 11(d), **Sch. 42 Pt. 2(13)**, Note 2

Modifications etc. (not altering text)

C1101 Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), **regs. 7-9**, 11

Requirement imposing a maximum on qualifying investments in the relevant company

7 (1) The requirement of this paragraph is that the relevant holding did not, when it was issued, represent an investment in excess of the maximum qualifying investment for the relevant period.

(2) Subject to sub-paragraph (4) below, the maximum qualifying investment for any period is exceeded to the extent that the aggregate amount of money raised in that period by the issue to the trust company during that period of shares in or securities of the relevant company exceeds £1 million.

(3) Any question for the purposes of this paragraph as to whether any shares in or securities of the relevant company which are for the time being held by the trust company represent an investment in excess of the maximum qualifying investment for any period shall be determined on the assumption, in relation to disposals by the trust company, that, as between shares or securities of the same description, those representing the whole or any part of the excess are disposed of before those which do not.

(4) Where—

(a) at the time of the issue of the relevant holding the relevant company or any of its qualifying subsidiaries was a member of a partnership or a party to a joint venture,

(b) the trade by virtue of which the requirements of paragraph 3(3) above are satisfied was at that time being carried on, or to be carried on, by those partners in partnership or by the parties to the joint venture as such, and

(c) the other partners or parties to the joint venture include at least one other company,

this paragraph shall have effect in relation to the relevant company as if the sum of money for the time being specified in sub-paragraph (2) above were to be divided by the number of companies (including the relevant company) which, at the time when the relevant holding was issued, were members of the partnership or, as the case may be, parties to the joint venture.

(5) For the purposes of this paragraph the relevant period is the period beginning with whichever is the earlier of—

(a) the time six months before the issue of the relevant holding; and

(b) the beginning of the year of assessment in which the issue of that holding took place.

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Modifications etc. (not altering text)

C1102 Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), **regs. 7-9**, 11

Requirement as to the assets of the relevant company

8 (1) The requirement of this paragraph is that the value of the relevant assets—

(a) did not exceed **[**F6791£15 million**]** immediately before the issue of the relevant holding; and

(b) did not exceed **[**F6791£16 million**]** immediately afterwards.

(2) Subject to sub-paragraph (3) below, the reference in sub-paragraph (1) above to the value of the relevant assets is a reference—

(a) in relation to a time when the relevant company did not have any qualifying subsidiaries, to the value of the gross assets of that company at that time; and

(b) in relation to any other time, to the aggregate value at that time of the gross assets of all the companies in the relevant company's group.

(3) For the purposes of this paragraph assets of any member of the relevant company's group that consist in rights against, or in shares in or securities of, another member of the group shall be disregarded.

(4) In this paragraph references, in relation to any time, to the relevant company's group are references to the relevant company and its qualifying subsidiaries at that time.

Textual Amendments

F6791 Words in Sch. 28B para. 8(1) substituted (with effect in accordance with s. 73(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 73(5)**

Modifications etc. (not altering text)

C1103 Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), **regs. 7-9**, 11

Requirements as to the subsidiaries etc. of the relevant company

9 (1) The requirements of this paragraph are that F6792. . . the relevant company must not be—

(a) a company which controls (whether on its own or together with any person connected with it) any company that is not a qualifying subsidiary of the relevant company; or

(b) a company which is under the control of another company (or of another company and a person connected with the other company);

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and arrangements must not be in existence by virtue of which the relevant company could fall within paragraph (a) or (b) above.

(2) F6793 . . . . . .

Textual Amendments

F6792 Words in Sch. 28B para. 9(1) repealed (retrospectively) by Finance Act 1996 (c. 8), s. 161(1)(2)(a), **Sch. 41 Pt. 5(22)**, Note

F6793 Sch. 28B para. 9(2) repealed (retrospectively) by Finance Act 1996 (c. 8), s. 161(1)(2)(b), **Sch. 41 Pt. 5(22)**, Note

Modifications etc. (not altering text)

C1104 Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), **regs. 7-9**, 11

Meaning of "qualifying subsidiary"

10 (1) Subject to the following provisions of this paragraph, a company is a qualifying subsidiary of the relevant company for the purposes of this Schedule if—

(a) the company in question ("the subsidiary"), and

(b) where the relevant company has more than one subsidiary, every other subsidiary of the relevant company,

is a company falling within **[**F6794sub-paragraph**]** (3) below.

(2) F6795 . . . . . .

(3) The subsidiary falls within this sub-paragraph if—

(a) F6796 . . . . . .

(b) F6796 . . . . . .

(c) F6796 . . . . . .

[F6797(ca) the subsidiary is a 51 per cent. subsidiary of the relevant company;**]**

(d) no person other than the relevant company or another of its subsidiaries has control of the subsidiary within the meaning of section 840; and

(e) no arrangements are in existence by virtue of which **[**F6798either of the conditions in paragraphs (ca) and (d) above would cease to be met**]**.

(4) The subsidiary shall not be regarded, at a time when it **[**F6799or any other company**]** is being wound up, as having ceased on that account to be a company falling within **[**F6800sub-paragraph**]** (3) above if F6801 . . . —

(a) F6802 . . . it would fall within **[**F6803that sub-paragraph**]** apart from the winding up; and

(b) F6804 . . . the winding up is for bona fide commercial reasons **[**F6805and is not**]** part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

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[F6806(4A) Sub-paragraph (4B) below applies at a time when the subsidiary or any other company is in administration or receivership.

(4B) The subsidiary shall not be regarded, by reason only of anything done as a consequence of the company concerned being in administration or receivership, as having ceased to be a company falling within sub-paragraph (3) above if—

(a) the entry into administration or receivership, and

(b) everything done as a consequence of the company concerned being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose of which or one of the main purposes of which is the avoidance of tax.

(4C) Sub-paragraph (2) of paragraph 11A below applies for the purposes of sub-paragraphs (4A) and (4B) above as it applies for the purpose of that paragraph.**]**

(5) The subsidiary shall not be regarded, at any time when arrangements are in existence for the disposal by the relevant company, or (as the case may be) by another subsidiary of that company, of all its interest in the subsidiary in question, as having ceased on that account to be a company falling within **[**F6800sub-paragraph**]** (3) above if F6807. . . the disposal is to be for bona fide commercial reasons **[**F6808and is not to be**]** part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

(6) F6809. . . . . .

Textual Amendments

F6794 Words in Sch. 28B para. 10(1) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 5(1)**

F6795 Sch. 28B para. 10(2) repealed (with effect in accordance with Sch. 9 para. 6 of the repealing Act) by Finance Act 1997 (c. 16), Sch. 9 para. 5(2), **Sch. 18 Pt. 6(9)**, Note

F6796 Sch. 28B para. 10(3)(a)-(c) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 12(a), **Sch. 42 Pt. 2(13)**, Note 2

F6797 Sch. 28B para. 10(3)(ca) inserted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 12(b)**

F6798 Words in Sch. 28B para. 10(3)(e) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 12(c)**

F6799 Words in Sch. 28B para. 10(4) inserted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 12(d)(i)**

F6800 Words in Sch. 28B para. 10(4)(5) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 5(3)**

F6801 Words in Sch. 28B para. 10(4) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 12(d)(ii), **Sch. 42 Pt. 2(13)**, Note 2

F6802 Word in Sch. 28B para. 10(4)(a) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 12(d)(iii), **Sch. 42 Pt. 2(13)**, Note 2

F6803 Words in Sch. 28B para. 10(4)(a) substituted (with effect in accordance with Sch. 9 para. 6 of the amending Act) by Finance Act 1997 (c. 16), **Sch. 9 para. 5(4)**

F6804 Word in Sch. 28B para. 10(4)(b) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 12(d)(iv), **Sch. 42 Pt. 2(13)**, Note 2

F6805 Words in Sch. 28B para. 10(4)(b) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 12(d)(v)**

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F6806 Sch. 28B para. 10(4A)-(4C) inserted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 12(e)**

F6807 Words in Sch. 28B para. 10(5) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 12(f)(i), **Sch. 42 Pt. 2(13)**, Note 2

F6808 Words in Sch. 28B para. 10(5) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 12(f)(ii)**

F6809 Sch. 28B para. 10(6) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 12(g), **Sch. 42 Pt. 2(13)**, Note 2

Requirement as to property managing subsidiaries

10ZA (1) The requirement of this paragraph is that the relevant company must not have a property managing subsidiary which is not a relevant qualifying subsidiary of the relevant company.

(2) "Property managing subsidiary" means a qualifying subsidiary of the relevant company whose business consists wholly or mainly in the holding or managing of land or any property deriving its value from land.

(3) In sub-paragraph (2) above, "land" and "property deriving its value from land" have the same meaning as in section 776.

Requirement that securities should not relate to a guaranteed loan

10A (1) The requirement of this paragraph is that there are no securities relating to a guaranteed loan in the relevant holding.

(2) For the purposes of this paragraph a security relates to a guaranteed loan if (and only if) there are arrangements for the trust company to be or become entitled, in the event of a failure by any person to comply with—

(a) the terms of the loan to which the security relates, or

(b) the terms of the security,

to receive anything (whether directly or indirectly) from a third party.

(3) For the purposes of sub-paragraph (2) above it shall be immaterial whether the arrangements apply in all cases of a failure to comply or only in certain such cases.

(4) For the purposes of this paragraph "third party" means any person except—

(a) the relevant company; and

(b) if the relevant company is the parent company of a trading group for the purposes of paragraph 3 above, the subsidiaries of the relevant company.

Requirement that a proportion of the holding in each company must be eligible shares

10B (1) The requirement of this paragraph is that eligible shares represent at least 10 per cent. by value of the totality of the shares in or securities of the relevant company (including the relevant holding) which are held by the trust company.

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(2) For the purposes of this paragraph the value at any time of any shares in or securities of a company shall be taken (subject to sub-paragraph (4) below) to be their value immediately after—

(a) any relevant event occurring at that time; or

(b) where no relevant event occurs at that time, the last relevant event to occur before that time.

(3) In sub-paragraph (2) above "relevant event", in relation to any shares in or securities of the relevant company, means—

(a) the acquisition by the trust company of those shares or securities;

(b) the acquisition by the trust company of any other shares in or securities of the relevant company which—

(i) are of the same description as those shares or securities, and

(ii) are acquired otherwise than by virtue of being allotted to the trust company without that company's becoming liable to give any consideration;

or

(c) the making of any such payment in discharge, in whole or in part, of any obligation attached to any shares in or securities of the relevant company held by the trust company as (by discharging that obligation) increases the value of any such shares or securities.

(4) If at any time the value of any shares or securities held by the trust company is less than the amount of the consideration given by the trust company for those shares or securities, it shall be assumed for the purposes of this paragraph that the value of those shares or securities at that time is equal to the amount of that consideration.

(5) In this paragraph "eligible shares" has the same meaning as in section 842AA.

Modifications etc. (not altering text)

C1105 Sch. 28B para. 10B modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 72(5)**

C1106 Sch. 28B paras. 6-9, 10B modified (13.11.2002 with effect in accordance with reg. 1(2) of the modifying S.I.) by The Venture Capital Trust (Exchange of Shares and Securities) Regulations 2002 (S.I. 2002/2661), **regs. 7-9**, 11

Acquisitions for restructuring purposes

10C (1) This paragraph applies where—

(a) arrangements are made for a company ("the new company") to acquire all the shares ("old shares") in another company ("the old company");

(b) the acquisition provided for by the arrangements falls within sub-paragraph (2) below; and

(c) the Board have, before any exchange of shares takes place under the arrangements, given an approval notification.

(2) An acquisition of shares falls within this sub-paragraph if—

(a) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

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(b) new shares are issued in consideration of old shares only at times when there are no issued shares in the new company other than subscriber shares and new shares previously issued in consideration of old shares;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description; and

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of, and in proportion to, their holdings.

(3) For the purposes of sub-paragraph (1)(c) above an approval notification is one which, on an application by either the old company or the new company, is given to the applicant company and states that the Board are satisfied that the exchange of shares under the arrangements—

(a) will be effected for bona fide commercial reasons; and

(b) will not form part of any such scheme or arrangements as are mentioned in section 137(1) of the 1992 Act.

(4) If the requirements of paragraph 3 above were satisfied in relation to the old company and any old shares immediately before the beginning of the period for giving effect to the arrangements, then (to the extent that it would not otherwise be the case) those requirements shall be deemed to be satisfied in relation to the new company and the matching new shares at all times which—

(a) fall in that period; and

(b) do not fall after a time when (apart from the arrangements) those requirements would have ceased by virtue of—

(i) sub-paragraph (4) or (5) of that paragraph, or

(ii) any cessation of a trade by any company,

to be satisfied in relation to the old company and the matching old shares.

(5) For the purposes of paragraph 3 above the period of two years mentioned in sub-paragraph (4) of that paragraph shall be deemed, in the case of any new shares, to expire at the same time as it would have expired (or by virtue of this sub-paragraph would have been deemed to expire) in the case of the matching old shares.

(6) Subject to sub-paragraph (7) below, where—

(a) there is an exchange under the arrangements of any new shares for any old shares, and

(b) those old shares are shares in relation to which the requirements of paragraphs 6 and 8 above were (or were deemed to be) satisfied to any extent immediately before the exchange,

those requirements shall be deemed, at all times after that time, to be satisfied to the same extent in relation to the matching new shares.

(7) Where there is a time following any exchange under the arrangements of any new shares for any old shares when (apart from the arrangements) the requirements of paragraph 6 above would have ceased under—

(a) sub-paragraph (2) of that paragraph, or

(b) this sub-paragraph,

to be satisfied in relation to those old shares, those requirements shall cease at that time to be satisfied in relation to the matching new shares.

(8) For the purposes of paragraph 7 above any new shares acquired under the arrangements shall be deemed to represent an investment which—

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(a) raised the same amount of money as was raised (or, by virtue of this sub-paragraph, is deemed to have been raised) by the issue of the matching old shares, and

(b) raised that amount by an issue of shares in the new company made at the time when the issue of the matching old shares took place (or, as the case may be, is deemed to have taken place).

(9) In determining whether the requirements of paragraph 9 above are satisfied in relation to the old company or the new company at a time in the period for giving effect to the arrangements, both—

(a) the arrangements themselves, and

(b) any exchange of new shares for old shares that has already taken place under the arrangements,

shall be disregarded.

(10) For the purposes of paragraph 10B above the value of the new shares, both immediately after the time of their acquisition and immediately after the time of any subsequent relevant event occurring by virtue of the arrangements, shall be taken to be the same as the value, when last valued in accordance with that paragraph, of the old shares for which they are exchanged.

(11) Nothing in this paragraph shall deem any of the requirements of this Schedule to be satisfied in relation to any new shares unless the matching old shares were first issued to the trust company and have been held by that company from the time when they were issued until they are acquired by the new company.

(12) References in this paragraph to the period for giving effect to the arrangements are references to the period which—

(a) begins with the time when those arrangements first came into existence; and

(b) ends with the time when the new company completes its acquisition under the arrangements of all the old shares.

(13) If, at any time after the arrangements first came into existence and before the new company has acquired all the old shares, the arrangements—

(a) cease to be arrangements for the acquisition of all the old shares by the new company, or

(b) cease to be arrangements for an acquisition falling within sub-paragraph (2) above,

this paragraph shall not deem any requirement of this Schedule to be satisfied, and sub-paragraph (10) above shall not apply, in the case of any new shares at any time after the arrangements have so ceased.

(14) Subject to sub-paragraph (15) below, references in this paragraph, except in the expression "subscriber shares", to shares in a company include references to any securities of that company.

(15) For the purposes of this paragraph, a relevant security of the old company shall not be treated as a security of that company if—

(a) the arrangements do not provide for the acquisition of the security by the new company; or

(b) such treatment prevents sub-paragraph (1)(b) above from being satisfied in connection with the arrangements.

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(16) In sub-paragraph (15) above "relevant security" means an instrument which is a security for the purposes of this Schedule by reason only of section 842AA(12).

(17) For the purposes of this paragraph—

(a) old shares and new shares are of a corresponding description if, were they shares in the same company, they would be of the same description; and

(b) old shares and new shares are matching shares in relation to each other if the old shares are the shares for which those new shares are exchanged under the arrangements.

Conversion of convertible shares and securities

10D (1) This paragraph applies where—

(a) shares have been issued to the trust company by virtue of the exercise by that company of any right of conversion attached to other shares, or securities, held by that company ("the convertibles");

(b) the shares so issued are in the same company as the convertibles to which the right was attached;

(c) the convertibles to which the right was attached were first issued to the trust company and were held by that company from the time they were issued until converted; and

(d) the right was attached to the convertibles when they were first so issued and was not varied before it was exercised.

(2) Sub-paragraphs (5) to (8) of paragraph 10C above shall apply in relation to the exchange of convertibles for shares by virtue of the exercise of the right of conversion as if—

(a) that exchange were an exchange under any such arrangements as are mentioned in that paragraph of new shares for old shares; and

(b) the references in those sub-paragraphs and sub-paragraph (17)(b) of that paragraph to the arrangements were references to the provision conferring the right of conversion.

(3) For the purposes of paragraph 10B above the value of the new shares immediately after the time of their acquisition by the trust company shall be taken to be the same as the value, when last valued in accordance with that paragraph, of the convertibles for which they are exchanged.

Winding up of the relevant company

11 None of the requirements of this Schedule shall be regarded, at a time when the relevant company is being wound up, as being, on that account, a requirement that is not satisfied in relation to that company if **F6810**. . . —

(a) **F6811**. . . the requirements of this Schedule would be satisfied in relation to that company apart from the winding up; and

(b) **F6812**. . . the winding up is for bona fide commercial reasons **[**F6813and is not**]** part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

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Textual Amendments

F6810 Words in Sch. 28B para. 11 repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 14(a), **Sch. 42 Pt. 2(13)**, Note 2

F6811 Word in Sch. 28B para. 11(a) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 14(b), **Sch. 42 Pt. 2(13)**, Note 2

F6812 Word in Sch. 28B para. 11(b) repealed (with effect in accordance with Sch. 19 para. 16 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 19 para. 14(c), **Sch. 42 Pt. 2(13)**, Note 2

F6813 Words in Sch. 28B para. 11(b) substituted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 14(d)**

Company in administration or receivership

11A (1) A company which is in administration or receivership shall not be regarded as ceasing to comply with paragraph 3(2) or (3) by reason **[**F6814only**]** of anything done as a consequence of its being in administration or receivership.

(2) For this purpose—

[F6815(a) a company is "in administration" if it is in administration within the meaning of Schedule B1 to the Insolvency Act 1986, or there is in force in relation to it—

(i) an administration order under Part III of the Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom;**]** and

(b) a company is "in receivership" if there is in force in relation to it—

(i) an order for the appointment of an administrative receiver, a receiver and manager or a receiver under Chapter I or II of Part III of the M1354Insolvency Act 1986 or Part IV of the M1355Insolvency (Northern Ireland) Order 1989, or

(ii) any corresponding order under the law of a country or territory outside the United Kingdom.

(3) This paragraph applies only if—

(a) **[**F6816the entry into administration or receivership**]**, and

(b) everything done as a consequence of the company being in administration or receivership,

is for bona fide commercial reasons and is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax.

Textual Amendments

F6814 Word in Sch. 28B para. 11A(1) inserted (with effect in accordance with Sch. 19 para. 16 of the amending Act) by Finance Act 2004 (c. 12), **Sch. 19 para. 15**

F6815 Sch. 28B para. 11A(2)(a) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 19(a)** (with art. 6)

F6816 Words in Sch. 28B para. 11A(3)(a) substituted (15.9.2003) by The Enterprise Act 2002 (Insolvency) Order 2003 (S.I. 2003/2096), art. 1(1), **Sch. para. 19(b)** (with art. 6)

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Marginal Citations
M1354 1986 c. 45.
M1355 S.I. 1989/2405 (N.I. 19).

Company reorganisations etc. involving exchange of shares

11B (1) The Treasury may by regulations make provision for cases where—

(a) a holding of shares or securities that meets the requirements of this Schedule is exchanged for other shares or securities,

(b) the exchange is made for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is the avoidance of tax, and

(c) the new shares or securities do not meet some or all of the requirements of this Schedule,

providing that the new shares or securities shall be treated as meeting those requirements.

(2) The references in sub-paragraph (1) to an exchange of shares or securities include any form of company reorganisation or other arrangement which involves a holder of shares or securities in a company receiving other shares or securities—

(a) whether the original shares or securities are transferred, cancelled or retained, and

(b) whether the new shares or securities are in the same or another company.

(3) The regulations shall specify—

(a) the cases in which, and conditions subject to which, they apply,

(b) which requirements of this Schedule are to be treated as met, and

(c) the period for which those requirements are to be treated as met.

(4) The regulations may contain such administrative provisions (including provision for advance clearances) as appear to the Treasury to be necessary or expedient.

(5) The regulations may authorise the Board to give notice to any person requiring him to provide such information, specified in the notice, as they may reasonably require in order to determine whether any conditions imposed by the regulations are met.

(6) Regulations under this paragraph—

(a) may make different provision for different cases,

(b) may include such supplementary, incidental and transitional provisions as appear to the Treasury to be appropriate, and

(c) may include provision having retrospective effect.

Power to amend Schedule

12 The Treasury may by order amend this Schedule for any or all of the following purposes, that is to say—

(a) to make such modifications of paragraphs **[**F6817 3 to 5**]** above as they may consider expedient;

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(b) to substitute different sums for the sums of money for the time being specified in paragraphs 7(2) and 8(1) above.

Textual Amendments

F6817 Words in Sch. 28B para. 12(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 70(3)**

General interpretation

13 (1) **[**F6818 Subject to paragraph 10C(15) above,**]** in this Schedule—

"debenture" has the meaning given by section 744 of the M1356 Companies Act 1985; and

"securities" has the same meaning as in section 842AA;

and references in this Schedule to the issue of any securities, in relation to any security consisting in a liability in respect of an unsecured loan, shall have effect as references to the making of the loan.

[F6819 (2) For the purposes of paragraphs 5(2) and 9 above, the question whether a person controls a company shall be determined in accordance with subsections (2) to (6) of section 416 with the modification given by sub-paragraph (3) below.

(3) The modification is that, in determining whether a person controls a company, there shall be disregarded—

(a) his or any other person's possession of, or entitlement to acquire, relevant fixed-rate preference shares of the company; and

(b) his or any other person's possession of, or entitlement to acquire, rights as a loan creditor of the company.

(4) Section 839 shall apply for the purposes of this Schedule, but as if the reference in subsection (8) to section 416 were a reference to subsections (2) to (6) of section 416 with the modification given by sub-paragraph (3) above.

(5) For the purposes of sub-paragraph (3) above—

(a) relevant fixed-rate preference shares are fixed-rate preference shares that do not for the time being carry voting rights; F6820 . . .

(b) F6820 . . . . . .**]**

[F6821 (6) In this paragraph "fixed-rate preference shares" means shares which—

(a) were issued wholly for new consideration;

(b) do not carry any right either to conversion into shares or securities of any other description or to the acquisition of any additional shares or securities; and

(c) do not carry any right to dividends other than dividends which—

(i) are of a fixed amount or at a fixed rate per cent. of the nominal value of the shares, and

(ii) together with any sum paid on redemption, represent no more than a reasonable commercial return on the consideration for which the shares were issued;

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and in paragraph (a) above "new consideration" has the meaning given by section 254.**]**

Textual Amendments

F6818 Words in Sch. 28B para. 13(1) inserted (16.6.1999 with effect in accordance with s. 69(5)(a) of the amending Act) by Finance Act 1999 (c. 16), **s. 69(3)(5)(b)**

F6819 Sch. 28B para. 13(2)-(5) substituted for para. 13(2)(3) (retrospectively) by Finance Act 1996 (c. 8), **s. 161(1)(3)**

F6820 Sch. 28B para. 13(5)(b) and preceding word repealed (2.7.1997) by Finance (No. 2) Act 1997 (c. 58), s. 25(3)(8), **Sch. 8 Pt. 2(8)**, Note 3

F6821 Sch. 28B para. 13(6) inserted (2.7.1997) by Finance (No. 2) Act 1997 (c. 58), **s. 25(4)(8)**

Marginal Citations

M1356 1985 c. 6.

SCHEDULE 29

s.844

CONSEQUENTIAL AMENDMENTS

THE CAPITAL ALLOWANCES ACTS

F6822 1 and 2 . . . . . .

Textual Amendments

F6822 Sch. 29 paras. 1, 2 repealed by Capital Allowances Act 1990 (c. 1), s. 164, **Sch. 2**

TAXES MANAGEMENT ACT 1970 C.9

3 The Taxes Management Act 1970 shall have effect subject to the amendments made by paragraphs 4 to 10 below.

F6823 4 . . . . . .

Textual Amendments

F6823 Sch. 29 para. 4 repealed (with effect in accordance with s. 90 of the repealing Act) by Finance Act 1990 (c. 29), **Sch. 19 Pt. 5**, Note 2

F6824 5 . . . . . .

Textual Amendments

F6824 Sch. 29 para. 5 repealed by Copyright, Designs and Patents Act 1988 (c. 48), **Sch. 8**; S.I. 1989/816

6 **F6825** . . . . . .

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Textual Amendments

F6825 Sch. 29 para. 6 repealed (6.4.2003 with effect in accordance with s. 723(1) of the repealing Act) by Income Tax (Earnings and Pensions) Act 2003 (c. 1), **Sch. 8 Pt. 1** (with Sch. 7)

7 F6826(1) . . . . . .

(2) In subsection (2) and (3) of that section for the words "this section" there shall be substituted the words " subsection (1) above ".

F6826(3) . . . . . .

Textual Amendments

F6826 Sch. 29 para. 7(1)(3) repealed (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 148, **Sch. 14 Pt. 4**, Note 9

8 (1) In subsection (1) of section 55 (recovery of tax not postponed) the following paragraph shall be **[**F6827substituted for paragraph (g)**]**—[*for text see Taxes Management Act 1970 (c. 9), s. 55(1)(g)*].

(2) The following subsection shall be inserted in that section after subsection (6)—[*for text see Taxes Management Act 1970 (c. 9), s. 55(6A)*].

Textual Amendments

F6827 Words in Sch. 29 para. 8 substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **13**

9 The following Table shall be substituted for the Table in section 98—[*for text see Taxes Management Act 1970 (c. 9), s. 98*].

10 (1) The Taxes Management Act 1970, as amended by the Finance (No.2) Act 1987, shall have effect, after the day appointed under section 95 of the 1987 Act for the purposes of the provision in question, subject to the following amendments.

(2) In section 11(8) for "286" there shall be substituted " 419 ".

(3) In section 30(2A) F6828. . . for "87 of the Finance (No.2) Act 1987" there shall be substituted " 826 of the principal Act ".

(4) In section 87A—

(a) in subsection (1) for "243(4)" there shall be substituted " 10 ";

F6829(b) . . . . . .

(c) in subsection (4), in paragraph (a) for "85 of the Finance Act 1972" there shall be substituted " 239 of the principal Act ", and in paragraph (b) for "85" there shall be substituted " 239 "; and

(d) in subsection (5) for the words from "subsection" to "1972" there shall be substituted " section 252(5) of the principal Act ".

(5) In section 89 for "87 of the Finance (No.2) Act 1987" there shall be substituted " 826 of the principal Act ".

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(6) In section 91(2A) for "90 of the Finance (No.2) Act 1987" there shall be substituted " 10 of the principal Act ".

F6830(7) . . . . . .

(8) In section 109—

(a) in subsection (3) for "286" and "(4)" there shall be substituted " 419 " and " (3) ";

(b) in subsection (3A) for "(5)" and "286" (twice) there shall be substituted " (4) " and " 419 ".

Textual Amendments

F6828 Words in Sch. 29 para. 10(3) repealed (with effect in accordance with Sch. 27 Pt. 3(28) Note of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(28)**

F6829 Sch. 29 para. 10(4)(b) repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6830 Sch. 29 para. 10(7) repealed (with effect in accordance with Sch. 27 Pt. 3(28) Note of the repealing Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. 3(28)**

THE FRIENDLY SOCIETIES ACT (NORTHERN IRELAND) 1970 C.31 (N.I.)

F6831 11 . . . . . .

Textual Amendments

F6831 Sch. 29 para. 11 repealed (1.1.1994) by Friendly Societies Act 1992 (c. 40), s. 120(2), **Sch. 22 Pt. I** (with ss. 7(5), 93(4)); S.I. 1993/2213, art. 2(1), **Sch.6** Appendix

THE FINANCE ACT 1973 C.51

F6832 12 . . . . . .

Textual Amendments

F6832 Sch. 29 para. 12 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

FRIENDLY SOCIETIES ACT 1974 C.46

13 In section 7 of the Friendly Societies Act 1974 at the end of subsection (3) there shall be added the following—

"but nothing in this subsection shall apply with respect to—

(a) policies issued in respect of insurances made on or after 19th March 1985; or

(b) policies issued in respect of insurances made before that date which are varied on or after that date."

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THE SOCIAL SECURITY ACTS

F6833 14 . . . . . .

Textual Amendments

F6833 Sch. 29 para. 14 repealed (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 3, 7(2), **Sch.1** (with Sch. 3 paras. 2, 4)

CAPITAL GAINS TAX ACT 1979 c.14

F6834 15 . . . . . .

Textual Amendments

F6834 Sch. 29 para. 15 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6835 16 . . . . . .

Textual Amendments

F6835 Sch. 29 para. 16 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6836 17 . . . . . .

Textual Amendments

F6836 Sch. 29 para. 17 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6837 18 . . . . . .

Textual Amendments

F6837 Sch. 29 para. 18 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6838 19 . . . . . .

Textual Amendments

F6838 Sch. 29 para. 19 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

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F6839 20 . . . . . .

Textual Amendments

F6839 Sch. 29 para. 20 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6840 21 . . . . . .

Textual Amendments

F6840 Sch. 29 para. 21 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6841 22 . . . . . .

Textual Amendments

F6841 Sch. 29 para. 22 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6842 23 . . . . . .

Textual Amendments

F6842 Sch. 29 para. 23 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6843 24 . . . . . .

Textual Amendments

F6843 Sch. 29 para. 24 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6844 25 . . . . . .

Textual Amendments

F6844 Sch. 29 para. 25 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6845 26 . . . . . .

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Textual Amendments

F6845 Sch. 29 para. 26 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6846 27 . . . . . .

Textual Amendments

F6846 Sch. 29 para. 27 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

F6847 28 . . . . . .

Textual Amendments

F6847 Sch. 29 para. 28 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the amending Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 171, 201(3), Sch. 11 paras. 22, 26(2), 27)

ADMINISTRATION OF JUSTICE ACT 1985 c.61

30 In paragraph 36(3) of Schedule 2 to the Administration of Justice Act 1985 for all the words preceding "any reference" there shall be substituted the words " (3) In sections 745(3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988 ".

LAW REFORM (MISCELLANEOUS PROVISIONS) (SCOTLAND) ACT 1985 c.73

31 In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 for the heading preceding paragraph 41 there shall be substituted the following—

" Income and Corporation Taxes Act 1988;"and in paragragh 41 for "30(5)" there shall be substituted the words " (3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988 ".

TRANSLATION OF REFERENCES TO ENACTMENTS REPEALED AND RE-ENACTED

32 In the enactments specified in Column 1 of the following Table for the words set out or referred to in Column 2 there shall be substituted the words set out in the corresponding entry in Column 3.

Enactment amended	***Words to be omitted***	***Words to be substituted***
In the Provisional Collection of Taxes Act 1968 c. 2		

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Section 1(1A)(a)	343 of the Income and Corporation Taxes Act 1970	476 of the Income and Corporation Taxes Act 1988
1(1A)(b)	27 of the Finance Act 1984	479 of that Act
5(1)(c)	from "243(6)" to "1972"	8(5) of the Income and Corporation Taxes Act 1988
5(2)	from "the said" to "1972"	sections 8(5) and 822 of the 1988 Act (over-deductions from preference dividends before passing of annual Act)
In the Capital Allowances Act 1968 c.3		
[*Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*]		
In the Finance Act 1969 c. 32		
Section 58(1)(a)	204 of the Income and Corporation Taxes Act 1970	203 of the Income and Corporation Taxes Act 1988
In the Taxes Management Act 1970 c. 9		
Section 6(1)(c)	463	706
8(8)	457 or 458	683 or 684
8(9)	86 of the Finance Act 1972	231 of the principal Act
9(4)	155	114
11(6)	85(4) of the Finance Act 1972	239(4) of the principal Act
12(5)	137(4)	100(2)
15(7)(a)	from "section 196" to "1977"	sections 141, 142, 143, 145 or 154 to 165 of the principal Act
15(11)(b)	Part II of the Finance Act 1976	Part V of the principal Act
	80 to 82	34 to 36
F6848	***F6848***	***F6848***
. . .	. . .	. . .

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29(2)	*Schedule* 16*to the Finance Act* 1972	*sections* 426*to* 430*of the principal Act*
F6849	39(3)	284(4)
29(8)		F6850
30	47 or 48 (twice)	824 or 825 of the principal Act or section 47
31	all of subsection (3)	(3) The appeal shall be to the Special Commissioners if the assessment is made— (a) by the Board; or (b) under section 350, 426, 445, 740, 743(1) or 747(4)(a) of the principal Act; or (c) under section 38 of the Finance Act 1973 or section 830 of the principal Act and is not an assessment to tax under Schedule E; or if the appeal involves any question as to the application of Part XV or XVI of the principal Act.
35(2)(b)	187	148
42(3)(a)	27	278
42(3)(c)	section 218	subsection (5) of section 614
42(3)(c)	that section	section 615(3) of that Act
47B	Schedule 5 to the Finance Act 1983	Chapter III of Part VII of the principal Act
47B	paragraph 5A(5) of that Schedule	section 294(5) of that Act
55(1)(b)	204	203
55(1)(c)	Schedule 20 to the Finance Act 1972	Schedule 16 to the principal Act
55(1)(e)	Schedule 14 to the Finance Act 1972	Schedule 13 to the principal Act
55(1)(g)	88*of the Finance Act* 1984	753*of the principal Act*
F6851	82(4)(a)	747(4)(a)

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55(1)(g)		**F6851**
58(3)(b)	from "sections" to "that Act or"	section 102, 113(5), 263(5) and (6), 343(10) or 783(9) of the principal Act, or paragraph 22 of Schedule 7 to the Income and Corporation Taxes Act 1970, or **F6852**
63(3) (as substituted by Schedule 4 to the Debtors (Scotland) Act 1987 c.18)	204	203
71(1)	Part XI	sections 6 to 12 and Parts VIII and XI
78(1)	89	43
F6853	**F6853**	**F6853**
. . .	. . .	. . .
78(5)	533	839
86(2)(b)	204	203
86(2)(d)	14 to the Finance Act 1972	13 to the principal Act
86(4)	5 (three times)	3
86(4)	4(3)	5(4)
86(4)	14 to the Finance Act 1972	13 to the principal Act
86(4)	243(4)	10(1)
86(4)	344	478
87	14 (four times)	13
87	20 (four times)	16
87	the Finance Act 1972	the principal Act
F6854	***F6854***	***F6854***
. . .	. . .	. . .
F6854	***F6854***	***F6854***
. . .	. . .	. . .
F6854	***F6854***	***F6854***
. . .	. . .	. . .
91(3)(c)	204	203
93(1)	39(3)	284(4) **F6855**
93(3)	204	203

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94(2)	240(5) or 246(3)	7(2) or 11(3)
95(1)(a)	39(3)	284(4) **F6855**
109(4)	286(5)	419(4)
109(1)-(3),(5)	section 286	sections 419 and 420
118(1)	526(5)	832(1)
118(1)	354	468
118(1)	1970	1988
Schedule 2, para.2(2), in column 1 of the Table	II of Part I	I of Part VII
	65(4)	351(5)
	3	2
para.2(2), in column 2 of the Table	158(1)	121(1), (2)
	315(3)	441(3)
	331	459
	332	460
	338	467
	339	484
	384	527
	389	534
	391	536
	392	538
3, para.3,5	204 (three times)	203
para.5B	65 of the Finance Act 1976	159 of the principal Act
para.8	section 286	sections 419 and 420
para.8	15 of Schedule 16 to the Finance Act 1972	13 of Schedule 19 to the principal Act
last para.	from “11” to “to the principal Act”	102, 113(5), 263(5) and (6), 343(10) and 783(9) of the principal Act, to paragraph 22 of Schedule 7 to the Income and Corporation Taxes Act 1970

F6856

. . .

F6856

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. . .

In the Friendly Societies Act (Northern Ireland) 1970 c. 31 (N.I.)		
Section 1(5)	(2) and (3) respectively of section 337 of the Income and Corporation Taxes Act 1970	(1) and (2) respectively of section 466 of the Income and Corporation Taxes Act 1988
82(4)	226(13) of the Income and Corporation Taxes Act 1970	620(9) of the Income and Corporation Taxes Act 1988
In the Finance Act 1971 c. 68		
Section 21	the whole of subsection (6)	(6) Part II of Schedule 3 to this Act shall have effect.
40(2)(a), 43(3)	533	839 F6857
44(5), (6)	VIII*of the Taxes Act or Chapter* II*of Part* III*of the Finance Act* 1976*(Schedule E) (twice)*	*Schedule E*
F6858 44(6)	63*of the Finance* (No. 2)*Act* 1987	404*of the Taxes Act*
F6858 44(6)	533*of the Taxes Act*	839*of that Act*
F6858 44(7)	533	839 F6858
47(1)	*the whole of paragraph* (ii)	(ii)*the provisions of this Chapter as applied by this subsection shall have effect subject to section* 198(2)*of the Taxes Act (offices and employments with duties abroad).*
F6858 47(2)	*from beginning to "shall each"*	*Section* 306*of the Income and Corporation Taxes Act* 1970*(capital allowances for machinery and plant used by investment or life assurance companies) shall*
F6858 69(2)	1970	1988

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Schedule 3, para.8(1), (5)	the Taxes Act	the Income and Corporation Taxes Act 1970
para.8(3)	the words from "sub-paragraphs" to "this Schedule)"	section 598(2) to (4) of the Taxes Act
para.8(4)	1970	1970 or Chapter I of Part XIV of the Taxes Act
8*para.*3	533 (*three times*)	839 **F6858**
*para.*8(4), 8A(11)	169(4)(d), 174(6)*and* 259(2)	383(5)(d), 388(7)*and* 403(3) **F6858**
*para.*13	533*of the Taxes Act*	839*of that Act*
F6858	63*of the Finance* (No.2)*Act* 1987	404*of the Taxes Act*
F6859		
*para.*13		
F6858		
F6859		
In the Finance Act 1972 c. 41		
Section 68(10)	533	839 **F6860**
69(1)(c)(i)	533	839 **F6860**
69(4)	80	34 **F6860**
134(2)	1970	1988
In the Finance Act 1973 c. 51		
Section 32(1)(b)	30 above	395 of the Taxes Act 1988
32(1)(c)	31 above	116 of that Act
32(1)(c)	85(5) of the Finance Act 1972	239(5) of that Act
32(1)(d)	92 of the Finance Act 1972	240 of that Act
32(2)	from beginning of paragraph (a) to end of paragraph (d)	(a) section 410(1) or (2) of or paragraph 5(3) of Schedule 18 to the Taxes Act 1988; (b) section 395(1)(c) of that Act;

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		(c) section 116(1) of that Act; (d) paragraph 5(3) of Schedule 18 to or section 240(11) of that Act.
32(3)	258 of the Income and Corporation Taxes Act 1970	402 of the Taxes Act 1988
38(2)(d)	237(5) of the Taxes Act	254(1) of the Taxes Act 1988
38(3)	from beginning to "such rights"	Any gains accruing on the disposal of exploration or exploitation rights
38(3B)	533 of the Taxes Act	839 of the Taxes Act 1988
38(5)	the Taxes Act	the Taxes Act 1970
59	all of subsection (2)	(2) In this Act— (a) "the Taxes Act 1970" means the Income and Corporation Taxes Act 1970; and (b) "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988.
Schedule 15, para.2,4	this Act	this Act or section 830 of the Taxes Act 1988
15, para.6	533 of the Taxes Act	839 of the Taxes Act 1988
In the Friendly Societies Act 1974 c. 46		
Section 7(5)	(2) and (3) respectively of section 337 of the Income and Corporation Taxes Act 1970	(1) and (2) respectively of section 466 of the Income and Corporation Taxes Act 1988
93(4)	226(13) of the Income and Corporation Taxes Act 1970	620(9) of the Income and Corporation Taxes Act 1988
F6861	***F6861***	***F6861***
. . .	. . .	. . .
F6856	***F6856***	***F6856***
. . .	. . .	. . .
In the Finance Act 1976 c. 40		

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Section 41(1)	*section* 168*of the Taxes Act*	*sections* 380*and* 381*of the Income and Corporation Taxes Act* 1988 **F6862**
41(2)	*section* 168	*sections* 380*and* 381 **F6862**
41(2)	533*of the Taxes Act*	839*of the Income and Corporation Taxes Act* 1988 **F6862**
41(6)	*section* 168	*sections* 380*and* 381 **F6862**
131(2)	from beginning to "such a security"	A security issued by the Inter-American Development Bank
In the Finance Act 1978 c. 42		
Section 37(4)	*section* 84(1), (2)*and* (3)*of the Taxes Act*	*subsections* (1)*to* (4)*and* (6)*of section* 38*of the Income and Corporation Taxes Act* 1988 **F6862**
37(6)(a)	533	839*of the Income and Corporation Taxes Act* 1988 **F6862**
F6856	***F6856***	***F6856***
. . .	. . .	. . .
In the European Parliament (Pay and Pensions) Act 1979 c. 50		
Section 8(1)	subsections (1A) and (1B) of section 229 of the Income and Corporation Taxes Act 1970	section 629(2) and (3) of the Income and Corporation Taxes Act 1988
In the Finance Act 1980 c.48		
Section		
64(9)(b)	154(2)*or* 155(1)*of the Taxes Act*	113(2)*or* 114(1)*of the Taxes Act* 1988 **F6863**
65(5), 66(5)	154(2), 155(1)*or* 252(2)*of the Taxes Act*	113(2), 114(1)*or* 343(2)*of the Taxes Act* 1988 **F6864**

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70(3)	*the said Act of* 1971	*the Finance Act* 1971 F6864
73(6)	533*of the Taxes Act*	839*of the Taxes Act* 1988 F6864
118	the whole of subsection (3)	(3) The trustees of the National Heritage Memorial Fund shall be treated for the purposes of section 49(2) of the Finance Act 1974 and section 99 above as a body of persons established for charitable purposes only.
122(2)	1970	1970 and "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988
Schedule		
F6856	F6856	F6856
. . .	. . .	. . .
In the Finance Act 1981 c. 35		
F6856	F6856	F6856
. . .	. . .	. . .
139(2)	1970	1988
In the Housing (Northern Ireland) Order 1981 (S.I. No.156 N.I.3)		
Article 146(3)	341 (three times)	488
146(3)	1970 (three times)	1988
In the Iron and Steel Act 1982 c. 25		
Section 13(3)	252(3) of the Income and Corporation Taxes Act 1970	343(3) of the Income and Corporation Taxes Act 1988
13(4)	265(1) of the Income and Corporation Taxes Act 1970	345(1) of the Income and Corporation Taxes Act 1988
In the Finance Act 1982 c. 39		
Section 27	this Act (three times)	this Act or the Taxes Act 1988

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70(1)	38(4)*of the Finance Act* 1973	830(4)*of the Taxes Act* 1988 **F6865**
70(12)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F6865**
72(5)	137(4)*of the Taxes Act*	100(2)*of the Taxes Act* 1988 **F6865**
88(9)(a)	Chapter IV of Part II of the Finance Act 1985	section 710 of the Taxes Act 1988
88(9)(b)	section 36 of the Finance Act 1984	Schedule 4 to that Act
88(9)(c)	VII of Part II of that Act	V of Part XVII of the Taxes Act 1988
147(1)	532(1)(b) of the Taxes Act	838 of the Taxes Act 1988
147(2), (3)	the Taxes Act	the Taxes Act 1970
157	the whole of subsection (2)	(2) In this Act—
		(a) “the Taxes Act 1970” means the Income and Corporation Taxes Act 1970; and
		(b) “the Taxes Act 1988” means the Income and Corporation Taxes Act 1988.
Schedule 11,*para.*4(3)	154(2),*section* 155(1)*or section* 255(2)*of the Taxes Act*	113(2), 114(1)*or* 243(2)*of the Taxes Act* 1988 **F6866**
	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F6866**
*para.*4(4)	341*of the Taxes Act*	488*of the Taxes Act* 1988 **F6866**
12,*para.* 3(3)(b)	Chapter III of Part XI*of the Taxes Act*	*Part* XI*of the Taxes Act* 1988 **F6866**
para. 3(3)(e)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F6866**
para. 3(3)	*the Taxes Act*	*the Taxes Act* 1970 **F6866**
13, para.3(3)(a)	463 of the Taxes Act	706 of the Taxes Act 1988

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21, para.3(2)		
In the Finance Act 1983 c. 28		
Section 46(3)	Commission	Historic Buildings and Monuments Commission
F6856	**F6856**	**F6856**
. . .	. . .	. . .
		(ab) deep discount securities (within the meaning of Schedule 4 to the Income and Corporation Taxes Act 1988); nor
In the Telecommunications Act 1984 c. 12		
F6867	**F6867**	**F6867**
. . .	. . .	. . .
72(3)(b)	paragraph (a) of the proviso to section 21(3) of the Finance Act 1970	section 592(5) of the Income and Corporation Taxes Act 1988
72(3)	II of Part II of the said Act of 1970	I of Part XIV of that Act
F6867	**F6867**	**F6867**
. . .	. . .	. . .
In the Finance Act 1984 c. 43		
F6856	**F6856**	**F6856**
. . .	. . .	. . .
60(1)	252*of the Taxes Act*	343*of the Taxes Act* 1988 **F6868**
128	1970	1970; and "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988
Schedule 14, para.1(1)	VII of Part II of this Act	V of Part XVII of the Taxes Act 1988
para.7(6)(b)	45 of the Finance Act 1981	740 of the Taxes Act 1988
para.8(6)	45 of the Finance Act 1981	740 of the Taxes Act 1988
para.12(7)	45 of the Finance Act 1981	740 of the Taxes Act 1988

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para.15(2)	(5) of section 481 of the Taxes Act	(6) of section 745 of the Taxes Act 1988
In the Finance Act 1985 c. 54		
Section 56(1)(c)	*enactment*	*enactment (including any contained in the Taxes Act)*
F6869 56(8)	*Chapter* I*of* Part XIV	*sections* 520*to* 533 **F6869**
57(7)	533	839 **F6869**
F6856	**F6856**	**F6856**
. . .	. . .	. . .
80(5)(b)	13*of the Oil Taxation Act* 1975	492*of the Taxes Act*
F6870 98(2)	1970	1988
Schedule 17, para.3(2), 5(4)(a),6(d)	533	839 **F6869**
F6856	**F6856**	**F6856**
. . .	. . .	. . .
In the Companies Act 1985 c. 6		
Section 209(3)(b)	444 of the Income and Corporation Taxes Act 1970	670 of the Income and Corporation Taxes Act 1988
266(4)		
266(4)	359 (*twice*)	842 **F6871**
	1970	1988 **F6871**
In the Trustee Savings Bank Act 1985 c. 58		
Schedule 2 para.4(2)	Taxes Act (twice)	the Income and Corporation Taxes Act 1970
6(1)	137	100
(4)	177	393
(8)	29 of the Finance Act 1973	410(1) to (6) of the Taxes Act

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7(2)	26 of the Finance Act 1982	369 of the Taxes Act
9(1)	1970	1988
In the Bankruptcy (Scotland) Act 1985 c. 66		
Schedule 3 Part I para.1(1)	204 of the Income and Corporation Taxes Act 1970	203 of the Income and Corporation Taxes Act 1988
para.1(2)	69 of the Finance (No.2) Act 1975	559 of the Income and Corporation Taxes Act 1988
In the Housing Associations Act 1985 c. 69		
Section 62(2)	341	488
62(2)	1970	1988
In the Airports Act 1986 c. 31		
Section 77(2)	1970 Act	Income and Corporation Taxes Act 1970
77(4)	48(10) of the Finance Act 1981	400(9) of the 1988 Act
77(5)	261(2) of the 1970 Act	408(2) of the 1988 Act
77(5)	262(1) of the 1970 Act	409(1) of that Act
77(5)	262(2)	409(2)
77(6)	1970 (twice)	1988
77(6)	258 to 264	Chapter IV of Part X
In the Finance Act 1986 c. 41		
Section 24(4)	Finance Act 1978	Taxes Act 1988
F6856	**F6856**	**F6856**
. . .	. . .	. . .
114(2)	1970	1970 and "the Taxes Act 1988" means the Income and Corporation Taxes Act 1988.
Schedule 13, para.17	134*of the Taxes Act*	87*of the Taxes Act* 1988 **F6872**
para.17	(5)*of the said section* 134	(7)*of that section*
F6872 15, para.10(1)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F6872**

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para.10(4)	80*of the Taxes Act*	34*of the Taxes Act* 1988 **F6872**
16, para.8(5)	*from* "154(2)" *to first "Act"*	113(2), 114(1)*or* 343(2)*of the Taxes Act* 1988 **F6872**
para.8(8)	533*of the Taxes Act*	839*of the Taxes Act* 1988 **F6872**
In the Gas Act 1986 c. 44		
Section 63(9)	533 of the Income and Corporation Tax Act 1970	839 of the Income and Corporation Taxes Act 1988
In the Insolvency Act 1986 c. 45		
F6873	**F6873**	**F6873**
. . .	. . .	. . .
F6873	**F6873**	**F6873**
. . .	. . .	. . .
F6874	***F6874***	***F6874***
. . .	. . .	. . .
In the Building Societies Act 1986 c. 53		
Schedule 8, para.7	Schedule 8 to the Finance Act 1986	section 333 of the Income and Corporation Taxes Act 1988
In the Financial Services Act 1986 c. 60		
Schedule 15, para.14(5)	332	460(1) or 461(1)
para.14(5)	1970	1988
In the Companies (Northern Ireland) Order 1986 (S.I.No.1032 N.I.6)		
Article 217(3)(b)	444*of the Income and Corporation Taxes Act* 1970	670*of the Income and Corporation Taxes Act* 1988 **F6875**
274(4)	359 (*twice*)	842 **F6875**
274(4)	1970	1988 **F6875**
F6876	***F6876***	***F6876***
. . .	. . .	. . .

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In the Finance Act 1987 c. 16		
Section		
72	1970	1988
In the Debtors (Scotland) Act 1987 c. 18		
Section 53(6)	65(1A)	351(2)
53(6)	1970	1988
63(9)	65(1A)	351(2)
63(9)	1970	1988
In the Abolition of Domestic Rates Etc. (Scotland) Act 1987 c. 47		
Section 3(5)	the whole of paragraph (b)	(b) "retail prices index" has the meaning given by section 833 of the Income and Corporation Taxes Act 1988
In the Finance (No.2) Act 1987 c. 51		
Section 84(1)	247 of the Taxes Act	12 of the Income and Corporation Taxes Act 1988

Textual Amendments

F6848 Entry in Sch. 29 para. 32 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

F6849 *Repealed by* 1989 s.187*and* Sch.17 Part V*in relation to accounting periods beginning after* 31*March* 1989.

F6850 *Repealed by* 1988(F) s.148*and* Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F6851 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

F6852 *Repealed by* 1988(F) s.148*and* Sch.14 Part IX*from* 3*April* 1989*—commencement order* S.I. 1989 No.473 (*in* Part III Vol.5).

F6853 Entry in Sch. 29 para. 32 Table repealed by Finance Act 1991 (c. 31, SIF 63:1), ss. 81, 123, **Sch 19 Pt. V**, Note 1

F6854 Entries in Sch. 29 para. 32 repealed (with effect in accordance with Sch. 18 para. 17 of the repealing Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(8)**, Note

F6855 *Repealed by* 1988(F) Sch.14 Part VIII*for* 1990-91*and subsequent years.*

F6856 Entries in Sch. 29 para. 32 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 12** (with ss. 60, 101(1), 172, 201(3), Sch. 11 paras. 22, 26(2), 27).

F6857 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F6858 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*

F6859 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*

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F6860 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6861 Entry in Sch. 29 para. 32 repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3, 7(2), **Sch. 1** and by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 3, 7(2), **Sch. 1**
F6862 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6863 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6864 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6865 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6866 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6867 Sch. 29 para. 32 Table: entries repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411, **Sch. 19(1)**,(with transitional provisions in Sch. 18); S.I. 2003/1900, art. 1(2), 2(1), 3(1), **Sch. 1** (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, **art. 1(3)**)); S.I. 2003/3142, **art. 3(2)** (with art. 11)
F6868 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6869 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6870 *Repealed by* 1988(F) s.148*and* Sch.14 Part IV*for* 1988-89*and subsequent years.*
F6871 *Repealed by* 1988(F) s.148*and* Sch.14 Part VI*for accounting periods ending after* 5*April* 1988.
F6872 *Repealed by* 1990(C) s.164(4)*and* Sch.2.*See* 1989*edition for these provisions.*
F6873 Sch. 29 para. 32 Table: entries repealed (15.9.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 26**: S.I. 2003/2093, art. 2(1), **Sch. 1** (with art. 4)
F6874 Entry in Sch. 29 para. 32 repealed (1.7.1992) by Social Security (Consequential Provisions) Act 1992 (c. 6), ss. 3, 7(2), **Sch. 1**
F6875 *Repealed by* 1988(F) s.148*and* Sch.14 Part VI*for disposals made on or after* 6*April* 1988.
F6876 Entry in Sch. 29 para. 32 repealed (1.7.1992) by Social Security (Consequential Provisions) (Northern Ireland) Act 1992 (c. 9), ss. 3, 7(2), **Sch. 1**

Modifications etc. (not altering text)
C1107 Sch. 29 para. 32 Table: entry relating to 178(1) of the Inheritance Tax Act 1984 repealed (with effect in accordance with Sch. 43 Pt. 4(1) Note of the repealing Act) by Finance Act 2003 (c. 14), **Sch. 43 Pt. 4(1)**
C1108 *See* 1990 s.132*and* Sch.19 Part V*for repeal in relation to allowances and charges falling to be made for chargeable periods ending after the day to be appointed* (*see* 1988 s.10).
C1109 *See* 1990 s.132*and* Sch.19 Part V*for repeal in relation to allowances and charges falling to be made for chargeable periods ending after the day to be appointed* (*see* 1988 s.10).

SCHEDULE 30

Section 844.

TRANSITIONAL PROVISIONS AND SAVINGS

Corporation tax payment dates

1 (1) In this paragraph, an "old company" means a company to which section 244 of the 1970 Act applied in respect of the last accounting period ending before 17th March 1987.

(2) In relation to an old company —

(a) "the company's section 244 interval" means the interval after the end of an accounting period of the company which, in accordance with section 244 of the 1970 Act, was the period within which corporation tax assessed for that period was required to be paid; and

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(b) "the period of reduction" means the number of whole days which are comprised in a period equal to one-third of the difference between nine months and the company"s section 244 interval.

(3) Subject to sub-paragraph (6) below, with respect to the first accounting period of an old company beginning on or after 17th March 1987, section 243(4) of the 1970 Act and section 10(1) of this Act (time for payment of corporation tax) shall have effect as if for the reference to nine months there were substituted a reference to a period which is equal to the company"s section 244 interval less the period of reduction.

(4) Subject to sub-paragraph (6) below, with respect to any accounting period of an old company which begins —

(a) after the accounting period referred to in sub-paragraph (3) above, but

(b) before the second anniversary of the beginning of that period,

section 10(1) of this Act shall have effect as if for the reference to nine months there were substituted a reference to a period equal to the previous payment interval less the period of reduction.

(5) In relation to any accounting period of an old company falling within sub-paragraph (4) above, "the previous payment interval"means the interval after the end of the immediately preceding accounting period within which corporation tax for that preceding period is required to be paid by virtue of section 243(4) of the 1970 Act or section 10(1) of this Act, as modified by this paragraph.

(6) If the accounting period referred to in sub-paragraph (3) above or any accounting period falling within sub-paragraph (4) above is less than 12 months, the sub-paragraph in question shall have effect in relation to that accounting period as if for the reference in that sub-paragraph to the period of reduction there were substituted a reference to the number of whole days comprised in a period which bears to the period of reduction the same proportion as that accounting period bears to 12 months.

(7) With respect to any accounting period of an old company which falls within sub-paragraph (3) or (4) above, section 86(4) of the Management Act (interest on overdue tax) shall have effect as if, in paragraph 5(a) of the Table (the reckonable date in relation to corporation tax), the reference to the nine months mentioned in section 243(4) of the 1970 Act or section 10(1) of this Act were a reference to the period which, under sub-paragraphs (3) to (6) above, is substituted for those nine months.

(8) In section 88(5)(e) of the Management Act (the date when corporation tax ought to have been paid) for the words from "where section 244(1)" to "the interval" there shall be substituted " in the case of an accounting period in respect of which section 10(1) of the principal Act applies as modified by sub-paragraph 1(3) or (4) of Schedule 30 to that Act, at the end of the period which, under that sub-paragraph, is substituted for the period of nine months ".

(9) With respect to any accounting period of an old company which falls within sub-paragraph (3) or (4) above, section 825 shall have effect as if, in subsection (8) in paragraph (a) of the definition of "the material date", the reference to the nine months mentioned in section 10(1) were a reference to the period which, under sub-paragraphs (1) to (8) above is substituted for those nine months.

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Duration of leases

2 (1) Subject to sub-paragraph (2) and paragraph 3 below, section 38 has effect —

(a) as respects a lease granted after 12th June 1969; and

(b) so far as it relates to section 34(5), as respects a variation or waiver the contract for which is entered into after that date.

(2) So far as relates to relief under —

(a) section 385 **[**F6877or**]** 393 **[**F6878or 393A(1)**]**; or

(b) section 380(1) as applied by subsection (2) of that section; or

(c) section 25(1);

given by setting a loss against, or making a deduction from, income of —

(i) the year 1988-89 or any subsequent year of assessment, or

(ii) a company's accounting period ending after 5th April 1988,

section 38 shall be deemed to have had effect as from the passing of the Finance Act 1963, and as respects leases granted at any time.

(3) Notwithstanding section 31 or any other enactment governing the order in which reliefs are given, in applying sub-paragraph (2) above it shall be assumed that all relief which could not be affected by the operation of that sub-paragraph was given (for all years of assessment and accounting periods before or after the passing of this Act) before relief which could be affected by the operation of that sub-paragraph.

(4) All such adjustments shall be made, whether by way of assessment or discharge of repayment of tax, as are required to give effect to section 38 with this paragraph.

Textual Amendments

F6877 Word "or" repealed by 1991 s. 123 and Sch. 19 Part V in relation to losses incurred in accounting periods ending on or after 1 April 1991.

F6878 1991 s.73(3)-(5) and Sch. 15 para. 27(1) in relation to losses incurred in accounting periods ending on or after 1 April 1991 - deemed always to have had effect.

3 (1) Sections 24 and 38 shall have effect subject to the modifications set out in sub-paragraphs (2) to (4) below in relation to any lease granted after 12th June 1969 and before 25th August 1971 and, so far as section 38 relates to section 34(5), in relation to any variation or waiver the contract for which was entered into between those dates, except to the extent that section 38 affects the computation of the profits or gains or losses of a trade, profession or vocation or relates to relief under —

(a) section 25(1);

(b) section 385 **[**F6879or **]**393 **[**F6880or 393A(1)**]**;

(c) subsection (1) of section 380 as applied by subsection (2) of that section; or

(d) section 779(5).

(2) In section 24, in subsection (1), in the definition of "premium", the words from "or to" to "landlord ", and subsections (3) and (4) shall be omitted.

(3) In subsection (1) of section 38 the following paragraph shall be inserted before paragraph (a) —

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"(aa) where the terms of the lease include provision for the determination of the lease by notice given by the landlord, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice so given;"and sub-paragraph (ii) of paragraph (a) and paragraph (c) shall be omitted.

(4) In subsection (2) of that section for the words "Subsection (1)" there shall be substituted the words " Subsection (1)(a) ", and subsection (4) of that section shall be omitted.

Textual Amendments

F6879 Word "or" repealed by 1991 s. 123 and Sch. 19 Part V in relation to losses incurred in accounting periods ending on or after 1 April 1991.

F6880 1991 s. 73(3)-(5) and Sch. 15 para. 27(1) in relation to losses incurred in accounting periods ending on or after 1 April 1991 - deemed always to have had effect.

4 (1) Where section 38 does not have effect, the following provisions of this paragraph shall apply in ascertaining the duration of a lease for the purposes of sections 34 to 36.

(2) Subject to sub-paragraph (4) below, where the terms of the lease include provision for the determination of the lease by notice given either by the landlord or by the tenant, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice.

(3) Subject to sub-paragraph (4) below, where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease, the lease shall not be treated as having been granted for a term longer than one ending on that date.

(4) Where the duration of a lease falls to be ascertained after the date on which the lease has for any reason come to an end, the duration shall be taken to have extended from its commencement to that date, and where the duration falls to be ascertained at a time when the lease is subsisting the preceding provisions of this paragraph shall be applied in accordance with circumstances prevailing at that time.

(5) In relation to Scotland, "term " in this paragraph, where referring to the duration of a lease, means "period".

(6) This paragraph shall be construed as one with Part II.

Repeal of section 136 of the Income Tax Act 1952: allowance of annual value of land as a business expense

5 (1) This paragraph has effect for allowing deductions by reference to those which would have fallen to be made if section 136 of the Income Tax Act 1952 had applied for the years 1963-64 and 1964-65.

(2) Subject to the provisions of this paragraph, an allowance under this paragraph shall be made to the person ("the occupier") carrying on a trade where land which was

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occupied by him at any time before the end of the year 1962-63 for the purposes of the trade permanently ceases to be occupied by him for those purposes.

(3) The amount of the allowance shall be the excess of —

(a) the aggregate of any deductions in respect of the annual value of the land which, by virtue of section 136, would have been made in computing the profits or gains of the trade for the years 1963-64 and 1964-65 but for section 29(1) of the Finance Act 1963 and the repeal by that Act of section 136;

over

(b) the aggregate of any deductions relating to the land made in computing the profits or gains of the trade for those years, being —

(i) deductions permitted by section 29(2) of the Finance Act 1963, so far as made in respect of the period in respect of which the deductions mentioned in paragraph (a) above would have been made; or

(ii) deductions in respect of rent from which an amount representing tax was deducted under section 173 of the Income Tax Act 1952, so far as made in respect of that period.

(4) The allowance shall be made by —

(a) treating the amount of it as rent paid for the land by the occupier (in addition to any actual rent), becoming due from day to day during the period defined in sub-paragraph (5) below; and

(b) allowing deductions accordingly in computing the profits or gains of the trade chargeable under Case I of Schedule D for any chargeable period the profits or gains for which fall to be computed by reference to a period including the period defined in sub-paragraph (5) below or any part thereof.

(5) The period referred to in sub-paragraph (4) above is that ending when the land permanently ceases to be occupied by the occupier for the purposes of the trade, and of a duration, equal to the aggregate of —

(a) the number of months and fractions of months during which the land was occupied by him for the purposes of the trade in so much of the period by reference to which the profits or gains of the trade for the year 1963-64 fell to be computed as fell before the beginning of that year; and

(b) the number of months and fractions of months during which the land was so occupied in so much of the period by reference to which the profits or gains of the trade for the year 1964-65 fell to be computed as fell before the beginning of the year 1963-64.

(6) No allowance shall be made under this paragraph where the date on which the land permanently ceases to be occupied by the occupier for the purposes of the trade

(a) falls within a chargeable period in which he permanently ceases to carry on the trade; [F6881]. . .

(b) [F6881] . . . . . .

(7) Where, by reason of a change in the persons carrying on the trade, the trade falls to be treated for any of the purposes of the Income Tax Acts as permanently discontinued, a person engaged in carrying on the trade immediately before the change occurred who continues to be so engaged immediately after it occurred shall be treated for the

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purposes of this paragraph as not having been in occupation of the land at any time before it occurred.

(8) Where there has been a change in the persons carrying on the trade, but by virtue of F6882. . . section 17(1) of the Finance Act 1954 (c. 44) (company reconstructions before introduction of corporation tax), the trade does not by reason of the change fall to be treated for any of the purposes of the Income Tax Acts as permanently discontinued, this paragraph (including this sub-paragraph) shall apply as if any occupation of the land before the change occurred by the persons carrying on the trade immediately before it occurred were occupation by the persons carrying on the trade immediately after it occurred.

(9) Where section 343(1) applies, then for the purposes of this paragraph any occupation of land for the purposes of the trade by the predecessor shall be treated as having been the occupation of the successor.

Subsection (6) of that section shall apply to this sub-paragraph as it applies to subsections (2) to (5) of that section, and in this paragraph "predecessor" and "successor" have the same meaning as in that section.

(10) Where section 518 has effect, then for the purposes of this paragraph any occupation of land for the purposes of the trade by the transferor shall be treated as having been the occupation of the transferee. This sub-paragraph shall be construed as one with section 518.

(11) Sub-paragraphs (1) to (10) above shall apply in relation to a profession F6883. . . as they apply in relation to a trade, but as if the reference in sub-paragraph (4) to Case I of Schedule D were a reference to Case II of that Schedule.

(12) For the purposes of this paragraph, any occupation of land by the London Transport Board which was by virtue of paragraph 6 of Schedule 3 to the Finance Act 1970 (c. 24) immediately before the commencement of this Act treated as occupation by another body, shall continue to be so treated by virtue of this sub-paragraph.

[F6884(13) This paragraph does not apply for the purposes of income tax.**]**

Textual Amendments

F6881 Sch. 30 para. 5(6)(b) and preceding word repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 352(2)(a), **Sch. 3** (with Sch. 2)

F6882 Words in Sch. 30 para. 5(8) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 352(2)(b), **Sch. 3** (with Sch. 2)

F6883 Words in Sch. 30 para. 5(11) repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 352(2)(c), **Sch. 3** (with Sch. 2)

F6884 Sch. 30 para. 5(13) inserted (6.4.2005 with effect in accordance with s. 883(1) of the amending Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **Sch. 1 para. 352(2)(d)** (with Sch. 2)

Loss relief etc.

6 (1) The substitution of this Act for the corresponding enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not

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there is a corresponding provision in this Act) so far as it determines whether and to what extent —

(a) losses or expenditure incurred in, or other amounts referable to, a chargeable period earlier than those to which this Act applies may be taken into account for any tax purposes in a chargeable period to which this Act applies; or

(b) losses or expenditure incurred in, or other amounts referable to, a chargeable period to which this Act applies may be taken into account for any tax purposes in a chargeable period earlier than those to which this Act applies.

(2) Without prejudice to sub-paragraph (1) above, the repeals made by this Act shall not affect the following enactments (which are not re-enacted) —

(a) section 27(4) of the Finance Act 1952 (restrictions on removal of six year time limit on carry forward of trading losses);

(b) section 29(3) of the Finance Act 1953 (Isles of Scilly);

(c) section 17 of, and Schedule 3 to, the Finance Act 1954 (company reconstructions before corporation tax) so far as in force by virtue of the saving in Part IV of Schedule 22 to the Finance Act 1965, and section 80(8) of the Finance Act 1965 (which amends Schedule 3 to the Finance Act 1954);

(d) section 82(4) of the Finance Act 1965 (losses allowable against chargeable gains);

(e) section 85 of the Finance Act 1965 (carry forward of surplus of franked investment income: dividends paid out of pre-1966-67 profits) and the enactments amending that section;

(f) paragraph 25 of Schedule 15 to the Finance Act 1965 (continuity of elections for purposes of corporation tax);

(g) paragraph 7 of Schedule 16 to the Finance Act 1965 (overseas trade corporations);

in so far as those enactments may be relevant to tax for any chargeable period to which this Act applies.

7 (1) This paragraph shall apply with respect to claims for group relief in respect of any amount which is attributable —

(a) to writing-down allowances, within the meaning of Chapter II of Part I of the 1968 Act, or, as the case may require, Chapter I of Part III of the Finance Act 1971, in respect of expenditure incurred by the surrendering company on the provision of machinery or plant; or

(b) to initial allowances under section 56 of the 1968 Act (expenditure in connection with mines etc.) in respect of expenditure incurred by the surrendering company and falling within section 52(1) of that Act of 1971 (works in a development area or in Northern Ireland); or

(c) to allowances under section 91 of the 1968 Act in respect of expenditure incurred by the surrendering company on scientific research;

where the expenditure is incurred under a contract entered into by the surrendering company before 6th March 1973.

(2) Notwithstanding anything in section 410(1) to (6) or 413(7) to (10) or in Schedule 18 but subject to sub-paragraph (5) below, group relief may be claimed in respect of any such amount as is referred to in sub-paragraph (1) above if —

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(a) immediately before 6th March 1973 —

(i) the surrendering company and the company claiming relief were members of a group of companies, and

(ii) throughout the period beginning on that date and ending at the end of the accounting period in respect of which the claim is made, there is no reduction in the rights of the parent company with respect to the matters specified in section 413(7)(a) and (b); or

(b) immediately before 6th March 1973 the company claiming relief was a member of a consortium and, throughout the period beginning on that date and ending at the end of the accounting period in respect of which the claim is made, there is

(i) no variation in the percentage of the ordinary share capital of the company owned by the consortium which is beneficially owned by that member, and

(ii) no reduction in the rights of that member (in respect of the company owned by the consortium) with respect to the matters specified in section 413(7)(a) and (b);

and in either case no such arrangements as are specified in section 410(1) or (2) have come into existence after 5th March 1973 with respect to any of the companies concerned and no variation is made in any such arrangements which are in existence on that date with respect to any of those companies.

(3) For the purposes of sub-paragraph (2)(a) above, "the parent company" means the company of which another member of the group referred to in that sub-paragraph was, immediately before 6th March 1973, a 75 per cent subsidiary, and the rights of the parent company referred to in that paragraph are —

(a) if the parent company is either the surrendering company or the company claiming relief, its rights in the other company; and

(b) in any other case, its rights in both the surrendering company and the company claiming relief.

(4) For the purposes of this paragraph an amount which the claimant company claims by way of group relief shall be treated as attributable to an allowance falling within any of paragraphs (a) to (c) of sub-paragraph (1) above to the extent that that amount would not have been available for surrender by the surrendering company if no such allowance had been available to the surrendering company in respect of the expenditure concerned.

(5) Sub-paragraph (2) above shall not apply if, during the period referred to in that sub-paragraph —

(a) there is a major change in the nature or conduct of a trade or business carried on by the relevant company; or

(b) the relevant company sets up and commences a trade or business which it did not carry on immediately before 6th March 1973.

(6) In sub-paragraph (5) above —"a major change in the nature or conduct of a trade or business" has the same meaning as in section 245(1); and "the relevant company" means, if the machinery or plant to which the allowance relates was brought into use on or before 6th March 1978, the company claiming group relief and in any other case either that company or the company which if sub-paragraph (5) did not apply would be the surrendering company.

(7) This paragraph shall be construed as if it were contained in Chapter IV of Part X.

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Capital allowances

8 Without prejudice to paragraphs 6 and 7 above, where a person is, immediately before the commencement of this Act, entitled to a capital allowance by virtue of any enactment repealed by this Act, he shall not cease to be so entitled by reason only of that repeal, notwithstanding that the enactment in question is not re-enacted by this Act; and accordingly the provisions of this Act shall apply, with any necessary modifications, so far as may be necessary to give effect to any such entitlement.

Social security benefits

9 (1) In relation to any period before regulations containing the first schemes under section 20 of the Social Security Act 1986 and Article 21 of the Social Security (Northern Ireland) Order 1986 providing for income support come into force —

(a) the repeal by this Act of sections 27 and 28 of the Finance Act 1981 shall not have effect;

(b) sections 151 and 152 of this Act shall not have effect;

(c) section 204 of this Act shall have effect with the substitution for paragraph (b) of the following paragraph —

"(b) he has claimed a payment of supplementary allowance under the Supplementary Benefits Act 1976 or the Supplementary Benefits (Northern Ireland) Order 1977 in respect of a period including that time and his right to the allowance is subject to any condition contained in section 5 of the said Act of 1976 or, in Northern Ireland, Article 7 of the said Order (requirements as to registration and availability for employment)"and with the addition at the end of the following —

"(2) Any reference in this section to section 5 of the Supplementary Benefits Act 1976 or to Article 7 of the Supplementary Benefits (Northern Ireland) Order 1977 includes a reference to that section or Article as amended by any other enactment including an enactment passed or made after the passing of this Act"; and

(2) In relation to any period before regulations containing the first schemes under section 20 of theSocial Security Act 1986 and Article 21 of the Social Security (Northern Ireland) Order 1986 providing for family credit come into force, section 617(2) of this Act shall have effect with the addition after paragraph (b) of the following paragraph —

"(bb) payments in respect of family income supplement under the Family Income Supplements Act 1970 or the Family Income Supplements Act (Northern Ireland) 1970;."

Children's settlements: irrevocable dispositions made before 22nd April 1936

10 **F6885** . . . . . .

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Textual Amendments

F6885 Sch. 30 paras. 10-12 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

Pre-1959 settlements

11 **F6886** . . . . . .

Textual Amendments

F6886 Sch. 30 paras. 10-12 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

12 **F6887** . . . . . .

Textual Amendments

F6887 Sch. 30 paras. 10-12 repealed (with effect in accordance with Sch. 29 Pt. 8(8) Note of the repealing Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. 8(8)**

General powers of amendment in Acts relating to overseas countries

13 Where under any Act passed before this Act and relating to a country or territory outside the United Kingdom there is a power to affect Acts passed or in force before a particular time, or instruments made or having effect under such Acts, and the power would but for the passing of this Act have included power to change the law which is reproduced in, or is made or has effect under, this Act, then that power shall include power to make such provision as will secure the like change in the law reproduced in, or made or having effect under, this Act notwithstanding that it is not an Act passed or in force before that time.

Double taxation agreements

14 The repeal by this Act of section 16 of the Finance (No.2) Act 1979 shall not prejudice the effect of any Order in Council which gives effect to arrangements contained in the Convention mentioned in that section and is made under section 497 of the 1970 Act.

Securities

15 The repeal by this Act of Schedule 22 to the Finance Act 1985 shall not affect the continued operation of paragraph 6 of that Schedule in relation to the holding of securities by any person at any time during the year (within the meaning of that Schedule).

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Building societies

16 Any enactment relating to building societies contained in this Act which re-enacts an enactment which was an existing enactment for the purposes of section 121 of the Building Societies Act 1986 shall continue to be an existing enactment for those purposes.

Pension business

17 Any reference to pension business in any enactment (other than an enactment repealed by this Act) which immediately before the commencement of this Act was such a reference by virtue of paragraph 11(3) of Part III of Schedule 5 to the Finance Act 1970 shall not be affected by the repeal by this Act of that paragraph and accordingly the business in question shall continue to be known as pension business.

Stock relief

18 F6888 . . . . . .

Textual Amendments

F6888 Sch. 30 paras. 18, 18A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 352(3), **Sch. 3** (with Sch. 2)

[F6889 18A F6890 . . . . . .]

Textual Amendments

F6889 Sch. 30 para. 18A inserted by Capital Allowances Act 1990 (c. 1), s. 164, **Sch. 1 para. 8(43)**

F6890 Sch. 30 paras. 18, 18A repealed (6.4.2005 with effect in accordance with s. 883(1) of the repealing Act) by Income Tax (Trading and Other Income) Act 2005 (c. 5), Sch. 1 para. 352(3), **Sch. 3** (with Sch. 2)

Schedule E emoluments

19 The repeal by this Act of section 21 of the Finance Act 1974 shall not affect the taxation of emoluments which if that section had been in force before 1973-74 would have fallen within Case I or Case II of Schedule E, and, accordingly, any such emoluments shall not be chargeable under Case III of Schedule E.

Unitary states

20 The repeal by this Act of section 54 of and Schedule 13 to the Finance Act 1985 shall not prevent the Treasury making an order under subsection (7) of section 54 exercising the powers conferred on the Treasury by that subsection in relation to distributions made in chargeable periods ending before 6th April 1988 and, accordingly, subsections (7) and (8) of section 54 shall continue to have effect in later chargeable periods for that purpose.

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Continuity and construction of references to old and new law

21 (1) The continuity of the operation of the Tax Acts and of the law relating to chargeable gains shall not be affected by the substitution of this Act for the enactments repealed by this Act and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Act and any Act amended by this Act) to, or to things done or falling to be done under or for the purposes of, any provision of this Act shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made after the passing of this Act) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in this Act has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

(4) Any reference to Case VIII of Schedule D, whether a specific reference or one imported by more general words, in any enactment, instrument or document shall, in relation to the chargeable periods to which section 843(1) applies, be construed as a reference to Schedule A, and for the purposes of sub-paragraph (2) above, Schedule A in this Act shall be treated as corresponding to Case VIII of Schedule D in the repealed enactments, and any provision of this Act or of any Act passed after 12th March 1970 and before this Act referring to Schedule A shall be construed accordingly.

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SCHEDULE 31

Section 844.

REPEALS

Chapter	Short title	Extent of repeal
1965 c. 25.	Finance Act 1965	Section 84. Schedule 20.
	* * * * *	
1970 c. 9.	Taxes Management Act 1970	In section 88(5)(e) the words from "or" to the end. In section 118(1)(a) the words from "as" to "Act". In Schedule 2, in paragraph 2(2), the words "section 311".
1970 c. 10.	Income and Corporation Taxes Act 1970	[*See* 1991 *edition for these repeals.*]
1970 c. 24.	Finance Act 1970.	Sections 11 to 14. Section 16. Sections 19 to 26. Section 29(1), (2), (3)(a), (4) and (8). * * * * * * In Schedule 4, paragraphs 6, 8, 9(6) and 11. Schedule 5.
1970 c. 54.	Income and Corporation Taxes (No.2) Act 1970	The whole Act.
1971 c. 68.	Finance Act 1971	Sections 13 to 20. Section 21(1) to (5). Sections 22 to 28. Sections 32 to 36. Section 39. * * * * * * Schedule 2. Schedule 3, except paragraph 8. Schedule 4. In Schedule 6, Parts I and III. Schedule 7. * * * * * *

Chapter	Short title	Extent of repeal
1972 c. 41.	Finance Act 1972	In Schedule 9, paragraph 4. Sections 62 to 66. Section 67(2)(c). Sections 70 to 77. Sections 79 to 95. Sections 97 to 110. Section 111(2). Section 124. Schedules 9 to 23. In Schedule 24, paragraphs 15 to 33.
1973 c. 51.	Finance Act 1973	Sections 10 to 31. In section 32, subsection (5) and in subsection (6) the words from "sections" to "1972". Sections 33 to 36. In section 38, in subsection (1) the words "income tax" and "and corporation tax" and subsection (6). Sections 39 and 40. Section 43. Sections 52 and 53. In section 54(1) the words "income tax, corporation tax or". Schedules 8 to 14. In Schedule 15, paragraphs 1 and 3. Schedule 16. In Schedule 21, paragraphs 6 to 9.
1974 c. 30.	Finance Act 1974	Sections 7 to 16. Sections 18 to 23. Sections 25 to 28. Section 30. Sections 36 and 37. In section 52 the words "the Income Tax Acts, the Corporation Tax Acts and". Schedules 1 and 2. In Schedule 12, paragraphs 7 to 12.

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Chapter	Short title	Extent of repeal
	* * *	* *
1974 c. 46.	Friendly Societies Act 1974	Section 64. In Schedule 9, paragraph 23.
	* * *	* *
1975 c. 7.	Finance Act 1975	Sections 5 to 12. Sections 16 and 17. Schedules 1 and 2. In Schedule 12, paragraphs 16 and 19.
	* * *	* *
1975 c. 22	[*See* Oil Taxation Acts.]	
1975 c. 45.	Finance (No. 2) Act 1975	Sections 25 to 43. Section 44(1) to (3) and (6). Section 46(6). * * * * * Section 48. Sections 50 to 53. Sections 68 to 71. Schedule 8. Schedules 12 and 13.
1976 c. 40.	Finance Act 1976	Sections 24 to 38. Sections 44 to 50. Sections 60 to 71. Section 72(1) to (12). Schedules 4, 7 and 8. In Schedule 9, paragraphs 3, 4, 8, 9 and 12 to 16.
	* * *	* *
1977 c. 36.	Finance Act 1977	Sections 17 to 39. Sections 45 to 48. Schedules 7 and 8.
	* * *	* *

Chapter	Short title	Extent of repeal
1977 c. 53.	Finance (Income Tax Reliefs) Act 1977	The whole Act.
	* * *	* *
1978 c. 42.	Finance Act 1978	Sections 13 to 28. Section 29(1), (2) and (4). Sections 30 to 36. Sections 41 to 43. Sections 53 to 61. Schedules 2 to 5. Schedule 9.
	* * *	* *
1979 c. 14.	Capital Gains Tax Act 1979	* * * * *
1979 c. 25.	Finance Act 1979	The whole Act.
	* * *	* *
1979 c. 47.	Finance (No.2) Act 1979	Sections 5 to 13. Sections 15 and 16. * * * * *
1980 c. 48.	Finance Act 1980	Schedules 1 and 2. Sections 18 to 56. Section 57(1), (2)(b), (3) and (4). Sections 59 and 60. Section 61(1). Section 63. Section 70(1), (2), (4), (5) and (6). Section 88(7). * * * * * Section 118(1) and (2). Section 119. Section 121. Schedules 8 to 11. * * * * *

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Chapter	Short title	Extent of repeal
1981 c. 35.	Finance Act 1981	Sections 19 to 37. Section 38(1) and (2). Sections 39 to 72. * * * * * Section 138. Schedules 9 to 12. * * * * *
1982 c. 39.	Finance Act 1982	Sections 20 to 26. Sections 28 to 67. Section 78. * * * * * Schedules 7 to 10. * * * * * * * * * *
1983 c. 28.	Finance Act 1983	Sections 10 to 28. Section 46(1), (2) and (3)(a) and (b). Schedules 4 and 5.
1983 c. 49.	Finance (No. 2) Act 1983	Sections 1 to 5. Schedule 1.
1983 c. 56 [*See* Oil Taxation Acts.]		
	* * * * *	
1984 c. 43.	Finance Act 1984	Sections 17 to 43. * * * * * Sections 45 to 49. * * * * *

Chapter	Short title	Extent of repeal
		Sections 51 to 55. In section 56, subsections (1) and (2) and in subsection (4) the words from the beginning to "assessment and". Section 72. In section 73, subsections to (3), (5) and (6). Sections 74 to 77. * * * * * Sections 82 to 100. Section 126(3)(a). Schedules 7 to 10. * * * * * Schedules 15 to 20.
	* * * * *	
1984 c. 51.	Inheritance Tax Act 1984	In Schedule 8, paragraphs 8, 17, 18, 21 and 22.
	* * * * *	
1985 c. 54.	Finance Act 1985	Sections 34 to 49. Sections 51 to 54. Section 60. Sections 64 and 65. * * * * * Sections 73 to 77. Schedules 9 to 13. In Schedule 14, paragraph 16. Schedule 18. Schedules 22 and 23. In Schedule 25, paragraphs 7, 8 and 9.
	* * * * *	

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Chapter	Short title	Extent of repeal
1986 c. 41.	Finance Act 1986	Sections 16 to 23. Section 24(1) to (3). Sections 25 to 32. Sections 34 to 54. Section 56(7)(a) and (b). Sections 61 to 63. Schedules 7 and 8. In Schedule 9, paragraphs 1 to 21 and 23. Schedules 10, 11 and 12. In Schedules 13, paragraphs 2(5)(a) and (b) and 26 and 27. In Schedule 16, paragraph 10(7). Schedule 17. In Schedule 18, paragraphs 1 to 6, in paragraph 9(1), paragraph (a) and in paragraph (c) the words "section 477 or" and paragraph 9(2).
	* * * * *	
1987 c. 16.	Finance Act 1987	Sections 20 to 39. Section 40(1) and (2). Sections 41 to 46. Section 70(1). Section 71. Schedules 3 to 6. * * * * * Schedule 15, except paragraph 12.
	* * * * *	

Chapter	Short title	Extent of repeal
1987 c. 51.	Finance (No. 2) Act 1987	Sections 1 to 63. Section 64(2). Sections 65 to 68. Sections 70 and 71. In section 73(1) the words "income tax, corporation tax or". Sections 74 to 77. Section 87. In section 88, subsections (5) and (6) and the words following paragraph (c) in subsection (7). Section 90. Sections 92 and 93. Schedules 1 to 5. In Schedule 6, paragraphs 1, 3, 6 and 8.

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