



# 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 1

### THE CHARGE TO TAX

#### *Income tax*

#### 1 The charge to income tax.

<sup>F1</sup> .....

##### Textual Amendments

- F1** [S. 1](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 2](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

#### [<sup>F2</sup>1A Application of lower rate to income from savings and distributions.

<sup>F3</sup> .....]

##### Textual Amendments

- F2** [S. 1A](#) inserted (with effect in accordance with s. 73(3) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), **s. 73(1)**
- F3** [S. 1A](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 2](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

#### [<sup>F4</sup>1B Rates of tax applicable to [<sup>F5</sup>distribution] income etc.

<sup>F6</sup> .....]

##### Textual Amendments

- F4** [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)**
- F5** 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](#))
- F6** [S. 1B](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 2](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

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## 2 Fractions of a pound, and yearly assessments.

F7 .....

### Textual Amendments

**F7** S. 2 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 2, **Sch. 3 Pt. 1** (with Sch. 2)

## 3 Certain income charged at basic rate.

F8 .....

### Textual Amendments

**F8** S. 3 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 3, **Sch. 3 Pt. 1** (with Sch. 2)

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

F9 .....

### Textual Amendments

**F9** S. 4 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 4, **Sch. 3 Pt. 1** (with Sch. 2)

## 5 Date for payment.

F10 .....

### Textual Amendments

**F10** 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) <sup>M1</sup> 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 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



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- (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)), <sup>F11</sup> . . . <sup>F12</sup> . . . 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.
- [<sup>F13</sup>(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

- F11** 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**
- F12** 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**
- F13** 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)

- C17** 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)**).
- C18** 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.*
- C19** See 1988(F) s.148 and Sch.14 Part V for repeals which will take place from 6 April 1993.

#### Marginal Citations

- M1** Source—1970 s.238

## 7 Treatment of certain payments and repayment of income tax.

- (1) <sup>F14</sup> . . . . .
- (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 <sup>F15</sup> . . . 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

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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) <sup>M2</sup> Subsection (2) above does not apply to a payment of relevant loan interest to which section 369 applies.
- (4) <sup>M3</sup> 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.

<sup>F16</sup>(5) .....

<sup>F16</sup>(6) .....

<sup>F16</sup>(7) .....

#### Textual Amendments

**F14** S. 7(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 5, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F15** 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\(28\)](#)

**F16** 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)

**C20** 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).

**C21** 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](#))

**C22** S. 7(2) excluded (1.9.2009) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), reg. 69Z57](#) (as inserted by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2009 \(S.I. 2009/2036\), regs. 1, 24](#))

#### Marginal Citations

**M2** Source—1982 s.26(7)

**M3** 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.
- (2) <sup>M4</sup> 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.

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- (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)”.

<sup>F17</sup>(4) .....

<sup>F17</sup>(5) .....

<sup>F17</sup>(6) .....

**Textual Amendments**

**F17** 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)**

**C23** 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**

**M4** Source—1970 s.243 (1)-(3), (5)-(7); 1974 s.36; 1987(No. 2) s.90(1)(a)

**[<sup>F18</sup>8A Resolutions to reduce corporation tax.**

<sup>F19</sup> .....

**Textual Amendments**

**F18** S. 8A inserted (27.7.1993) by 1993 c. 34, s. 206(2)

**F19** 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) <sup>M5</sup> 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 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 [<sup>F20</sup>—

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- (a) 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<sup>[F21]</sup>, or
- (b) ITA 2007.]
- <sup>[F22]</sup>(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—
- <sup>[F23]</sup>(a) Schedules A <sup>[F24]</sup>and D] and the Cases of <sup>[F25]</sup>Schedule D]<sup>F26</sup>. . . , 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 <sup>[F27]</sup>and 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 <sup>[F28]</sup>(other than ITTOIA 2005 <sup>[F29]</sup>and ITA 2007)] 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 including a reference to any corresponding relief from or charge to corporation tax, or to any corresponding provision of the Corporation Tax Acts.

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- (6) <sup>F30</sup> . . . 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

- F20** Words in s. 9(2) renumbered as s. 9(2)(a) (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by virtue of [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 6\(2\)\(a\)](#) (with Sch. 2)
- F21** S. 9(2)(b) and preceding word 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. 6\(2\)\(b\)](#) (with Sch. 2)
- F22** 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)
- F23** 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)
- F24** 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)
- F25** 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)
- F26** 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)
- F27** 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)
- F28** 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)
- F29** Words in s. 9(4) 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. 6\(3\)](#) (with Sch. 2)
- F30** Words in s. 9(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 6(4), [Sch. 3 Pt. 1](#) (with Sch. 2)

#### Modifications etc. (not altering text)

- C24** 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

- M5** Source—1970 s.250

## 10 Time for payment of tax.

<sup>F31</sup> . . . . .

#### Textual Amendments

- F31** 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](#)

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## 11 Companies not resident in United Kingdom.

[<sup>F32</sup>(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.

(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) <sup>F33</sup> . . . 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 <sup>F34</sup> . . . 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) <sup>M6</sup> Subsection (3) above does not apply to a payment of relevant loan interest to which section 369 applies.

### Textual Amendments

**F32** 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)

**F33** 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

**F34** 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)

**C25** 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).

**C26** 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)



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### Marginal Citations

M6 SOURCE-1982 s. 26(7)

## [<sup>F35</sup> 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

F35 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) <sup>M7</sup> 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.

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- (2) An accounting period of a company shall begin for purposes of corporation tax whenever—
- (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;
  - [<sup>F36</sup>(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) [<sup>F37</sup>Subject 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 [<sup>F38</sup>as the company may determine].
- [<sup>F39</sup>(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.]
- [<sup>F40</sup>(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 [<sup>F41</sup>subsection (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

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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 <sup>M8</sup>Insolvency Act 1986.

[<sup>F42</sup>(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.]

[<sup>F43</sup>(7A) Notwithstanding anything in [<sup>F44</sup>subsections (1) to (7ZA)] above, [<sup>F45</sup>and subject to subsection (7C) below] where [<sup>F46</sup>an 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.]

[<sup>F47</sup>(7B) <sup>F48</sup> . . .  
                  <sup>F48</sup> .....  
                  <sup>F49</sup> .....]

[<sup>F50</sup>[<sup>F51</sup>(7C) Where section 444AA applies, an accounting period of the transferor (within the meaning of that section) shall end for the purposes of corporation tax with the end of any period covered by a periodical return deemed by 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
  - (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.

[<sup>F52</sup>(9) This section is subject to Schedule 10 to the Finance Act 2006.]

#### Textual Amendments

- F36** 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)
- F37** 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)
- F38** 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)

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- F39** 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)**
- F40** 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)**
- F41** 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)**
- F42** 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)**
- F43** 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)
- F44** 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)**
- F45** 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)**
- F46** 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)**
- F47** 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)**
- F48** S. 12(7B): words and definition of "contracts of long-term insurance" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(2)(a), **Sch. 27 Pt. 2(10)**, Note
- F49** S. 12(7B): definition of "insurance business transfer scheme" repealed (with effect in accordance with Sch. 9 para. 17(1) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 9 para. 1(2)(a), **Sch. 27 Pt. 2(9)**, Note
- F50** 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)**
- F51** S. 12(7C) substituted (with effect in accordance with Sch. 9 para. 17(1) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 3(2)**
- F52** S. 12(9) inserted (with effect in accordance with Sch. 10 para. 2 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 10 para. 43(2)**

#### **Modifications etc. (not altering text)**

- C27** S. 12(1)-(7) excluded (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (SI 1997/1154), {reg. 25(2)}
- C28** 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)
- C29** 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)**
- C30** 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**)
- C31** 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 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**

- M7** SOURCE-1970 s. 247; 1972 s. 107(1)
- M8** 1986 c. 45.

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### *Small companies' rate*

## 13 Small companies' relief.

- (1)<sup>M9</sup>Where in any accounting period the profits of [<sup>F53</sup>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—

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

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 [<sup>F54</sup>£300,000] and [<sup>F55</sup>£1,500,000] respectively;
- (b) where the company has one or more associated companies in the accounting period, the lower relevant maximum amount is [<sup>F54</sup>£300,000] divided by one plus the number of those associated companies, and the upper relevant maximum amount is [<sup>F55</sup>£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 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.

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- (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 [<sup>F56</sup> 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 <sup>F57</sup> . . . of which the receiving company is a 51 per cent. subsidiary; or
  - (b) a trading or holding company which does not fall within [<sup>F58</sup> subsection (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 [<sup>F59F60</sup> . . . ] ; 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.

[<sup>F61</sup>(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.

[<sup>F62</sup>[<sup>F63</sup>(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.]

[<sup>F64</sup>(8A) <sup>F65</sup> . . . . .]

(9) <sup>F66</sup> . . . . .

#### Textual Amendments

**F53** 1989 s.105(1) *in relation to accounting periods beginning after 31 March 1989. Previously* “a company resident in the United Kingdom”.

**F54** 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\(2\)\(a\)](#)

**F55** 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\(2\)\(b\)](#)



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- F56** 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)**
- F57** 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)**
- F58** 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)**
- F59** Words in s. 13(7) inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 138, **Sch. 16 para. 11(2)**
- F60** 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
- F61** 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)**
- F62** 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)**
- F63** 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)**
- F64** S. 13(8A) inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 138, **Sch. 16 para. 11(3)**
- F65** 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
- F66** 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)

- C32** 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)**
- C33** S. 13 applied (27.7.1999) by Finance Act 1999 (c. 16), **s. 28(7)(b)**
- C34** S. 13 applied (19.7.2006) by Finance Act 2006 (c. 25), **s. 26(10)**
- C35** For rates and fractions see Table K Vol.1.
- C36** S. 13(2) amended (for the financial year 1990) by Finance Act 1991 (c. 31, SIF 63:1), **s. 23(2)**
- C37** 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)**
- C38** 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)  
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**)
- C39** 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

- M9** SOURCE-1972 s. 95; 1973 Sch. 14 2, 4; 1983 (No. 2) s. 2(2); 1987 (No. 2) s. 74(4)

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### [<sup>F67</sup>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).]

#### Textual Amendments

**F67** S. 13ZA inserted (with application in accordance with s. 86(6) of the amending Act) by Finance Act 2001 (c. 9), s. 86(5)

### [<sup>F68</sup>13AAC Corporation tax starting rate.

<sup>F69</sup> .....

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#### Textual Amendments

- F68** S. 13AA inserted (with effect in accordance with s. 28(6)(7) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 28\(1\)](#)
- F69** S. 13AA repealed (with effect in accordance with s. 26(8)-(11) of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), s. 26(1), [Sch. 26 Pt. 3\(1\)](#), Note

### [<sup>F70</sup> 13A] The non-corporate distribution rate

<sup>F71</sup> .....

#### Textual Amendments

- F70** S. 13AB inserted (with effect in accordance with s. 28(4)(5) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 28\(1\)\(6\)](#)
- F71** S. 13AB repealed (with effect in accordance with s. 26(8)-(11) of the repealing Act) by [Finance Act 2006 \(c. 25\)](#), s. 26(2), [Sch. 26 Pt. 3\(1\)](#), Note

### [<sup>F72</sup> 13A] Close investment-holding companies.

- (1) A close company is for the purposes of section 13(1) <sup>F73</sup> . . . 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 [<sup>F74</sup> spouse or civil partner] of an individual connected with the relevant company, or is a relative, or the [<sup>F75</sup> spouse or civil partner] of a relative, of such an individual or of the [<sup>F74</sup> 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.

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- (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 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

- F72** S. 13A inserted (in relation to accounting periods beginning after 31 March 1989) by [Finance Act 1989 \(c. 26\), s. 105\(2\)\(3\)](#)
- F73** Words in s. 13A(1) repealed (with effect in accordance with s. 26(8)-(11) of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 26\(3\), Sch. 26 Pt. 3\(1\)](#), Note
- F74** 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\(b\)](#)
- F75** 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\(a\)](#)

#### Modifications etc. (not altering text)

- C40** S. 13A applied (1.1.2009) by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\), reg. 14B\(3\)\(a\)](#) (as inserted by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\), regs. 1\(1\), 11](#) (with regs. 30, 31))

### *Advance corporation tax*

## 14 Advance corporation tax and qualifying distributions.

- (1) <sup>F76</sup> .....
- (2) <sup>M10</sup> 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) <sup>F76</sup> .....
- (4) <sup>F76</sup> .....

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(5) <sup>F76</sup> .....

**Textual Amendments**

**F76** 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)**

**C41** For rates see Table J Vol.1.

**C42** See 1980 s.117 and Sch.18—demergers.

**Marginal Citations**

**M10** SOURCE-1972 s. 84(4)

*The six Schedules*

**<sup>M11</sup>15 Schedule A.**

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

<sup>F77</sup>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 <sup>F78</sup> . . . 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—

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(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

F79

[<sup>F80</sup>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 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.]

[<sup>F81</sup>(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 [<sup>F82</sup>the profits of a UK property business within the charge to income tax under Chapter 3 of Part 3 of ITTOIA 2005],

are treated [<sup>F83</sup>for the purposes of those charges as separate businesses].]



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(2) <sup>F84</sup> .....

(3) <sup>F85</sup> .....

[<sup>F86</sup>(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 [<sup>F87</sup>and under Chapter 3 of Part 3 of ITTOIA 2005 (profits of a property business)].

### Textual Amendments

- F77** 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)
- F78** 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**
- F79** 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)**
- F80** 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)
- F81** 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)
- F82** 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)
- F83** 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)
- F84** 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)**
- F85** S. 51(3) repealed (with effect from 6.4.1988) by Finance Act 1988 (c. 39), s.148, **Sch. 14 Part V**, Note 1
- F86** 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)
- F87** 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)

- C43** 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.*
- C44** 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)
- C45** S. 15(1): Sch. A para. 2(3) excluded (19.7.2006) by Finance Act 2006 (c. 25), **s. 120(3)(4)**
- C46** 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

- M11** SOURCE-1970(1)-(3)

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## <sup>F88</sup>16 Schedule B.

.....

### Textual Amendments

**F88** S. 16 repealed (with effect from 6.4.1988) by [Finance Act 1988 \(c. 39\)](#) s.148, Sch.14 Pt. V

## <sup>F89</sup>17 Schedule C.

.....

### Textual Amendments

**F89** 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) <sup>M12</sup>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 [<sup>F90</sup>not charged under Schedule A [<sup>F91</sup>or under ITEPA 2003 as employment income, pension income or social security income]], and not specially exempted from tax.

(2) <sup>M13</sup>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 [ <sup>F92</sup> but not contained in Schedule A];
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- 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 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 [<sup>F93</sup>from 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 <sup>F94</sup>
- ... ;
- Case V: tax in respect of income arising from possessions out of the United Kingdom not being [<sup>F95</sup>employment 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 [<sup>F96</sup>Schedule A [<sup>F97</sup>or by virtue of ITEPA 2003 as employment income, pension income or social security income]].

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[<sup>F98</sup>(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;

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(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;

<sup>F99</sup>(c)

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

[<sup>F100</sup>(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) <sup>M14</sup>The 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.

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[<sup>F101</sup>(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) [<sup>F102</sup>Parts III and IV contain] further provisions relating to the charge to tax under Schedule D [<sup>F103</sup>and under ITTOIA 2005 (see, in particular, the charge under Chapter 2 of Part 2 of that Act (trade profits))].

[<sup>F104</sup>(6) <sup>F105</sup>.....]

### Textual Amendments

- F90** 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)
- F91** 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)
- F92** 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**
- F93** 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)
- F94** 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)
- F95** 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)
- F96** 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)
- F97** 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)
- F98** 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)
- F99** 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
- F100** 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)
- F101** 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)
- F102** 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)
- F103** 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)
- F104** 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)
- F105** 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)

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### Modifications etc. (not altering text)

- C47** 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.459to 461—certain friendly societies.s.467—certain trade unions.s.476—certain dividends and interest payable by building societies (Repealed by 1990 s.30and Sch.5 para.2for 1991-92and subsequent years.)s.484—savings banks.s.505and 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.614and 615—certain pension funds for overseas employees.s.620(5)and (6)—approved retirement annuity trust schemes.s.656and 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.43for periods of account ending after 5April 1989involving 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.788-799of this Act as to certain persons resident abroad.
- C48** 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](#))
- C49** See 1970(M) Part VIIIas to charges on non-residents.
- C50** 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.
- C51** See—1989 s.94and Sch.11 para.5—deep gain securities transferred on or after 14March 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.56and Sch.10 para.12(4)—treatment of chargeable events in relation to convertible securities.Housing Act 1957 (c.56) Sch.8 para.4andHousing (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.
- C52** See—1989 s.94and Sch.11 para.5—deep gain securities transferred on or after 14March 1989.1990 s.56and Sch.10 paras.12(4)and 20—treatment of chargeable events in relation to income received in the U.K. from convertible securities.
- C53** 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. 4and 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.
- C54** 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)

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- 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 I 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)**
- C55** 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)
- C56** S. 18: Sch. D Case III extended (1.5.1995) by Finance Act 1995 (c. 4), **s. 157(7)**
- 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)
- C57** 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)
- C58** 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

- M12** SOURCE-1970 s. 108(1)
- M13** SOURCE-1970 s. 109(1), (2)
- M14** SOURCE-1970 ss. 108(3), 109(3)

## 19 Schedule E.

**F106** .....

#### Textual Amendments

- F106** 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)



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## 20 Schedule F.

F107 .....

### Textual Amendments

**F107** 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](#))

## PART II

### [<sup>F108</sup>PROVISIONS RELATING TO THE SCHEDULE A CHARGE]

### Textual Amendments

**F108** 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*

## [<sup>F109</sup>21 Persons chargeable and basis of assessment.

F110 .....]

### Textual Amendments

**F109** 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](#))

**F110** 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](#))

## [<sup>F111</sup>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);
  - [<sup>F112</sup>section 588] (training courses for employees);
  - [<sup>F113</sup>section 589A] (counselling services for employees);
  - section 73(2) of the <sup>M15</sup>Finance Act 1988 (consideration for restrictive undertakings);

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section 43 of the <sup>M16</sup>Finance Act [<sup>F114</sup>1989 (Schedule D: computation)];

<sup>F115</sup>  
.....

<sup>F116</sup>  
.....

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

[<sup>F117</sup>sections 196 to 200 of the Finance Act 2004 (registered pension schemes);

section 246 of that Act (employer-financed retirement benefits schemes).]

(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 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)—

<sup>F118</sup>  
.....

section 87 (treatment of premiums taxed as rent),

<sup>F119</sup>  
.....

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

[ Part 1 of Schedule 22 to the Finance Act 2001 (deduction for capital expenditure <sup>F120</sup>(5) 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

- F111** 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)
- F112** 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)
- F113** 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)
- F114** 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)
- F115** Words in s. 21A(2) repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)
- F116** 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)
- F117** Words in s. 21A(2) inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284, **Sch. 35 para. 3** (with Sch. 36)
- F118** 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)
- F119** Words in s. 21A(4) 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. 12(3)(b), **Sch. 3** (with Sch. 2)
- F120** 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**

### Modifications etc. (not altering text)

- C59** S. 21A applied (19.7.2006) by Finance Act 2006 (c. 25), s. 120(2)

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**C60** S. 21A applied (6.4.2008) by the [Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 69Z1\(2\)](#) (as inserted by [The Authorised Investment Funds \(Tax\) \(Amendment\) Regulations 2008 \(S.I. 2008/705\)](#), [regs. 1, 5](#))

#### Marginal Citations

**M15** 1988 c. 39.

**M16** 1989 c. 26.

### [<sup>F111</sup>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 <sup>F121</sup>. . . and 110 (post-cessation receipts and expenses, etc.) [<sup>F122</sup>, with any reference to a trade within the charge to income tax being read as a reference to a UK property business];  
<sup>F121</sup> . . . . .  
section 337(1) (effect of company beginning or ceasing to carry on trade);  
section 401(1) (pre-trading expenditure);  
[<sup>F123</sup>section 64 of and Schedule 22 to the Finance Act 2002] (change of accounting basis).]

#### Textual Amendments

- F111** 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](#))
- F121** 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](#))
- F122** 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](#))
- F123** Words in s. 21B substituted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), s. [102\(3\)](#)

### [<sup>F124</sup>21C The Schedule A charge and mutual business.

- (1) The following provisions have effect for the purpose of applying the charge to [<sup>F125</sup>corporation] 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) [<sup>F126</sup>The 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).]

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**Textual Amendments**

- F124** 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)
- F125** 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)
- F126** 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.**

**F127** .....

**Textual Amendments**

- F127** 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.**

**F128** .....

**Textual Amendments**

- F128** 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) <sup>M17</sup>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) <sup>M18</sup>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 [<sup>F129</sup>can be] shown to have been given.
- (3) <sup>M19</sup>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.

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- (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) <sup>M20</sup>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) <sup>M21</sup>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; <sup>F130</sup> . . .
  - (c) <sup>F130</sup> . . . . .
- (7) <sup>F130</sup> . . . . .

**Textual Amendments**

**F129** 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**

**F130** 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

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**Marginal Citations**

**M17** SOURCE-1970 s. 90(1); 1972 s. 81(3)

**M18** SOURCE-1970 s. 90(2)

**M19** SOURCE-1970 s. 90(2A), (2B); 1972 s. 81(4)

**M20** SOURCE-1970 s. 90(3)

**M21** SOURCE-1970 s. 71(2)

*Deductions and other allowances*

**25 Deductions from rent: general rules.**

<sup>F131</sup> . . . . .

**Textual Amendments**

**F131** 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

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(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.

F132 .....

### Textual Amendments

**F132** 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.

F133 .....

### Textual Amendments

**F133** 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.

F134 .....

### Textual Amendments

**F134** 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.

F135 .....

### Textual Amendments

**F135** 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)<sup>M22</sup> Where 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



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of the sea or any tidal river, [<sup>F136</sup>that person shall be] treated [<sup>F137</sup>for 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 [<sup>F138</sup>that 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.

[<sup>F139</sup>(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,

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.

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#### Textual Amendments

- F136** 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](#))
- F137** 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](#))
- F138** 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](#))
- F139** [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)

- C61** [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](#)
- C62** See 1979(C) s.34(4)(b)—restriction, by reference to capital allowances, of capital losses for purpose of capital gains.

#### Marginal Citations

- M22** SOURCE-1970 s. 76

### 31 Provisions supplementary to sections 25 to 30.

**F140** .....

#### Textual Amendments

- F140** [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](#))

### [<sup>F141</sup>31ZA] Deduction for expenditure on energy-saving items

- (1) This section applies if—
- a company carries on a Schedule A business in relation to land which consists of or includes a dwelling-house,
  - 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)),
  - the expenditure is incurred before 1st April 2015,
  - 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
  - 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—

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- (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
  - “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

**F141** 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](#)

#### [<sup>F141</sup>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.

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- (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**

**F141** 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](#)

[<sup>F141</sup>**31Z**Regulations

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

**F141** 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](#)

[<sup>F142</sup>**31A** Deductions for expenditure by landlords on energy-saving items

<sup>F143</sup> .....

**Textual Amendments**

**F142** Ss. 31A, 31B inserted (with effect in accordance with s. 143(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 143\(1\)](#)

**F143** 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](#))

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### **31B Provisions supplementary to section 31A**

F144 .....]

#### **Textual Amendments**

**F142** 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)

**F144** 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)

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

F145 .....

#### **Textual Amendments**

**F145** 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.**

F146 .....

#### **Textual Amendments**

**F146** 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)

*[<sup>F147</sup> Connected persons*

#### **Textual Amendments**

**F147** 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).

### **<sup>F148</sup>33A Rents or receipts payable by a connected person.**

F149 .....

#### **Textual Amendments**

**F148** 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).

**F149** 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

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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)

**<sup>F150</sup>33B Rents or receipts relating to land in respect of which a connected person makes payments to a third party.**

<sup>F151</sup> .....

**Textual Amendments**

**F150** 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).

**F151** 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** [<sup>F152</sup>Treatment of premiums, etc. as rent.]

- (1) <sup>M23</sup>Where 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 [<sup>F153</sup>corporation tax purposes] as [<sup>F154</sup>receiving when the lease is granted] an amount by way of rent (in addition to any actual rent) equal to—

$$P - \frac{(PyY)}{50}$$

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) <sup>M24</sup>Subsection (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 [<sup>F155</sup>as an expense of any Schedule A business carried on by the landlord].
- (4) <sup>M25</sup>Where, 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



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- 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) [<sup>F156</sup>in 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 [<sup>F157</sup>deemed to be received] when the sum in question becomes payable by the tenant.
- (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 [<sup>F158</sup>the 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 [<sup>F159</sup>deemed to be received] when the contract providing for the variation or waiver is entered into.
- (6) <sup>M26</sup>Where a payment falling within subsection (1), (4) or (5) above is due to a person other than the landlord, [<sup>F160</sup>no amount shall fall under that subsection to be treated as a receipt of any Schedule A business carried on by the landlord; but [<sup>F161</sup>if 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 [<sup>F162</sup>corporation tax] as if [<sup>F163</sup>the company] had received it in consequence of having, on [<sup>F164</sup>its] 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.
- [<sup>F165</sup>(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 [<sup>F166</sup>accounting] period in which it is treated as received.]
- (8) <sup>M27</sup>Where an amount by reference to which a [<sup>F167</sup>company] is chargeable to [<sup>F168</sup>corporation tax] by virtue of this section is payable by instalments (“the [<sup>F168</sup>corporation tax] instalments”), the [<sup>F168</sup>corporation tax] chargeable by reference to that amount [<sup>F169</sup>may, at [<sup>F170</sup>the 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 [<sup>F168</sup>corporation tax] instalments is payable.
  - (9) <sup>F171</sup> .....

#### Textual Amendments

**F152** 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)

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- F153** 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)
- F154** 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)**
- F155** 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)
- F156** 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)**
- F157** 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)**
- F158** 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)**
- F159** 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)**
- F160** 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)
- F161** 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)
- F162** 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)
- F163** 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)
- F164** 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)
- F165** 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)
- F166** 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)
- F167** 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)
- F168** 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)
- F169** 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)
- F170** 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)
- F171** 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)

- C63** 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**
- C64** 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.
- C65** 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

- M23** SOURCE-1970 s. 80(1), (2)
- M24** SOURCE-1970 s. 80(2); 1987 Sch. 15 para. 13
- M25** SOURCE-1970 s. 80(3), (4)
- M26** SOURCE-1970 s. 80(5)

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M27 SOURCE-1970 s. 80(6), (7); 1972 s. 81(1)

### 35 [F172 Charge] on assignment of lease granted at an undervalue.

(1) <sup>M28</sup>This 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".

(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 [F173 deemed to have been received as income by the assignor and to have been received by [F174 the 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.]

[F175(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 [F176 accounting] period in which it is treated as received.]

(3) <sup>M29</sup>If 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 [F177 corporation 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

- F172 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)
- F173 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)
- F174 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)
- F175 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)
- F176 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)
- F177 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)

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#### Modifications etc. (not altering text)

- C66** 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.
- C67** 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)**
- C68** 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**

#### Marginal Citations

- M28** SOURCE-1970 s. 81(1)
- M29** SOURCE-1970 s. 81(2)

### 36 [F178] Charge] on sale of land with right to reconveyance.

- (1) <sup>M30</sup>Where 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 [F179]the vendor], [F180]the following amount shall be deemed to have been received as income by the vendor and to have been received by [F179]the vendor] in consequence of [F181]the 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, [F182]the 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 [F183]corporation tax] assessed on [F184]the 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) <sup>M31</sup>Where 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 [F185]the 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.
- [F186](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 [F187]accounting] period in which it is treated as received.

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- (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) <sup>M32</sup>In this section references to a person connected with another shall be construed in accordance with section 839.

#### Textual Amendments

- F178** 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)
- F179** 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)
- F180** 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)
- F181** 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)
- F182** 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)
- F183** 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)
- F184** 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)
- F185** 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)
- F186** 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)
- F187** 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)

- C69** S. 36 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), ss. 252(1)(3), **Sch. 24 para. 24**
- C70** See 1976(D) Sch.6 para.4. 1976(D)repealed by 1985 ss.93, 98(6)and Sch.27 Part Xwith effect from 19March 1985.
- C71** 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**
- C72** See 1979(C) s.106and Sch.3 para.6(3)—effect of claim under s.36(2)(b)on computation of capital gains.
- C73** See 1979(C) s.106and Sch.3 para.5(3)—deduction of amounts chargeable under s.36in computing capital gains.

#### Marginal Citations

- M30** SOURCE-1970 s. 82(1), (2)
- M31** SOURCE-1970 S. 82(3)
- M32** SOURCE-1970 s. 82(1), (3)

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

- (1) <sup>M33</sup>This section applies in any case where in respect of a lease of any premises—
- <sup>F188</sup>(a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, <sup>F189</sup> . . .
  - (b) any amount would fall to be so treated but for the operation of subsection (2) or (3) below,
  - <sup>F190</sup>(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).]
- and <sup>F191</sup>that amount] is in this section <sup>F192</sup>and 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 <sup>F193</sup>company] would, apart from this subsection, <sup>F194</sup>be 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 <sup>F195</sup>which <sup>F196</sup>the 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 <sup>F197</sup>company] would, apart from subsection (2) above, be <sup>F198</sup>treated 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 <sup>F199</sup>which <sup>F200</sup>the 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) <sup>M34</sup>Subject to subsection (5) below, <sup>F201</sup>a company which is] for the time being entitled to the head lease shall be treated for the <sup>F202</sup>purpose, 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 <sup>F203</sup>the 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) <sup>M35</sup>Where 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



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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) <sup>M36</sup>For the purposes of this section—
- (a) 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 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;
- <sup>F204</sup>(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) <sup>M37</sup>Where the amount chargeable on the superior interest arose under section 34(2) <sup>F205</sup>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) <sup>M38</sup>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 <sup>F206</sup>income tax or corporation tax] purposes <sup>F207</sup>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.].

- <sup>F208</sup>(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

**F188** 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)

**F189** 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)

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- F190** 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)
- F191** 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.*
- F192** 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)
- F193** 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)
- F194** 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)
- F195** 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)
- F196** 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)
- F197** 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)
- F198** 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)
- F199** 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)
- F200** 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)
- F201** 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)
- F202** 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)
- F203** 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)
- F204** 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)
- F205** 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)
- F206** 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)
- F207** 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)
- F208** 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)

- C74** 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**
- C75** 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.*
- C76** 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

- M33** SOURCE-1970 s. 83(1); 1978 s. 32(2)
- M34** SOURCE-1970 s. 83(2)

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**M35** SOURCE-1970 s. 83(3)

**M36** SOURCE-1970 s. 83(4)

**M37** SOURCE-1970 s. 83(5)

**M38** SOURCE-1970 s. 83(7)

**[<sup>F209</sup>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”), 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—

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“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.]

#### Textual Amendments

**F209** 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) <sup>M39</sup>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) <sup>M40</sup>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 [<sup>F210</sup>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,

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it shall also be assumed, unless it [<sup>F211</sup>can be] shown that the benefits were not conferred or the payments made for the purpose of securing a [<sup>F212</sup>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.

- (5) <sup>M41</sup>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) <sup>M42</sup>In this section in relation to Scotland, the expression “term”, where referring to the duration of a lease, means period.
- (7) <sup>M43</sup>This section has effect subject to paragraphs 2 and 3 of Schedule 30.

#### Textual Amendments

- F210** 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)
- F211** 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](#)
- F212** 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)

- C77** [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\(3\)](#)
- C78** [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.](#)
- C79** See 1990(C) s.11(4)—*rules applied in connection with leases for industrial buildings and structures.*

#### Marginal Citations

- M39** SOURCE-1970 S. 84(1)(b)–(d); 1972 s. 81(2)(a), (b)
- M40** SOURCE-1970 s. 84(2); 1972 s. 81(2)(c)
- M41** SOURCE-1970 s. 84(3A); 1972 s. 81(5)
- M42** SOURCE-1970 s. 84(3); 1972 s. 81(2)(d)
- M43** SOURCE-1970 s. 84(4)

### 39 Saving for pre-1963 leases, and special relief for individuals.

- (1) <sup>M44</sup>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.

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- (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<sup>F213</sup>.

#### Textual Amendments

**F213** Repealed by 1988(F) ss. 75, 148 and Sch. 14 Part IV for 1988-89 and subsequent years.

#### Marginal Citations

**M44** SOURCE-1970 s. 85(1)

### [<sup>F214</sup> Supplementary provisions]

#### Textual Amendments

**F214** 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) <sup>M45</sup>Where—
- 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
  - 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 [<sup>F215</sup>corporation] tax under Schedule A as if that part had [<sup>F216</sup>been received or paid by [<sup>F217</sup>the 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 [<sup>F218</sup>corporation] 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 [<sup>F219</sup>corporation] tax under Schedule 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
  - the part apportioned to the vendor shall be treated as if it were of the same nature as the receipt or outgoing and [<sup>F220</sup>had been received or paid directly



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by [<sup>F221</sup>the 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.

[<sup>F222</sup>(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) <sup>F223</sup> .....

**Textual Amendments**

- F215** 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)
- F216** 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)
- F217** 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)
- F218** 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)
- F219** 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)
- F220** 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)
- F221** 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)
- F222** 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)
- F223** 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**

- M45** SOURCE-1970 s. 86

**41 Relief for rent etc. not paid.**

<sup>F224</sup> .....

**Textual Amendments**

- F224** 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)



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## 42 Appeals against determinations under sections 34 to 36 <sup>F225</sup> or Chapter 4 of Part 3 of ITTOIA 2005].

- (1) <sup>M46</sup>Where it appears to the inspector that the determination of <sup>F226</sup>—
- any amount on which a person may be chargeable <sup>F227</sup>to corporation tax] by virtue of section 34, 35 or 36 <sup>F228</sup>, or
  - 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

- F225** 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](#))
- F226** 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](#))
- F227** 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](#))
- F228** 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](#))

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**Modifications etc. (not altering text)**

- C80** 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**
- C81** 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**

**Marginal Citations**

- M46** SOURCE- 1972 s. 82

[<sup>F229</sup>**42A Non-residents and their representatives.**

<sup>F230</sup> .....

**Textual Amendments**

- F229** S. 42A inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 40(1)**
- F230** S. 42A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 7, **Sch. 3 Pt. 1** (with Sch. 2)

**43 Non-residents.**

<sup>F231</sup> .....

**Textual Amendments**

- F231** 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

*<sup>F232</sup> Rent factoring*

**Textual Amendments**

- F232** 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.**

<sup>F233</sup> .....

**Textual Amendments**

- F233** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

**43B Transfer of rent.**

<sup>F234</sup> .....

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**Textual Amendments**

**F234** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

**43C Transfer of rent: exceptions, &c.**

**F235** .....

**Textual Amendments**

**F235** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

**43D Interposed lease.**

**F236** .....

**Textual Amendments**

**F236** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

**43E Interposed lease: exceptions, &c.**

**F237** .....

**Textual Amendments**

**F237** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

**43F Insurance business.**

**F238** .....

**Textual Amendments**

**F238** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

**43G Interpretation.**

**F239** .....]

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#### Textual Amendments

**F239** Ss. 43A-43G repealed (with effect in accordance with Sch. 6 para. 1(2) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 1(1), **Sch. 26 Pt. 3(12)**, Note

### PART III

#### [<sup>F240</sup>GOVERNMENT SECURITIES]

#### Textual Amendments

**F240** 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.

<sup>F241</sup> .....

#### Textual Amendments

**F241** 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.

<sup>F242</sup> .....

#### Textual Amendments

**F242** 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) <sup>M47</sup> Subject to subsections (3) to (6) below, income arising from savings certificates shall not be liable to [<sup>F243</sup>corporation] tax.
- (2) [<sup>F244M48</sup>Corporation tax] shall not be chargeable in respect of the interest on tax reserve certificates issued by the Treasury.

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- (3) <sup>M49</sup>Subsection (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 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 [<sup>F245</sup>the 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 “savings certificates” means savings certificates issued under section 12 of the <sup>M50</sup>National Loans Act 1968 or section 7 of the <sup>M51</sup>National Debt Act 1958 or Section 59 of the <sup>M52</sup>Finance Act 1920 and any war savings certificates as defined in section 9(3) of the <sup>M53</sup>National Debt Act 1972, together with any savings certificates issued under any corresponding enactment forming part of the law of Northern Ireland.
- [<sup>F246</sup>(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

- F243** 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)
- F244** 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)
- F245** 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)
- F246** 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)

- C82** *And see, as regards Ulster Savings Certificates, Part III Vol.5.*

#### Marginal Citations

- M47** SOURCE-1981 S. 34(1)
- M48** SOURCE-1970 s. 98
- M49** SOURCE-1981 s. 34(2)–(5); 1979 (C) s. 71(2)(a)
- M50** 1968 c. 13.
- M51** 1958 c.6.
- M52** 1920 c.18.
- M53** 1972 c. 65.

## 47 United Kingdom government securities held by non-residents.

F247

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#### Textual Amendments

**F247** 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.

F248 .....

#### Textual Amendments

**F248** 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.

[<sup>F249</sup>(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 [<sup>F250</sup>or in the registers kept by the Registrar of Government Stock].

[<sup>F251</sup>(3) In this section “dividends” means any interest, public annuities, dividends or shares of annuities.]

[<sup>F252</sup>(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

**F249** 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)

**F250** 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)

**F251** 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](#))

**F252** 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.**

F253 .....

**Textual Amendments**

**F253** S. 50 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 8, **Sch. 3 Pt. 1** (with Sch. 2)

**51 Treasury directions as respects Northern Ireland securities.**

F254 .....

**Textual Amendments**

**F254** S. 51 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 8, **Sch. 3 Pt. 1** (with Sch. 2)

**[<sup>F255</sup>51A Commencement of direction under section 50 or 51.**

F256 .....]

**Textual Amendments**

**F255** S. 51AA inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), s. 155

**F256** S. 51AA repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 8, **Sch. 3 Pt. 1** (with Sch. 2)

**[<sup>F257</sup>51A Gilt-edged securities held under authorised arrangements.**

F258 .....]

**Textual Amendments**

**F257** S. 51A inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), s. 77

**F258** 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)**

**[<sup>F259</sup>51B Periodic accounting for tax on interest on gilt-edged securities.**

F260 .....]

**Textual Amendments**

**F259** S. 51B inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), s. 78(1)

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**F260** 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.

F261 .....

### Textual Amendments

**F261** 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) <sup>M54</sup>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 [<sup>F262</sup>profits] thereof shall be charged to [<sup>F263</sup>corporation] tax under Case I of Schedule D accordingly.
  - (2) All the farming carried on by any particular [<sup>F264</sup>company or partnership] shall be treated as one trade [<sup>F265</sup>for corporation tax purposes].
  - (3) <sup>M55</sup>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 [<sup>F266</sup>profits] thereof shall be charged to [<sup>F267</sup>corporation] tax under Case I of Schedule D accordingly.
- [<sup>F268</sup>(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

**F262** 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

**F263** 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)

**F264** 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)

**F265** 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)

**F266** 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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- F267** 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)
- F268** 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

- M54** SOURCE-1970 s. 110(1), (2)  
**M55** SOURCE-1970 s. 110(3)

### <sup>F269</sup>54 Woodlands managed on a commercial basis.

#### Textual Amendments

- F269** 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) [<sup>F270</sup>profits] arising out of land in the case of any concern specified in subsection (2) below shall be charged to [<sup>F271</sup>corporation] 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

- F270** Word in s. 55(1) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\), Sch. 7 para. 1](#)
- F271** 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)

### 56 Transactions in deposits with and without certificates or in debts.

- (1) <sup>M56M57</sup>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

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- (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) <sup>M58</sup>Profits or gains arising to a [<sup>F272</sup>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 [<sup>F273</sup>corporation tax] under Case VI of Schedule D.
- (3) <sup>M59</sup>Subsection (2) above [<sup>F274</sup>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 [<sup>F275</sup>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 [<sup>F276</sup>613(4) or 614(2) or (3) or section 186 of the Finance Act 2004] 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 [<sup>F277</sup>charitable company] within the meaning of section 506.

- [<sup>F278</sup>(3A) <sup>F279</sup> .....
- (3B) <sup>F279</sup> .....
- (3C) <sup>F279</sup> .....
- (3D) <sup>F279</sup> .....]

- (4) <sup>M60</sup>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 [<sup>F280</sup>for the purposes of] section 76(2).

[<sup>F281</sup>(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) <sup>M61</sup>In this section—
  - “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 [<sup>F282</sup>132 of the 1992 Act].

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### Textual Amendments

- F272** 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](#))
- F273** 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](#))
- F274** 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](#))
- F275** 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](#))
- F276** Words in s. 56(3)(b) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 4](#) (with [Sch. 36](#))
- F277** Words in s. 56(3)(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. 9](#) (with [Sch. 2](#))
- F278** [S. 56\(3A\)-\(3D\)](#) inserted (27.7.1993) by 1993 c. 34, s. 170, [Sch. 18 para. 2](#)
- F279** [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
- F280** 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)
- F281** [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](#))
- F282** 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)

- C83** See s.608—*exemption for certain superannuation funds.*
- C84** [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

- M56** SOURCE-1973 s. 26(1)
- M57** SOURCE-1974 s. 30(1)
- M58** SOURCE-1973 s. 26(1); 1974 s. 30(1)
- M59** SOURCE-1973 s. 26(1)(a)(b); 1975 (No. 2) s. 50(1)
- M60** SOURCE-1973 s. 26(3); 1974 s. 30(2)
- M61** SOURCE-1973 s. 26(4); 1974 s. 30(2), (1); 1968 s. 55(3); 1979(C) Sch. 7

## [<sup>F283</sup>56A Disposal or exercise of rights in pursuance of deposits.

- (1) This section applies where there is an arrangement under which—
- there is a right to receive an amount (with or without interest) in pursuance of a deposit of money,
  - when the right comes into existence there is no certificate of deposit in respect of the right, and
  - 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—
- the right shall be treated as not falling within section 56(1)(b), and

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- (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

**F283** 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.

F284 .....

#### Textual Amendments

**F284** 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.

F285 .....

#### Textual Amendments

**F285** 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) <sup>F286</sup> .....
- (2) <sup>F286</sup> .....
- (3) Where, in accordance with [<sup>F287</sup>section 12 of ITTOIA 2005], income tax is charged <sup>F288</sup> . . . 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 shall be answerable for the tax so charged, and may retain and deduct the same out of any such profits.
- (4) [<sup>F289</sup>Subsection (3)] above shall not apply for the purposes of corporation tax.



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**Textual Amendments**

- F286** 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](#))
- F287** 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](#))
- F288** 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](#))
- F289** 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.**

**F290** .....

**Textual Amendments**

- F290** [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.**

**F291** .....

**Textual Amendments**

- F291** [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.**

**F292** .....

**Textual Amendments**

- F292** [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](#))

**[<sup>F293</sup>62A Conditions for such a change.**

**F294** .....]

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**Textual Amendments**

**F293** 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](#))

**F294** 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.**

F295 .....

.....

**Textual Amendments**

**F295** 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](#))

[<sup>F296</sup> **63A Overlap profits and overlap losses.**

F297 .....]

.....

**Textual Amendments**

**F296** 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](#))

**F297** 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.**

F298 .....

.....

**Textual Amendments**

**F298** 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.**

F299 .....

.....

**Textual Amendments**

**F299** 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](#))

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[<sup>F300</sup> **65A Case V income from land outside UK: income tax.**

F301 .....]

**Textual Amendments**

**F300** 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)

**F301** 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.**

F302 .....

**Textual Amendments**

**F302** 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.**

F303 .....

**Textual Amendments**

**F303** 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.**

F304 .....

**Textual Amendments**

**F304** 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)

[<sup>F305</sup> **68A Share incentive plans: application of section 68B**

F306 .....

**Textual Amendments**

**F305** 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)

**F306** 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)

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## 68B Share incentive plans: cash dividends and dividend shares

F307 .....

### Textual Amendments

**F305** 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)

**F307** 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

F308 .....]

### Textual Amendments

**F305** 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)

**F308** 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.

F309 .....

### Textual Amendments

**F309** 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)

## CHAPTER III

### CORPORATION TAX: BASIS OF ASSESSMENT ETC

## 70 Basis of assessment etc.

- (1) <sup>M62</sup>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) <sup>M63</sup>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.

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- (3) [<sup>F310M64</sup>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

**F310** 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)

**C85** 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

**M62** SOURCE-1970 s. 129(1)

**M63** SOURCE-1970 s. 129(4)

**M64** SOURCE-1970 s. 129(5)

### [<sup>F311</sup>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—
- 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
  - 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—
- the land in question were in the United Kingdom, or
  - 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.
- (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.

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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 <sup>F312</sup> . . . 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

- F311** 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](#))
- F312** 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.

<sup>F313</sup> .....

#### Textual Amendments

- F313** 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](#))

#### 72 Apportionments etc. for purposes of Cases I, II and VI.

- (1) <sup>M65</sup>Where in the case of any profits or gains chargeable [<sup>F314</sup>to corporation tax] under Case I, II or VI of Schedule D it is necessary in order to arrive for the purposes of <sup>F315</sup> . . . corporation tax at the profits or gains or losses of any <sup>F315</sup> . . . 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) <sup>M66</sup>Any apportionment under this section shall be made in proportion to the number of [<sup>F316</sup>days] in the respective periods.



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#### Textual Amendments

- F314** 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](#))
- F315** 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](#))
- F316** Word in s. 72(2) substituted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [s. 121](#)

#### Modifications etc. (not altering text)

- C86** See S.I. 1987 No. 530 (in Part III Vol. 5) regn. 16—*payments attributable to non-resident entertainers and sportsmen.*

#### Marginal Citations

- M65** SOURCE-1970 ss. 127(1), 129(2)  
**M66** SOURCE-1970 s. 127(2), 527(4)

### 73 Single assessments for purposes of Cases III, IV and V.

F317 .....

#### Textual Amendments

- F317** [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)

- C87** 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.*

#### *Deductions*

### 74 General rules as to deductions not allowable.

- [<sup>F318</sup>(1)] <sup>M67</sup>Subject to the provisions of [<sup>F319</sup>the Corporation Tax Acts], in computing the amount of the [<sup>F320</sup>profits] to be charged [<sup>F321</sup>to 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 [<sup>F322</sup>or profession];
  - (b) <sup>F323</sup> .....
  - (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 [<sup>F322</sup>or profession],

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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 [<sup>F322</sup>or profession], beyond the sum actually expended for those purposes;
- (e) any loss not connected with or arising out of the trade [<sup>F322</sup>or profession];
- (f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade [<sup>F322</sup>or 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 [<sup>F322</sup>or profession];
- (h) any interest which might have been made if any such sums as aforesaid had been laid out at interest;
- [<sup>F324</sup>(j) <sup>F325</sup>.....]
- (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 [<sup>F326</sup>profits];
- (n) <sup>F327</sup>.....
- [<sup>F328</sup>(o) <sup>F323</sup>.....]
- (p) <sup>M68</sup>any royalty or other sum paid in respect of the user of a patent;
- (q) <sup>F329</sup>.....

[<sup>F330</sup>(2) <sup>F331</sup>.....]

### Textual Amendments

- F318** S. 74 renumbered as s. 74(1) (3.5.1994) by virtue of Finance Act 1994 (c. 9), s. 144(2)
- F319** 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)
- F320** Words in s. 74(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a)(b), Sch. 7 para. 1
- F321** 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)
- F322** 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)
- F323** 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)
- F324** 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)
- F325** 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
- F326** 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
- F327** 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
- F328** 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
- F329** 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)

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- F330** S. 74(2) inserted (3.5.1994) by Finance Act 1994 (c. 9) {s. 144(2)}  
**F331** 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)**

- C88** 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))  
**C89** 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)  
**C90** 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)  
**C91** See 1989 ss.112-113—*expenditure on security on or after 6 April 1989.*  
**C92** S. 74(1)(a) extended (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), regs. 1, 5  
**C93** 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**

- M67** SOURCE-1970 s. 130(a)–(m); 1987 Sch. 15 para. 2(9)  
**M68** SOURCE-1970 s. 130(n), (o)

**[<sup>F332</sup>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.
- [<sup>F333</sup>(2A)** A deduction is not to be allowed under that subsection for any particular expenses of management if any part of those expenses is incurred directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure the allowance of a deduction (or increased deduction) under that subsection or any other tax advantage.
- (2B) Subsection (2A) above does not apply if, as a result of paragraph 7A of Schedule 23A (manufactured payments under arrangements having an unallowable purpose), the company incurring the expenses is not entitled to a relevant tax relief (within the meaning of that paragraph) in respect of, or referable to, the whole or any part of the expenses.
- (2C) The reference in subsection (2A) above to expenses of management includes amounts treated by any provision as deductible under 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—
- subsection (7) below (capital allowances), or
  - 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.
- [<sup>F334</sup>(5A) For the purposes of subsection (5)(a) above investments are not held for a business or other commercial purpose if they are held directly or indirectly in consequence of, or otherwise in connection with, any arrangements the main purpose, or one of the main purposes, of which is to secure the allowance of a deduction (or increased deduction) under subsection (1) above or any other tax advantage.]
- (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

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(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.

(10) Any apportionment falling to be made for the purposes of this section shall be made on a just and reasonable basis.

[<sup>F335</sup>(11) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and  
“tax advantage” has the meaning given by section 840ZA.]]

#### Textual Amendments

- F332** S. 75 substituted (with effect in accordance with ss. 42, 43 of the amending Act) by [Finance Act 2004 \(c. 12\), s. 38\(1\)\(5\)](#)
- F333** S. 75(2A)-(2C) inserted (with effect in accordance with s. 28(5)(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 28\(2\)](#)
- F334** S. 75(5A) inserted (with effect in accordance with s. 28(5)(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 28\(3\)](#)
- F335** S. 75(11) inserted (with effect in accordance with s. 28(5)(6) of the amending Act) by [Finance Act 2007 \(c. 11\), s. 28\(4\)](#)

#### Modifications etc. (not altering text)

- C94** 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](#))
- C95** 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](#))
- C96** S. 75 modified by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), [reg. 69Z24A\(4\)\(b\)](#) (as inserted (1.1.2009 with effect in accordance with [reg. 1\(2\)\(3\)](#) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), [regs. 1\(1\), 27](#))
- C97** S. 75(1) modified (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 43\(5\)](#)

#### [<sup>F336</sup>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—
- expenses of management are debited in accounts drawn up by a company for a period of account,
  - the treatment of those expenses in those accounts is in accordance with generally accepted accounting practice, and
  - the period of account coincides with an accounting period,
- the expenses of management are referable to that accounting period.
- (3) Where—
- expenses of management are debited in accounts drawn up by a company for a period of account, and

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- (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
  - (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 [<sup>F337</sup>or income statement], or
  - (b) in a statement of total recognised gains and losses [<sup>F338</sup>, statement of changes in equity] or other statement of items brought into account in computing the company's profits and losses for accounting purposes.

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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

- F336** S. 75A inserted (with effect in accordance with ss. 42, 43 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 39](#)
- F337** 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\(a\)](#)
- F338** 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\(b\)](#)

#### [<sup>F339</sup>75B Amounts reversing expenses of management deducted: charge to tax

- (1) This section applies in any case where the following conditions are satisfied—
- 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,
  - the credit reverses (in whole or in part) a debit brought into account in a previous period of account of the company (whenever ending),
  - 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”),
  - the expenses of management were so deductible for that period otherwise than by virtue of section 75(9) (carry forward of unrelieved excess),
  - the period of deductibility ends before, or at the same time as, the reversal period,
  - 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—
- reverses so much of the debit as represents the expenses of management, and
  - 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—
- the reversal amount shall be apportioned between any accounting periods that fall within the reversal period, and
  - 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.



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- (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.
- (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.]

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**Textual Amendments**

**F339** S. 75B inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 45(1) (with s. 45(2)(3))

**[<sup>F340</sup>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 [<sup>F341</sup>charged to tax in respect of that business under the I minus E basis],

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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.

F342 .....

- (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),
  - (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

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(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);

<sup>F343</sup> .....

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);

<sup>F343</sup> .....

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 [<sup>F344</sup> amount (“amount S”)] by which any losses for that period under section [<sup>F345</sup>436A] fall to be reduced under section 434A(2)(b),
- (c) from amount L deduct amount S, to give the adjusted loss deduction,

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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
- (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 [<sup>F346</sup>expenses] deduction.

*Step 9*

<sup>F347</sup> .....

*Step 10: the amount of the expenses deduction*

<sup>F347</sup> .....

- (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,<sup>F348</sup> . . .
- (b) the Prudential Sourcebook (Insurers)<sup>F349</sup>, or
- (c) the [<sup>F350</sup>Insurance 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.

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*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*

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) <sup>F351</sup> .....

(11) <sup>F351</sup> .....

(12) Where for any accounting period—

- (a) the amount of the expenses deduction (see [<sup>F352</sup>Step 8]), exceeds
- (b) the amount from which that deduction is to be made (see subsection (2) above),

the excess is to be carried forward to the next accounting period [<sup>F353</sup> for which the company is charged to tax in respect of its life assurance business under the I minus E basis] and brought into account for that period in accordance with Step 7.

[<sup>F354</sup>(13) Where for any accounting period excess adjusted Case I profits are charged to tax under section 85A of the Finance Act 1989, an amount equal to the profits is to be carried forward to the next accounting period for which the company is charged to tax in respect of its life assurance business under the I minus E basis and brought into account for that period in accordance with Step 7.]

(14) <sup>F355</sup> .....

(15) In this section—

<sup>F356</sup> .....

“expenses payable” has the meaning given by subsection (3) above;

<sup>F357</sup> .....

**Textual Amendments**

**F340** S. 76 substituted (with effect in accordance with ss. 42, 44 of the amending Act) by [Finance Act 2004 \(c. 12\), s. 40](#)

**F341** Words in s. 76(1)(b) substituted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 8 para. 2\(2\)](#) (with [Sch. 8 Pt. 2](#))

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- F342** Words in s. 76(1) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 3(2), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F343** S. 76(7): entries in Step 3 repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(a), **Sch. 27 Pt. 2(10)**, Note
- F344** Words in s. 76(7) Step 5 substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 3(3)(a)** (with Sch. 7 Pt. 2)
- F345** Words in s. 76(7) Step 5 substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 3(3)(b)** (with Sch. 7 Pt. 2)
- F346** Word in s. 76(7) Step 8 substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 2(3)(a)** (with Sch. 8 Pt. 2)
- F347** S. 76(7) Steps 9, 10 repealed (with effect in accordance with s. 39(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 8 para. 2(3)(b), **Sch. 27 Pt. 2(8)**, Note (with Sch. 8 Pt. 2)
- F348** 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)**
- F349** 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)**
- F350** Words in s. 76(8) substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), **arts. 1(1)**, 3
- F351** S. 76(10)(11) repealed (with effect in accordance with s. 39(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 8 para. 2(4), **Sch. 27 Pt. 2(8)**, Note (with Sch. 8 Pt. 2)
- F352** Words in s. 76(12)(a) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 2(5)(a)** (with Sch. 8 Pt. 2)
- F353** Words in s. 76(12) inserted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 2(5)(b)** (with Sch. 8 Pt. 2)
- F354** S. 76(13) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 2(6)** (with Sch. 8 Pt. 2)
- F355** S. 76(14) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 3(4), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F356** S. 76(15): definition of "capital redemption business" repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 3(5), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F357** Words in s. 76(15) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(2)(b), **Sch. 27 Pt. 2(10)**, Note

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**Modifications etc. (not altering text)**

- C98** 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)
- C99** 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)
- C100** 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 [<sup>F358</sup>to corporation tax] under Case I of Schedule D arising from a trade carried on by an authorised person (other than an investment company)—

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- (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;
- (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.

[<sup>F359</sup>(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.]

[<sup>F360</sup>(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.

[<sup>F361</sup>(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

**F358** 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)

**F359** 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\(3\)](#)

**F360** 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\(4\)](#)

**F361** 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 [<sup>F362</sup>a company with investment business]—



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- (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.
- (2) [<sup>F363</sup>For the purposes of corporation tax,] if a payment is made to [<sup>F364</sup>a 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 [<sup>F365</sup>76A(2)].
- [<sup>F366</sup>(4) “Costs rules” has the meaning given in section 76A(6).]
- (5) “Repayment provision” has the meaning given in section 76A(3).

#### Textual Amendments

- F362** 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)**
- F363** 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)**
- F364** 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)**
- F365** 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)**
- F366** 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.

<sup>F367</sup> .....

#### Textual Amendments

- F367** 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.

<sup>F368</sup> .....

#### Textual Amendments

- F368** 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) <sup>M69</sup>Notwithstanding anything in section 74, but subject to the provisions of this section, where a [<sup>F369</sup>company] carrying on a [<sup>F370</sup>trade or profession] makes any contribution

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(whether in cash or in kind) to an approved local enterprise agency, any expenditure incurred by [<sup>F371</sup>the company] in making the contribution may be deducted as an expense in computing the [<sup>F372</sup>profits] of the [<sup>F370</sup>trade or profession] for the purposes of [<sup>F373</sup>corporation] tax if it would not otherwise be so deductible.

- (2) Where any such contribution is made by [<sup>F374</sup>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.
- [<sup>F375</sup>(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 [<sup>F376</sup>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 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) <sup>M70</sup>A 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)<sup>M71</sup> 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 [<sup>F377</sup>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 [<sup>F378</sup>accounting period] by [<sup>F379</sup>the company or any person connected with the company] is in any way attributable to that contribution,
- [<sup>F380</sup>the company shall] in respect of that [<sup>F378</sup>accounting period] be charged to [<sup>F381</sup>corporation] tax under Case I or Case II of Schedule D or, if [<sup>F382</sup>the company] is not chargeable to [<sup>F381</sup>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<sup>F383</sup> . . . .

#### Textual Amendments

- F369** 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)
- F370** 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)
- F371** 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)
- F372** Words in s. 79(1) substituted (31.7.1998) by *Finance Act 1998* (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1
- F373** 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)
- F374** 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)
- F375** 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)
- F376** 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)
- F377** 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)
- F378** 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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- F379** 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)
- F380** 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)
- F381** 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)
- F382** 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)
- F383** 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)**

- C101** 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**
- C102** 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**

- M69** SOURCE-1982 s. 48(1)–(4)  
**M70** SOURCE-1982 s. 48(5)  
**M71** SOURCE-1982 s. 48(6)–(9)

**[<sup>F384</sup>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 [<sup>F385</sup>company] carrying on a [<sup>F386</sup>trade or profession] makes any contribution (whether in cash or in kind) to a training and enterprise council, [<sup>F387</sup>business link organisation] or a local enterprise company, any expenditure incurred by [<sup>F388</sup>the company] in making the contribution may be deducted as an expense in computing the [<sup>F389</sup>profits] of the [<sup>F386</sup>trade or profession] for the purposes of [<sup>F390</sup>corporation] tax if it would not otherwise be so deductible.
  - (2) Where any such contribution is made by [<sup>F391</sup>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.
- [<sup>F392</sup>(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 [<sup>F393</sup>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, [<sup>F394</sup>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 [<sup>F395</sup>made by a company], and

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- (b) any benefit received in any [<sup>F396</sup>accounting period] by [<sup>F397</sup>the company or any person connected with the company] is in any way attributable to that contribution,
- [<sup>F398</sup>the company shall] in respect of that [<sup>F396</sup>accounting period] be charged to [<sup>F399</sup>corporation] tax under Case I or Case II of Schedule D, or if [<sup>F400</sup>the company] is not chargeable to [<sup>F399</sup>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—
- [<sup>F401</sup>(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 [<sup>F402</sup> . . . 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 [<sup>F403</sup>or, in the case of a contribution to a business link organisation, 30th November 1993] [<sup>F404</sup> . . . .]

### Textual Amendments

- F384** 1990 s.76.
- F385** 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)
- F386** 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)
- F387** Words in s. 79A(1) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 145\(3\)](#)
- F388** 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)
- F389** Words in s. 79A(1) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\)](#), Sch. 7 para. 1
- F390** 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)
- F391** 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)
- F392** [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)
- F393** 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)
- F394** Word in s. 79A(3) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 145\(3\)](#)
- F395** 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)
- F396** 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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- F397** 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)
- F398** 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)
- F399** 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)
- F400** 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)
- F401** S. 79A(5)(aa) inserted (3.5.1994) by **Finance Act 1994 (c. 9), s. 145(4)**
- F402** Words in s. 79A(5)(b) repealed (28.7.2000) by **Finance Act 2000 (c. 17), Sch. 40 Pt. 2(9)**
- F403** Words in s. 79A(7) inserted (3.5.1994) by **Finance Act 1994 (c. 9), s. 145(5)**
- F404** 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 [<sup>F405</sup>company] carrying on a [<sup>F406</sup>trade or profession] makes any contribution (whether in cash or in kind) to a designated urban regeneration company, any expenditure incurred by [<sup>F407</sup>the company] in making the contribution may be deducted as an expense in computing the profits of the [<sup>F406</sup>trade or profession][<sup>F408</sup> for the purposes of corporation tax] if it would not otherwise be so deductible.
- (2) Where any such contribution is made by [<sup>F409</sup> 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.
- [<sup>F410</sup>(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 [<sup>F411</sup>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 [<sup>F412</sup>made by a company], and
  - (b) any benefit received in any [<sup>F413</sup>accounting period] by [<sup>F414</sup>the company or any person connected with the company] is in any way attributable to that contribution,

[<sup>F415</sup>the company shall] in respect of that [<sup>F413</sup>accounting period] be charged to [<sup>F416</sup>corporation] tax under Case I or Case II of Schedule D or, if [<sup>F417</sup>the company] is not chargeable to [<sup>F416</sup>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

- F405** 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)
- F406** 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)
- F407** 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)
- F408** 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)
- F409** 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)
- F410** [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)
- F411** 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)
- F412** 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)
- F413** 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)
- F414** 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)
- F415** 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)
- F416** 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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**F417** 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.

**F418** .....

### Textual Amendments

**F418** 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.

**F419** .....

### Textual Amendments

**F419** 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.

**F420** .....

### Textual Amendments

**F420** 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 [<sup>F421</sup>company] carrying on a trade incurs expenditure not of a capital nature on research and development—
  - (a) related to that trade, and
  - (b) directly undertaken [<sup>F422</sup>by 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 [<sup>F423</sup>corporation] 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

- F421** 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](#))
- F422** 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](#))
- F423** 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)

- C103** [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 [<sup>F424</sup>company] carrying on a trade—
- [<sup>F425</sup>(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 [<sup>F426</sup>corporation] 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 [<sup>F427</sup>subsection (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

- F424** 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)
- F425** 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)**
- F426** 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)
- F427** 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.

<sup>M72</sup>Notwithstanding anything in section 74, in computing the [<sup>F428</sup>profits] of a trade [<sup>F429</sup>for 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, [<sup>F430</sup>an 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.

F431

#### Textual Amendments

- F428** Words in s. 83 substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 46(3)(a)(b)**, Sch. 7 para. 1
- F429** 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)
- F430** 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”.*
- F431** 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)

- C104** 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

- M72** SOURCE-1970 s. 132

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### 83A Gifts in kind to charities etc.

- (1) This section applies where [<sup>F432</sup>a 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 [<sup>F433</sup>the company in the course of its trade]; <sup>F434</sup> . . .
  - (b) <sup>F434</sup> . . . . .
- (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 [<sup>F435</sup>the company's] disposal of that article from trading stock, to be brought into account for [<sup>F436</sup>corporation tax purposes] as a trading receipt of [<sup>F437</sup>the company]; <sup>F434</sup> . . .
  - (b) <sup>F434</sup> . . . . .
- (4) In any case where—
  - (a) relief is given under subsection (3) above [<sup>F438</sup>or section 63(2) of the Capital Allowances Act] in respect of the gift of an article [<sup>F439</sup>made by a company], and
  - (b) any benefit received in any [<sup>F440</sup>accounting period] by [<sup>F441</sup>the company or any person connected with the company] is in any way attributable to the making of that gift,  
[<sup>F442</sup>the company shall] in respect of that [<sup>F440</sup>accounting period] be charged to [<sup>F443</sup>corporation] tax under Case I or Case II of Schedule D or, if [<sup>F444</sup>the company] is not chargeable to [<sup>F443</sup>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) Section 839 applies for the purposes of this section.

#### Textual Amendments

- F432** 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)
- F433** 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)
- F434** 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*
- F435** 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)
- F436** 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)
- F437** 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)
- F438** 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)*
- F439** 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)
- F440** 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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- F441** 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)
  - F442** 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)
  - F443** 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)
  - F444** 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)**
- C105** [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] <sup>F445</sup>Gifts to educational establishments.**

- (1) This section applies where [<sup>F446</sup>a 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 [<sup>F447</sup>its trade] which qualifies as [<sup>F448</sup>plant or machinery] in the hands of the educational establishment; <sup>F449</sup> . . .
  - (b) <sup>F449</sup> . . . . .
- (2) For the purposes of this section, an article “[<sup>F450</sup>qualifies 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 [<sup>F451</sup>Part 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 [<sup>F452</sup>corporation tax purposes], no amount shall be required to be brought into account as a trading receipt of the donor in consequence of [<sup>F453</sup>its disposal] of that article from trading stock; <sup>F449</sup> . . .
  - (b) <sup>F449</sup> . . . . .

but this subsection shall not apply unless, within [<sup>F454</sup>the 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.

[ The period mentioned in subsection (3) above is [<sup>F456</sup>the period of two years beginning <sup>F455</sup>(3A) at the end of the accounting period in which the gift is made.]

(3B) <sup>F457</sup> . . . . .]

- (4) In any case where—

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- (a) relief is given under subsection (3) above [<sup>F458</sup>or section 63(2) of the Capital Allowances Act] in respect of the gift of an article [<sup>F459</sup>made by the donor], and
  - (b) any benefit received in any [<sup>F460</sup>accounting period] by the donor or any person connected with [<sup>F461</sup>the donor] is in any way attributable to the making of that gift,
- the donor shall in respect of that [<sup>F460</sup>accounting period] be charged to [<sup>F462</sup>corporation] tax under Case I or Case II of Schedule D or, if [<sup>F463</sup>the donor] is not chargeable to [<sup>F462</sup>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 “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

- F445** S. 84 substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 68(1)(2)
- F446** 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)
- F447** 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)
- F448** 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)
- F449** 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}
- F450** 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)
- F451** 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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- F452** 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)
- F453** 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)
- F454** 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)**
- F455** 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)**
- F456** 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)
- F457** 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)
- F458** 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)**
- F459** 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)
- F460** 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)
- F461** 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)
- F462** 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)
- F463** 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)**

- C106** 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**

**[<sup>F464</sup>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 [<sup>F465</sup>or Part 2 of ITTOIA 2005] the [<sup>F466</sup>profits] of a trade carried on by the company, or
  - [<sup>F467</sup>(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,
- [<sup>F468</sup>for the purpose of applying subsection (2) above the expenditure shall be treated in accordance with subsection (3ZA) below.]

- [ Where this subsection applies—
- <sup>F469</sup>(3ZA) (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.]

- [ In this section, “share option scheme” means—
- <sup>F470</sup>(3A) (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 [<sup>F471</sup>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

- F464** S. 84A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), [s. 42](#)
- F465** 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](#))
- F466** 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](#)
- F467** [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\(2\)](#)
- F468** 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\(3\)](#)
- F469** [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\(4\)](#)
- F470** [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](#))
- F471** 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) <sup>M73</sup> 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 [<sup>F472</sup>profits] of a trade carried on by that company; or
  - [<sup>F473</sup>(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

**F472** 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

**F473** 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)

**C107** S. 85 amended (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 50](#)

### Marginal Citations

**M73** SOURCE-1978 s. 60

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**[85A** <sup>F474</sup> **Costs 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 [<sup>F475</sup>profits] of a trade carried on by the company,<sup>F476</sup> . . .

[<sup>F477</sup>(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,

[<sup>F478</sup>for the purpose of applying subsection (2) above, the expenditure shall be treated in accordance with subsection(3A) below.]

[ Where this subsection applies—

<sup>F479</sup>(3A) (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**

**F474** S. 85A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), s. 43

**F475** 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

**F476** 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)

**F477** 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)

**F478** 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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**F479** 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) [<sup>F480M74</sup> 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, [<sup>F481</sup> notwithstanding 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 [<sup>F482</sup> or profession].
- (2) In subsection (1) above—  
 “charity” has the same meaning as in section 506;  
 [<sup>F483</sup> “deductible” means—  
 (a) deductible as an expense in computing the profits of the employer to be charged [<sup>F484</sup> to 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 [<sup>F485</sup> . . .], this section shall have effect as if the references to a charity included references to any of the following bodies, that is to say—  
 [<sup>F486</sup> (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.
- [<sup>F487</sup> (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

- F480** 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](#))
- F481** 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)
- F482** 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](#))
- F483** 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)
- F484** 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](#))
- F485** Words in s. 86(3) repealed (retrospectively) by [Finance Act 1999 \(c. 16\)](#), s. 58(2)(5), [Sch. 20 Pt. 3\(14\)](#), Note
- F486** 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)
- F487** 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

M74 SOURCE-1983 s. 28; 1984 s. 33; 1987 s. 34

[<sup>F488</sup>86A Charitable donations: contributions to agent’s expenses.

- (1) This section applies where—



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- (a) [<sup>F489</sup>a company] (the employer) is liable to make to any individual payments from which income tax falls to be deducted [<sup>F490</sup>under PAYE regulations], and
- (b) the employer withholds sums from those payments in accordance with [<sup>F491</sup>an approved scheme and pays the sums to an approved agent].

[ In subsection (1)(b) “approved scheme” and “approved agent” have the same meaning <sup>F492</sup>(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 [<sup>F493</sup>profits] of a trade [<sup>F494</sup>or profession] carried on by the employer, or
  - <sup>F495</sup>(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

- F488** S. 86A inserted (27.7.1993) by 1993 c. 34, s.69
- F489** 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)
- F490** 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)
- F491** 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)
- F492** 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)
- F493** 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
- F494** 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)
- F495** 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) <sup>M75</sup>This section applies where in relation to any land used in connection with a [<sup>F496</sup>trade or profession]—
  - <sup>F497</sup>(a) any amount falls to be treated as a receipt of a Schedule A business by virtue of section 34 or 35, <sup>F498</sup> . . .
  - (b) any amount would fall to be so treated but for the operation of section 37(2) or (3);]
  - <sup>F499</sup>(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 [<sup>F500</sup>and in section 87A] as “the amount chargeable”.

- (2) <sup>M76</sup>Subject 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 [<sup>F501</sup>a 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 [<sup>F502</sup>trade or profession] carried on by [<sup>F503</sup>the company],
- [<sup>F504</sup>the company] shall be treated, in computing the [<sup>F505</sup>profits] of the [<sup>F502</sup>trade or profession] chargeable to [<sup>F506</sup>corporation 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) <sup>M77</sup>Where a [<sup>F507</sup>company], although not in occupation of the land or any part of the land, deals with [<sup>F508</sup>the company's] interest in the land or that part as property employed for the purposes of a [<sup>F509</sup>trade or profession] carried on by [<sup>F510</sup>the company], subsections (2) and (3) above shall apply as if the land or part were occupied by [<sup>F510</sup>the company] for those purposes.
- (5) <sup>M78</sup>Where 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) <sup>M79</sup>In computing [<sup>F505</sup>profits] chargeable under Case I or II of Schedule D for any [<sup>F511</sup>accounting period], rent shall not by virtue of subsection (4) above be treated as paid by a [<sup>F512</sup>company] for any period in respect of land in so far as rent treated under section 37(4) as paid by [<sup>F513</sup>the company] for that period in respect of the land has in any previous [<sup>F511</sup>accounting period] been deducted, or falls in that [<sup>F511</sup>accounting period] to be deducted under Part II.
- (7) <sup>M80</sup>Where, in respect of expenditure on the acquisition of [<sup>F514</sup>the company's] interest in the land in relation to which the amount chargeable arose, a [<sup>F515</sup>company] has become entitled to an allowance under [<sup>F516</sup>Part 5 of the Capital Allowances Act in respect of expenditure falling within section 403 (mineral asset expenditure)] for any [<sup>F517</sup>accounting period], then—
- (a) if the allowance is in respect of the whole of the expenditure, no deduction shall be allowed [<sup>F518</sup>the company] under this section for that or any subsequent [<sup>F517</sup>accounting period]; or
  - (b) if the allowance is in respect of part only of the expenditure (“the allowable part”), a deduction allowed [<sup>F518</sup>the company] under this section for that or any subsequent [<sup>F517</sup>accounting 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;

F519 .....

- (8) Where the amount chargeable arose under section 34(2) [F520 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, 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) M81 In 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;
  - [F521 (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)).]
- [F522 (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) F523 .....

#### Textual Amendments

- F496** 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)
- F497** 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)
- F498** 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)
- F499** 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)
- F500** 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)
- F501** 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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- F502** 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)
- F503** 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)
- F504** 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)
- F505** 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
- F506** 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)
- F507** 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)
- F508** 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)
- F509** 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)
- F510** 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)
- F511** 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)
- F512** 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)
- F513** 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)
- F514** 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)
- F515** 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)
- F516** 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**
- F517** 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)
- F518** 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)
- F519** *Words repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.*
- F520** 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)
- F521** 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)
- F522** 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)
- F523** 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

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**Modifications etc. (not altering text)**

- C108** *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.*
- C109** 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.
- C110** S. 87 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 9(2)**
- C111** 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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**C112** 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

- M75** SOURCE-1970 s. 134(1); 1978 s. 32  
**M76** SOURCE-1970 s. 134(2), (3); 1978 s. 32  
**M77** SOURCE-1970 s. 134(4)  
**M78** SOURCE-1970 s. 134(4)(a)  
**M79** SOURCE-1970 s. 134(4)(b)  
**M80** SOURCE-1970 s. 134(5), (6); 1986 Sch. 13 para. 26  
**M81** 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.

<sup>M82</sup>Any sums paid by [<sup>F524</sup>a 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 <sup>M83</sup>Export 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 [<sup>F525</sup>profits] of any [<sup>F526</sup>trade or profession carried on by that company]; or
- <sup>F527</sup>(b) [<sup>F528</sup>if 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

- F524** 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)
- F525** 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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- F526** 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](#))
- F527** [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\(2\)](#)
- F528** 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

- M82** SOURCE-1972 s. 124(1)  
**M83** 1978 c. 18.

### [<sup>F529</sup> 88A Debts of overseas governments etc.

<sup>F530</sup> .....]

#### Textual Amendments

- F529** [Ss. 88A-88C](#) inserted by [Finance Act 1990 \(c. 29\), s. 74](#)
- F530** [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](#))

### [<sup>F531</sup> 88B Section 88A debts: restriction on deductions under section 74(j).

<sup>F532</sup> .....]

#### Textual Amendments

- F531** [Ss. 88A-88C](#) inserted by [Finance Act 1990 \(c. 29\), s. 74](#)
- F532** [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](#))

### [<sup>F533</sup> 88C Section 88A debts: restriction on other deductions.

<sup>F534</sup> .....]

#### Textual Amendments

- F533** [Ss. 88A-88C](#) inserted by [Finance Act 1990 \(c. 29\), s. 74](#)
- F534** [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—
- Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships, etc);
  - Schedule 26 to the Finance Act 2002 (derivative contracts);
  - 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).

### <sup>F535</sup>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 <sup>F536</sup>relevant deduction in respect of them] in a computation for any period before the event or cessation.
  - <sup>F537</sup>(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

- F535** 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](#))
- F536** 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\(3\)\(a\)](#)
- F537** 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.

[<sup>F538</sup>(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 [<sup>F539</sup>or 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, [<sup>F540</sup>profession 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, [<sup>F540</sup>profession or business] was carried on.]

[<sup>F541</sup>(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, [<sup>F542</sup>profession or business] include references to any occasion on which it is treated as permanently discontinued by virtue of section <sup>F543</sup> . . . 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

- F538** 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)
- F539** 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)
- F540** 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)
- F541** 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)
- F542** 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)
- F543** 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) <sup>M84</sup>In computing [<sup>F544</sup>for corporation tax purposes] the [<sup>F545</sup>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 [<sup>F546</sup>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) <sup>M85</sup>Subject to subsection (3) below, the relevant capital expenditure is capital expenditure incurred for the purposes of the trade in question by [<sup>F547</sup>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) <sup>M86</sup>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 [<sup>F548</sup>, or under section 170(2)(b) of ITTOIA 2005 (relief for income tax purposes)] in computing [<sup>F549</sup>for tax purposes] the [<sup>F545</sup>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 [<sup>F550</sup>the company] carrying on the trade in



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- respect of the destruction and any money received by [F551:it] 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 [F552:the 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 [F553:the company] had at all times been engaged in carrying on the trade;
  - (b) as if everything done to or by any of [F554:its] predecessors in carrying on the trade had been done to or by [F555:it]; and
  - (c) without regard to the price paid on any sale on the occasion of any such change.
- [F556:(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 <sup>M87</sup>Finance Act 1952 (which made similar provision to that made by this section).

[<sup>F557</sup>(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

- F544** 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)
- F545** 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
- F546** 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)
- F547** 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)
- F548** 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)
- F549** 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)
- F550** 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)
- F551** 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)
- F552** 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)
- F553** 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)
- F554** 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)
- F555** 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)
- F556** 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)
- F557** 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

- M84** SOURCE-1970 s. 141(1)  
**M85** SOURCE-1970 s. 141(2)  
**M86** SOURCE-1970 s. 141(3)–(8)  
**M87** 1952 c. 33.

#### [<sup>F558</sup>91A Waste disposal: restoration payments.

- (1) This section applies where on or after 6th April 1989 a [<sup>F559</sup>company] makes a site restoration payment in the course of carrying on a trade.
- (2) Subject to subsection (3) below, for the purposes of <sup>F560</sup> . . . corporation tax the payment shall be allowed as a deduction in computing the [<sup>F561</sup>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 [<sup>F561</sup>profits] 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 [<sup>F562</sup>any 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 licence is—
  - (a) a disposal licence under Part I of the <sup>M88</sup>Control of Pollution Act 1974 or Part II of the <sup>M89</sup>Pollution 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, [<sup>F563</sup> or
  - <sup>F564</sup> [ a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999, [<sup>F565</sup> or a permit under regulations under Article 4 of the Environment (Northern Ireland) Order 2002,] or]
  - <sup>F566</sup> [ a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999, [<sup>F565</sup> or a permit under regulations under Article 4 of the Environment (Northern Ireland) Order 2002,] or]
  - (c) any authorisation under the <sup>M90</sup>Radioactive Substances Act 1960 or the <sup>M91</sup>Radioactive Substances Act 1993 for the disposal of radioactive waste or any nuclear site licence under the <sup>M92</sup>Nuclear Installations Act 1965.]
- <sup>F567</sup> [ For the purposes of this section a relevant obligation is—
- (7) (a) an obligation arising under an agreement made under—
  - (i) section 106 of the <sup>M93</sup>Town and Country Planning Act 1990, as originally enacted;
  - (ii) [<sup>F568</sup>section 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 <sup>M94</sup>Planning 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 <sup>M93</sup>Town 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) <sup>F569</sup> .....]

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### Textual Amendments

- F558** Ss. 91A, 91B inserted by Finance Act 1990 (c. 29), s. 78.
- F559** 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)
- F560** 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)
- F561** 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
- F562** 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)
- F563** 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)
- F564** 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)
- F565** 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
- F566** 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)
- F567** 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)
- F568** 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
- F569** S. 91A(8) repealed (24.7.2002) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(16)

### Marginal Citations

- M88** 1974 c. 40.  
**M89** S.I. 1978/1049 (N.I.19).  
**M90** 1960 c. 34.  
**M91** 1993 c. 12.  
**M92** 1965 c. 57.  
**M93** 1990 c. 8.  
**M94** 1991 c. 34.

## 91B Waste disposal: preparation expenditure.

- (1) This section applies where a [<sup>F570</sup>company]—
- (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 [<sup>F570</sup>company] 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 [<sup>F571</sup>profits] 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 <sup>F572</sup> . . . 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—

$$\left( A - B \right) \times \frac{C}{C + D}$$

- (4) A is the site preparation expenditure incurred by the [<sup>F573</sup>company] 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 [<sup>F574</sup>for the purposes of corporation tax or income tax] the [<sup>F571</sup>profits] 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 [<sup>F575</sup>for 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 [<sup>F576</sup>or section 165 of ITTOIA 2005 (relief for income tax purposes)], if allowed—
- (a) in computing the [<sup>F571</sup>profits] 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.

[<sup>F577</sup>(10A) For the purposes of this section any expenditure incurred for the purposes of a trade by a [<sup>F578</sup>company] about to carry it on shall be treated as if it had been incurred by that [<sup>F578</sup>company] on the first day on which [<sup>F579</sup>it] 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, <sup>F580</sup> . . .
- (e) <sup>F580</sup> . . . . .

#### Textual Amendments

- F570** 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)
- F571** 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**
- F572** 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)
- F573** 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)
- F574** 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)
- F575** 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)
- F576** 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)
- F577** *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)**
- F578** 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)
- F579** 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)
- F580** *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 [<sup>F581</sup>that 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 [<sup>F582</sup>it] 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

- F581** 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](#))
- F582** 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 [<sup>F583</sup>company] carrying on a trade incurs expenditure on mineral exploration and access as defined in [<sup>F584</sup>section 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 [<sup>F585</sup>profits] of the trade for the purposes of [<sup>F586</sup>corporation tax],

that expenditure shall not be so deducted.

#### Textual Amendments

- F583** 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](#))
- F584** 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](#)
- F585** 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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**F586** 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

### *<sup>F587</sup>Payments for restrictive undertakings*

#### Textual Amendments

**F587** 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

### *<sup>F588</sup>Seconded employees*

#### Textual Amendments

**F588** 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

### <sup>F589</sup>Counselling and retraining expenses

#### Textual Amendments

**F589** 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.

#### <sup>F590</sup>**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

**F590** 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)

#### [<sup>F591</sup>76ZB 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

**F591** 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)

**C113** 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

### *[<sup>F592</sup>Redundancy payments etc*

#### Textual Amendments

**F592** 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.

**[<sup>F593</sup>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**

**F593** 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)

**[<sup>F594</sup>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**

**F594** 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)

**[<sup>F595</sup>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

**F595** 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)

#### [<sup>F596</sup>76Z. 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

**F596** 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

### <sup>F597</sup>Contributions to local enterprise organisations or urban regeneration companies

### Textual Amendments

**F597** 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

### *[<sup>F598</sup>Unpaid remuneration*

#### **Textual Amendments**

**F598** 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.

#### **[<sup>F599</sup>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**

**F599** 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

*[<sup>F600</sup>Car or motor cycle hire]*

**Textual Amendments**

**F600** 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)

**[<sup>F601</sup>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—

$$\frac{\text{£ } 12,000 + \text{RP}}{2 \times \text{RP}}$$

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

**F601** 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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**[<sup>F602</sup>76ZO Hiring cars (but not motor cycles) with low CO<sub>2</sub> emissions before 1 April 2013**

- (1) Section 76ZN does not apply to expenses incurred on the hiring of a car with low CO<sub>2</sub> 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<sub>2</sub> emissions” has the meaning given by section 45D of CAA 2001, and
- “electrically-propelled car” has the meaning given by that section.]

**Textual Amendments**

**F602** 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) <sup>M95</sup>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) <sup>M96</sup>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 <sup>M97</sup>Industrial Development Act 1982.

**Marginal Citations**

**M95** SOURCE-1984 s. 54(1), (4)  
**M96** SOURCE-1984 s. 54(2), (3)  
**M97** 1982 c. 52.

**93 Other grants under Industrial Development Act 1982 etc.**

- (1) <sup>M98</sup>A payment to which this section applies which is made to a [<sup>F603</sup>company] carrying on a trade the profits of which are chargeable [<sup>F604</sup>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 [<sup>F605</sup>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) <sup>M99</sup>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 <sup>M100</sup>Industry Act 1972; or
  - (b) section 1 of the <sup>M101</sup>Industries Development Act (Northern Ireland) 1966 or section 4 of the <sup>M102</sup>Industries Development Act (Northern Ireland) 1971; or
  - (c) <sup>M103</sup>any of Articles 7, 9 and 30 of the <sup>M104</sup>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) <sup>M105</sup>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

- F603** 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)
- F604** 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)
- F605** 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

- M98** SOURCE-1980 s. 42(1)
- M99** SOURCE-1980 s. 42(2)
- M100** 1972 c. 63.
- M101** 1966 c. 36 (N.I.).
- M102** 1971 c. 22 (N.I.).
- M103** SOURCE-1980 s. 42(2); 1984 s. 55(1)
- M104** [S.I. 1982/1083 \(N.I. 15\)](#).
- M105** SOURCE-1980 s. 42(3); 1984 s. 55(2)

## 94 Debts deducted and subsequently released.

[<sup>F606</sup>(1)] <sup>M106</sup>Where, in computing for [<sup>F607</sup>corporation tax purposes] the [<sup>F608</sup>profits] of a [<sup>F609</sup>trade or profession], a deduction has been allowed for any debt incurred for the purposes of the [<sup>F609</sup>trade or profession], then, if the whole or any part of the debt is thereafter released [<sup>F610</sup>otherwise than as part of a [<sup>F611</sup>statutory insolvency arrangement]], the amount released shall be treated as a receipt of the [<sup>F609</sup>trade or profession] arising in the period in which the release is effected.

- (2) <sup>F612</sup> .....



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### Textual Amendments

- F606** S. 94 renumbered as s. 94(1) (3.5.1994) by virtue of [Finance Act 1994 \(c. 9\), s. 144\(4\)](#)
- F607** 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)
- F608** Words in s. 94(1) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\)](#), Sch. 7 para. 1
- F609** 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)
- F610** 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\(3\)\(a\)](#)
- F611** 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\(2\)](#)
- F612** 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

- M106** SOURCE-1970 s. 136

## 95 <sup>F613</sup>Taxation of dealers in respect of distributions etc.]

<sup>F614</sup><sup>F615</sup>(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,
- (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 <sup>F616</sup>corporation 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 <sup>F617</sup>relevant distribution]—

- (a) <sup>F618</sup> .....
- (b) <sup>F619</sup> .....
- (c) <sup>F620</sup>section 208] shall not apply to that distribution; and
- (d) <sup>F621</sup> .....
- <sup>F622</sup>(e) <sup>F623</sup> .....

(1B) <sup>F624</sup> .....

<sup>F625</sup>(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 <sup>F626</sup>... distribution if—

- (a) were there a sale by that person of the shares <sup>F627</sup>or 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 <sup>F626</sup>... distribution,

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the price would be taken into account in computing the profits of that person which are chargeable to [<sup>F628</sup>corporation tax] in accordance with the provisions of this Act applicable to Case I or II of Schedule D.]

[<sup>F629</sup>(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) <sup>F630</sup> .....
- (5) <sup>F630</sup> .....

### Textual Amendments

- F613** 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)
- F614** 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)
- F615** 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)
- F616** 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)
- F617** 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)
- F618** 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)
- F619** 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
- F620** 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)
- F621** 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
- F622** 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)
- F623** 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)
- F624** 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
- F625** S. 95(1C) inserted (2.7.2004) by Finance Act 2004 (c. 12), s. 137(2)(6)
- F626** 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
- F627** 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)
- F628** 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)
- F629** 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)
- F630** 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

**[<sup>F631</sup>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**

**F631** 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*

**[<sup>F632</sup>95A Creative artists: relief for fluctuating profits**

<sup>F633</sup> .....

**Textual Amendments**

**F632** S. 95A inserted (11.5.2001) by Finance Act 2001 (c. 9), s. 71(1)

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**F633** 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.

F634 .....

### Textual Amendments

**F634** 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.

<sup>M107</sup>Schedule 5 shall have effect with respect to the treatment, in computing [<sup>F635</sup>profits] 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

**F635** 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

**M107** SOURCE-1970 s. 139

## [<sup>F636</sup>98 Tied premises: receipts and expenses treated as those of trade.

- (1) This section applies [<sup>F637</sup>for corporation tax purposes] where [<sup>F638</sup>a 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 [<sup>F639</sup>a 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

- F636** S. 98 substituted (17.3.1998) by Finance Act 1998 (c. 36), s. 41(1)(3) (with s. 41(4)-(7))
- F637** 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)
- F638** 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)
- F639** 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) <sup>M108</sup>In computing for [<sup>F640</sup>corporation tax purposes] the [<sup>F641</sup>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) <sup>M109</sup>In computing the [<sup>F641</sup>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 [<sup>F642</sup>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 [<sup>F643</sup>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 [<sup>F643</sup>corporation tax] shall be made (for all relevant [<sup>F644</sup>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 [<sup>F643</sup>corporation tax] for the [<sup>F645</sup>accounting period] in which that claim is made.
- (4) <sup>M110</sup>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

- F640** 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)
- F641** 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
- F642** 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)
- F643** 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)
- F644** 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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**F645** 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

**M108** SOURCE-1970 s. 142(1)

**M109** SOURCE-1970 s. 142(2), (4)

**M110** SOURCE-1970 s. 142(2), (4)

## CHAPTER VI

### DISCONTINUANCE <sup>F646</sup> . . .

#### Textual Amendments

**F646** 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) <sup>M111</sup>In computing for [<sup>F647</sup>any corporation tax purpose] the [<sup>F648</sup>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 [<sup>F648</sup>profits] of that trade, the value of the stock shall be taken to be the amount [<sup>F649</sup>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.

<sup>F650</sup>(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.]

<sup>F651</sup>(1A) Subject to subsections (1B) and (1C) below and to paragraph 2 of Schedule 12 to the <sup>M112</sup>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 [<sup>F652</sup>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 [<sup>F653</sup>that 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) <sup>F654</sup> . . . . .
- (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 [<sup>F655</sup>accounting 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 [<sup>F656</sup>corporation] tax purposes the [<sup>F648</sup>profits] 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 [<sup>F648</sup>profits] were to be computed began immediately before the sale.

(1E) [<sup>F657</sup>Where 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 [<sup>F648</sup>profits] of the discontinued trade shall also be taken, for the purpose of making [<sup>F658</sup>for corporation tax purposes] any deduction in computing the [<sup>F648</sup>profits] 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)<sup>M113</sup> 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<sup>F659</sup> . . . , be treated, for the purposes of section 101, as work in progress of the profession<sup>F659</sup> . . . , and references to the sale or transfer of trading stock shall be construed accordingly.

[<sup>F660</sup>(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

- F647** 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)
- F648** 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
- F649** 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)**
- F650** 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)**
- F651** 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)}
- F652** 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)
- F653** 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)
- F654** S. 100(1B)(a) repealed (24.7.2002) by *Finance Act 2002 (c. 23)*, s. 105(1), **Sch. 40 Pt. 3(17)**
- F655** 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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- F656** 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)
- F657** 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)
- F658** 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)
- F659** 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)
- F660** 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)

- C114** 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))
- C115** 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

- M111** Source—1970 s.137(1)
- M112** 1988 c. 39.
- M113** Source—1970 s.137(4)

## 101 Valuation of work in progress at discontinuance of profession or vocation.

- (1) <sup>M114</sup>Where, in computing for [<sup>F661</sup>any corporation tax purpose] the [<sup>F662</sup>profits] of a profession <sup>F663</sup>. . . which has been discontinued, a valuation is taken of the work of the profession <sup>F663</sup>. . . 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 <sup>F663</sup>. . . 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 [<sup>F662</sup>profits] of that profession <sup>F663</sup>. . . ,
- 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) <sup>M115</sup>Where a profession <sup>F664</sup>. . . is discontinued, and the [<sup>F665</sup>company by which] it was carried on immediately before the discontinuance so elects by notice sent to the inspector at any time within [<sup>F666</sup>the 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 [<sup>F662</sup>profits] 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.

- [<sup>F667</sup>(2A) The period mentioned in subsection (2) above is—
- (a) <sup>F668</sup> . . . . .
  - (b) <sup>F669</sup> . . . the period of two years beginning at the end of the accounting period in which the profession <sup>F669</sup> . . . is discontinued.]
- (3) <sup>M116</sup> <sup>F670</sup> References in this section to work in progress at the discontinuance of a profession . . . shall be construed as references to—
- (a) any services performed in the ordinary course of the profession <sup>F670</sup> . . . , 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 <sup>F670</sup> . . . 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.

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#### Textual Amendments

- F661** 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)
- F662** 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
- F663** 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)
- F664** 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)
- F665** 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)
- F666** 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)**
- F667** 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)**
- F668** 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)
- F669** 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)
- F670** 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)

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#### Marginal Citations

- M114** Source—1970 s.138(1)  
**M115** Source—1970 s.138(3)  
**M116** Source—1970 s.138(5)

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## 102 Provisions supplementary to sections 100 and 101.

- (1)<sup>M117</sup> 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 [<sup>F671</sup>profits] of both the trades or, as the case may be, the professions<sup>F672</sup> . . . concerned—
- (a) in a case where the same body of General Commissioners have jurisdiction with respect to [<sup>F673</sup>each of the persons whose [<sup>F674</sup>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)<sup>M118</sup> Where, by virtue of section<sup>F675</sup> . . . 337(1), a [<sup>F676</sup>trade or profession] is treated as having been permanently discontinued for the purpose of computing [<sup>F677</sup>corporation] tax, it shall also be so treated for the purposes of sections 100 and 101<sup>F675</sup> . . . .

### Textual Amendments

- F671** Words in s. 102(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a)(b), Sch. 7 para. 1
- F672** 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)
- F673** 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
- F674** 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)
- F675** 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)
- F676** 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)
- F677** 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

- M117** Source—1970 s.137(2), 138(2)
- M118** 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.

- <sup>M119</sup>(1) Where any trade, profession or vocation [<sup>F678</sup>carried on wholly or partly in the United Kingdom] the [<sup>F679</sup>profits] of which are chargeable to tax<sup>F680</sup> . . . has been permanently discontinued, [<sup>F681</sup>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 [<sup>F679</sup>profits] 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 [<sup>F679</sup>profits] for any period before the discontinuance, and
- (b) where those [<sup>F679</sup>profits] were computed on a conventional basis (that is to say, were computed otherwise than by reference to earnings), any sums which, if those [<sup>F679</sup>profits] 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 [<sup>F682</sup>company] beneficially entitled thereto [<sup>F683</sup>which] is not resident in the United Kingdom, or by a person acting on [<sup>F684</sup>its] behalf, which represent income arising directly or indirectly from a country or territory outside the United Kingdom, or
- (b) <sup>F685</sup> . . . . .
- [<sup>F686</sup>(bb) <sup>F685</sup> . . . . .]
- (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.

<sup>F687</sup> . . . . .

(4) Where—

- (a) in computing for tax purposes the [<sup>F679</sup>profits] 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 [<sup>F688</sup>otherwise than as part of a [<sup>F689</sup>statutory 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.

[<sup>F690</sup>(4A) <sup>F691</sup> . . . . .]

(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 [<sup>F679</sup>profits] of a trade, profession or vocation to the extent that [<sup>F692</sup>a deduction has been made for tax purposes in respect of an impairment loss or a release of liability].

#### Textual Amendments

**F678** 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)

**F679** 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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- F680** 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](#))
- F681** 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](#))
- F682** 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](#))
- F683** 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](#))
- F684** 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](#))
- F685** 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](#))
- F686** [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).
- F687** 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](#))
- F688** 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\(3\)\(b\)](#)
- F689** 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\(2\)](#)
- F690** S. 103(4A) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 144\(5\)](#)
- F691** 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
- F692** 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

**M119** Source—1970 s.143; 1983 s.27(b)

### 104 Conventional basis: general charge on receipts after discontinuance <sup>F693</sup>. . . .

- (1) <sup>M120</sup>Where any trade, profession or vocation [<sup>F694</sup>carried on wholly or partly in the United Kingdom] the [<sup>F695</sup>profits] of which are chargeable to tax <sup>F696</sup>. . . has been permanently discontinued, and the [<sup>F695</sup>profits] for any period before the discontinuance were computed on a conventional basis, [<sup>F697</sup>corporation 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 [<sup>F695</sup>profits] 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 [<sup>F698</sup>corporation tax] under section 103 or to which that section would have applied but for subsection (3)(a) <sup>F699</sup>. . . of that section.
- (4) <sup>F700</sup> . . . . .

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- (5) <sup>F700</sup> . . . . .
- (6) <sup>M121</sup> 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) <sup>F700</sup> . . . . .

**Textual Amendments**

- F693** 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)**
- F694** 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)
- F695** 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
- F696** 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)
- F697** 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)
- F698** 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)
- F699** 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)
- F700** 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**

- M120** Source—1970 s.144(1)  
**M121** Source—1970 s.144(3), (4)

**105 Allowable deductions.**

- <sup>M122</sup>(1) In computing the charge to [<sup>F701</sup>corporation tax] in respect of sums received by any [<sup>F702</sup>company] which are chargeable to [<sup>F701</sup>corporation tax] by virtue of section 103 or 104(1) (including amounts treated as sums received by [<sup>F703</sup>it] by virtue of section 103(4)), there shall be deducted from the amount which, apart from this subsection, would be chargeable to [<sup>F701</sup>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 [<sup>F704</sup>profits] of the person by whom it was carried on before the discontinuance, or would have been deducted from or set off against those [<sup>F704</sup>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.
- (2) No amount shall be deducted under subsection (1) above if that amount has been allowed under any other provision of the Tax Acts <sup>F705</sup> . . . .

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- (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 [<sup>F706</sup>accounting period] and sums so charged for a subsequent [<sup>F706</sup>accounting period], any deduction in respect of a loss or capital allowance shall be made against sums chargeable for the earlier [<sup>F706</sup>accounting period];
  - (c) subject to paragraph (b) above, as between sums chargeable for any [<sup>F706</sup>accounting 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 [<sup>F706</sup>accounting period] preceding that in which the loss is incurred.

(4) <sup>F707</sup> .....

#### Textual Amendments

- F701** 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](#))
- F702** 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](#))
- F703** 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](#))
- F704** 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](#)
- F705** Words in s. 105(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 10](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F706** 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](#))
- F707** [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)

- C116** [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

- M122** Source—1970 s.145

## 106 Application of charges where rights to payments transferred.

- <sup>M123</sup>(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 [<sup>F708</sup>corporation tax] chargeable by virtue of either of those sections shall be charged in respect of the 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.

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- (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 <sup>F709</sup>the company carrying on the trade,] profession or vocation after the change, <sup>F710</sup>corporation tax] shall not be charged by virtue of either of those sections, but any sum received by <sup>F711</sup>that company] by virtue of the transfer shall be treated for <sup>F712</sup>corporation tax purposes] as a receipt to be brought into the computation of the <sup>F713</sup>profits] of the trade, profession or vocation in the period in which it is received.

#### Textual Amendments

- F708** 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](#))
- F709** 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](#))
- F710** 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](#))
- F711** 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](#))
- F712** 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](#))
- F713** 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

- M123** Source—1970 s.147

### Reliefs

#### 107 Treatment of receipts as earned income.

<sup>F714</sup> .....

#### Textual Amendments

- F714** [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.

<sup>F715</sup> .....

#### Textual Amendments

- F715** [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](#))

#### 109 Charge under section 104: relief for individuals born before 6th April 1917.

<sup>F716</sup> .....

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#### Textual Amendments

**F716** 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 \(with Sch. 2\)](#)

### *[<sup>F717</sup> Relief for post-cessation expenditure*

#### Textual Amendments

**F717** 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.

<sup>F718</sup> . . . . .]

#### Textual Amendments

**F718** S. 109A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 11, Sch. 3 Pt. 1 \(with Sch. 2\)](#)

### *Supplemental*

## 110 Interpretation etc.

- (1) <sup>M124</sup>The following provisions have effect for the purposes of [<sup>F719</sup>sections 103 to 106].
- [<sup>F720</sup>(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)

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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) <sup>M125</sup>The [F721profits] 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 those [F721profits] 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 [F721profits] 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 [F721profits] of which were computed on a conventional basis if the [F721profits] of the next succeeding period are computed by reference to earnings; and, if the [F721profits] 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.

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#### Textual Amendments

**F719** Words in s. 110(1) 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. 12](#) (with [Sch. 2](#))

**F720** [S. 110\(1A\)-\(1D\)](#) substituted 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](#))

**F721** 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](#)

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#### Marginal Citations

**M124** Source—1970 s.151(1)

**M125** Source—1970 s.151(2)-(5)



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**[<sup>F722</sup><sup>F723</sup> Change of residence]**

**Textual Amendments**

**F722** 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)

**F723** 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.**

<sup>F724</sup> .....

**Textual Amendments**

**F724** 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*

**[<sup>F725</sup>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 [<sup>F726</sup>corporation tax purposes] as an entity which is separate and distinct from those persons.
- (2) <sup>F727</sup> .....
- (3) <sup>F727</sup> .....
- (4) <sup>F727</sup> .....
- (5) <sup>F727</sup> .....
- (6) <sup>F727</sup> .....
- (7) <sup>F727</sup> .....
- (8) <sup>F727</sup> .....
- (9) <sup>F727</sup> .....
- (10) <sup>F727</sup> .....
- (11) <sup>F727</sup> .....
- (12) <sup>F727</sup> .....

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(13) <sup>F727</sup> .....

#### Textual Amendments

- F725** 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)
- F726** 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)
- F727** 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)

- C117** S. 111 modified (1.5.1995) by Finance Act 1995 c. 4, [s. 125\(1\)](#)
- C118** 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\(6\)](#)
- C119** 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.

<sup>F728</sup> .....

#### Textual Amendments

- F728** 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.

<sup>F729</sup> .....

#### Textual Amendments

- F729** 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) <sup>M126</sup>So long as a trade [<sup>F730</sup>profession 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 [<sup>F730</sup>profession 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 [<sup>F731</sup>and, 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 [<sup>F730</sup>profession or business], except that—

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- (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 [F730 profession or business] shall be treated as the transfer of the trade [F730 profession 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) M127 A 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 [F730 profession 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) F732 .....
- (4) F733 .....

**Textual Amendments**

- F730** 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)
- F731** 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)
- F732** 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
- F733** 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)**

- C120** S. 114(1) modified (3.5.1994) by Finance Act 1994 (c. 9), s. 172(4)-(6)

**Marginal Citations**

- M126** Source—1970 s.155(1); 1973 s.31(5); 1980 s.39(3)
- M127** Source—1970 s.155(2); 1972 s.107(2)

**115 Provisions supplementary to section 114.**

- (1) F734 .....
- (2) F734 .....

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(3) <sup>F734</sup> .....

[<sup>F735</sup>(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 [<sup>F736</sup>permanent establishment]”.

[<sup>F737</sup>(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
- (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).]]

[<sup>F738</sup>(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) <sup>F734</sup> .....

(7) For the purposes of this section and section 114 “profits” shall not be taken as including chargeable gains.

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#### Textual Amendments

**F734** 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)

**F735** 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)

**F736** 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)

**F737** 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)

**F738** S. 115(5C) inserted (retrospectively) by [Finance Act 2008 \(c. 9\)](#), s. 58(1)(4)

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#### Modifications etc. (not altering text)

**C121** S. 115(5) modified (with retrospective effect) by [Finance Act 2008 \(c. 9\)](#), s. 58(5)(6)(b)

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## 116 Arrangements for transferring relief.

- <sup>M128</sup>(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 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) <sup>F739</sup> .....
- (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 [<sup>F740</sup>corporation] 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
  - <sup>F741</sup>(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.

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(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**

- F739** 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
- F740** 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)
- F741** 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**

**Marginal Citations**

- M128** Source—1973 s.31(1)-(5), (9), 32(6)

*Limited partners*

**117 Restriction on relief: individuals.**

**F742** .....

**Textual Amendments**

- F742** S. 117 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 13, **Sch. 3 Pt. 1** (with Sch. 2)

**118 Restriction on relief: companies.**

(1) <sup>M129</sup>An amount which may be given <sup>F743</sup>... under section 338, [<sup>F744</sup>393A(1)] or [<sup>F745</sup>403] below <sup>F746</sup>... —

(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; <sup>F747</sup>...

(b) <sup>F747</sup>.....

may be given <sup>F743</sup>... to that company (“the partner company”) otherwise than against [<sup>F748</sup>profits] arising from the trade, or to another company, only to the extent that the amount given <sup>F743</sup>... or (as the case may be) the aggregate amount does not exceed the relevant sum.

(2) <sup>M130</sup>In this section—

[<sup>F749cc1</sup>“limited partner” means—

(a) a company which is carrying on a trade as a limited partner in a limited partnership registered under the Limited Partnerships Act 1907;

(b) a company which—

(i) is carrying on a trade as a general partner in a partnership;

(ii) is not entitled to take part in the management of the trade; and



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- (iii) is entitled to have its liabilities, or its liabilities beyond a certain limit, for debts or obligations incurred for the purposes of the trade discharged or reimbursed by some other person; or
- (c) a company which carries on a trade jointly with others and which, under the law of any territory outside the United Kingdom—
  - (i) is not entitled to take part in the management of the trade; and
  - (ii) is not liable beyond a certain limit for debts or obligations incurred for the purposes of the trade;]

“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<sup>F750</sup> . . . ;

“the aggregate amount” means the aggregate of any amounts given<sup>F751</sup> . . . to the partner company or another company at any time under section 338, [F752 393A(1)] or [F745 403] below<sup>F753</sup> . . . —

- (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;<sup>F754</sup> . . .
- (b)<sup>F754</sup> . . . . .

“the relevant sum” means the amount of the partner company’s contribution<sup>F755</sup> . . . 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).

- [<sup>F756</sup>(3) A partner company's contribution to a trade at any time is the aggregate of—
  - (a) the amount which the partner company has contributed to the trade as capital and has not, directly or indirectly, drawn out or received back (other than anything which it is or may be entitled so to draw out or receive back at any time when it carries on the trade as a limited partner or which it is or may be entitled to require another person to reimburse to it), and
  - (b) the amount of any profits of the trade to which the partner company is entitled but which it has not received in money or money's worth.]

### Textual Amendments

- F743** 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](#)
- F744** 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)
- F745** 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](#)
- F746** 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](#)
- F747** 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](#)
- F748** Words in s. 118(1) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\)\(b\), Sch. 7 para. 1](#)
- F749** S. 118(2): definition of "limited partner" 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. 14\(2\)](#) (with Sch.. 2)
- F750** Words in s. 118(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 14\(3\), Sch. 3 Pt. 1](#) (with Sch. 2)

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- F751** 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))
- F752** 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)
- F753** 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))
- F754** 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))
- F755** Words in s. 118(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 14\(4\)](#), [Sch. 3 Pt. 1](#) (with Sch. 2)
- F756** S. 118(3) 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. 14\(5\)](#) (with Sch. 2)

#### Marginal Citations

- M129** Source—1985 Sch.12 3(1)-(3)  
**M130** Source—1985 Sch.12 3(4), 1, 4

### *[<sup>F757</sup>Limited liability partnerships*

#### Textual Amendments

- F757** [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.**

[<sup>F758</sup>(1) For [<sup>F759</sup>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 [<sup>F760</sup>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.

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- (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—
- (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

**F758** S. 118ZA substituted (retrospective to 6.4.2001) by [Finance Act 2001 \(c. 9\), s. 75\(1\)\(6\)](#)

**F759** 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](#))

**F760** 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](#))

#### <sup>F761</sup>118ZB Restriction on relief: companies

Section 118 has 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.]

#### Textual Amendments

**F761** S. 118ZB 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. 15](#) (with [Sch. 2](#))

#### 118ZC Member's contribution to trade.

- (1) Subsection (3) of [<sup>F762</sup>section 118] does not have effect in relation to a member of a limited liability partnership.
- (2) But, for the purposes of <sup>F763</sup>. . . 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 [<sup>F764</sup>it], and
  - (b) the amount of [<sup>F765</sup>its] liability on a winding up.
- (3) The amount subscribed by a member of a limited liability partnership is the amount which [<sup>F766</sup>it] has contributed to the limited liability partnership as capital, less so much of that amount (if any) as—
  - (a) [<sup>F766</sup>it] has previously, directly or indirectly, drawn out or received back,

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- (b) [F766:it] so draws out or receives back during the period of five years beginning with the relevant time,
  - (c) [F766:it] is or may be entitled so to draw out or receive back at any time when [F767:it] is a member of the limited liability partnership, or
  - (d) [F766:it] is or may be entitled to require another person to reimburse to [F767:it].
- (4) The amount of the liability of a member of a limited liability partnership on a winding up is the amount which—
- (a) [F768:it] is liable to contribute to the assets of the limited liability partnership in the event of [F769:the partnership's] being wound up, and
  - (b) [F768:it] remains liable so to contribute for the period of at least five years beginning with the relevant time (or until [F770:the partnership] is wound up, if that happens before the end of that period).

[F771(5) F772.....]

#### Textual Amendments

- F762** Words in s. 118ZC(1) 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. 16\(2\)](#) (with [Sch. 2](#))
- F763** Words in s. 118ZC(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 16\(3\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F764** Word in s. 118ZC(2)(a) 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. 16\(3\)\(b\)](#) (with [Sch. 2](#))
- F765** Word in s. 118ZC(2)(b) 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. 16\(3\)\(c\)](#) (with [Sch. 2](#))
- F766** Words in s. 118ZC(3) 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. 16\(4\)\(a\)](#) (with [Sch. 2](#))
- F767** Word in s. 118ZC(3)(d) substituted (with effect in accordance with s. 1034(1) of the amending Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 16\(4\)\(b\)](#) (with [Sch. 2](#))
- F768** Words in s. 118ZC(4) 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. 16\(5\)\(a\)](#) (with [Sch. 2](#))
- F769** Words in s. 118ZC(4)(a) 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. 16\(5\)\(b\)](#) (with [Sch. 2](#))
- F770** Words in s. 118ZC(4) 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. 16\(5\)\(c\)](#) (with [Sch. 2](#))
- F771** S. 118ZC(5) inserted (retrospective to 2.12.2004) by [Finance Act 2005 \(c. 7\)](#), [s. 73\(3\)\(5\)](#)
- F772** S. 118ZC(5) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 16\(6\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

#### 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 [F773:accounting periods], prevented from being given or allowed by section F774. . . 118 as it applies otherwise than by virtue of this section ([F775:the member's]“total unrelieved loss”), subsection (2) applies in each subsequent [F776:accounting period] in which—
- (a) [F777:the member] carries on the trade as a member of the limited liability partnership, and
  - (b) any of [F775:the member's] total unrelieved loss remains outstanding.

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- (2) [<sup>F778</sup>Sections 393A(1) and 403 (and section 118 as it applies] in relation to those sections) shall have effect in the subsequent [<sup>F779</sup>accounting period] as if—
- (a) any loss sustained or incurred by the member in the trade in that [<sup>F779</sup>accounting period] were increased by an amount equal to so much of [<sup>F780</sup>the member's] 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 [<sup>F781</sup>accounting period], deduct from the amount of [<sup>F782</sup>the member's] total unrelieved loss the aggregate of—
- (a) any relief given under any provision of [<sup>F783</sup>the Corporation Tax Acts] (otherwise than as a result of subsection (2)) in respect of [<sup>F782</sup>the member's] total unrelieved loss in that or any previous [<sup>F781</sup>accounting period], and
  - (b) any amount given or allowed in respect of [<sup>F782</sup>the member's] total unrelieved loss as a result of subsection (2) in any previous [<sup>F781</sup>accounting period] (or which would have been so given or allowed had a claim been made).]

#### Textual Amendments

- F773** Words in s. 118ZD(1) 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. 17\(2\)\(a\)](#) (with [Sch. 2](#))
- F774** Words in s. 118ZD(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 17\(2\)\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F775** Words in s. 118ZD(1) 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. 17\(2\)\(c\)](#) (with [Sch. 2](#))
- F776** Words in s. 118ZD(1) 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. 17\(2\)\(d\)](#) (with [Sch. 2](#))
- F777** Words in s. 118ZD(1)(a) 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. 17\(2\)\(e\)](#) (with [Sch. 2](#))
- F778** Words in s. 118ZD(2) 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. 17\(3\)\(a\)](#) (with [Sch. 2](#))
- F779** Words in s. 118ZD(2) 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. 17\(3\)\(b\)](#) (with [Sch. 2](#))
- F780** Words in s. 118ZD(2)(a) 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. 17\(3\)\(c\)](#) (with [Sch. 2](#))
- F781** Words in s. 118ZD(3) 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. 17\(4\)\(a\)](#) (with [Sch. 2](#))
- F782** Words in s. 118ZD(3) 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. 17\(4\)\(b\)](#) (with [Sch. 2](#))
- F783** Words in s. 118ZD(3)(a) 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. 17\(4\)\(c\)](#) (with [Sch. 2](#))

*[<sup>F784</sup>Non-active general partners and non-active members of limited liability partnerships*

#### Textual Amendments

- F784** [Ss. 118ZE-118ZK](#) and preceding cross-heading inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 124\(1\)](#)

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## 118ZE Restriction on relief for non-active partners

F785 .....

### Textual Amendments

**F785** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

## 118ZF Meaning of “the aggregate amount”

F786 .....

### Textual Amendments

**F786** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

## 118ZG “The individual’s contribution to the trade”

F787 .....

### Textual Amendments

**F787** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

## 118ZH “A significant amount of time”

F788 .....

### Textual Amendments

**F788** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

## 118ZI Carry forward of unrelieved losses of non-active partners

F789 .....

### Textual Amendments

**F789** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

## 18ZJ Commencement: the first restricted year

F790 .....



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#### Textual Amendments

**F790** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

### 118ZK Transitional provision for years after the first restricted year

**F791** .....]

#### Textual Amendments

**F791** Ss. 118ZE-118ZK repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 18, **Sch. 3 Pt. 1** (with Sch. 2)

### *[<sup>F792</sup>Partnerships exploiting films*

#### Textual Amendments

**F792** Ss. 118ZL, 118ZM and preceding cross-heading inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 125

### 118ZL Partnerships exploiting films

**F793** .....

#### Textual Amendments

**F793** Ss. 118ZL, 118ZM repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 19, **Sch. 3 Pt. 1** (with Sch. 2)

### 118ZM Partnerships exploiting films: supplementary

**F794** .....]

#### Textual Amendments

**F794** Ss. 118ZL, 118ZM repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 19, **Sch. 3 Pt. 1** (with Sch. 2)

### *[<sup>F795</sup>Partners: meaning of “contribution to the trade”*

#### Textual Amendments

**F795** Ss. 118ZN, 118ZO and preceding cross-heading inserted (retrospective to 2.12.2004) by Finance Act 2005 (c. 7), s. 73(1)(5)

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## 118ZN Partners: meaning of “contribution to the trade”

F796 .....

### Textual Amendments

**F796** Ss. 118ZN, 118ZO repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 20, **Sch. 3 Pt. 1** (with Sch. 2)

## 118ZO Meaning of “relevant loss” in section 118ZN

F797 .....]

### Textual Amendments

**F797** Ss. 118ZN, 118ZO repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 20, **Sch. 3 Pt. 1** (with Sch. 2)

## [<sup>F798</sup><sup>F799</sup>CHAPTER VIIA

### PAYING AND COLLECTING AGENTS]

### Textual Amendments

**F798** Pt. 4 Ch. 7A (ss. 118A-118K) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 29 para. 1**  
**F799** 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.

F800 .....

### Textual Amendments

**F800** 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.

F801 .....

### Textual Amendments

**F801** 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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## 118C Collecting agents.

F802 .....

### Textual Amendments

**F802** 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.

F803 .....

### Textual Amendments

**F803** 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.

F804 .....

### Textual Amendments

**F804** 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.

F805 .....

### Textual Amendments

**F805** 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.

F806 .....

### Textual Amendments

**F806** 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.

F807 .....

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**Textual Amendments**

**F807** 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.**

**F808** .....

**Textual Amendments**

**F808** 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.**

**F809** .....

**Textual Amendments**

**F809** 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.**

**F810** .....]

**Textual Amendments**

**F810** 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

**CHAPTER VIII**

**MISCELLANEOUS AND SUPPLEMENTAL**

**119 Rent etc. payable in connection with mines, quarries and similar concerns.**

<sup>M131</sup>(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 [<sup>F811</sup> and section 201 of the 1992 Act], be charged to [<sup>F812</sup> corporation] tax under Schedule D, <sup>F813</sup> . . . .

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- (2) Where the rent is rendered in produce of the concern, it shall, <sup>F814</sup> . . . , 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 <sup>F815</sup> . . . 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**

**F811** 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)).

**F812** 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)

**F813** 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)**

**F814** 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)**

**F815** 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**

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**Modifications etc. (not altering text)**

**C122** 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)).

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**Marginal Citations**

**M131** Source—1970 s.156

**120 Rent etc. payable in respect of electric line wayleaves.**

<sup>M132</sup>(1) [<sup>F816</sup>Subject 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 [<sup>F817</sup>corporation] tax under Schedule D <sup>F818</sup> . . . .

[<sup>F819</sup>(1A) If—

- (a) the profits and gains arising to any person for any [<sup>F820</sup>accounting period] include both rent in respect of any such easement as is mentioned in subsection (1) above and amounts which are charged to [<sup>F821</sup>corporation] 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 [<sup>F821</sup>corporation] tax under Schedule A, instead of being charged under Schedule D.]

(2) <sup>F822</sup> . . . . .

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- (3) <sup>F822</sup> .....
- (4) <sup>F822</sup> .....
- (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; <sup>F823</sup> . . .
  - (c) <sup>F823</sup> .....

**Textual Amendments**

- F816** 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\(2\)\(a\)](#)
- F817** 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)
- F818** 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\(2\)](#)
- F819** S. 120(1A) inserted (with effect in accordance with s. 60(5) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 60\(3\)](#)
- F820** 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)
- F821** 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)
- F822** 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\(2\)](#)
- F823** 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\(2\)}](#)

**Marginal Citations**

- M132** Source—1970 s.157

**121 Management expenses of owner of mineral rights.**

[<sup>F824M133</sup>(1) <sup>F825</sup> .....

- (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**

- F824** 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\(2\)](#)
- F825** 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)



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**Marginal Citations**

M133 Source—1970 s.158(1), (2)

**122 Relief in respect of mineral royalties.**

(1) <sup>M134</sup>Subject to the following provisions of this section, [<sup>F826</sup>a 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) <sup>F827</sup> . . . for the purposes of corporation tax on profits exclusive of chargeable gains, as if the total of the mineral royalties receivable by [<sup>F828</sup>it] under that lease or agreement in that <sup>F827</sup> . . . period and any management expenses available for set-off against those royalties in that <sup>F827</sup> . . . period were each reduced by one-half; <sup>F829</sup> . . .

<sup>F829</sup>(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 <sup>F830</sup> . . . .

(2) <sup>M135</sup>For 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 <sup>F831</sup> . . . deductible from those royalties under [<sup>F832</sup>subsection (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) <sup>F833</sup> . . . . .

(4) <sup>F834</sup> . . . . .

(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—

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- (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 <sup>M136</sup>Mines (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 <sup>M137</sup>Mineral Development Act (Northern Ireland) 1969 (“the 1969 Act”) or under section 4 of the <sup>M138</sup>Petroleum (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 <sup>M139</sup>Irish 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.

<sup>F833</sup>(8) .....

**Textual Amendments**

- F826** 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)
- F827** 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)
- F828** 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)
- F829** 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).
- F830** 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)**
- F831** 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)
- F832** 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)
- F833** 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).
- F834** 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)**

**C123** For regulations see Part III Vol.5.

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**C124** 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

**M134** Source—1970(F) s.29(1), (3); 1971 Sch.9 4

**M135** Source—1970(F) s.29(2)

**M136** 1966 c. 4.

**M137** 1969 c. 35 (N.I.).

**M138** 1964 c. 28 (N.I.).

**M139** 1903 c. 37.

## 123 Foreign dividends.

<sup>F835</sup> .....

#### Textual Amendments

**F835** 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.

<sup>F836</sup> .....

#### Textual Amendments

**F836** 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

## 125 [<sup>F837</sup>Annual payments for dividends or non-taxable consideration]

<sup>M140</sup>(1) Any payment to which this subsection applies <sup>F838</sup> . . . shall not be allowed as a deduction in computing the income [<sup>F839</sup>of the company by which] it is made <sup>F840</sup> . . . .

(2) Subject to the following provisions of this section, subsection (1) above applies to any payment which—

[<sup>F841</sup>(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]

[<sup>F842</sup>(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 <sup>F843</sup> . . . corporation tax the income of the person making the payment.]

(3) Subsection (1) above does not apply to—

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- (a) any payment which in the hands of the recipient is income falling within [F844 section 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; [F845 or]
  - (c) any annuity granted in the ordinary course of a business of granting annuities; F846 . . .
  - (d) F846 .....
- (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**

- F837** S. 125 title substituted (retrospective to 2.12.2004) by virtue of Finance Act 2005 (c. 7), s. 91(3)
- F838** Words in s. 125(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 21(2)(a), Sch. 3 Pt. 1 (with Sch. 2)
- F839** Words in s. 125(1) 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. 21(2)(b) (with Sch. 2)
- F840** 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
- F841** 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)
- F842** 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)
- F843** Words in s. 125(2)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 21(3), Sch. 3 Pt. 1 (with Sch. 2)
- F844** 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)
- F845** Word in s. 125(3) 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. 21(4)(a) (with Sch. 2)
- F846** S. 125(3)(d) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 21(4)(b), Sch. 3 Pt. 1 (with Sch. 2)

**Modifications etc. (not altering text)**

- C125** See 1989 s.59—rights of admission disregarded in the case of certain covenanted subscriptions.

**Marginal Citations**

- M140** Source—1977 s.48

**126 Treasury securities issued at a discount.**

F847 .....

**Textual Amendments**

- F847** 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

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## 126A Charge to tax on appropriation of securities and bonds.

F848 .....

### Textual Amendments

**F848** 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.

F849 .....

### Textual Amendments

**F849** 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 \(with Sch. 2\)](#)

## [<sup>F850</sup> 127A] Futures and options: transactions with guaranteed returns.

F851 .....

### Textual Amendments

**F850** S. 127A inserted (with effect in accordance with s. 80(6) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 80\(1\)](#)

**F851** 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. <sup>M141</sup>

[<sup>F852</sup>(1) <sup>F853</sup> .....

[<sup>F854</sup>(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.]

[<sup>F855</sup>(3) In this section “commodity or financial futures” and “qualifying options” have the same meaning as in section [<sup>F856</sup>143 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 [<sup>F856</sup>(3)] of that section.

### Textual Amendments

**F852** 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\(1\)\(a\) \(with Sch. 28\)](#)

**F853** 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 \(with Sch. 2\)](#)

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- F854** 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)
- F855** 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)
- F856** 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**

**M141** Source—1985 s.72(1), (2); 1987 (No.2) s.81(1)

**129 Stock lending.**

**F857** .....

**Textual Amendments**

**F857** 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**

[<sup>F858</sup>**129A** **Stock lending: interest on cash collateral.**

**F859** .....]

**Textual Amendments**

**F858** S. 129A inserted (with application in accordance with s. 85(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 85(1)**

**F859** 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**

[<sup>F860</sup>**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 [<sup>F861</sup>sections 613(4) and 614(3) and section 186 of the Finance Act 2004].
- (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 [<sup>F862</sup>any] stock lending arrangement relating to investments which, but for any transfer under the arrangement, would be investments of that description.

[<sup>F863</sup>(4) In this section “stock lending arrangement” has the same meaning as in section 263B of the 1992 Act.]



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#### Textual Amendments

- F860** S. 129B inserted (with effect in accordance with s. 157(2) of the amending Act) by Finance Act 1996 (c. 8), s. 157(1)
- F861** Words in s. 129B(2) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 6 (with Sch. 36)
- F862** 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
- F863** 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 [F864 Meaning of “company with investment business” and “investment company” in Part 4]

<sup>M142</sup>In this Part of this Act [F865—

“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 <sup>M143</sup>Trustee Savings Bank Act 1985, is a successor or a further successor to a trustee savings bank.

#### Textual Amendments

- F864** 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)
- F865** 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)

- C126** 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.5and Sch.2 para.6(6).

#### Marginal Citations

- M142** Source—1970 s.304(5); 1980 Sch.11
- M143** 1985 c. 58.

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**PART V**

**PROVISIONS RELATING TO THE SCHEDULE E CHARGE**

**CHAPTER I**

**SUPPLEMENTARY CHARGING PROVISIONS OF GENERAL APPLICATION**

*Miscellaneous provisions*

**131 Chargeable emoluments.**

F866 .....

**Textual Amendments**

**F866** 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.**

F867 .....

**Textual Amendments**

**F867** 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.**

F868 .....

**Textual Amendments**

**F868** 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.**

F869 .....

**Textual Amendments**

**F869** 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)

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*Shareholdings, loans etc.*

**135 Gains by directors and employees from share options.**

F870

**Textual Amendments**

**F870** 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.**

F871

**Textual Amendments**

**F871** 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.**

F872

**Textual Amendments**

**F872** 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)

**<sup>F873</sup>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) <sup>M144</sup>*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) <sup>M145</sup>*if he receives, by virtue of his ownership of or interest in the shares, any benefit not received by the majority of persons who—*
    - (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 <sup>F874</sup>the employment income Parts of ITEPA 2003] for the year of assessment in which he receives the benefit on an amount equal*

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*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) <sup>M146</sup> 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) <sup>M147</sup> where the arrangements were made or modified after 22nd 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) <sup>M148</sup> 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) <sup>M149</sup> the acquisition was an acquisition after 5th 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) <sup>M150</sup> the acquisition took place before 6th April 1981.
- (4) The conditions referred to in subsection (2)(b) above are as follows—
- (a) <sup>M151</sup> 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 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

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- (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) <sup>M152</sup>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 <sup>F875</sup>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) <sup>M153</sup>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) <sup>M154</sup>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) <sup>M155</sup>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) <sup>M156</sup>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
  - (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;

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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) <sup>M157</sup> 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 18th 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.

(12) <sup>M158</sup> 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 6th April 1972.



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### Textual Amendments

- F873** 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.
- F874** 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)
- F875** 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)

- C127** 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)).
- C128** 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

- M144** Source—1972 s.79(1), (4)
- M145** Source—1972 c.79(1), (7)
- M146** Source—1972 s.79(2)(b), (3)(b), (8)
- M147** Source—1973 Sch.8 1
- M148** Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)
- M149** Source—1972 s.79(2)(bb); 1984 s.40(1)
- M150** Source—1972 s.79(6)
- M151** Source—1973 Sch.8 1(b), 3; 1974 s.20(2)
- M152** Source—1973 Sch.8 2
- M153** Source—1972 s.79(2)(c); 1973 Sch.8 4(1)(a)
- M154** Source—1972 s.79(2A); 1973 Sch.8 4(1)(b)
- M155** Source—1972 s.79(2B); 1984 s.40(2)
- M156** Source—1972 s.79(5), (6); 1973 Sch.8 4(1)(c); 1986 s.26(4)
- M157** Source—1972 s.79(5A), (5B); 1986 s.26(3), (6)
- M158** Source—1972 s.79(3)(a); 1974 s.20(1)(b)

### <sup>F876</sup>139 Provisions supplementary to section 138.

- (1) <sup>M159</sup>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
  - (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;

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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) <sup>M160</sup> 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) <sup>M161</sup> 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) <sup>M162</sup> 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) <sup>M163</sup> 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 19th 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—
    - (i) the body corporate of which he is a director or employee, or
    - (ii) an associated company of that body, or

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- (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) <sup>M164</sup> 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— <sup>M165</sup>
- “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) <sup>M166</sup> If, on a person ceasing to have a beneficial interest in any shares, he acquires, after 18th 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
- (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—

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(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) <sup>M167</sup>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 <sup>F877</sup>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

**F876** 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.

**F877** 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)

**C129** 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

**M159** Source—1972 s.79(1A), (1B); 1984 s.41(1)

**M160** Source—1972 s.79(10), (11)

**M161** Source—1972 Sch.12 3; 1984 s.41(2)

**M162** Source—1972 Sch.12 3A; 1984 s.40(4)

**M163** Source—1973 Sch.8 5-7; 1982 s.41

**M164** Source—1982 s.41; 1986 s.23(4)

**M165** Source—1973 Sch.8 35; 1972 Sch.12 6, 8

**M166** Source—1972 s.79(6A); 1986 s.26(5)

**M167** Source—1972 s.79(4A); 1984 s.40(3)

## 140 Further interpretation of sections 135 to 139.

F878 .....

#### Textual Amendments

**F878** 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)

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[<sup>F879</sup> **140A Conditional acquisition of shares.**

F880 .....

**Textual Amendments**

**F879** 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)

**F880** 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.**

F881 .....

**Textual Amendments**

**F879** 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)

**F881** 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.**

F882 .....]

**Textual Amendments**

**F879** 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)

**F882** 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)

[<sup>F883</sup> **140D Convertible shares.**

F884 .....

**Textual Amendments**

**F883** 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)

**F884** 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)

**140E Consideration for convertible shares.**

F885 .....

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**Textual Amendments**

- F883** 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)
- F885** 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.**

**F886** .....]

**Textual Amendments**

- F883** 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)
- F886** 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)

**[<sup>F887</sup>140G Information for the purposes of sections 140A to 140F.**

**F888** .....]

**Textual Amendments**

- F887** S. 140G inserted (31.7.1998) by Finance Act 1998 (c. 36), s. 52(1)
- F888** 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)

**[<sup>F889</sup>140H Construction of sections 140A to 140G.**

**F890** .....]

**Textual Amendments**

- F889** S. 140H inserted (31.7.1998) by Finance Act 1998 (c. 36), s. 53
- F890** 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.**

**F891** .....

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**Textual Amendments**  
**F891** 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.**

F892 .....

**Textual Amendments**  
**F892** 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.**

F893 .....

**Textual Amendments**  
**F893** 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.**

F894 .....

**Textual Amendments**  
**F894** 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)

[<sup>F895</sup>**144A** Payments etc. received free of tax.

F896 .....]

**Textual Amendments**  
**F895** S. 144A inserted (3.5.1994) by *Finance Act 1994 (c. 9)*, s. 132  
**F896** 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.**

F897 .....



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**Textual Amendments**

**F897** 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.**

**F898** .....

**Textual Amendments**

**F898** 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)

[<sup>F899</sup>**146A** Priority of rules applying to living accommodation.

**F900** .....]

**Textual Amendments**

**F899** S. 146A inserted (with application in accordance with s. 106(3) of the amending Act) by Finance Act 1996 (c. 8), s. 106(2)

**F900** 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.**

**F901** .....

**Textual Amendments**

**F901** 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.**

**F902** .....

**Textual Amendments**

**F902** 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.

F903 .....

### Textual Amendments

**F903** 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.

F904 .....

### Textual Amendments

**F904** 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.

F905 .....

### Textual Amendments

**F905** 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)

## [<sup>F906</sup>151A] Jobseeker's allowance.

F907 .....]

### Textual Amendments

**F906** 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)**

**F907** 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 [<sup>F908</sup>Notification of taxable amount of certain benefits].

<sup>M168</sup>(1) A benefit officer may by notice notify a person who is taxable in respect of any unemployment benefit [<sup>F909</sup>, 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, [<sup>F910</sup>in Great Britain, of the Department for Work and Pensions], or, in Northern Ireland, of the Department of Health and Social Services.

#### Textual Amendments

**F908** 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](#))

**F909** 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\(b\)](#)

**F910** 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**  
 M168 Source—1981 s.28; 1987 Sch.3 6

## CHAPTER II

### [<sup>F911</sup>EMPLOYEES EARNING £8,500 OR MORE AND DIRECTORS]

**Textual Amendments**  
 F911 Pt. 5 Ch. 2 heading substituted by Finance Act 1989 (c. 26), s. 53(2)(a)

#### *Expenses*

**153 Payments in respect of expenses.**

<sup>F912</sup> .....

**Textual Amendments**  
 F912 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.**

<sup>F913</sup> .....

**Textual Amendments**  
 F913 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.**

<sup>F914</sup> .....

**Textual Amendments**  
 F914 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)

[<sup>F915</sup> **155ZA Accommodation, supplies or services used in performing duties of employment.**

<sup>F916</sup> .....]

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**Textual Amendments**

**F915** 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)**

**F916** 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)

[<sup>F917</sup>**155ZB**ower to provide for exemption of minor benefits.

<sup>F918</sup> .....

**Textual Amendments**

**F917** 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)**

**F918** 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)

[<sup>F919</sup>**155A**Mobile telephones.

<sup>F920</sup> .....

**Textual Amendments**

**F919** S. 155AA inserted (with effect in accordance with s. 44(6) of the amending Act) by Finance Act 1999 (c. 16), s. 44(1)

**F920** 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)

[<sup>F921</sup>**155A**Care for children.

<sup>F922</sup> .....

**Textual Amendments**

**F921** S. 155A inserted (1990-91 and subsequent years of assessment) by Finance Act 1990 (c. 29), s. 21(1) (3)

**F922** 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.**

<sup>F923</sup> .....

**Textual Amendments**

**F923** 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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[<sup>F924</sup> **156A** Limited exemption for computer equipment.

<sup>F925</sup> .....

**Textual Amendments**

**F924** S. 156A inserted (with application in accordance with s. 45(3) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), s. 45(1)

**F925** 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.

<sup>F926</sup> .....

**Textual Amendments**

**F926** 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)

[<sup>F927</sup> **157A** Cars available for private use: cash alternative, etc.

<sup>F928</sup> .....

**Textual Amendments**

**F927** S. 157A inserted (with effect in accordance with s. 43(4) of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 43(1)

**F928** 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.

<sup>F929</sup> .....

**Textual Amendments**

**F929** 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.

<sup>F930</sup> .....

**Textual Amendments**

**F930** 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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[<sup>F931</sup> **159AA** Vans available for private use.

<sup>F932</sup> .....

**Textual Amendments**

**F931** 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

**F932** 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)

[<sup>F933</sup> **159AB** Boiled vans.

<sup>F934</sup> .....

**Textual Amendments**

**F933** 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

**F934** 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)

[<sup>F935</sup> **159AC** heavier commercial vehicles available for private use.

<sup>F936</sup> .....

**Textual Amendments**

**F935** 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)

**F936** 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)

[<sup>F937</sup> **159A** .....

<sup>F938</sup> .....

**Textual Amendments**

**F937** S. 159A inserted (1991-92 and subsequent years of assessment) by Finance Act 1991 (c. 31), s. 30(2)(3)

**F938** 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.**

<sup>F939</sup> .....



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**Textual Amendments**

**F939** 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.**

**F940** .....

.....

**Textual Amendments**

**F940** 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](#))

[<sup>F941</sup>**161A** **Treatment of qualifying loans.**

**F942** .....]

.....

**Textual Amendments**

**F941** 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)**

**F942** 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](#))

[<sup>F943</sup>**161B** **Beneficial loans: loans on ordinary commercial terms.**

**F944** .....]

.....

**Textual Amendments**

**F943** 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)**

**F944** 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.**

**F945** .....

.....

**Textual Amendments**

**F945** 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.

F946 .....

### Textual Amendments

**F946** 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.

F947 .....

### Textual Amendments

**F947** 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.

F948 .....

### Textual Amendments

**F948** 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.

F949 .....

### Textual Amendments

**F949** 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.

F950 .....

### Textual Amendments

**F950** 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.

F951 .....

### Textual Amendments

**F951** 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)

## [<sup>F952</sup> 168A Price of a car as regards a year.

F953 .....

### Textual Amendments

**F952** 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

**F953** 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)

## [<sup>F954</sup> 168AA Equipment to enable disabled person to use car.

F955 .....

### Textual Amendments

**F954** S. 168AA inserted (with effect in accordance with s. 44(3) of the amending Act) by Finance Act 1995 (c. 4), s. 44(2)

**F955** 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)

## [<sup>F956</sup> 168AB Equipment etc. to enable car to run on road fuel gas.

F957 .....

### Textual Amendments

**F956** S. 168AB inserted (with effect in accordance with s. 60(6) of the amending Act) by Finance Act 1998 (c. 36), s. 60(3)

**F957** 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)

## <sup>F958</sup> 168B Price of a car: accessories not included in list price.

F959 .....

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**Textual Amendments**

- F958** 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
- F959** 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)

**F960 168C Price of a car: accessories available after car first made available.**

**F961** .....

**Textual Amendments**

- F960** 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
- F961** 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)

**F962 168D Price of a car: capital contributions.**

**F963** .....

**Textual Amendments**

- F962** 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
- F963** 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)

**F964 168E Price of a car: replacement accessories.**

**F965** .....

**Textual Amendments**

- F964** 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
- F965** 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)

**F966 168F Price of a car: classic cars.**

**F967** .....

**Textual Amendments**

- F966** 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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**F967** 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)

**F968** **168C Price of a car: cap for expensive car.**

**F969** .....

**Textual Amendments**

**F968** 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

**F969** 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.**

**F970** .....

**Textual Amendments**

**F970** 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.**

**F971** .....

**Textual Amendments**

**F971** 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.**

**F972** .....

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**Textual Amendments**

**F972** 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.**

**F973** .....

**Textual Amendments**

**F973** 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.**

**F974** .....

**Textual Amendments**

**F974** 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.**

**F975** .....

**Textual Amendments**

**F975** 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.**

**F976** .....

**Textual Amendments**

**F976** 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.

F977 .....

### Textual Amendments

**F977** 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.

F978 .....

### Textual Amendments

**F978** 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)

## [<sup>F979</sup>177A] Death of scheme employer.

F980 .....]

### Textual Amendments

**F979** Ss. 177A, 177B inserted by Finance Act 1989 (c. 26), **Sch. 4 para. 3**  
**F980** 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.

F981 .....

### Textual Amendments

**F981** 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.

F982 .....



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**Textual Amendments**

**F982** 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.**

**F983** .....

**Textual Amendments**

**F983** 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.**

**F984** .....

**Textual Amendments**

**F984** 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.**

**F985** .....

**Textual Amendments**

**F985** 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.**

**F986** .....

**Textual Amendments**

**F986** 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.**

F987 .....

##### **Textual Amendments**

**F987** 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.**

F988 .....

##### **Textual Amendments**

**F988** 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.**

F989 .....

##### **Textual Amendments**

**F989** 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) <sup>M169</sup>The provisions of this section apply where, after 5th April 1979 [<sup>F990</sup>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) <sup>M170</sup>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 [F991section 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) M171 Subject 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"), F992 . . . 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[F993 counts as employment income of the participant for the year of assessment in which the entitlement arises].
- (4) M172 If 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, F994 . . . the appropriate percentage of the locked-in value of the shares at the time of the disposal[F995 counts as employment income of the participant for the year of assessment in which the disposal takes place].
- (5) M173 Subject 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 [F996 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) M174 For 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)<sup>M175</sup> 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
  - <sup>F997</sup>(b) any other disposal falling within that subsection is not at arm's length,
  - (c) a disposal of shares falling within <sup>F998</sup>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)<sup>M176</sup> 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)<sup>M177</sup> 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 <sup>F999</sup>£60], is the product of multiplying £20 by 1 plus the number of years which fall within the period of <sup>F1000</sup>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

- F990** Words in s. 186(1) inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 49\(3\)](#)
- F991** 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](#)
- F992** 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](#))
- F993** 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](#))
- F994** 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](#))
- F995** 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](#))
- F996** 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](#))
- F997** 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\(a\)](#)
- F998** 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\(b\)](#)
- F999** 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\(1\)\(a\)](#)
- F1000** 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)

- C130** S. 186 modified (29.4.1996) by [Finance Act 1996 \(c. 8\), ss. 115\(1\), 116\(3\)](#)
- C131** 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

- M169** Source—1978 s.53(1)
- M170** Source—1978 s.53(3)
- M171** Source—1978 s.56(1); 1982 s.42(1)
- M172** Source—1978 s.55(1)
- M173** Source—1978 s.55(2)-(4)
- M174** Source—1978 s.55(5), (9)
- M175** Source—1978 s.55(7), (8)
- M176** Source—1978 s.53(6)
- M177** 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) <sup>F1001M178</sup> In sections 185 and 186, this section and Schedules 9 and 10 “the relevant provisions” means those sections (including this section) and Schedules.]
- (2) <sup>F1001</sup> For 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 [F1002 1992 Act];

“new holding” has the meaning given by section [F1002 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;

F1003

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“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 [F1004 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 [F1005 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;

[F1006 “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) [F1001M179 For 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 [F1007 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 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 participants.]

In this subsection “associate” has the meaning given by section 417(3) and (4) [F1007 and “participator” has the meaning given by section 417(1)].]

(4) [F1001M180 Subsection (3) above shall have effect subject to the provisions of Part VI of Schedule 9.]

(5) M181 For 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) [F1001M182 Section 839 shall apply for the purposes of the relevant provisions.]

(7) [F1001M183 For 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) M184 Where 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, F1008 . . .

(b) F1008 . . . . .

(9) M185 Any 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) <sup>M186</sup>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 <sup>M187</sup>Industrial and Provident Societies Act 1965 or, as the case may be, the <sup>M188</sup>Industrial and Provident Societies Act (Northern Ireland) 1969.

#### Textual Amendments

- F1001S.** 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](#))
- F1002** 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)).
- F1003S.** 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](#)
- F1004** 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\(1\)](#)
- F1005** 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\(1\)\(2\)](#)
- F1006S.** 187(2): definition of “specified age” inserted by [Finance Act 1991 \(c. 31\), s. 38\(4\)](#)
- F1007** 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](#)
- F1008S.** 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)

- C132** S. 187 modified (29.4.1996) by [Finance Act 1996 \(c. 8\), ss. 115\(1\), 116\(3\)](#)
- C133** S. 187 applied (29.4.1996) by [Finance Act 1996 \(c. 8\), s. 114, Sch. 16 para. 5\(1\)](#)
- C134** 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

- M178** 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)
- M179** Source—1970 s.285(6); 1978 Sch.9 11(3)(b); 1980 Sch.10 26(2); 1984 Sch.10 4(4)
- M180** Source—1987 s.33(2)
- M181** Source—1978 s.61(4); 1983 s.25(2)
- M182** Source—1978 Sch.9 16; 1980 Sch.10 26(4); 1984 Sch.10 15(3)
- M183** Source—1978 Sch.9 17; 1980 Sch.10 26(5); 1984 Sch.10 15(4); 1986 s.23(5)

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- M184 Source—1978 s.55(6)
- M185 Source—1978 s.61(2)
- M186 Source—1978 Sch.9 18; 1986 s.24(1)
- M187 1965 c. 12.
- M188 1969 c. 24. (N.I.).

*f<sup>F1009</sup> Contributions in respect of share option gains*

**Textual Amendments**

**F1009S. 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.**

F1010 ..... ]

**Textual Amendments**

**F1010S. 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.**

F1011 .....

**Textual Amendments**

**F1011S. 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.**

F1012 .....

**Textual Amendments**

**F1012Ss. 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.**

F1013 .....

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**Textual Amendments**  
**F1013**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.**

**F1014** . . . . .

**Textual Amendments**  
**F1014**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)

*f<sup>F1015</sup> Removal expenses and benefits*

**Textual Amendments**  
**F1015**Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**

**F1016 191A Removal expenses and benefits.**

**F1017** . . . . .

**Textual Amendments**  
**F1016**Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**  
**F1017**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)

**F1018 191B Removal benefits: beneficial loan arrangements.**

**F1019** . . . . . ]

**Textual Amendments**  
**F1018**Ss. 191A, 191B and preceding cross-heading inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para.1**  
**F1019**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.**

F1020 .....

**Textual Amendments**

F1020Ss. 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)

[<sup>F1021</sup>**192 Foreign earnings deduction for seafarers.**

F1022 ..... ]

**Textual Amendments**

F1021S. 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))  
F1022Ss. 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.**

F1023 .....

**Textual Amendments**

F1023Ss. 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.**

F1024 .....

**Textual Amendments**

F1024Ss. 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.**

F1025 .....

**Textual Amendments**

F1025Ss. 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.

F1026 .....

### Textual Amendments

**F1026**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.

F1027 .....

### Textual Amendments

**F1027**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)

## [<sup>F1028</sup>197A Car parking facilities

F1029 .....]

### Textual Amendments

**F1028**S. 197A inserted (1988-89 and subsequent years of assessment) by Finance Act 1988 (c. 39), **s. 46(4)**

**F1029**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)

## [<sup>F1030</sup>197AB Works bus services.

F1031 .....

### Textual Amendments

**F1030**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)**

**F1031**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.

F1032 .....

### Textual Amendments

**F1030**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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**F1032**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)

[<sup>F1033</sup>**197AC Provision of cycle or cyclist's safety equipment.**

<sup>F1034</sup> .....

**Textual Amendments**

**F1033**S. 197AC inserted (with effect in accordance with s. 50(3) of the amending Act) by Finance Act 1999 (c. 16), **s. 50(1)**

**F1034**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)

[<sup>F1035</sup> *Mileage allowances*

**Textual Amendments**

**F1035**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**

<sup>F1036</sup> .....

**Textual Amendments**

**F1036**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**

<sup>F1037</sup> .....

**Textual Amendments**

**F1037**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**

<sup>F1038</sup> .....

**Textual Amendments**

**F1038**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**

F1039 .....

**Textual Amendments**  
F1039 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**

F1040 ..... ]

**Textual Amendments**  
F1040 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)

*[<sup>F1041</sup> Mileage allowances*

**Textual Amendments**  
F1041 Ss. 197B-197F and preceding cross-heading inserted by Finance Act 1990 (c. 29), s. 23, **Sch. 4**

**197B** .....

F1042 .....

**Textual Amendments**  
F1042 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** .....

F1043 .....

**Textual Amendments**  
F1043 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** .....

F1044 .....



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**Textual Amendments**

**F1044**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** .....

**F1045** .....

**Textual Amendments**

**F1045**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** .....

**F1046** ..... ]

**Textual Amendments**

**F1046**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)**

*<sup>F1047</sup> Sporting and recreational facilities*

**Textual Amendments**

**F1047**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.**

**F1048** ..... ]

**Textual Amendments**

**F1048**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.**

**F1049** .....

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#### Textual Amendments

**F1049**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](#))

### [<sup>F1050</sup>198A. ....]

**F1051** .....

#### Textual Amendments

**F1050**S. 198A inserted (with effect in accordance with s. 62(5) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [s. 62\(2\)](#)

**F1051**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.

**F1052** .....

#### Textual Amendments

**F1052**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.

**F1053** .....

#### Textual Amendments

**F1053**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](#))

### [<sup>F1054</sup>200ZA Expenses of members of Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly.

**F1055** .....

#### Textual Amendments

**F1054**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\(1\)](#)

**F1055**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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[<sup>F1056</sup>**200AA** **Accidental benefits for holders of certain offices etc.**

F1057  
..... ]

**Textual Amendments**

**F1056**S. 200AA inserted (with effect in accordance with s. 108(2) of the amending Act) by Finance Act 1996 (c. 8), s. 108(1)

**F1057**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)

[<sup>F1058</sup>**200AB** **Accidental overnight expenses.**

F1059  
..... ]

**Textual Amendments**

**F1058**S. 200A inserted (with effect in accordance with s. 93(5) of the amending Act) by Finance Act 1995 (c. 4), s. 93(4)

**F1059**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)

[<sup>F1060</sup>**200B** **Work-related training provided by employers.**

F1061  
..... ]

**Textual Amendments**

**F1060**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)

**F1061**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.**

F1062  
..... ]

**Textual Amendments**

**F1060**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)

**F1062**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.**

F1063  
..... ]

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#### Textual Amendments

**F1060**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)

**F1063**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)

### [<sup>F1064</sup>200 Education and training funded by employers.

**F1065** .....

#### Textual Amendments

**F1064**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)

**F1065**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.

**F1066** .....

#### Textual Amendments

**F1064**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)

**F1066**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.

**F1067** .....

#### Textual Amendments

**F1064**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)

**F1067**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.

**F1068** .....

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**Textual Amendments**

- F1064**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)
- F1068**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.**

**F1069** . . . . . ]

**Textual Amendments**

- F1064**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)
- F1069**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.**

**F1070** . . . . .

**Textual Amendments**

- F1070**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)

[<sup>F1071</sup>**201AA Employee liabilities and indemnity insurance.**

**F1072** . . . . . ]

**Textual Amendments**

- F1071**S. 201AA inserted (with effect in accordance with s. 91(3) of the amending Act) by Finance Act 1995 (c. 4), s. 91(1)
- F1072**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)

[<sup>F1073</sup>**201A Expense of entertainers.**

**F1074** . . . . . ]

**Textual Amendments**

- F1073**S. 201A inserted by Finance Act 1990 (c. 29), s. 77
- F1074**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.

F1075 .....

### Textual Amendments

**F1075**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

## [<sup>F1076</sup>202A Assessment on receipts basis.

F1077 ..... ]

### Textual Amendments

**F1076**Ss. 202A, 202B inserted by Finance Act 1989 (c. 26), s. 37

**F1077**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.

F1078 .....

### Textual Amendments

**F1078**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.

F1079 .....

### Textual Amendments

**F1079**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)

## [<sup>F1080</sup>203A R.A.Y.E.: meaning of payment.

F1081 ..... ]

### Textual Amendments

**F1080**S. 203A inserted by Finance Act 1989 (c. 26), s. 37(2)(4)(5)

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**F1081** 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)

[<sup>F1082</sup>**203B** **PAYE: payment by intermediary.**

**F1083** ..... ]

**Textual Amendments**

**F1082** S. 203B inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 125

**F1083** 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)

[<sup>F1084</sup>**203C** **PAYE: employee of non-UK employer.**

**F1085** ..... ]

**Textual Amendments**

**F1084** Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 126

**F1085** 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.**

**F1086** ..... ]

**Textual Amendments**

**F1084** Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 126

**F1086** 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.**

**F1087** ..... ]

**Textual Amendments**

**F1084** Ss. 203C-203E inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 126

**F1087** 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)

[<sup>F1088</sup>**203P** **PAYE: tradeable assets.**

**F1089** ..... ]



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**Textual Amendments**  
**F1088S. 203F** inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 127](#)  
**F1089Ss. 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)

[<sup>F1090</sup>**203PAYE: enhancing the value of an asset.**

F1091 .....]

**Textual Amendments**  
**F1090S. 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))  
**F1091Ss. 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)

[<sup>F1092</sup>**203PAYE: gains from share options etc.**

F1093 .....]

**Textual Amendments**  
**F1092S. 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))  
**F1093Ss. 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)

[<sup>F1094</sup>**203PAYE: non-cash vouchers.**

F1095 .....]

**Textual Amendments**  
**F1094S. 203G** inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 128](#)  
**F1095Ss. 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)

[<sup>F1096</sup>**203PAYE: credit-tokens.**

F1097 .....]

**Textual Amendments**  
**F1096S. 203H** inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 129](#)  
**F1097Ss. 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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[<sup>F1098</sup>**203PAYE: cash vouchers.**

F1099 ..... ]

**Textual Amendments**

**F1098S.** 203I inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **s. 130**

**F1099Ss.** 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)

[<sup>F1100</sup>**203B.203B to s.203I: accounting for tax.**

F1101 ..... ]

**Textual Amendments**

**F1100Ss.** 203J-203L inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **s. 131**

**F1101Ss.** 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.**

F1102 ..... ]

**Textual Amendments**

**F1100Ss.** 203J-203L inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **s. 131**

**F1102Ss.** 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.**

F1103 ..... ]

**Textual Amendments**

**F1100Ss.** 203J-203L inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **s. 131**

**F1103Ss.** 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.**

F1104 ..... ]

**Textual Amendments**

**F1104Ss.** 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.

F1105

### Textual Amendments

**F1105** 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.

F1106

### Textual Amendments

**F1106** 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](#))

## [<sup>F1107</sup>206 RAYE settlement agreements.

F1108

### Textual Amendments

**F1107** S. 206A inserted (29.4.1996) by [Finance Act 1996 \(c. 8\), s. 110](#)  
**F1108** 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.

F1109

### Textual Amendments

**F1109** 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)

**C135** 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](#)))

**C136** 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](#)))

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**C137** 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)

**C138** 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\(2\)\(3\)\(d\)](#)

#### [<sup>F1110</sup>**207** Application of lower rate to company distributions.

<sup>F1111</sup> . . . . . ]

#### Textual Amendments

**F1110** 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\(1\)\(2\)\(5\)](#)

**F1111** 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.

<sup>M189</sup> 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)

**C139** 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](#)

**C140** 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\(4\)](#))

**C141** S. 208 excluded (27.7.1999) by [Commonwealth Development Corporation Act 1999 \(c. 20\), Sch. 3 paras. 1, 6\(2\)\(a\)](#)

**C142** s. 208 excluded (with effect in accordance with s. 22(7) of the amending Act) by [Finance Act 1993 \(c. 34\), s. 171\(4A\)](#) (as inserted by [1997 c. 58, s. 22\(4\)](#)),

**C143** S. 208 modified (with retrospective effect) by [Finance \(No. 3\) Act 2010 \(c. 33\), Sch. 3 para. 6\(1\)\(2\)](#)

#### Marginal Citations

**M189** 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)

- C144** Pt. 6 Ch. 2 modified (retrospective to 11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(1)(3), [Sch. 24 para. 14\(5\)](#)
- C145** 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.](#)
- C146** Pt. 6 Ch. 2 modified (8.11.1995) by [Gas Act 1995 \(c. 45\)](#), s. 18(2)(c), [Sch. 5 paras. 1, 10\(4\)](#)
- C147** 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) <sup>M190</sup>The following provisions of this Chapter, together with section 418, shall, subject to [<sup>F1112</sup>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) <sup>M191</sup>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) <sup>M192</sup>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;
- [<sup>F1113</sup>(da) <sup>F1114</sup>.....]
- (e) <sup>M193</sup>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 [<sup>F1115</sup>paragraph (d) <sup>F1116</sup>. . . ] 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 [<sup>F1117</sup>listed] on a recognised stock exchange nor issued on terms which are reasonably comparable with the terms of issue of securities so [<sup>F1117</sup>listed]; 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) <sup>F1118</sup> . . . . .
  - (v) <sup>F1118</sup> . . . . .
  - (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 [<sup>F1119</sup>or;
  - (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) <sup>M194</sup>Without prejudice to section 254(11), no amount shall be regarded for the purposes of [<sup>F1120</sup>subsection (2)(d)<sup>F1121</sup> . . . ] 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.
- [<sup>F1122</sup>(3A) Where any security of a company is issued at a premium representing new consideration—
- (a) the references in subsection (2)(d)<sup>F1123</sup> . . . 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.]
- [<sup>F1124</sup>(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.]
- [<sup>F1125</sup>(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) <sup>M195</sup>Where 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) <sup>M196</sup>No 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) <sup>M197</sup>The 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)<sup>M198</sup> 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.

[ <sup>F1126</sup> (8A)	<sup>F1127</sup> .....
(8B)	<sup>F1127</sup> .....
(8C)	<sup>F1127</sup> .....
(8D)	<sup>F1127</sup> .....
(8E)	<sup>F1127</sup> .....
(8F)	<sup>F1127</sup> .....]

[<sup>F1128</sup>(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

**F1112** 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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- F1113** 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\(1\)](#)
- F1114** 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
- F1115** 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\(2\)\(a\)](#)
- F1116** 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\(2\)](#)
- F1117** 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\(1\)\(2\)\(b\)](#)
- F1118** 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
- F1119** 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\(1\)\(4\)](#).
- F1120** 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\(2\)\(b\)](#)
- F1121** 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
- F1122** 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](#))
- F1123** 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
- F1124** S. 209(3AA) inserted (with effect in accordance with s. 102(3) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 102\(1\)](#)
- F1125** S. 209(3B) inserted (with application in accordance with s. 86(1) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 86\(1\)](#)
- F1126** 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\(3\)](#)
- F1127** 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
- F1128** 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)**

- C148** 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](#)))
- C149** 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**

- M190** Source—1970 s.233(1); 1980 s.45(2)
- M191** Source—1970 s.233(2)(a), (b), (c); 1972 Sch.22 1, 2(1)
- M192** Source—1970 s.233(2)(d)(iii); 1972 Sch.22 3(2)
- M193** Source—1970 s.233(d), (e); 1970(F) Sch.4 6; 1972 Sch.22 3(1)
- M194** Source—1972 Sch.22 3(3)
- M195** Source—1970 s.233(3); 1972 Sch.22 4(3)
- M196** Source—1972 Sch.22 4(1), (2)
- M197** Source—1970 s.233(4)
- M198** Source—1972 Sch.22 2(2)

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## **[<sup>F1129</sup>209] 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 [<sup>F1130</sup>section 984 of ITA 2007].
- (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

**F1129** 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)

**F1130** Words in s. 209A(4) 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. 22 (with Sch. 2)

#### [<sup>F1129</sup>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 [<sup>F1131</sup>(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

**F1129** 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)

**F1131** 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.

<sup>M199</sup>(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) <sup>M200</sup>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) <sup>M201</sup>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 [<sup>F1132</sup>included in the official UK list]; 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

**F1132** Words in s. 210(4) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\), Sch. 26 para. 7\(2\)](#)

#### Marginal Citations

**M199** Source—1970 s.234(1), (2)

**M200** Source—1972 Sch.22 5(2), (3)

**M201** Source—1970 s.234(3); 1973 s.54

## 211 Matters to be treated or not to be treated as repayments of share capital.

- (1) <sup>M202</sup>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) <sup>M203</sup>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—
- (a) more than ten years after the issue of share capital mentioned in paragraph (a) of that subsection; and

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- (b) in respect of share capital other than redeemable share capital.
- (3) <sup>M204</sup>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

**M202** Source—1970 s.235(1); 1972 Sch.22 6(1), (3)

**M203** Source—1972 Sch.22 6(2)

**M204** 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.**

- <sup>M205</sup>(1) Any interest or other distribution—
- which is paid out of the assets of a company (“the borrower”) to another company which is within the charge to corporation tax; and
  - which is so paid in respect of securities of the borrower which fall within <sup>F1133</sup> . . . any of sub-paragraphs (i) to (iii) and (vi) [<sup>F1134</sup> and (vii)] of paragraph (e) of section 209(2); and
  - 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.
- (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—



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- (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) <sup>F1135</sup> . . . 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 <sup>F1135</sup> . . . .
- (4) <sup>F1136</sup> . . . . .

#### Textual Amendments

- F1133** 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
- F1134** 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\(3\)\(4\)](#).
- F1135** 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
- F1136** 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

- M205** Source—1982 s.60(1)-(4)

### *Demergers*

## 213 Exempt distributions.

<sup>M206</sup>(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—
  - (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”.

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- (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 [F1137(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;
  - (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

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- 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 [F1138 stamp 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.

#### Textual Amendments

**F1137** 1990 s.89 and Sch.14 para.3 (correction of errors)—deemed always to have had effect. Previously “(3)(1)(a)”.

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**F1138** 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

**M206** Source—1980 s.117, Sch.18 1-8, 23

VALID FROM 29/11/2007

#### **[<sup>F1139</sup>213] 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

**F1139** 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) <sup>M207</sup>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 <sup>F1140</sup> . . . . ;
  - <sup>F1141</sup>(ab) that income shall be chargeable to tax;]
  - (b) <sup>F1142</sup> . . . . .
  - (c) the payment shall be regarded as a distribution for the purposes of <sup>F1143</sup>section 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.
- <sup>F1144</sup>(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.

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- (1B) Corporation tax chargeable by virtue of subsection (1) shall be charged under Case VI of Schedule D.]
- (2) <sup>M208</sup>In 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 <sup>F1145</sup>stamp 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

- F1140** 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)
- F1141** 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)
- F1142** S. 214(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 23, Sch. 3 Pt. 1](#) (with Sch. 2)
- F1143** Words in s. 214(1)(c) substituted (24.7.2002) by [Finance Act 2002 \(c. 23\), Sch. 30 para. 1\(3\)](#)
- F1144** 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)
- F1145** 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\(4\)](#)

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### Marginal Citations

M207 Source—1980 Sch.18 14

M208 Source—1980 Sch.18 13

## 215 Advance clearance by Board of distributions and payments.

- (1) <sup>M209</sup>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 [<sup>F1146</sup>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) <sup>M210</sup>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 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.

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#### Textual Amendments

**F1146** 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

**M209** Source—1980 Sch.18 17

**M210** Source—1980 Sch.18 18

### 216 Returns.

- (1) <sup>M211</sup>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) <sup>M212</sup>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

**M211** Source—1980 Sch.18 19

**M212** Source—1980 Sch.18 20

### 217 Information.

- (1) <sup>M213</sup>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



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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) <sup>M214</sup>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

**M213** Source—1980 Sch.18 21

**M214** Source—1980 Sch.18 22

## 218 Interpretation of sections 213 to 217.

<sup>M215</sup>(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);
- “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;

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“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**

M215 Source—1980 Sch.18 23

### *Purchase of own shares*

#### **219 Purchase by unquoted trading company of own shares.**

<sup>M216</sup>(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

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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

M216 Source—1982 s.53(1)-(3); 1986 s.100

## 220 Conditions as to residence and period of ownership.

- M217(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) F1147 .....
- (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.
- (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 [F1148 or 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 [F1148 or 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.

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- (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 [F1149 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

**F1147** S. 220(2) repealed (6.4.2007) by [Finance Act 2006 \(c. 25\)](#), Sch. 13 paras. 8, 27(2), **Sch. 26 Pt. 3(15)**, Note

**F1148** 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**

**F1149** 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)).

#### Marginal Citations

**M217** Source—1982 Sch.9 1, 2

## 221 Reduction of vendor's interest as shareholder.

- (1) <sup>M218</sup>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.
- (2) <sup>M219</sup>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) <sup>M220</sup>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

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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) <sup>M221</sup>In subsection (5) above “profits available for distribution” has the same meaning as it has for the purposes of Part VIII of the <sup>M222</sup>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) <sup>M223</sup>References in this section to entitlement are, except in the case of trustees and personal representatives, references to beneficial entitlement.

#### Marginal Citations

**M218** Source—1982 Sch.9 3(1)

**M219** Source—1982 Sch.9 4

**M220** Source—1982 Sch.9 3(2)-(4)

**M221** Source—1982 Sch.9 3(5), (6)

**M222** 1985 c.6

**M223** Source—1982 Sch.9 3(7)

## 222 Conditions applicable where purchasing company is member of group.

(1) <sup>M224</sup>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

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- (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) <sup>M225</sup>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) <sup>M226</sup>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) <sup>M227</sup>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
    - (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) <sup>M228</sup>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.

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- (10) <sup>M229</sup>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

**M224** Source—1982 Sch.9 5(1), (2)

**M225** Source—1982 Sch.9 6(1), (2)

**M226** Source—1982 Sch.9 6(3)

**M227** Source—1982 Sch.9 5(3)-(6)

**M228** Source—1982 Sch.9 5(7), 6(4)

**M229** Source—1982 Sch.9 5(8)-(10)

## 223 Other conditions.

- (1) <sup>M230</sup>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) <sup>M231</sup>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.
- (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

**M230** Source—1982 Sch.9 7

**M231** Source—1982 Sch.9 8



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## 224 Relaxation of conditions in certain cases.

<sup>M232</sup>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

M232 Source—1982 Sch.9 9

## 225 Advance clearance of payments by Board.

- (1) <sup>M233</sup>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.
- (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

M233 Source—1982 Sch.9 10

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## 226 Returns and information.

- (1) <sup>M234</sup>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) <sup>M235</sup>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

**M234** Source—1982 Sch.9 11

**M235** Source—1982 Sch.9 12

## 227 Associated persons.

- <sup>M236</sup>(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.
- (2) A husband and wife living together [<sup>F1150</sup>, 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.

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- (5) Where shares in a company are held by [<sup>F1151</sup>the trustees of a settlement] 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 [<sup>F1152</sup>a registered pension scheme], 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 [<sup>F1153</sup>the settled property] 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

**F1150** 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**

**F1151** Words in s. 227(5) substituted (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 13 paras. 9(a), 27(1)**

**F1152** Words in s. 227(8)(a) substituted (6.4.2006) by [Finance Act 2004 \(c 12\)](#), s. 284(1), **Sch. 35 para. 7** (with **Sch. 36**)

**F1153** Words in s. 227(9) substituted (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), **Sch. 13 paras. 9(b), 27(1)**

#### Marginal Citations

**M236** Source—1982 Sch.9 14

## 228 Connected persons.

- <sup>M237</sup>(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.

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- (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.

#### Marginal Citations

M237 Source—1982 Sch.9 15

## 229 Other interpretative provisions.

<sup>M238</sup>(1) In sections 219 to 228—

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“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 [<sup>F1154</sup>settled property] or are comprised in the estate of a deceased person, and in such a case are references to the [<sup>F1155</sup>trustees of the settlement] 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.

#### Textual Amendments

**F1154** Words in s. 229(2) substituted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 10(a), 27(1)

**F1155** Words in s. 229(2) substituted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 10(b), 27(1)

#### Marginal Citations

**M238** Source—1982 Sch.9 16

### *Stock dividends*

#### 230 Stock dividends: distributions.

<sup>M239</sup>Any share capital to which section 249 applies and which is issued by a company <sup>F1156</sup> . . . [<sup>F1157</sup>in 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

- F1156** 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](#)
- F1157** 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

- M239** Source—1975 (No.2) Sch.8 6

VALID FROM 01/04/2009

## <sup>F1158</sup>Industrial and provident society dividends etc

### Textual Amendments

- F1158** [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.**

<sup>M240</sup>(1) Subject to <sup>F1159</sup>sections 231AA and 231AB of this Act][<sup>F1160</sup>and section 219(4B) of the Finance Act 1994,][<sup>F1161</sup>for 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 <sup>F1162</sup>. . . , 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 <sup>F1163</sup>the tax credit fraction in force when] the distribution is made.

<sup>F1164</sup>(1A) The tax credit fraction is one-ninth.]

(2) <sup>F1165</sup> . . . . .

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- (3) <sup>F1166</sup> .....
- (3AA) <sup>F1166</sup> .....
- (3A) <sup>F1167</sup> .....
- (3B) <sup>F1167</sup> .....
- (3C) <sup>F1167</sup> .....
- (3D) <sup>F1167</sup> .....
- (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 [<sup>F1168</sup>that person] is entitled to a tax credit in respect of it shall be determined by reference to where [<sup>F1168</sup>that 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*<sup>F1169</sup>.
- (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*<sup>F1169</sup>.

#### Textual Amendments

- F1159** 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)
- F1160** 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)**
- F1161** 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)
- F1162** 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)
- F1163** 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)**
- F1164** 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)**
- F1165** 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)**)
- F1166** 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)
- F1167** 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)**
- F1168** 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)
- F1169** 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)**

- C150** See 1989 s.107 and Sch.12—close companies.
- C151** S. 231 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **6(2)(b)**
- C152** S. 231 excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 121(5), **Sch. 17 para. 18(2)**
- C153** 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**
- C154** 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.
- C155** 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)**)
- C156** 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)**)
- C157** S. 231(4) applied (31.7.1998) by Finance Act 1998 (c. 36), **s. 76(4)**

**Marginal Citations**

- M240** Source—1972 s.86; 1972 s.110(1)

[<sup>F1170</sup> **231A Restrictions on the use of tax credits by pension funds.**

<sup>F1171</sup> . . . . . ]

**Textual Amendments**

- F1170** 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)**
- F1171** 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)**

[<sup>F1172</sup> **231A No 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 <sup>F1173</sup> . . . 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.

[<sup>F1175</sup> . . . . . ]  
<sup>F1174</sup>(1A)

- (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—

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- (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

**F1172** S. 231AA inserted (with effect in accordance with s. 102(9) of the amending Act) by Finance Act 1998 (c. 36), s. 102(1)

**F1173** Words in s. 231AA(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 24(2), Sch. 3 Pt. 1 (with Sch. 2)

**F1174** 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)

**F1175** S. 231AA(1A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 24(3), Sch. 3 Pt. 1 (with Sch. 2)

#### [<sup>F1176</sup> **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<sup>F1177</sup> . . . 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.

[<sup>F1179</sup> . . . . . ]  
<sup>F1178</sup>(1A)

- (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.]

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### Textual Amendments

**F1176**S. 231AB inserted (with effect in accordance with s. 102(10) of the amending Act) by Finance Act 1998 (c. 36), s. 102(2)

**F1177**Words in s. 231AB(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 25(2), Sch. 3 Pt. 1 (with Sch. 2)

**F1178**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)

**F1179**S. 231AB(1A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 25(3), Sch. 3 Pt. 1 (with Sch. 2)

### [<sup>F1180</sup>231E] 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.
- (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 [<sup>F1181</sup>section 397(2) of ITTOIA 2005]<sup>F1182</sup> . . . 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.

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- (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.
- (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;
  - [<sup>F1183</sup>“tax advantage” has the meaning given by section 840ZA]]

#### Textual Amendments

**F1180** 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)

**F1181** 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)

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- F1182** 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\(10\)](#)
- F1183** [S. 231B\(12\)](#): definition of "tax advantage" 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. 26](#)

## 232 Tax credits for non-U.K. residents.

**F1184** .....

### Textual Amendments

- F1184** [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.

**F1185** .....

### Textual Amendments

- F1185** [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) <sup>M241</sup>Without prejudice to [<sup>F1186</sup>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.

- (2) The duty imposed by subsection (1) above shall be enforceable at the suit or instance of the person requesting the information.

**F1187**(3) .....

**F1187**(4) .....

- (5) <sup>M242</sup>Where 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

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- (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 [<sup>F1188</sup>paragraphs 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

**F1186** 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).

**F1187** 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.

**F1188** 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)

**C158** S. 234 applied (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), reg. 21(2)

#### Marginal Citations

**M241** Source—1970 s.232(4); 1972 Sch.24 18

**M242** Source—1972 Sch.21

### [<sup>F1189</sup>234] **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.

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- (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—
- (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.

[ In this section “bank” has the meaning given by section 840A.]  
F1190(8A)

- (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.



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- (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

**F1189** 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).

**F1190** 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)

**C159** 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)

**C160** 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

**C161** 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)

**C162** 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)

### <sup>F1191</sup>235 Distributions of exempt funds etc.

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#### Textual Amendments

**F1191** 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)

### <sup>F1192</sup>236 Provisions supplementary to section 235.

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#### Textual Amendments

**F1192** 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)

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**F1193 237 Disallowance of reliefs in respect of bonus issues.**

**Textual Amendments**

**F1193 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.**

**F1194**

**Textual Amendments**

**F1194 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.**

**F1195**

**Textual Amendments**

**F1195 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))

**240 Set-off of company’s surplus ACT against subsidiary’s liability to corporation tax.**

**F1196**

**Textual Amendments**

**F1196 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.**

**F1197**

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#### Textual Amendments

**F1197** 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.

**F1198** .....

#### Textual Amendments

**F1198** 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.

**F1199** .....

#### Textual Amendments

**F1199** 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.

**F1200** .....

#### Textual Amendments

**F1200** 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

### 245 Calculation etc. of ACT on change of ownership of company.

**F1201** .....

#### Textual Amendments

**F1201** 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

### [<sup>F1202</sup> 245 Restriction on application of section 240 in certain circumstances.

**F1203** .....

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**Textual Amendments**

**F1202**Ss. 245A, 245B inserted (in relation to changes in ownership on or after 14 March 1989) by [Finance Act 1989 \(c. 26\)](#), s. 98

**F1203**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.**

**F1204** .....

**Textual Amendments**

**F1204**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.**

**F1205** .....

**Textual Amendments**

**F1205**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

[<sup>F1206F1207</sup>CHAPTER VA

FOREIGN INCOME DIVIDENDS

**Textual Amendments**

**F1206**Pt. 6 Ch. 5A (ss. 246A-246Y) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 16 para. 1](#)

**F1207**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.**

**F1208** .....

**Textual Amendments**

**F1208**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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## 246B Procedure for making election.

F1209

### Textual Amendments

**F1209** 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.

F1210

### Textual Amendments

**F1210** 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.

F1211

### Textual Amendments

**F1211** 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

*Companies: payments and receipts*

## 246E Foreign income dividend not franked payment.

F1212

### Textual Amendments

**F1212** 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.

F1213

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**Textual Amendments**

**F1213**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.**

**F1214** .....

**Textual Amendments**

**F1214**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.**

**F1215** .....

**Textual Amendments**

**F1215**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.**

**F1216** .....

**Textual Amendments**

**F1216**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.**

**F1217** .....

**Textual Amendments**

**F1217**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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## 246K Matching: subsidiaries.

F1218  
 .....

### Textual Amendments

**F1218** 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.

F1219  
 .....

### Textual Amendments

**F1219** 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.

F1220  
 .....

### Textual Amendments

**F1220** 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

*Repayment or set-off of advance corporation tax*

## 246N ACT to be repaid or set off against corporation tax liability.

F1221  
 .....

### Textual Amendments

**F1221** 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.

F1222  
 .....

### Textual Amendments

**F1222** 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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## 246Q Repayment or set-off: supplementary.

F1223  
.....

### Textual Amendments

F1223 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.

F1224  
.....

### Textual Amendments

F1224 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.

F1225  
.....

### Textual Amendments

F1225 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.

F1226  
.....

### Textual Amendments

F1226 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.

F1227  
.....

### Textual Amendments

F1227 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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## 246V Settlement of liability by non-IHC as to ACT.

F1228

### Textual Amendments

**F1228**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.

F1229

### Textual Amendments

**F1229**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.

F1230

### Textual Amendments

**F1230**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.

F1231

### Textual Amendments

**F1231**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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## CHAPTER VI

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Group income*

#### **247 Dividends etc. paid by one member of a group to another.**

F1232  
.....

##### **Textual Amendments**

**F1232S. 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.**

F1233  
.....

##### **Textual Amendments**

**F1233S. 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\(10\)](#)

#### *Stock dividends*

#### **249 Stock dividends treated as income.**

- (1) <sup>M243</sup>Subject to [<sup>F1234</sup>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* <sup>F1235</sup> shall have effect as if the company had issued to each of those

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persons separately a part of that share capital proportionate to his interest therein on the due date of issue.

- (4) <sup>F1236</sup> . . . . .
- (5) <sup>F1236</sup> . . . . .
- (6) <sup>F1236</sup> . . . . .
- (7) <sup>F1236</sup> . . . . .
- (8) Where, in a case within [<sup>F1237</sup> 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; <sup>F1238</sup> . . . . .
- (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 cancellation, extinguishment or acquisition by the company of so much of that bonus share capital as caused [<sup>F1239</sup> 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

**F1234** 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)*

**F1235** Words repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.

**F1236** 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)*

**F1237** 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)

**F1238** 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)*

**F1239** 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)

**C163** See Sch.10 para.5—*profit sharing schemes.*

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### Marginal Citations

M243 Source—1975 (No.2) s.34(1)-(6)

## 250 Returns.

- (1) <sup>M244</sup>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) <sup>M245</sup>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) <sup>M246</sup>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—
  - (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, [<sup>F1240</sup>the 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 <sup>F1241</sup>. . . [<sup>F1242</sup>of this Act or Chapter 5 of Part 4 of ITTOIA 2005].

### Textual Amendments

**F1240** 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](#))

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**F1241** 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).

**F1242** 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

**M244** Source—1975 (No.2) Sch.8 7(1)

**M245** Source—1975 (No.2) Sch.8 7(2)

**M246** Source—1975 (No.2) Sch.8 7(3)-(6)

## 251 Interpretation of sections 249 and 250.

<sup>M247</sup>(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.

- (2) <sup>F1243</sup> .....
- (3) <sup>F1243</sup> .....
- (4) <sup>F1243</sup> .....
- (5) <sup>F1243</sup> .....
- (6) <sup>F1243</sup> .....

#### Textual Amendments

**F1243** 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)

**C164** S. 251(1)(c) applied (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 7 para. 4(2)**

#### Marginal Citations

**M247** Source—1975 (No.2) s.34(8)(a)-(d)

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*[<sup>F1244</sup> Approved share incentive plans*

**Textual Amendments**

**F1244**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**

**F1245** .....

**Textual Amendments**

**F1245**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**

**F1246** .....

**Textual Amendments**

**F1246**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](#))

**251C Charge on dividend shares ceasing to be subject to plan**

**F1247** .....

**Textual Amendments**

**F1247**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**

**F1248** ..... ]

**Textual Amendments**

**F1248**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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### *Supplemental*

#### M248 **252. Rectification of excessive set-off etc. of ACT or tax credit.**

(1) If an inspector discovers that—

- (a) <sup>F1249</sup> .....
- (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 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**

**F1249** 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

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**Modifications etc. (not altering text)**

- C165** S. 252 modified (27.7.1993) by 1993 c. 34, s. 80(8)
- C166** S. 252 modified (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), reg. 15(4)(5)
- C167** S. 252 applied (16.8.1995) by The Venture Capital Trust Regulations 1995 (S.I. 1995/1979), reg. 20
- C168** S. 252 modified (31.7.1997) by Finance (No. 2) Act 1997 (c. 58), s. 35(10)
- C169** 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**

- M248** Source—1972 s.102; (No.2) s.88(5)-(7)

**253 Power to modify or replace section 234(5) to (9) and Schedule 13.**

- <sup>M249</sup>(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) <sup>F1250</sup> . . . . .  
and references in this Act and in any other enactment to section 234(5) to (9) <sup>F1251</sup> . . . shall be construed as including references to any such regulations.
- (2) <sup>F1252</sup> . . . . .
- (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 as respects <sup>F1253</sup> . . . 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**

- F1250** 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
- F1251** 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
- F1252** 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
- F1253** 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

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### Marginal Citations

M249 Source—1972 s.108

## 254 Interpretation of Part VI.

- (1) <sup>M250</sup>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) <sup>M251</sup>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.
- (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) <sup>M252</sup>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) <sup>M253</sup>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.

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- (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) <sup>M254</sup>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) <sup>M255</sup>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) <sup>M256</sup>References in this Part to issuing share capital as paid up apply also to the paying up of any issued share capital.
- (11) <sup>M257</sup>Where securities are issued at a price less than the amount repayable on them, and are not [<sup>F1254</sup>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 [<sup>F1254</sup>listed].
- (12) <sup>M258</sup>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.

**Textual Amendments**

**F1254** 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**

- M250** Source—1970 s.237(1), (3), (5); 1972 Sch.22 10(4)  
**M251** Source—1972 Sch.22 10(1)-(3)  
**M252** Source—1970 s.237(1)  
**M253** Source—1972 Sch.22 8  
**M254** Source—1972 Sch.22 9  
**M255** Source—1970 s.237 (2)  
**M256** Source—1970 s.237(4)  
**M257** Source—1970 s.237(6)  
**M258** Source—1970 s.237(7)

**255 “Gross rate” and “gross amount” of distributions to include ACT.**

<sup>F1255</sup> .....

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### Textual Amendments

**F1255S. 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.

[<sup>F1256</sup>(1)] <sup>M259</sup>An 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 [<sup>F1257</sup>section 278] and [<sup>F1258</sup>287 and 288].

[<sup>F1259</sup>(2)] Where under any provision of this Chapter the relief to which a person is entitled for any year of assessment consists in [<sup>F1260</sup>a tax reduction] calculated by reference to a specified amount, [<sup>F1261</sup>the amount of the tax reduction is equal to 10 per cent. of the specified amount].

(3) [<sup>F1262</sup>.....]

### Textual Amendments

**F1256S. 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\(1\)](#)

**F1257**Words in [s. 256\(1\)](#) 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. 27\(2\)](#) (with [Sch. 2](#))

**F1258**“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.*

**F1259S. 256(2)(3)** inserted (with effect as mentioned in [s. 77\(7\)](#) of the amending Act) by [Finance Act 1994 c. 9, s. 77\(2\)](#)

**F1260**Words in [s. 256\(2\)](#) 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. 27\(3\)\(a\)](#) (with [Sch. 2](#))

**F1261**Words in [s. 256\(2\)](#) 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. 27\(3\)\(b\)](#) (with [Sch. 2](#))

**F1262S. 256(3)** repealed (6.4.2007 with effect in accordance with [s. 1034\(1\)](#) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 27\(4\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### Marginal Citations

**M259** Source-1970 s.5; 1971 Sch.4 3; 1975 (No.2) s.31(3); 1976 Sch.4 3(1), 18(1)

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## [<sup>F1263</sup>256B 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*

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**

**F1263**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)

## [<sup>F1263</sup>256B Meaning of “the minimum amount”

In this Chapter “the minimum amount” means £2,350.]

### **Textual Amendments**

**F1263**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)**

**C170** 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)

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## <sup>F1264</sup>**257 Personal allowance.**

- (1) The claimant shall be entitled to a [<sup>F1265</sup>personal allowance] of [<sup>F1266</sup>£3,005].
- (2) If the claimant <sup>F1267</sup> . . . is at any time within the year of assessment of the age of 65 or upwards, he shall be entitled to a [<sup>F1268</sup>personal allowance] of [<sup>F1266</sup>£3,670] (instead of [<sup>F1269</sup>the allowance] provided for by subsection (1) above).
- (3) If the claimant <sup>F1267</sup> . . . is at any time within the year of assessment of the age of [<sup>F1270</sup>75] or upwards, he shall be entitled to a [<sup>F1271</sup>personal allowance] of [<sup>F1266</sup>£3,820] (instead of [<sup>F1272</sup>the allowance] 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 [<sup>F1273</sup>adjusted net income] for the year of assessment exceeds [<sup>F1266</sup>£12,300], subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by [<sup>F1270</sup>one half] of the excess (but not so as to reduce those amounts below that specified in subsection (1) above).]

[ An allowance under this section is given effect at Step 3 of the calculation in section 23 <sup>F1274</sup>(6) of ITA 2007. ]]

### **Textual Amendments**

**F1264**Ss. 257-257F substituted for s. 257 (1990-91 and subsequent years) by [Finance Act 1988 \(c. 39\), s. 33](#)

**F1265**Words in s. 257(1) 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. 29\(2\)](#) (with Sch. 2)

**F1266**S.I. 1990 No.677, [arts.2\(1\)\(3\)](#) (in Part III Vol.5)for 1990-91.

**F1267**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

**F1268**Words in s. 257(2) 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. 29\(3\)\(a\)](#) (with Sch. 2)

**F1269**Words in s. 257(2) 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. 29\(3\)\(b\)](#) (with Sch. 2)

**F1270**1989 s.33 for 1990-91and subsequent years.

**F1271**Words in s. 257(3) 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. 29\(4\)\(a\)](#) (with Sch. 2)

**F1272**Words in s. 257(3) 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. 29\(4\)\(b\)](#) (with Sch. 2)

**F1273**Words in s. 257(5) 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. 29\(5\)](#) (with Sch. 2)

**F1274**S. 257(6) 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. 29\(6\)](#) (with Sch. 2)

### **Modifications etc. (not altering text)**

**C171** 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\(3\)\(d\)](#)



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- 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)
- 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))
- C172** S. 257(5) modified (6.4.2006) by Finance Act 2004 (c. 12), ss. 192(5), 284(1) (with Sch. 36)

**[<sup>F1275</sup>257A Children’s tax credit.**

<sup>F1276</sup> . . . . . ]

**Textual Amendments**

**F1275S. 257AA** inserted (with effect in accordance with s. 30(5) of the amending Act) by Finance Act 1999 (c. 16), s. 30(1)

**F1276S. 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**<sup>F1277</sup> (pre-5th December 2005 marriages)].

(1) <sup>F1278</sup> . . . . .

(2) [<sup>F1279</sup>If the claimant is, for the whole or any part of the year of assessment, a married man whose wife is living with him <sup>F1280</sup>and whose marriage was entered into before 5th December 2005], and] either of them [<sup>F1281</sup>was born before 6th April 1935], he shall [<sup>F1282</sup>(subject to subsection (3A) below)] be entitled [<sup>F1283</sup>for that year to [<sup>F1284</sup>a tax reduction] calculated by reference to £2,665 ]. . . .

(3) [<sup>F1279</sup>If the claimant is, for the whole or any part of the year of assessment, a married man whose wife is living with him <sup>F1285</sup>and whose marriage was entered into before 5th December 2005], and] either of them [<sup>F1286</sup>(a)] is at any time within that year of the age of [<sup>F1287</sup>75] or upwards, [<sup>F1288</sup> and

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- (b) was born before 6th April 1935,]  
 he shall [<sup>F1289</sup>(subject to subsection (3A) below)] be entitled [<sup>F1290</sup>for that year to [<sup>F1284</sup>a tax reduction] calculated by reference to £2,705 (instead of to the reduction] provided for by subsection <sup>F1291</sup> . . . (2) above).
- [<sup>F1292</sup>(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 [<sup>F1293</sup>subsection (3)] above a person who would have been of or over [<sup>F1294</sup>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.
- (5) In relation to a claimant whose [<sup>F1295</sup>adjusted net income] for the year of assessment exceeds [<sup>F1296</sup>£12,300], subsections (2) and (3) above shall apply as if the amounts specified in them were reduced by—
- (a) [<sup>F1287</sup>one half] of the excess, less
  - (b) any reduction made in his allowance under section 257 by virtue of subsection (5) of that section,
- <sup>F1297</sup> . . .
- [<sup>F1298</sup>(5A) The amounts specified in subsections (2) and (3) above shall not by virtue of subsection (5) above be treated as reduced below [<sup>F1299</sup>the minimum amount].]
- (6) A man shall not be entitled by virtue of this section to more than one [<sup>F1300</sup>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 [<sup>F1301</sup>subsections (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.
- [<sup>F1302</sup>(6A) A tax reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007.]
- [<sup>F1303</sup>(7) <sup>F1304</sup> . . . . .
- (8) <sup>F1304</sup> . . . . .
- (9) <sup>F1304</sup> . . . . .]

#### Textual Amendments

**F1277** 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)**

**F1278S.** 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\(3\)](#)

**F1279** 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)**

**F1280** 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)**

**F1281** 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)**

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- F1282** 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)**
- F1283** 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)**
- F1284** Words in s. 257A(2)(3) 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. 30(2)** (with Sch. 2)
- F1285** 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)**
- F1286** 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)**
- F1287** 1989 s.33 for 1990-91 and subsequent years.
- F1288** 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)**
- F1289** 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)**
- F1290** 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)**
- F1291** 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)**
- F1292** 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)**
- F1293** 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)**
- F1294** 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)**
- F1295** Words in s. 257A(5) 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. 30(3)** (with Sch. 2)
- F1296** S.I. 1990 No.677, **arts.2(1)(4)** (in Part III Vol.5) for 1990-91.
- F1297** 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))
- F1298** 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))
- F1299** Words in s. 257A(5A) substituted (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by the Income Tax Act 2007 (c. 3), **Sch. 1 para. 30(4)** (with Sch. 2)
- F1300** Words in s. 257A(6) 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. 30(5)** (with Sch. 2)
- F1301** 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)**
- F1302** S. 257A(6A) 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. 30(6)** (with Sch. 2)
- F1303** 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)**
- F1304** 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)

- C173** 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)**
- C174** 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)**)

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- 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)**
- C175** S. 257A(5) modified (6.4.2006) by Finance Act 2004 (c. 12), **ss. 192(5), 284(1)** (with Sch. 36)

**[<sup>F1305</sup>257A] 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,
  - (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 [<sup>F1306</sup>net income] for that year exceeds that of his spouse or civil partner or, if they have the same amount of [<sup>F1306</sup>net 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 [<sup>F1307</sup>a 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 [<sup>F1308</sup>adjusted net 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.

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- (5) The amounts specified in subsection (2) above shall not by virtue of subsection (4) above be treated as reduced below [<sup>F1309</sup>the minimum amount].
- (6) An individual shall not be entitled by virtue of this section to more than one [<sup>F1310</sup>tax reduction] for any year of assessment.
- (7) In relation to a claim by an individual who —
- becomes a spouse or civil partner 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 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) —
- shall be made jointly by the parties to the marriage,
  - shall be made before the first year of assessment for which it is to have effect,
  - 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
  - shall be irrevocable.
- (9) An election under subsection (1)(d) —
- shall be made jointly by the parties to the marriage or civil partnership, and
  - 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.

[ A tax reduction under this section is given effect at Step 6 of the calculation in <sup>F1311</sup>(10) section 23 of ITA 2007. ]

#### Textual Amendments

- F1305** 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
- F1306** Words in s. 257AB(1)(d) 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. 31\(2\)](#) (with [Sch. 2](#))
- F1307** Words in s. 257AB(2) 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. 31\(3\)](#) (with [Sch. 2](#))
- F1308** Words in s. 257AB(4) 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. 31\(4\)](#) (with [Sch. 2](#))
- F1309** Words in s. 257AB(5) 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. 31\(5\)](#) (with [Sch. 2](#))
- F1310** Words in s. 257AB(6) 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. 31\(6\)](#) (with [Sch. 2](#))
- F1311** S. 257AB(10) 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. 31\(7\)](#) (with [Sch. 2](#))

#### Modifications etc. (not altering text)

- C176** 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\(5\)](#)



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S. 257AB(2)(4) amended (2009-10) by S.I. 2008/3024, art. 2(d)

**[<sup>F1312</sup>257A] Elections as to transfer of relief under section 257A [<sup>F1313</sup>or 257AB].**

- <sup>F1314</sup>(1) An individual may elect that for any year of assessment for which the individual's spouse or civil partner is entitled to a tax reduction under section 257A or 257AB—
- (a) the individual shall be entitled (on making a claim) to a tax reduction calculated by reference to half the minimum amount, and
  - (b) the spouse or civil partner's appropriate amount shall be reduced by half the minimum amount.
- (2) 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 a tax reduction under section 257A or 257AB—
- (a) the individual's spouse or civil partner shall be entitled (on making a claim) to a tax reduction calculated by reference to the minimum amount, and
  - (b) the individual's appropriate amount shall be reduced by the minimum amount.
- (3) An individual may elect that for any year of assessment for which the individual's spouse or civil partner is entitled to a tax reduction by virtue of an election under subsection (2) above—
- (a) the individual shall be entitled (on making a claim) to a tax reduction calculated by reference to half the minimum amount (in addition to any tax reduction to which the individual is already entitled under section 257A or 257AB), and
  - (b) the tax reduction to which the spouse or civil partner is entitled by virtue of that election shall be calculated by reference to half the minimum amount (instead of by reference to the minimum amount).]

[ In this section “the appropriate amount” means the amount by reference to which the <sup>F1315</sup>(3A) calculation of the tax reduction is to be made.]

- (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 [<sup>F1316</sup>the individual concerned] is entitled to relief under section 257A [<sup>F1317</sup>or 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 [<sup>F1318</sup>or civil partnership] takes place.
- (6) <sup>F1319</sup>.....
- (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

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shall not have effect until the year of assessment after the one in which the notice is given.

- (9) <sup>F1320</sup>[An individual] shall not be entitled by virtue of an election under this section to more than one <sup>F1321</sup>[tax reduction] for any year of assessment.

<sup>F1322</sup>[ A tax reduction under this section is given effect at Step 6 of the calculation in (10) section 23 of ITA 2007.]

### Textual Amendments

- F1312** 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.
- F1313** 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)
- F1314** S. 257BA(1)-(3) 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. 32(2) (with Sch. 2 paras. 14, 16(1)(4), 17(1)(5))
- F1315** S. 257BA(3A) 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. 32(3) (with Sch. 2 paras. 14, 16(1)(4), 17(1)(5))
- F1316** 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)
- F1317** 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)
- F1318** 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)
- F1319** S. 257BA(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act by Income Tax Act 2007 (c. 3), Sch. 1 para. 32(4), Sch. 3 Pt. 1 (with Sch. 2 paras. 14, 16(1)(4), 17(1)(5))
- F1320** 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)
- F1321** Words in s. 257BA(9) 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. 32(5) (with Sch. 2 paras. 14, 16(1)(4), 17(1)(5))
- F1322** S. 257BA(10) 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. 32(6) (with Sch. 2 paras. 14, 16(1)(4), 17(1)(5))

### Modifications etc. (not altering text)

- C177** 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)

<sup>F1324</sup>**257BB** Transfer of relief under section 257A where relief exceeds income<sup>F1323</sup> or 257AB.]

<sup>F1325</sup>(1) Where—

- (a) an individual is entitled to a tax reduction under section 257A or 257AB, but
- (b) the amount of the tax reduction to which the individual is entitled is greater than the individual's comparable tax liability,

the individual's spouse or civil partner shall be entitled (in addition to any tax reduction to which that spouse or civil partner is entitled by virtue of an election under section 257BA) to a tax reduction equal to the unused part of the individual's MCA tax reductions.]



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- [<sup>F1326</sup>(1A) The individual's MCA tax reductions are the sum of—
- (a) the tax reduction to which the individual is entitled under section 257A or 257AB, and
  - (b) any tax reduction to which the individual is entitled by virtue of an election under section 257BA(3).
- (1B) The unused part of the individual's MCA tax reductions is equal to—
- (a) the individual's MCA tax reductions, less
  - (b) the individual's comparable tax liability.]
- (2) Subsection (1) above shall not apply for a year of assessment unless the claimant's [<sup>F1327</sup>spouse or civil partner] gives notice to the inspector that it is to apply.
- [<sup>F1328</sup>(3) Where—
- (a) an individual is entitled to a tax reduction by virtue of an election under section 257BA, but
  - (b) the amount of the tax reduction to which the individual is entitled is greater than the individual's comparable tax liability,
- the individual's spouse or civil partner shall be entitled (in addition to any tax reduction to which that spouse or civil partner is entitled by virtue of section 257A or 257AB) to a tax reduction equal to the unused part of the individual's tax reduction.]
- [<sup>F1329</sup>(3AA) The unused part of the individual's tax reduction is equal to—
- (a) the tax reduction to which the individual is entitled by virtue of the election under section 257BA, less
  - (b) the individual's comparable tax liability.]
- (3A) [<sup>F1330</sup>.....
- (4) Subsection (3) above shall not apply for a year of assessment unless the claimant's [<sup>F1331</sup>spouse 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 on 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.
- [<sup>F1332</sup>(5A) For the purposes of this section, the comparable tax liability of an individual is the amount of the individual's tax left after Step 6 of the calculation in section 23 of ITA 2007, making that calculation with the modifications set out in subsections (5B) and (5C).
- (5B) In making that calculation, do not deduct any tax reduction under—
- (a) section 788 (double taxation arrangements: relief by agreement), or
  - (b) section 790(1) (relief for foreign tax where there are no double taxation arrangements).
- (5C) If the individual's entitlement to a tax reduction under section 257A, 257AB, 257BA or this section is extinguished under section 423(4) of ITA 2007 (gift aid: restriction of reliefs) to any extent, deduct from the amount calculated in accordance with subsections (5A) and (5B) the amount by which the tax reduction is reduced.

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(5D) For the purposes of this section a person is treated as being entitled to a tax reduction under section 788 if the person is entitled to credit against income tax under arrangements which have effect under that section.

(5E) A tax reduction under this section is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

(6) <sup>F1333</sup> . . . . .

### Textual Amendments

**F1323** 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)**

**F1324** 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**.

**F1325** S. 257BB(1) 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. 33(2)** (with [Sch. 2 paras. 14, 16\(1\)\(5\), 17\(6\)](#))

**F1326** S. 257BB(1A)(1B) 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. 33(3)** (with [Sch. 2 paras. 14, 16\(1\)\(5\), 17\(6\)](#))

**F1327** 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)**

**F1328** S. 257BB(3) 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. 33(4)** (with [Sch. 2 paras. 14, 16\(1\)\(5\), 17\(6\)](#))

**F1329** S. 257BB(3AA) 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. 33(5)** (with [Sch. 2 paras. 14, 16\(1\)\(5\), 17\(6\)](#))

**F1330** S. 257BB(3A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007](#) (c. 3), **Sch. 1 para. 33(6), Sch. 3 Pt. 1** (with [Sch. 2 paras. 14, 16\(1\)\(5\), 17\(6\)](#))

**F1331** 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)**

**F1332** S. 257BB(5A)-(5E) 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. 33(7)** (with [Sch. 2 paras. 14, 16\(1\)\(5\), 17\(6\)](#))

**F1333** 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

### Modifications etc. (not altering text)

**C178** 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)**

**C179** 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.**

## 257C Indexation of amounts in [<sup>F1338</sup>sections 256B, 257][<sup>F1339</sup>, 257A and 257AB].

- (1) If the retail prices index for the month of [<sup>F1340</sup>September] preceding a year of assessment is higher than it was for the previous [<sup>F1340</sup>September], then, unless Parliament otherwise determines, [<sup>F1341</sup>sections 256B, 257][<sup>F1342</sup>. . . [<sup>F1343</sup>, 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—

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- (a) if in the case of an amount specified in sections 257(5) [<sup>F1344</sup>, 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.

<sup>F1345</sup>(2) . . . . .

[<sup>F1346</sup>(2A) Subsection (1) above shall not require any change to be made in the amounts deductible or repayable under [<sup>F1347</sup>PAYE 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 [<sup>F1341</sup>sections 256B, 257]<sup>F1342</sup> . . . [<sup>F1348</sup>, 257A and 257AB].

[<sup>F1349</sup>(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

- F1338** Words in s. 257C sidenote 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. 34(3)** (with Sch. 2)
- F1339** 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)**
- F1340** 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)**
- F1341** Words in s. 257C(1)(3) 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. 34(2)** (with Sch. 2)
- F1342** 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)
- F1343** 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)**
- F1344** 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)**
- F1345** 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**
- F1346** S. 257C(2A) inserted (1999-00 and subsequent years of assessment) by [Finance Act 1999 \(c. 16\)](#), **s. 25(3)(4)**
- F1347** 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)
- F1348** 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)**
- F1349** Repealed by 1990 s.132 and Sch.19 Part IV.

#### Modifications etc. (not altering text)

- C181** 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)**
- C182** S. 257C applied (2000-01 and subsequent years of assessment) by [Finance Act 1999 \(c. 16\)](#), **s. 32(5)**
- C183** 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)**

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- 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)
- C184** S. 257C(2A) modified (2002-03) by Finance Act 2002 (c. 23), s. 27(b)
- C185** See S.I. 1990 No.677 in Part III Vol.5 for 1990-91.

**257D Transitional relief: husband with excess allowances.**

F1350  
.....

**Textual Amendments**

**F1350** 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.**

F1351  
.....

**Textual Amendments**

**F1351** 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.**

F1352  
.....

**Textual Amendments**

**F1352** 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)

**F1353 258 Widower’s or widow’s housekeeper.**

.....

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**Textual Amendments**

**F1353**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.**

**F1354** . . . . .

**Textual Amendments**

**F1354**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.**

**F1355** . . . . .

**Textual Amendments**

**F1355**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.**

**F1356** . . . . .

**Textual Amendments**

**F1356**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)**

[<sup>F1357</sup>**261A**Additional relief in respect of children for year of separation.

**F1358** . . . . . ]

**Textual Amendments**

**F1357**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**.

**F1358**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.**

**F1359** . . . . .

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**Textual Amendments**

**F1359S. 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))

**F1360 263 Dependent relatives.**

**Textual Amendments**

**F1360S. 263** repealed (1988-89 and subsequent years) by [Finance Act 1988 \(c. 39\)](#), s. 25(3), **Sch.14 Part IV**

**F1361 264 Claimant depending on services of a son or daughter.**

**Textual Amendments**

**F1361S. 264** repealed (1988-89 and subsequent years) by [Finance Act 1988 \(c. 39\)](#), s. 25(3), **Sch.14 Part IV**

**[F1362 265 Blind person's allowance.**

(1) If the claimant <sup>F1363</sup> . . . is a registered blind person for the whole or any part of the year of assessment, he shall be entitled to a [<sup>F1364</sup>blind person's allowance] of [<sup>F1365</sup>£1,280]<sup>F1366</sup> . . . .

[ Section 257C (indexation) shall have effect (using the rounding up rule in <sup>F1367</sup>(1A) subsection (1)(b) of that section) for the application of this section for the year 1998-99 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 [<sup>F1368</sup>an allowance under subsection (1) above] is a [<sup>F1369</sup>person whose spouse or civil partner] is living with him for the whole of any part of the year of assessment, but

[<sup>F1370</sup>(b) the amount to which the person is entitled exceeds the person's remaining relievable income,]

his [<sup>F1371</sup>spouse or civil partner] shall be entitled to [<sup>F1372</sup>an allowance] of an amount equal to the excess.

[ The person's remaining relievable income is the amount found by—

<sup>F1373</sup>(2A) (a) taking the amount of the individual's net income, and  
(b) subtracting any personal allowance to which the person is entitled.]

(3) <sup>F1374</sup> . . . . .

(4) <sup>F1375</sup> . . . . .

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- (5) <sup>F1376</sup>Subsection (2) above shall not apply for a year of assessment unless the person entitled to <sup>F1377</sup>an allowance] under subsection (1) has given to the inspector written notice that <sup>F1378</sup>it is] to apply; and any such notice—
- (a) shall be given <sup>F1379</sup>on 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 <sup>F1380</sup>a spouse or civil partner] shall have effect also as a notice under <sup>F1381</sup>section 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].
- <sup>F1382</sup>(8) An allowance under this section is given effect at Step 3 of the calculation in section 23 of ITA 2007.]

### Textual Amendments

**F1362** 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, 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.*

**F1363** 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

**F1364** Words in s. 265(1) 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. 35(2)(a)** (with Sch. 2 paras. 14, 15(1)(3))

**F1365** 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)**

**F1366** Words in s. 265(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act by **Income Tax Act 2007 (c. 3), Sch. 1 para. 35(2)(b), Sch. 3 Pt. 1** (with Sch. 2 paras. 14, **15(1)(3)**)

**F1367** S. 265(1A) inserted (19.3.1997) by **Finance Act 1997 (c. 16), s. 56(2)**

**F1368** Words in s. 265(2)(a) 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. 35(3)(a)** (with Sch. 2 paras. 14, 15(1)(3))

**F1369** 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)**



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- F1370** S. 265(2)(b) 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. 35(3)(b)** (with Sch. 2 paras. 14, 15(1)(3))
- F1371** 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)**
- F1372** Words in s. 265(2) 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. 35(3)(c)** (with Sch. 2 paras. 14, 15(1)(3))
- F1373** S. 265(2A) 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. 35(4)** (with Sch. 2 paras. 14, 15(1)(3))
- F1374** S. 265(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 35(5), Sch. 3 Pt. 1** (with Sch. 2 paras. 14, **15(1)(3)**)
- F1375** 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)**
- F1376** Words in s. 265(5) 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. 35(6)(a)** (with Sch. 2 paras. 14, 15(1)(3))
- F1377** Words in s. 265(5) 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. 35(6)(b)** (with Sch. 2 paras. 14, 15(1)(3))
- F1378** Words in s. 265(5) 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. 35(6)(c)** (with Sch. 2 paras. 14, 15(1)(3))
- F1379** 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
- F1380** 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)**
- F1381** 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**.
- F1382** S. 265(8) 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. 35(7)** (with Sch. 2 paras. 14, 15(1)(3))

#### Modifications etc. (not altering text)

- C186** 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**
- C187** 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**
- C188** 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) <sup>M260</sup>Subject to the provisions of this section, [<sup>F1383</sup>section 274 and Schedules 14 and 15 and sections 192 to 194 of the Finance Act 2004,] an individual who pays any such premium as is specified in subsection (2) below or makes a payment falling within

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subsection (7) below shall (without making any claim) be entitled to relief under this section.

- (2) <sup>M261</sup>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 —
    - <sup>F1384</sup>(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 <sup>F1385</sup>or civil partner]; and
  - (c) the insurance or contract was made by him or his spouse <sup>F1385</sup>or civil partner].
- (3) Subject to subsections (7), (10) and (11) below, no relief under this section shall be given—
  - (a) <sup>M262</sup>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) <sup>M263</sup>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) <sup>M264</sup>in respect of premiums payable under any policy issued in respect of an insurance made after 13th March 1984 <sup>F1386</sup> . . . ;
  - (d) <sup>M265</sup>in respect of premiums payable during the period of deferment in respect of a policy of deferred assurance.
- (4) <sup>M266</sup>Subject to <sup>F1387</sup> subsections (7) and (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 respect of the premium and retain an amount equal to <sup>F1388</sup>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) <sup>F1389</sup> .....
- (6A) <sup>F1389</sup> .....

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- (7) <sup>M267</sup>Where a person makes a payment to a trade union as defined in section 28(1) of the <sup>M268</sup>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) [<sup>F1390</sup>in calculating his net income there shall be deducted] 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) <sup>M269</sup>Where the individual is not resident in the United Kingdom [<sup>F1391</sup>and is entitled] to relief by virtue of section 278(2) [<sup>F1392</sup>or (2ZA)], subsection (4) above shall not apply but <sup>F1393</sup>... the like relief shall be given to him under paragraph 6 of Schedule 14.
- (9) <sup>M270</sup>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 [<sup>F1394</sup>spouse][<sup>F1395</sup>or civil partner] of such a member as if the individual were so resident.
- (10) <sup>M271</sup>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
  - (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 <sup>M272</sup>Conveyancing (Scotland) Act 1924 (but including a security constituted by ex facie absolute disposition or assignation).

- (11) <sup>M273</sup>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 [<sup>F1396</sup>spouse, [<sup>F1397</sup>civil partner,] widow, widower [<sup>F1398</sup>, 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.
- <sup>F1399</sup>(13) In <sup>F1400</sup>... 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).]

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[<sup>F1401</sup>(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 <sup>M274</sup>.]

### Textual Amendments

**F1383** Words in s. 266(1) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 9** (with Sch. 36)

**F1384** 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)**

**F1385** 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)

**F1386** Words in s. 266(3)(c) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 36(2), **Sch. 3 Pt. 1** (with Sch. 2)

**F1387** Words in s. 266(4) 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. 36(3)** (with Sch. 2)

**F1388** Words in s. 266(5)(a) substituted (from 6.4.1989) by Finance Act 1988 (c. 39), **s. 29**

**F1389** S. 266(6)(6A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 36(4), **Sch. 3 Pt. 1** (with Sch. 2)

**F1390** Words in s. 266(7)(b) 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. 36(5)** (with Sch. 2)

**F1391** Words in s. 266(8) 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. 36(6)(a)** (with Sch. 2)

**F1392** Words in s. 266(8) 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. 36(6)(b)** (with Sch. 2)

**F1393** Words in s. 266(8) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 36(6)(c), **Sch. 3 Pt. 1** (with Sch. 2)

**F1394** Words in s. 266(9) substituted (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 35, **Sch. 3 para. 9(a)**

**F1395** 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)

**F1396** 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)**

**F1397** 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)

**F1398** 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)

**F1399** 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**

**F1400** Words in s. 266(13) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 36(7), **Sch. 3 Pt. 1** (with Sch. 2)

**F1401** 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

**M260** Source-1970 s.19(1); 1976 Sch.4 3(1)

**M261** Source-1970 s.19(2); 1976 s.36(5), Sch.4 3(2)

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- M262 Source-1970 s.19(3)(a)
- M263 Source-1970 s.19(4)
- M264 Source-1984 s.72(1)
- M265 Source-1970 s.19(3)(b)
- M266 Source-1976 Sch.4 4(1) 5; 1978 Sch.3 2; 1980 s.29(2)(b)
- M267 Source-1978 Sch.3 12; 1981 s.33
- M268 1974 c. 52.
- M269 Source-1976 Sch.4 4(2)
- M270 Source-1976 Sch.4 5A; 1978 Sch.3 5
- M271 Source-1970 s.19(4)(a), (c); 1971 Sch.3 11
- M272 1924 c. 27.
- M273 Source-1970 s.19(3)(i)(ii)
- M274 1982 c. xiv.

### [<sup>F1402</sup>266] Life assurance premiums paid by employer

- (1) This section applies if—
- (a) pursuant to [<sup>F1403</sup>an employer-financed] 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.
- [<sup>F1404</sup>(3) For the purposes of subsection (1)(a) benefits are provided in respect of an employee if they are provided for the employee's spouse, widow or widower, children, dependants or personal representatives.
- (4) If a sum within subsection (1) is paid with a view to the provision of benefits for or in respect of more than one employee of the employer, part of it is to be treated as paid for or in respect of each of them.
- (5) The amount treated as paid for or in respect of each employee is—

$$A \times \frac{B}{C}$$

where—

A is the sum paid,

B is the amount which would have had to be paid to secure the benefits to be provided for or in respect of the employee in question, and

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C is the total amount which would have had to be paid to secure the benefits to be provided for or in respect of all the employees if separate payments had been made in the case of each of them.

- (6) This section does not apply if—
- (a) in the year of assessment in which the sum is paid the earnings from the employee's employment are (or, if there are none, would be if there were any) earnings charged on remittance, or
  - (b) the employee is not domiciled in the United Kingdom in the tax year in which the sum is paid and the conditions in subsection (7) are met.
- (7) Those conditions are—
- (a) that the employment is with a foreign employer, and
  - (b) that, on a claim made by the employee, the Board are satisfied that the pension scheme corresponds to a registered pension scheme.
- (8) In subsection (6)(a) “earnings charged on remittance” means earnings which are taxable earnings under—
- (a) section 22 of ITEPA 2003 (chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK), or
  - (b) section 26 of that Act (foreign earnings for year when employee resident, but not ordinarily resident, in UK).
- (9) In this section—
- “employer-financed retirement benefits scheme”, and  
 “relevant benefits”,
- have the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act).]]

#### Textual Amendments

**F1402** 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)

**F1403** Words in s. 266A(1) substituted (6.4.2006) by *Finance Act 2004 (c. 12)*, s. 284(1), **Sch. 35 para. 10(2)** (with Sch. 36)

**F1404** S. 266A(3)-(9) substituted for s. 266A(3)-(6) (6.4.2006) by *Finance Act 2004 (c. 12)*, s. 284(1), **Sch. 35 para. 10(3)** (with Sch. 36)

## 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.

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## 268 Early conversion or surrender of life policies.

<sup>M275</sup>(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.

(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.



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- (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
  - (b) it is a policy of life insurance issued in connection with [<sup>F1405</sup>a registered pension scheme;]
- 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.

#### Textual Amendments

**F1405** Words in s. 268(7)(b) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 11 (with Sch. 36)

#### Marginal Citations

**M275** Source-1975 s.7; 1976 Sch.4 19(1); 1984 s.72(5)

### 269 Surrender etc. of policies after four years.

- <sup>M276</sup>(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.

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- (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.

#### Marginal Citations

M276 Source-1975 s.8; 1976 Sch.4 19(2); 1984 s.72(5)

### 270 Provisions supplementary to sections 268 and 269.

- <sup>M277</sup>(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;

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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

M277 Source-1975 s.9(1)-(4); 1976 Sch.4 19(3)

### 271 Deemed surrender in cases of certain loans.

M278(1) Where—

- (a) [<sup>F1406</sup>by virtue of section 465 of ITTOIA 2005] a gain arising in connection with a policy <sup>F1407</sup> . . . 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 <sup>F1408</sup> . . .; and
- (c) any sum is at any time after the making of the insurance <sup>F1407</sup> . . . lent to or at the direction of that individual by or by arrangement with the body issuing the policy <sup>F1409</sup> . . .;

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 <sup>F1407</sup> . . . 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; <sup>F1410</sup> . . .

<sup>F1410</sup>(b) . . . . .

#### Textual Amendments

**F1406** 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)

**F1407** Words in s. 271(1) repealed (retrospectively) by [Finance Act 1994 \(c. 9\)](#), [Sch. 17 para. 2\(1\)\(a\)](#), [Sch. 26 Pt. 5\(22\)](#)

**F1408** Words in s. 271(1)(b) repealed (retrospectively) by [Finance Act 1994 \(c. 9\)](#), [Sch. 17 para. 2\(1\)\(b\)](#), [Sch. 26 Pt. 5\(22\)](#)

**F1409** Words in s. 271(1)(c) repealed (retrospectively) by [Finance Act 1994 \(c. 9\)](#), [Sch. 17 para. 2\(1\)\(c\)](#), [Sch. 26 Pt. 5\(22\)](#)

**F1410** 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

M278 Source-1975 Sch.2 16(1), (3); 1976 s.35

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## 272 Collection of sums payable under sections 268 and 269.

- <sup>M279</sup>(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 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

M279 Source-1975 Sch.1

## [<sup>F1411</sup>273 Payments securing annuities.

- [ [<sup>F1413</sup>Subject to subsection (2) below, section 274 of this Act and sections 192 to 194  
<sup>F1412</sup>(1)] of the Finance Act 2004, if the claimant] 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 [<sup>F1414</sup>or surviving civil partner] of the claimant or provision for the claimant's children after the claimant dies, the claimant shall be

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entitled to a [<sup>F1415</sup>tax reduction] 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.

[<sup>F1417</sup>There is no entitlement to a tax reduction] under this section in respect of any  
<sup>F1416</sup>(2) 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.]

[ A tax reduction under this section is given effect at Step 6 of the calculation in  
<sup>F1418</sup>(3) section 23 of ITA 2007.]]

### Textual Amendments

**F1411** 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.”

**F1412** 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)

**F1413** Words in s. 273 substituted (6.4.2006) by *Finance Act 2004 (c. 12)*, s. 284(1), **Sch. 35 para. 12** (as amended by *Income Tax (Trading and Other Income) Act 2005 (c. 5)*, Sch. 1 para. 655, Sch. 2 para. 161 (with **Sch. 2**)) (with Sch. 36)

**F1414** 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

**F1415** Words in s. 273(1) 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. 37(2)** (with Sch. 2)

**F1416** 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)

**F1417** Words in s. 273(2) 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. 37(3)** (with Sch. 2)

**F1418** S. 273(3) 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. 37(4)** (with Sch. 2)

### 274 Limits on relief under sections 266 and 273.

- (1) <sup>M280</sup>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) <sup>M281</sup>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) <sup>M282</sup>In subsection (2) above “the appropriate rate”—
  - (a) in relation to premiums to which section 266 applies, means [<sup>F1419</sup>12.5 per cent.];
  - (b) in relation to other payments, means the basic rate of income tax.

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- (4) <sup>M283</sup>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 [<sup>F1420</sup>is] attributable to those risks, or either of them.

**Textual Amendments**

**F1419**1988(F) s.29—from 6 April 1989. Previously  
“15 per cent.”.

**F1420**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**

**M280** Source-1970 s.21(1); 1976 Sch.4 21

**M281** Source-1970 s.21(3); 1975 Sch.2 6

**M282** Source-1970 s.21(4); 1975 Sch.2 6; 1980 s.29; 1976 Sch.4 21; 1987 Sch.15 2(5)

**M283** Source-1970 s.21(5)

*Supplemental*

- <sup>F1421</sup>**275 Meaning of “relative”.**

.....

**Textual Amendments**

**F1421**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.**

<sup>F1422</sup>.....

**Textual Amendments**

**F1422**S. 276 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 38, **Sch. 3 Pt. 1** (with Sch. 2)

- 277 Partners.**

<sup>F1423</sup>.....

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**Textual Amendments**  
**F1423**S. 277 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 39, Sch. 3 Pt. 1** (with Sch. 2)

**278 Non-residents.**

- (1) <sup>F1424</sup> . . . . .
- (2) [<sup>F1425</sup>Subject to subsection (2ZA) below, relief under this Chapter shall be given only to an individual] who <sup>F1426</sup> . . . —
  - <sup>F1427</sup>(za) is not resident in the United Kingdom,
  - (zb) does not meet the condition in section 56(3) of ITA 2007, and]
    - (a) is a Commonwealth citizen or [<sup>F1428</sup>an EEA national];<sup>F1429</sup> . . .
    - (b) <sup>F1429</sup> . . . . .
    - (c) <sup>F1429</sup> . . . . .
    - (d) <sup>F1429</sup> . . . . .
    - (e) <sup>F1429</sup> . . . . .

[<sup>F1430</sup>(2ZA) Relief under section 266 above (except relief given by virtue of subsection (7) of that section) may also be given to an individual who—

- (a) is resident in the United Kingdom, or
- (b) meets the condition in section 56(3) of ITA 2007.]

[<sup>F1431</sup><sup>F1432</sup>(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<sup>F1433</sup>.

- (4) <sup>M284</sup>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<sup>F1431</sup>.
- (5) <sup>M285</sup>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;



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- (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*<sup>F1433</sup>.

- (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*<sup>F1433</sup>.

- (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)*<sup>F1433</sup>.

- (8) Any claim which an individual is entitled to make by virtue of subsection (2) above shall be made to the Board.

- [<sup>F1434</sup>(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

**F1424** S. 278(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 40\(2\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F1425** Words in s. 278(2) 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. 40\(3\)\(a\)](#) (with [Sch. 2](#))

**F1426** 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

**F1427** S. 278(2)(za)(zb) 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. 40\(3\)\(b\)](#) (with [Sch. 2](#))

**F1428** 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\(1\)](#)

**F1429** S. 278(2)(b)-(e) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 40\(3\)\(c\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F1430** S. 278(2ZA) 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. 40\(4\)](#) (with [Sch. 2](#))

**F1431** 1988(F) s.31 for 1990-91 and subsequent years.

**F1432** 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\(3\)](#)

**F1433** Repealed by 1988(F) ss.31, 148 and Sch.14 Part IV for 1990-91 and subsequent years.

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**F1434S. 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)**

**C189** See British Nationality Act 1981 ss.37 and 51(1) for definition.

**Marginal Citations**

**M284** Source-1976 Sch.4 18(3)

**M285** Source-1970 s.27(3)-(5)

## CHAPTER II

### TAXATION OF INCOME OF SPOUSES<sup>F1435</sup> AND CIVIL PARTNERS]

**Textual Amendments**

**F1435** 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*

**F1436** **279 Aggregation of wife's income with husband's.**

.....

**Textual Amendments**

**F1436S. 279** repealed (1990-91 and subsequent years) by **Finance Act 1988 (c. 39), ss. 32, 148, Sch. 14 Part VIII**

**F1437** **280 Transfer of reliefs.**

.....

**Textual Amendments**

**F1437S. 280** repealed (1990-91 and subsequent years) by **Finance Act 1988 (c. 39), s. 148, Sch. 14 Part VIII**

**F1438** **281 Tax repayments to wives.**

.....

**Textual Amendments**

**F1438S. 281** repealed (1990-91 and subsequent years) by **Finance Act 1988 (c. 39), s. 148, Sch. 14 Part VIII**

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**282 Construction of references to [<sup>F1439</sup>spouses or civil partners] living together.**

<sup>F1440</sup> .....

**Textual Amendments**

**F1439** 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)

**F1440** S. 282 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 41](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**[<sup>F1441</sup>282A Jointly held property.**

<sup>F1442</sup> ..... ]

**Textual Amendments**

**F1441** Ss. 282A, 282B inserted (1990-91 and subsequent years) by [Finance Act 1988 \(c. 39\)](#), [s. 34](#)

**F1442** Ss. 282A, 282B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 42](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**282B Jointly held property: declarations.**

<sup>F1443</sup> .....

**Textual Amendments**

**F1443** Ss. 282A, 282B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 42](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Separate assessments*

**<sup>F1444</sup>283 Option for separate assessment.**

.....

**Textual Amendments**

**F1444** Ss. 283-288 repealed (1990-91 and subsequent years) by [Finance Act 1988 \(c. 39\)](#), [s. 148](#), [Sch. 14 Part VIII](#)

**<sup>F1445</sup>284 Effect of separate assessment on personal reliefs.**

.....

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**Textual Amendments**

F1445 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, Sch. 14 Part VIII

**F1446 285 Collection from wife of tax assessed on husband but attributable to her income.**

.....

**Textual Amendments**

F1446 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, Sch. 14 Part VIII

**F1447 286 Right of husband to disclaim liability for tax on deceased wife's income.**

.....

**Textual Amendments**

F1447 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, Sch. 14 Part VIII

*Separate taxation*

**F1448 287 Separate taxation of wife's earnings.**

.....

**Textual Amendments**

F1448 Ss. 283-288 repealed (1990-91 and subsequent years) by Finance Act 1988 (c. 39), s. 148, Sch. 14 Part VIII

**F1449 288 Elections under section 287.**

.....

**Textual Amendments**

F1449 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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[<sup>F1450</sup>CHAPTER III

ENTERPRISE INVESTMENT SCHEME]

**Textual Amendments**

**F1450**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

**289 Eligibility for relief.**

<sup>F1451</sup> .....

**Textual Amendments**

**F1451**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#)); and s. 289(9) amended (as saved) (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 16 paras. 16\(1\)\(a\), 18](#); and s. 289 further amended (as saved) (17.7.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/1820\)](#), [arts. 1\(1\), 2\(2\)](#)

[<sup>F1452</sup>**289**Form of relief.

<sup>F1453</sup> .....]

**Textual Amendments**

**F1452**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](#)  
**F1453**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

[<sup>F1454</sup>**289**Attribution of relief to shares.

<sup>F1455</sup> .....]

**Textual Amendments**

**F1454**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](#)  
**F1455**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

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**290 Minimum and maximum subscriptions.**

F1456 .....

**Textual Amendments**  
F1456Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

[<sup>F1457F1458</sup>**290A** Restriction of relief where amounts raised exceed permitted maximum.

.....]

**Textual Amendments**  
F1457S. 290A inserted (retrospectively) by [Finance Act 1988 \(c. 39\) s. 51\(1\)\(b\)](#)  
F1458S. 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\(14\)](#)

**291 Individuals qualifying for relief.**

F1459 .....

**Textual Amendments**  
F1459Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

[<sup>F1460</sup>**291A** Connected persons: directors.

F1461 .....

**Textual Amendments**  
F1460Ss. 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](#)  
F1461Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

[<sup>F1462</sup>**291B** Connected persons: persons interested in capital etc. of company.

F1463 .....

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**Textual Amendments**

**F1462**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**

**F1463**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), **Sch. 2**); and s. 291B amended (as saved) (17.7.2007 with effect in accordance with art. 1(2) of the amending S.I.) by **The Income Tax Act 2007 (Amendment) (No. 2) Order 2007 (S.I. 2007/1820), arts. 1(1), 2(2)**

**292 Parallel trades.**

**F1464** .....

**Textual Amendments**

**F1464**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), **Sch. 2**)

**293 Qualifying companies.**

**F1465** .....

**Textual Amendments**

**F1465**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), **Sch. 2**); and s. 293 amended (as saved) (17.7.2007 with effect in accordance with art. 1(2) of the amending S.I.) by **The Income Tax Act 2007 (Amendment) (No. 2) Order 2007 (S.I. 2007/1820), arts. 1(1), 2(2)**

**294 Companies with interests in land.**

**F1466** .....

**Textual Amendments**

**F1466**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), **Sch. 2**)

**295 Valuation of interests in land for purposes of section 294(1)(b).**

**F1467** .....



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### Textual Amendments

**F1467**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

## 296 Section 294 disapplied where amounts raised total £50,000 or less.

**F1468** .....

### Textual Amendments

**F1468**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

## 297 Qualifying trades.

**F1469** .....

### Textual Amendments

**F1469**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2); and s. 297 amended (as saved) (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\), Sch. 16 paras. 11\(1\), 13, Sch. 27 Pt. 2\(16\)](#), Note

## 298 Provisions supplementary to sections 293 and 297.

**F1470** .....

### Textual Amendments

**F1470**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2); and s. 298 amended (as saved) (17.7.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/1820\), arts. 1\(1\), 2\(3\)](#)

## 299 Disposal of shares.

**F1471** .....

### Textual Amendments

**F1471**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 627, Sch. 3 Pt. 2](#) (with savings in s.

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1034(3), Sch. 2); and s. 299 (as saved) applied (with modifications) by s. 149(1)(a) of that repealing Act

[<sup>F1472</sup>**299** ~~Loan linked investments.~~

<sup>F1473</sup> . . . . . ]

**Textual Amendments**

**F1472S. 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)

**F1473Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

[<sup>F1474</sup>**299** ~~Pre-arranged exits.~~

<sup>F1475</sup> . . . . . ]

**Textual Amendments**

**F1474S. 299B** inserted (with effect in accordance with s. 71(5) of the amending Act) by **Finance Act 1998 (c. 36), s. 71(1)**

**F1475Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

**300 Value received from company.**

<sup>F1476</sup> . . . . .

**Textual Amendments**

**F1476Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

[<sup>F1477</sup>**300** ~~Receipt of replacement value~~

<sup>F1478</sup> . . . . . ]

**Textual Amendments**

**F1477S. 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**

**F1478Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

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### 301 Provisions supplementary to section 300.

F1479 .....

#### Textual Amendments

**F1479Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### [<sup>F1480</sup>301 Receipts of insignificant value: supplementary provision

F1481 ..... ]

#### Textual Amendments

**F1480S. 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](#)

**F1481Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### 302 Replacement capital.

F1482 .....

#### Textual Amendments

**F1482Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### 303 Value received by persons other than claimants.

F1483 .....

#### Textual Amendments

**F1483Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### [<sup>F1484</sup>303 Insignificant repayments disregarded for purposes of s.303(1)

F1485 ..... ]

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**Textual Amendments**

- F1484**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**
- F1485**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

[<sup>F1486</sup>**303** ~~Restriction on withdrawal of relief under section 303.~~

F1487 ..... ]

**Textual Amendments**

- F1486**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)**
- F1487**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

**304** [<sup>F1488</sup>**Spouses and civil partners.**]

F1489 ..... ]

**Textual Amendments**

- F1488**S. 304 heading substituted (5.12.2005) by **The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 65(c)**
- F1489**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2)

[<sup>F1490</sup>**304A** ~~Acquisition of share capital by new company.~~

F1491 ..... ]

**Textual Amendments**

- F1490**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)**
- F1491**Pt. 7 Ch. 3 (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 627, Sch. 3 Pt. 2** (with savings in s. 1034(3), Sch. 2); and s. 304A amended (as saved) (retrospective to 6.4.2007) by **Finance Act 2007 (c. 11), Sch. 16 paras. 11(2), 13**

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### 305 Reorganisation of share capital.

F1492 .....

#### Textual Amendments

**F1492Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### [<sup>F1493</sup>305 Relief for loss on disposal of shares.

F1494 .....]

#### Textual Amendments

**F1493S. 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](#)

**F1494S. 305A** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 43](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 306 Claims.

F1495 .....

#### Textual Amendments

**F1495Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### 307 Withdrawal of relief.

F1496 .....

#### Textual Amendments

**F1496Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), [Sch. 2](#))

### 308 Application to subsidiaries.

F1497 .....

#### Textual Amendments

**F1497Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 627](#), [Sch. 3 Pt. 2](#) (with savings in s.

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1034(3), Sch. 2); and s. 308 amended (as saved) (17.7.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/1820\)](#), arts. 1(1), 2(2)

### 309 Further provisions as to subsidiaries.

F1498

#### Textual Amendments

**F1498S. 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.

F1499

#### Textual Amendments

**F1499Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 627, [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

### 311 Nominees, bare trustees and approved investment funds.

F1500

#### Textual Amendments

**F1500Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 627, [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2)

### 312 Interpretation of Chapter III.

F1501

#### Textual Amendments

**F1501Pt. 7 Ch. 3** (ss. 289-312), except s. 305A, repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 627, [Sch. 3 Pt. 2](#) (with savings in s. 1034(3), Sch. 2); and s. 312 amended (as saved) (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. 44](#) (with Sch. 2); and s. 312 further amended (as saved) (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), Sch. 16 paras. 16(1)(b), 18, [Sch. 27 Pt. 2\(16\)](#), Note; and s. 312 further amended (as saved) (17.7.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax Act 2007 \(Amendment\) \(No. 2\) Order 2007 \(S.I. 2007/1820\)](#), arts. 1(1), 2(4)(5); and s. 312 further amended (as saved) (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 7\(3\)](#)

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## CHAPTER IV

### SPECIAL PROVISIONS

#### 313 Taxation of consideration for certain restrictive undertakings.

F1502  
 .....

##### Textual Amendments

**F1502S. 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.

F1503  
 .....

##### Textual Amendments

**F1503S. 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.

F1504  
 .....

##### Textual Amendments

**F1504Ss. 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.

F1505  
 .....

##### Textual Amendments

**F1505Ss. 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.

F1506  
 .....

##### Textual Amendments

**F1506Ss. 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)



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### 318 Other pensions in respect of death due to war service etc.

F1507  
.....

#### Textual Amendments

F1507Ss. 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.

F1508  
.....

#### Textual Amendments

F1508S. 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.

F1509  
.....

#### Textual Amendments

F1509S. 320 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 45, Sch. 3 Pt. 1](#) (with Sch. 2)

### 321 Consuls and other official agents.

F1510  
.....

#### Textual Amendments

F1510S. 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.

F1511  
.....

#### Textual Amendments

F1511S. 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.

F1512  
.....

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**Textual Amendments**  
F1512S. 323 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 46, **Sch. 3 Pt. 1** (with Sch. 2)

**324 Designated international organisations.**

F1513 . . . . .

**Textual Amendments**  
F1513S. 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.**

F1514 . . . . .

**Textual Amendments**  
F1514S. 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.**

F1515 . . . . .

**Textual Amendments**  
F1515S. 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)

[<sup>F1516</sup>**326A Tax-exempt special savings accounts.**

F1517 . . . . .]

**Textual Amendments**  
F1516Ss. 326A-326C inserted by [Finance Act 1990 \(c. 29\)](#), s. 28(1)  
F1517Ss. 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)

[<sup>F1518</sup>**326B Loss of exemption for special savings accounts.**

F1519 . . . . .]

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**Textual Amendments**

- F1518**Ss. 326A-326C inserted by Finance Act 1990 (c. 29), s. 28(1)
- F1519**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)

[<sup>F1520</sup>**326B** Blow-up TESSAs.

F1521 . . . . . ]

**Textual Amendments**

- F1520**S. 326BB inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 62(2)
- F1521**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)

[<sup>F1522</sup>**326C** Tax-exempt special savings accounts: supplementary.

F1523 . . . . . ]

**Textual Amendments**

- F1522**Ss. 326A-326C inserted by Finance Act 1990 (c. 29), s. 28(1)
- F1523**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)

[<sup>F1524</sup>**326D** Tax-exempt special savings accounts: tax representatives.

F1525 . . . . . ]

**Textual Amendments**

- F1524**S. 326D inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 63(4)
- F1525**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.**

F1526 . . . . .

**Textual Amendments**

- F1526**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)

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[<sup>F1527</sup>**327** ~~Payments to adopters~~

F1528 ..... ]

**Textual Amendments**

**F1527S. 327A** inserted (with effect in accordance with s. 175(2) of the amending Act) by [Finance Act 2003](#) (c. 14), [s. 175\(1\)](#)

**F1528S. 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](#))

<sup>F1529</sup>**328 Funds in court.**

.....

**Textual Amendments**

**F1529S. 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.**

F1530 ..... ]

**Textual Amendments**

**F1530Ss. 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](#))

[<sup>F1531</sup>**329A** ~~Personal injury damages in the form of periodical payments.~~

F1532 ..... ]

**Textual Amendments**

**F1531Ss. 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](#)

**F1532Ss. 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.**

F1533 ..... ]

**Textual Amendments**

**F1531Ss. 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](#)

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**F1533** 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)

**F1534** **F1535** ~~329A~~ **329A** Annuities purchased for certain persons.

**Textual Amendments**

**F1534** Ss. 329A, 329B inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 142  
**F1535** 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))

**F1536** ~~329B~~ **329B** Annuities assigned in favour of certain persons.

**Textual Amendments**

**F1534** Ss. 329A, 329B inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 142  
**F1536** 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))

**F1537** **F1538** ~~329C~~ **329C** Annuities: criminal injuries.

**Textual Amendments**

**F1537** S. 329C inserted (8.11.1995) by Criminal Injuries Compensation Act 1995 (c. 53), s. 8  
**F1538** 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.**

**F1539** .....

**Textual Amendments**

**F1539** 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.**

**F1540** .....

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**Textual Amendments**  
**F1540S. 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)

[<sup>F1541</sup>**331** ~~Student loans: certain interest to be disregarded.~~

F1542 ..... ]

**Textual Amendments**  
**F1541S. 331A** inserted (27.7.1999) by [Finance Act 1999 \(c. 16\), s. 60](#)  
**F1542S. 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) <sup>F1543</sup> .....
- (2) <sup>F1543</sup> .....
- (3) <sup>F1544</sup> .....

- [<sup>F1545</sup>(3A) <sup>F1546</sup> .....
- (3B) <sup>F1546</sup> ..... ]
- (4) <sup>F1546</sup> .....

**Textual Amendments**  
**F1543S. 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)  
**F1544S. 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)  
**F1545S. 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](#)  
**F1546S. 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)

[<sup>F1547</sup>**332A** ~~Venture capital trusts: relief.~~

F1548 ..... ]

**Textual Amendments**  
**F1547S. 332A** inserted (1.5.1995) by [Finance Act 1995 \(c. 4\), s. 71\(1\)](#)  
**F1548S. 332A** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 47, Sch. 3 Pt. 1](#) (with Sch. 2)

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**[<sup>F1549</sup>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**

**F1549S. 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)

**[<sup>F1550</sup>333] Personal equity plans: tax representatives.**

<sup>F1551</sup> . . . . . ]

**Textual Amendments**

**F1550S. 333A** inserted (1.5.1995) by **Finance Act 1995 (c. 4), s. 64(1)**  
**F1551S. 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)

**[<sup>F1552</sup>333] Involvement of insurance companies with plans and accounts.**

<sup>F1553</sup> . . . . . ]

**Textual Amendments**

**F1552S. 333B** inserted (31.7.1998) by **Finance Act 1998 (c. 36), s. 77(1)**  
**F1553S. 333B** repealed (with effect in accordance with s. 38(2) of the repealing Act) by **Finance Act 2007 (c. 11), Sch. 7 para. 4, Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

**CHAPTER V**

**RESIDENCE OF INDIVIDUALS**

**334 Commonwealth citizens and others temporarily abroad.**

<sup>F1554</sup> . . . . .

**Textual Amendments**

**F1554S. 334** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 48, Sch. 3 Pt. 1** (with Sch. 2)

**335 Residence of persons working abroad.**

<sup>F1555</sup> . . . . .



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#### Textual Amendments

**F1555S. 335** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 49, Sch. 3 Pt. 1](#) (with Sch. 2)

### 336 Temporary residents in the United Kingdom.

F1556  
 .....

#### Textual Amendments

**F1556S. 336** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 50, Sch. 3 Pt. 1](#) (with Sch. 2)

## 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 [<sup>F1557</sup>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 [<sup>F1558</sup>(within the meaning given by section 70A(4))] as it applies to a trade.

#### Textual Amendments

**F1557**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)

**F1558**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—
- (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.

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- (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)**

**C190** 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) <sup>F1559</sup> .....
  - (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.

<sup>F1560</sup>(4) .....

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**Textual Amendments**  
**F1559**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  
**F1560**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

**[<sup>F1561</sup>338E Charges on income: annuities or other annual payments**

<sup>F1562</sup> . . . . . ]

**Textual Amendments**  
**F1561**Ss. 338-338B substituted for s. 338 (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 1(2)**  
**F1562**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) <sup>M286</sup>A qualifying donation is a payment made by a company to a charity, other than—  
 [<sup>F1563</sup>(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 [<sup>F1564</sup>(but see subsections (1A) and (1B) below)]; and]  
 (b) a payment which is deductible in computing profits or any description of profits for purposes of corporation tax.

[<sup>F1565</sup>(1A) In determining whether a payment is to be regarded as a distribution for the purposes of subsection (1)(a) above, the words in section 209(5) from “; and any amount” to the end are to be disregarded.

(1B) A payment (other than a dividend) made by a company which is wholly owned by a charity is not to be regarded as a distribution for the purposes of subsection (1)(a) above.]

(2) <sup>F1566</sup> . . . . .

(3) <sup>F1566</sup> . . . . .

[<sup>F1567</sup>(3A) <sup>F1566</sup> . . . . .

- (3B) A payment made by a [<sup>F1568</sup>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 [<sup>F1569</sup>the 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 [<sup>F1570</sup>£500].

- (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;

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(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.

(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—

- <sup>F1571</sup>(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, [<sup>F1572</sup>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 [<sup>F1573</sup>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) <sup>F1566</sup> .....

(3G) A payment made by a company is not a qualifying donation if the company is itself a charity.]

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- <sup>F1574</sup>(4) Where a company gives a sum of money to a charity—
- (a) if the charity is a charitable company, a body mentioned in section 507 or an Association of a description specified in section 508, the gift shall in the hands of the charitable company be treated for the purposes of this Act as if it were an annual payment, and
  - (b) if the charity is a trust established for charitable purposes only, see section 522 of ITA 2007 (gifts of money from companies).]

<sup>F1575</sup>(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) <sup>F1566</sup> .....
- (7) <sup>F1566</sup> .....

<sup>F1576</sup><sup>F1577</sup>(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.]

<sup>F1578</sup>(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;

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and section 839 applies for the purposes of this subsection.]

- (8) <sup>F1566</sup> . . . . .
- (9) <sup>M287</sup> For the purposes of this section “charity” includes [<sup>F1579</sup> each of the bodies mentioned in section 507, and <sup>F1580</sup> . . . ] 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.

[<sup>F1581</sup>(10) In this section “charitable company” has the same meaning as in section 506.]

### Textual Amendments

- F1563**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)
- F1564**Words in s. 339(1)(a) inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2006 (c. 25), s. 57(2)
- F1565**S. 339(1A)(1B) inserted (with effect in accordance with s. 57(4) of the amending Act) by Finance Act 2006 (c. 25), s. 57(3)
- F1566**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
- F1567**1990 s.26(4)in relation to payments made on or after 1 October 1990.
- F1568**Words in s. 339(3B) substituted (with effect in accordance with s. 58(4) of the amending Act) by Finance Act 2006 (c. 25), s. 58(2)
- F1569**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)
- F1570**Words in s. 339(3B)(b) substituted (with effect in accordance with s. 60(4) of the amending Act) by Finance Act 2007 (c. 11), s. 60(2)(a)
- F1571**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)
- F1572**Words in s. 339(3DA)(c) substituted (with effect in accordance with s. 60(4) of the amending Act) by Finance Act 2007 (c. 11), s. 60(2)(b)
- F1573**Words in s. 339(3E) substituted (with effect in accordance with s. 58(4) of the amending Act) by Finance Act 2006 (c. 25), s. 58(3)
- F1574**S. 339(4) 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. 51(2) (with Sch. 2)
- F1575**Repealed by 1990 ss.27(2)and 132and Sch.19 Part IVin relation to accounting periods ending on or after 1 October 1990.
- F1576**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)
- F1577**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)
- F1578**1990 s.26(5)in relation to payments made on or after 1 October 1990.
- F1579**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”.
- F1580**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
- F1581**S. 339(10) 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. 51(3) (with Sch. 2)

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**Modifications etc. (not altering text)**

**C191** 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**

**M286** Source-1986 s.29(1), (2)  
**M287** Source-1981 s.49; 1983 s.46(3); 1986 s.29(6)

[<sup>F1582F1583</sup> **339A** . . . . .]

**Textual Amendments**

**F1582S. 339A** inserted (in relation to accounting periods ending on or after 1 October 1990) by [Finance Act 1990 \(c. 29\), s. 27\(3\)\(4\)](#)

**F1583S. 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

<sup>F1584</sup> **340 Charges on income: interest payable to non-residents.**

**Textual Amendments**

**F1584S. 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)

<sup>F1585</sup> **341 Payments of interest etc. between related companies.**

**Textual Amendments**

**F1585S. 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) <sup>M288</sup> 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) <sup>M289</sup> Subject to subsection (3) [<sup>F1586</sup> or (3A)] below—



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- (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.
- [<sup>F1587</sup>(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) <sup>M290</sup>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.
- (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, [<sup>F1588</sup>the 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 [<sup>F1589</sup>as if the winding-up had commenced with the beginning of that new accounting period].
- (7) <sup>M291</sup>References 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

**F1586** 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

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**F1587S.** 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

**F1588** 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

**F1589** 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

**M288** Source-1970 s.245(1)

**M289** Source-1970 s.245(2), (3); 1974 s.37(1)

**M290** Source-1970 s.245(4)-(6)

**M291** Source-1970 s.245(7)-(9); 1974 s.37(1)

### [<sup>F1590</sup> 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
  - (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.

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- (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

**F1590S. 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](#)

### 343 Company reconstructions without a change of ownership.

- (1) <sup>M292</sup>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) <sup>M293</sup>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 [<sup>F1591</sup>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

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- (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 <sup>F1592</sup>; and are subject to section 343A (company reconstructions involving business of leasing plant or machinery)].

- (3) <sup>M294F1593</sup> . . . Subject to subsection (4) below and to any claim made by the predecessor under section <sup>F1594</sup>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 <sup>F1595</sup> . . . relief if it had continued to carry on the trade.
- (4) <sup>M295</sup>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).

- <sup>F1596</sup>(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) <sup>M296</sup>Any 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.

<sup>F1597</sup>(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, <sup>F1598</sup> . . . , subsections (2) to <sup>F1599</sup>(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

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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)<sup>M297</sup> Where 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)<sup>M298</sup> Where, 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,
- 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)<sup>M299</sup> 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

**F1591** 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](#))

**F1592** Words in s. 343(2) inserted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 6 para. 1\(1\)](#)

**F1593** 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

**F1594** 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)

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- F1595** 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)
- F1596** 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)
- F1597** 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
- F1598** 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
- F1599** 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)

- C192** S. 343 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(1)(3), **Sch. 24 para. 20(8)**
- C193** 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))
- C194** 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**
- C195** S. 343 applied (with effect in accordance with s. 43(2) of the 2007 amending Act) by Finance Act 1994 (c. 9), s. 227B (as inserted by Finance Act 2007 (c. 11), s. 43(1))
- C196** 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).
- C197** 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
- C198** 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)
- C199** 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**
- C200** 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

- M292** Source-1970 s.252(1)
- M293** Source-1970 s.252(2), (2A); 1971 Sch.8 16(5); 1986 s.56(7), Sch.13 2; 1987 (No.2) s.64(2)
- M294** Source-1970 s.252(3)-(7)
- M295** Source-1970 s.252(3A); 1986 s.42(2), (3), Sch.10 1(2)
- M296** Source-1970 s.252(4)-(7)
- M297** Source-1970 s.252(8); 1986 Sch.10 1(3)
- M298** Source-1970 s.252(9), (10)
- M299** Source-1986 s.42(2), (3)

VALID FROM 21/07/2008

#### **F1600** **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,



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- (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)—
- (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).]

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#### Textual Amendments

**F1600S.** 343ZA inserted (with effect in accordance with s. 89(2) of the amending Act) by [Finance Act 2008](#) (c. 9), s. 89(1)

#### [<sup>F1601</sup>343] **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.



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- (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
  - (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

**F1601S. 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.

<sup>M300</sup>(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;

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- (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;
  - (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, [<sup>F1602</sup>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

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- (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.
- (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

**F1602** 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

**M300** Source-1970 s.253; 1986 s.42, Sch.10 2

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### Chargeable gains

F1603 **345** .....

#### Textual Amendments

**F1603S. 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).

F1604 **346** .....

#### Textual Amendments

**F1604S. 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).

F1605 **347** .....

#### Textual Amendments

**F1605S. 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

[<sup>F1606</sup> **347** **General rule.**

<sup>F1607</sup> ..... ]

#### Textual Amendments

**F1606Ss. 347A, 347B** inserted by Finance Act 1988 (c. 39), s. **36(1)(3)-(5)**

**F1607S. 347A** repealed (with effect in accordance with Sch. 5 para. 1(3)(5) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 5 para. 1(2)(4), **Sch. 27 Pt. 2(3)**, Note

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[<sup>F1608</sup>**347B** ~~Qualifying maintenance payments.~~

<sup>F1609</sup> ..... ]

**Textual Amendments**  
**F1608**Ss. 347A, 347B inserted by Finance Act 1988 (c. 39), s. 36(1)(3)-(5)  
**F1609**S. 347B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 53, Sch. 3 Pt. 1 (with Sch. 2)

**348** **Payments out of profits or gains brought into charge to income tax: deduction of tax.**

<sup>F1610</sup> .....

**Textual Amendments**  
**F1610**S. 348 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 54, Sch. 3 Pt. 1 (with Sch. 2); and s. 348 amended (6.4.2007) by Finance Act 2005 (c. 7), Sch. 10 paras. 62, 64(2), Sch. 11 Pt. 4, Note 1

**349** **Payments not out of profits or gains brought into charge to income tax, and annual interest.**

<sup>F1611</sup> .....

**Textual Amendments**  
**F1611**S. 349 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 55, Sch. 3 Pt. 1 (with Sch. 2); and s. 349 amended (6.4.2007) by Finance Act 2005 (c. 7), Sch. 10 paras. 62, 64(2), Sch. 11 Pt. 4, Note 1

[<sup>F1612</sup>**349ZA** ~~Extension of section 349: proceeds of sale of UK patent rights~~

<sup>F1613</sup> ..... ]

**Textual Amendments**  
**F1612**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)  
**F1613**S. 349ZA repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 56, Sch. 3 Pt. 1 (with Sch. 2)

[<sup>F1614</sup>**349** ~~Exceptions to section 349 for payments between companies etc~~

<sup>F1615</sup> .....

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**Textual Amendments**

- F1614**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)
- F1615**Ss. 349A-349D repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 57, Sch. 3 Pt. 1 (with Sch. 2)

**349B The conditions mentioned in section 349A(1)**

**F1616** . . . . .

**Textual Amendments**

- F1614**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)
- F1616**Ss. 349A-349D repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 57, Sch. 3 Pt. 1 (with Sch. 2)

**349C Directions disapplying section 349A(1)**

**F1617** . . . . .

**Textual Amendments**

- F1614**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)
- F1617**Ss. 349A-349D repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 57, Sch. 3 Pt. 1 (with Sch. 2)

**349D Section 349A(1): consequences of reasonable but incorrect belief**

**F1618** . . . . . ]

**Textual Amendments**

- F1614**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)
- F1618**Ss. 349A-349D repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 57, Sch. 3 Pt. 1 (with Sch. 2)

**[<sup>F1619</sup>349D Deductions under section 349(1): payment of royalties overseas**

**F1620** . . . . . ]

**Textual Amendments**

- F1619**S. 349E inserted (with application in accordance with s. 96(4) of the amending Act) by Finance Act 2002 (c. 23), s. 96(1)

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**F1620**S. 349E repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 58, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**350 Charge to tax where payments made under section 349.**

**F1621** . . . . .

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**Textual Amendments**  
**F1621**S. 350 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 59, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**[<sup>F1622</sup>350AK public revenue dividends: deduction of tax.**

**F1623** . . . . . ]

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**Textual Amendments**  
**F1622**S. 350A inserted (with application in accordance with s. 112(5) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 112\(4\)](#)  
**F1623**S. 350A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 60, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**<sup>F1624</sup>351 Small maintenance payments.**

. . . . .

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**Textual Amendments**  
**F1624**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.**

**F1625** . . . . .

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**Textual Amendments**  
**F1625**S. 352 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 61, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

*Relief for payments of interest (excluding MIRAS)*

**353 General provision.**

<sup>F1626</sup>(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 <sup>F1627</sup> . . . . . [<sup>F1628</sup>section 52 of ITTOIA 2005]) to relief in accordance with this section in respect



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of so much (if any) of the amount of that interest as is eligible for relief under this section by virtue of <sup>F1629</sup>section 365].]

<sup>F1630</sup> <sup>F1631</sup>(1A) Where a person is entitled for a year of assessment to relief under this section in respect of an amount of interest which is eligible for relief by virtue of section 365, the relief is given as a tax reduction for that tax year.

(1AA) The amount of the tax reduction is 23% of the amount of the interest.

(1AB) The tax reduction is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

(1B) <sup>F1632</sup> .....

(1C) <sup>F1633</sup> .....

(1D) <sup>F1633</sup> .....

(1E) Where any person is entitled for any year of assessment to relief <sup>F1634</sup> . . . 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 <sup>F1635</sup>section 383 of ITA 2007 (relief for interest payments)], that amount of interest shall be apportioned between the cases to which each of <sup>F1636</sup>those provisions] applies without regard to what parts of the total amount borrowed remain outstanding but according to <sup>F1637</sup> . . . —

(a) the proportions of the total amount borrowed which were applied for different purposes; <sup>F1638</sup> . . .

(b) <sup>F1638</sup> .....

<sup>F1639</sup>and subsection (1A) above or section 383 of ITA 2007 shall apply accordingly to the case in which that subsection or section applies].

(1F) <sup>F1640</sup> .....

(1G) <sup>F1640</sup> .....

(1H) <sup>F1640</sup> .....

(2) <sup>M301</sup>This section does not apply to a payment of relevant loan interest to which section 369 applies.

(3) <sup>M302</sup>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) <sup>F1641</sup> .....

(5) <sup>F1641</sup> .....

#### Textual Amendments

**F1626**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)

**F1627**Words in s. 353(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 62(2)(a), Sch. 3 Pt. 1 (with Sch. 2)

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- F1628** 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 \(with Sch. 2\)](#)
- F1629** Words in s. 353(1) 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. 62\(2\)\(b\) \(with Sch. 2\)](#)
- F1630** 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\(2\)](#)
- F1631** S. 353(1A)-(1AB) substituted for s. 353(1A) (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. 62\(3\) \(with Sch. 2\)](#)
- F1632** S. 353(1B) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 62\(4\), Sch. 3 Pt. 1 \(with Sch. 2\)](#)
- F1633** 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](#)
- F1634** Words in s. 353(1E) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 62\(5\)\(a\), Sch. 3 Pt. 1 \(with Sch. 2\)](#)
- F1635** Words in s. 353(1E) 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. 62\(5\)\(b\) \(with Sch. 2\)](#)
- F1636** Words in s. 353(1E) 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. 62\(5\)\(c\) \(with Sch. 2\)](#)
- F1637** 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](#)
- F1638** 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](#)
- F1639** Words in s. 353(1E) 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. 62\(5\)\(d\) \(with Sch. 2\)](#)
- F1640** S. 353(1F)-(1H) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 62\(6\), Sch. 3 Pt. 1 \(with Sch. 2\)](#)
- F1641** 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)**

- C201** S. 353 restricted (1.5.1995) by [Finance Act 1995 \(c. 4\), s. 123, Sch. 22 para. 2](#)
- C202** S. 353 restricted (27.7.1999) by [Finance Act 1999 \(c. 16\), s. 38\(1\)](#)

**Marginal Citations**

- M301** Source-1986 s.26(1)
- M302** Source-1972 s.75(1A), (2); 1974 s.19(1)(b)

**354 Loans to buy land etc.**

**F1642** .....

**Textual Amendments**

- F1642** 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.**

**F1643** .....

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**Textual Amendments**

**F1643**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.**

**F1644** . . . . .

**Textual Amendments**

**F1644**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)**

[<sup>F1645</sup>**356A** **Limit on relief for home loans: residence basis.**

**F1646** . . . . .]

**Textual Amendments**

**F1645**Ss. 356A-356D inserted (1.8.1988) by [Finance Act 1988 \(c. 39\)](#), **s.42(1)(4)**  
**F1646**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)**

[<sup>F1647</sup>**356B** **Residence basis: married couples.**

**F1648** . . . . .]

**Textual Amendments**

**F1647**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**  
**F1648**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)**

[<sup>F1649</sup>**356C** **Payments to which sections 356A and 356B apply.**

**F1650** . . . . .]

**Textual Amendments**

**F1649**Ss. 356A-356D inserted (1.8.1988) by [Finance Act 1988 \(c. 39\)](#), **s.42(1)(4)**  
**F1650**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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[<sup>F1651</sup>**356D** Provisions supplementary to sections 356A to 356C.

F1652 ..... ]

**Textual Amendments**

- F1651 Ss. 356A-356D inserted (1.8.1988) by Finance Act 1988 (c. 39), s.42(1)(4)
- F1652 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.**

F1653 ..... ]

**Textual Amendments**

- F1653 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)

[<sup>F1654</sup>**357A** Substitution of security.

F1655 ..... ]

**Textual Amendments**

- F1654 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 56
- F1655 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)

[<sup>F1656</sup>**357B** Treatment of loans following security substitution.

F1657 ..... ]

**Textual Amendments**

- F1656 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 56
- F1657 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)

[<sup>F1658</sup>**357C** Substitution of security: supplemental.

F1659 ..... ]

**Textual Amendments**

- F1658 Ss. 357A-357C inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 56
- F1659 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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### 358 Relief where borrower deceased.

F1660  
.....

#### Textual Amendments

F1660Ss. 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.

F1661  
.....

#### Textual Amendments

F1661S. 359 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 63, **Sch. 3 Pt. 1** (with Sch. 2)

### 360 Loan to buy interest in close company.

F1662  
.....

#### Textual Amendments

F1662S. 360 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 64, **Sch. 3 Pt. 1** (with Sch. 2)

### [<sup>F1663</sup>360 Meaning of “material interest” in section 360.

F1664  
.....]

#### Textual Amendments

F1663S. 360A inserted by Finance Act 1989 (c. 26), s. 48(2)

F1664S. 360A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 65, **Sch. 3 Pt. 1** (with Sch. 2)

### 361 Loan to buy interest in co-operative or employee-controlled company.

F1665  
.....

#### Textual Amendments

F1665S. 361 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 66, **Sch. 3 Pt. 1** (with Sch. 2)

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### 362 Loan to buy into partnership.

F1666

#### Textual Amendments

**F1666S. 362** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 67](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 363 Provisions supplementary to sections 360 to 362.

F1667

#### Textual Amendments

**F1667S. 363** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 68](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 364 Loan to pay inheritance tax.

F1668

#### Textual Amendments

**F1668S. 364** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 69](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 365 Loan to buy life annuity.

<sup>M303</sup>(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—

- [<sup>F1669</sup>(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 [<sup>F1670</sup>used the land on which it was secured as his only or main residence immediately before 9th March 1999] .

[<sup>F1671</sup>(1AA) Where—

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- (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.]

[<sup>F1672</sup>(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.

(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.]

[<sup>F1673</sup>[<sup>F1674</sup>(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 [<sup>F1675</sup>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 [<sup>F1676</sup>that sum] the same proportion as the interest payable by him bears to the interest payable by both or all of them.



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### Textual Amendments

- F1669**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)
- F1670**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)
- F1671**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)
- F1672**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)
- F1673**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)
- F1674**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)
- F1675**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)
- F1676**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)

### Marginal Citations

**M303** Source-1974 Sch.1 24; 1984 s.22(3)

## 366 Information.

- (1) <sup>M304</sup> 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 <sup>F1677</sup> . . . . ;  
and
  - (d) the name and address of the debtor.
- (2) <sup>M305</sup> 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

**F1677**Words in s. 366(1)(c) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 70, [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### Marginal Citations

**M304** Source-1972 Sch.10 7; 1974 Sch.1 25(1)  
**M305** Source-1972 Sch.10 8, 9

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### 367 Provisions supplementary to sections 354 to 366.

- (1) <sup>F1678</sup> .....
- (2) <sup>F1679</sup> .....
- (3) <sup>F1679</sup> .....
- (4) <sup>F1679</sup> .....
- (5) <sup>M306</sup>In [<sup>F1680</sup>section] 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

**F1678**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)

**F1679**S. 367(2)-(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 71, Sch. 3 Pt. 1 (with Sch. 2)

**F1680**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)

- C203** 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

**M306** Source-1972 Sch.9 5(1A); 1984 s.22(1)(c)

VALID FROM 01/04/2010

### <sup>F1681</sup>367 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**

**F1681**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.**

**F1682** .....

**Textual Amendments**

**F1682**S. 368 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 72, Sch. 3 Pt. 1** (with Sch. 2)

*Mortgage interest relief at source*

**369 Mortgage interest payable under deduction of tax.**

- (1) <sup>M307</sup>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 [<sup>F1683</sup>the applicable percentage thereof.]
- [<sup>F1684</sup>(1A) In subsection (1) above “the applicable percentage” means [<sup>F1685</sup>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.
- [<sup>F1686</sup>(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) <sup>M308</sup>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.
- [<sup>F1687</sup>(7) The following provisions of the Management Act, namely—

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- [<sup>F1688</sup>(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.) [<sup>F1689</sup>apart from subsection (1B)] ,
- (c) [<sup>F1690</sup>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 [<sup>F1691</sup>as respects a chargeable period] as a relief which was not due.]
- [<sup>F1692</sup>(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

- F1683** 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)
- F1684** 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
- F1685** 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)
- F1686** 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)
- F1687** S. 369(7) inserted (27.7.1993) by 1993 c. 34, s. 58(1)(2)
- F1688** 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)
- F1689** 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)
- F1690** 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)

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**F1691** 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)**

**F1692** 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)

**C204** See S.I. 1988 No.1347 (in Part III Vol.5) in respect of housing associations.

**C205** S. 369(1) excluded (27.7.1999) by Finance Act 1999 (c. 16), **s. 38(2)-(7)**

#### Marginal Citations

**M307** Source-1982 s.26(1), (2)

**M308** Source-1982 s.26(7)

### 370 Relevant loan interest.

- (1) <sup>M309</sup> Subject to this section and [<sup>F1693</sup>sections 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) <sup>F1694</sup> . . . below applies.
- (2) Subject to subsection (4) below, this subsection applies to interest if, disregarding section 353(2) [<sup>F1695</sup>and any other provision applying to interest falling to be treated as relevant loan interest]—
- (a) it is interest falling within section <sup>F1696</sup> . . . 365; and
  - (b) apart [<sup>F1697</sup>(where applicable) from] section <sup>F1696</sup> . . . 365(3), the whole of the interest [<sup>F1698</sup>would be eligible for relief under section 353]; <sup>F1699</sup> . . .
  - (c) <sup>F1699</sup> . . . . .
- (3) <sup>F1700</sup> . . . . .
- (4) <sup>F1700</sup> . . . . .
- (5) <sup>M310</sup> In determining whether subsection (2) above applies to any interest, [<sup>F1701</sup>section 365 shall] have effect as if the words “or the Republic of Ireland” were omitted.
- (6) <sup>F1700</sup> . . . . .
- [<sup>F1702</sup>(6A) <sup>F1703</sup> . . . . .]
- (7) <sup>F1700</sup> . . . . .

#### Textual Amendments

**F1693** 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)**

**F1694** 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)**

**F1695** 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)**

**F1696** 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)**

**F1697** 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)**

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- F1698** 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](#))
- F1699** 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\(7\)](#)
- F1700** 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\(7\)](#)
- F1701** 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\(5\)](#)
- F1702** 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\(2\)](#)
- F1703** 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

**Marginal Citations**

- M309** Source-1982 Sch.7 2(1)-(3)
- M310** Source-1982 Sch.7 3(1)-(3)

**F1704 371 Second loans.**

.....

**Textual Amendments**

- F1704** 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.**

**F1705** .....

**Textual Amendments**

- F1705** 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) <sup>M311</sup>The provisions of this section have effect in relation to a loan where, by virtue of <sup>F1706</sup> . . . 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) <sup>F1707</sup> .....



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- (4) <sup>F1707</sup> . . . . .
- (5) <sup>M312</sup>Where the condition in paragraph (a) or (b) of subsection (2) above is fulfilled  
<sup>F1708</sup> . . . 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) <sup>M313</sup>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 [<sup>F1709</sup>section 370] and this section.
- (7) In subsection (6) above references to the borrower's husband or wife do not include references to a separated husband or wife <sup>F1710</sup> . . . .

#### Textual Amendments

**F1706** 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)

**F1707** 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)

**F1708** 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)

**F1709** 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)

**F1710** 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

**M311** Source-1982 Sch.7 5(1)-(3); 1985 s.37(2)

**M312** Source-1982 Sch.7 5(4); 1983 s.17(2); 1985 s.37(3)

**M313** Source-1982 Sch.7 6(1), (2)

### 374 Conditions for application of section 369.

- (1) <sup>M314</sup>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) <sup>F1711</sup> . . . . .
  - (d) <sup>M315</sup>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



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- 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) <sup>M316</sup>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 <sup>F1712</sup> . . . (d) of subsection (1) above, section 369 applies to the relevant loan interest referred to in that paragraph.
- (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

**F1711** 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)**

**F1712** 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

**M314** Source-1982 Sch.7 7(1)(a)-(c)

**M315** Source-1982 Sch.7 7(1)(d), (4), (5)

**M316** Source-1982 Sch.7 7(2)(3)

#### <sup>F1713</sup>**374** 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.

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- (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 <sup>F1714</sup> . . . .
- (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

**F1713**S. 374A inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(1)

**F1714**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) <sup>M317</sup>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
  - <sup>F1715</sup>(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 <sup>F1716</sup>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.
- <sup>F1717</sup>(4) The Management Act shall apply to an assessment under subsection (3) above <sup>F1718</sup>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) <sup>M318</sup>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.

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- (6) <sup>M319</sup>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) <sup>M320</sup>In any case where—
- (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.

- [<sup>F1719</sup>(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.]

- [<sup>F1720</sup>(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) <sup>F1721</sup> .....

(10) <sup>F1721</sup> .....

#### Textual Amendments

**F1715S.** 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)

**F1716** 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

**F1717S.** 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)

**F1718** 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

**F1719S.** 375(8A) inserted (with application in accordance with s. 112(5) of the amending Act) by Finance Act 1995 (c. 4), s. 112(4)

**F1720S.** 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)

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**F1721** 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

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**Marginal Citations**  
**M317** Source-1982 Sch.7 8  
**M318** Source-1982 Sch.7 9(1)  
**M319** Source-1982 Sch.7 10(1), (2)  
**M320** Source-1982 Sch.7 11

**[<sup>F1722</sup>375. Option to deduct interest for the purposes of Schedule A.**

<sup>F1723</sup> . . . . . ]

**Textual Amendments**  
**F1722** 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**  
**F1723** 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) <sup>M321</sup> 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 [<sup>F1724</sup> 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 <sup>F1725</sup> . . . . .
- (4) <sup>M322</sup> The following bodies are qualifying lenders:—
  - (a) a building society;
  - (b) a local authority;
  - (c) the Bank of England;
  - (d) <sup>F1726</sup> . . . . .
  - [<sup>F1727</sup> (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 <sup>M323</sup> Trustee Savings Bank Act 1985;
  - (g) <sup>F1728</sup> . . . . .
  - (h) a development corporation within the meaning of the <sup>M324</sup> New Towns Act 1981 or the <sup>M325</sup> New Towns (Scotland) Act 1968;
  - (j) the Commission for the New Towns;
  - (k) the Housing Corporation;
  - [<sup>F1729</sup> (ka) the Secretary of State if the loan is made by him under section 79 of the <sup>M326</sup> Housing Associations Act 1985;]
  - (l) the Northern Ireland Housing Executive;

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- (m) the Scottish Special Housing Association;
- (n) <sup>F1730</sup> .....
- (o) the Church of England Pensions Board;
- [<sup>F1731</sup>(p) any body which is for the time being registered under section 376A.]
- [<sup>F1732</sup>(4A) <sup>F1733</sup> .....
- (5) <sup>F1734</sup> .....
- (6) <sup>F1735</sup> .....

### Textual Amendments

- F1724** 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)
- F1725** 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)**
- F1726** 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**
- F1727** 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)**
- F1728** 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)**
- F1729** 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**
- F1730** 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**
- F1731** 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)**
- F1732** 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**
- F1733** 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)**
- F1734** S. 376(5) repealed (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), s. 142(1)(b), **Sch. 26 Pt. 5(19)**
- F1735** 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

- M321** Source-1982 Sch.7 13
- M322** Source-1982 Sch.7 14(1); 1983 s.17(3)
- M323** 1985 c. 50.
- M324** 1981 c.64.
- M325** 1968 c. 16.
- M326** 1985 c. 69.

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**[<sup>F1736</sup>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—

<sup>F1737</sup>(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;

(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**

**F1736S.** 376A inserted (3.5.1994) by [Finance Act 1994 \(c. 9\), s. 142\(2\)](#)

**F1737S.** 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](#)



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### 377 Variation of terms of repayment of certain loans.

F1738 .....

#### Textual Amendments

**F1738S. 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.

M327 (1) F1739 .....

(2) F1739 .....

(3) The Board may by regulations make provision—

- (a) for the purposes of any provision of sections 369 to [F1740376A] 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 [F1740376A].

(4) F1739 .....

#### Textual Amendments

**F1739S. 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\(7\)](#)

**F1740** 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)

**C206** See [S.I. 1983 No.368](#) (in Part III Vol.5)—*housing associations*.

#### Marginal Citations

**M327** Source-1982 s.29; 1984 s.56(2)

### 379

In sections 369 to 378—

[F1741“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” F1742 . . . means prescribed by the Board;



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“qualifying borrower” has the meaning given by section 376(1) to (3);  
 “qualifying lender” has the meaning given by section 376(4) <sup>F1743</sup> . . . ;  
 “regulations” <sup>F1744</sup> . . . means regulations made by the Board under section 378;  
 “relevant loan interest” has the meaning given by section 370(1);  
 [<sup>F1745</sup>“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.]

#### Textual Amendments

- F1741S. 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**
- F1742S. 379:** words in definition of "prescribed" repealed (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), **Sch. 26 Pt. 5(19)**
- F1743S. 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)**
- F1744S. 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)**
- F1745S. 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

#### [<sup>F1746</sup>CHAPTER I

#### LOSS RELIEF: INCOME TAX]

#### Textual Amendments

- F1746Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), **Sch. 1 para. 73, Sch. 3 Pt. 1** (with **Sch. 2**)

*[<sup>F1747</sup>[<sup>F1748</sup>Losses from [<sup>F1749</sup>UK property] business or overseas property business]*

#### Textual Amendments

- F1747S. 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)**
- F1748S. 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**)

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**F1749** 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)

**379A** [<sup>F1750</sup>**Losses from UK property business**].

<sup>F1751</sup> .....

**Textual Amendments**

**F1750** 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)

**F1751** Pt. 10 Ch. 1 (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 73, Sch. 3 Pt. 1](#) (with Sch. 2)

[<sup>F1752</sup>**Losses from overseas property business.**

<sup>F1753</sup>**379B** ..... ]]

**Textual Amendments**

**F1752** 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)

**F1753** Pt. 10 Ch. 1 (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 73, Sch. 3 Pt. 1](#) (with Sch. 2)

*Trade etc. losses*

**380** **Set-off against general income.**

<sup>F1754</sup> .....

**Textual Amendments**

**F1754** Pt. 10 Ch. 1 (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 73, Sch. 3 Pt. 1](#) (with Sch. 2)

**381** **Further relief for individuals for losses in early years of trade.**

<sup>F1755</sup> .....

**Textual Amendments**

**F1755** Pt. 10 Ch. 1 (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 73, Sch. 3 Pt. 1](#) (with Sch. 2)

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### 382 Provisions supplementary to sections 380 and 381.

F1756 .....

#### Textual Amendments

**F1756Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 383 Extension of right of set-off to capital allowances.

F1757 .....

#### Textual Amendments

**F1757S. 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.

F1758 .....

#### Textual Amendments

**F1758Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### [<sup>F1759</sup>384A Restriction of set-off of allowances against general income

F1760 .....]

#### Textual Amendments

**F1759S. 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](#))

**F1760Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 385 Carry-forward against subsequent profits.

F1761 .....

#### Textual Amendments

**F1761Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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### 386 Carry-forward where business transferred to a company.

F1762  
.....

#### Textual Amendments

**F1762Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 387 Carry-forward as losses of amounts taxed under section 350.

F1763  
.....

#### Textual Amendments

**F1763Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 388 Carry-back of terminal losses.

F1764  
.....

#### Textual Amendments

**F1764Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 389 Supplementary provisions relating to carry-back of terminal losses.

F1765  
.....

#### Textual Amendments

**F1765Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 390 Treatment of interest as a loss for purposes of carry-forward and carry-back.

F1766  
.....

#### Textual Amendments

**F1766Pt. 10 Ch. 1** (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### 391 Losses from trade etc. carried on abroad

F1767  
.....

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#### Textual Amendments

**F1767** Pt. 10 Ch. 1 (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### *Case VI losses*

## 392 Losses from miscellaneous transactions

**F1768**  
 .....

#### Textual Amendments

**F1768** Pt. 10 Ch. 1 (ss. 379A-392) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 73](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

## CHAPTER II

### LOSS RELIEF: CORPORATION TAX

#### Modifications etc. (not altering text)

**C207** See s.434A—*limitations on loss relief for life assurance company.*

**C208** 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](#))

**C209** 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\(2\)\(d\)](#)

**C210** 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.

- <sup>F1769</sup>(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,

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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) [F1770“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).

#### Textual Amendments

**F1769** 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)

**F1770** 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)

**C211** 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.

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- (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)**

**C212** S. 392B excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(5), **Sch. 17 para. 12(2)**

**C213** 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) <sup>M328</sup>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 [<sup>F1771</sup>section 393A(1)], be relieved against income or profits of an earlier accounting period.

<sup>F1772</sup>(2) .....

<sup>F1772</sup>(3) .....

<sup>F1772</sup>(4) .....

<sup>F1772</sup>(4A) .....

<sup>F1772</sup>(4B) .....

<sup>F1772</sup>(5) .....

<sup>F1772</sup>(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



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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; <sup>F1773</sup> . . .

#### Textual Amendments

- F1771** Words in s. 393(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 8(a)**  
**F1772** 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  
**F1773** 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

#### Modifications etc. (not altering text)

- C214** 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**)  
**C215** 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**)  
**C216** 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)**  
**C217** 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**  
**C218** 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**  
**C219** 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).  
**C220** 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.  
**C221** S. 393(1) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 15**  
**C222** 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

- M328** Source—1970 s.177(1)-(3)

#### <sup>F1774</sup>393 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

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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) [<sup>F1775</sup>is (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.

[ This section shall have effect in relation to any loss to which this subsection applies <sup>F1776</sup>(2A) 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
- (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 [<sup>F1777</sup>section 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) [<sup>F1778</sup>for] 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—

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- [<sup>F1779</sup>(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) <sup>F1780</sup> .....
  - (6) <sup>F1780</sup> .....
  - (7) [<sup>F1781</sup>Subject 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 [<sup>F1782</sup>an 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.
- [ For the purposes of this section where—
- <sup>F1783</sup>(7A) (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 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 [<sup>F1784</sup>section 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

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(b) by virtue of [<sup>F1785</sup>section 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 [<sup>F1786</sup>the 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”.

[ In this section “ring fence trade” has the same meaning as in [<sup>F1788</sup>section 162 of the <sup>F1787</sup>(12) Capital Allowances Act].]

### Textual Amendments

- F1774S.** 393A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(1)(4)(5)
- F1775**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)
- F1776S.** 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)
- F1777**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)
- F1778**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)
- F1779S.** 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)
- F1780S.** 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)
- F1781**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)
- F1782**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)
- F1783S.** 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)
- F1784**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)
- F1785**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)
- F1786**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)
- F1787S.** 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)
- F1788**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)

- C223** 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)
- C224** 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
- C225** 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)
- C226** 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)

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**C227 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

**[<sup>F1789</sup>393] 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.
- (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).]

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#### Textual Amendments

**F1789S. 393B** inserted (with effect in accordance with s. 111(3) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 111\(1\)](#)

### <sup>F1790</sup>**394 Terminal losses.**

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#### Textual Amendments

**F1790S. 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— <sup>M329</sup>
- (a) under a contract entered into on or after 6th March 1973 a company (“the first company”) incurs capital expenditure on the provision of [<sup>F1791</sup>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 [<sup>F1792</sup>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
  - (c) in the accounting period for which a first-year allowance, [<sup>F1793</sup>within 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 <sup>F1794</sup> . . . 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.

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- (4) In determining whether the first company would be entitled <sup>F1794</sup> . . . 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.

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#### Textual Amendments

**F1791** 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)

**F1792** Words in s. 395(1)(b) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 8(3)(a)**

**F1793** 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)

**F1794** 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)**

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#### Marginal Citations

**M329** Source—1973 ss.30, 32(6)

### Case VI losses

#### 396 Case VI losses.

- (1) <sup>M330</sup> 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<sup>F1795</sup> or on a disposal to which Chapter 5 of Part 17 applies.]
- (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 .

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#### Textual Amendments

**F1795** Words in s. 396(2) inserted (with effect in accordance with s. 57(6) of the amending Act) by Finance Act 2007 (c. 11), s. 57(1)



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**Modifications etc. (not altering text)**

- C228** 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
- C229** 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)
- C230** 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))
- C231** 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**

**M330** Source—1970 s.179

**CHAPTER III**

LOSS RELIEF: MISCELLANEOUS PROVISIONS

**397 Restriction of relief in case of farming and market gardening.**

- (1) <sup>F1796</sup> .....
- (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 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) [<sup>F1797</sup>This section] shall not restrict relief for any loss or for any capital allowance [<sup>F1798</sup>in any case]—
  - (a) [<sup>F1799</sup>where] 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) [<sup>F1799</sup>where], if that farmer or market gardener had undertaken those activities at the beginning of the prior period of loss, [<sup>F1800</sup>that farmer or market gardener] 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) [<sup>F1801</sup>This section] 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—
  - <sup>F1802</sup> .....
  - <sup>F1803</sup> .....
  - [<sup>F1804</sup>“prior five years” means, in relation to a loss incurred in a company’s accounting period, the last five years before the beginning of that period;]

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“prior period of loss” means the prior five years, except that, if losses were incurred in the trade in successive<sup>F1805</sup> . . . 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 [<sup>F1806</sup>for this purpose]“losses” means losses computed without regard to capital allowances; and [<sup>F1807</sup>“farming” and “market gardening” shall be construed in accordance with the definitions in section 832, but as if those definitions were not restricted to activities in the United Kingdom.]

- (6)<sup>F1808</sup> . . . . .
- (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<sup>F1809</sup> . . . Case I of Schedule D [<sup>F1810</sup>(or to the calculation of the profits of a trade in Part 2 of ITTOIA 2005)] shall be applied; and in this section “loss computed without regard to capital allowances” means<sup>F1811</sup> . . . a loss so ascertained, [<sup>F1812</sup>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
  - (b) any provision of that Act requiring allowances and charges to be treated as expenses and receipts of the trade].
- (8) [<sup>F1813</sup>This section] 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
- <sup>F1814</sup>(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 [<sup>F1815</sup>Corporation 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) [<sup>F1816</sup>Where 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,<sup>F1817</sup> . . .
  - <sup>F1818</sup>(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; [<sup>F1819</sup>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<sup>F1820</sup> . . . may be restricted under this section by reference to losses [<sup>F1821</sup>(computed without regard to capital allowances) some of which are incurred in an accounting period wholly or partly comprised in the prior five years and some of which are incurred in a year of assessment wholly or partly comprised in the prior five years].

In this subsection “control” has the same meaning as in Part XI.

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### Textual Amendments

- F1796S.** 397(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 74\(2\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F1797**Words in s. 397(3) 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. 74\(3\)\(a\)](#) (with [Sch. 2](#))
- F1798**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\(a\)](#)
- F1799**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\(b\)](#)
- F1800**Words in s. 397(3)(b) 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. 74\(3\)\(b\)](#) (with [Sch. 2](#))
- F1801**Words in s. 397(4) 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. 74\(4\)](#) (with [Sch. 2](#))
- F1802S.** 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](#))
- F1803S.** 397(5): definition of "chargeable period" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 74\(5\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F1804S.** 397(5): definition of "prior five years" 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. 74\(5\)\(b\)](#) (with [Sch. 2](#))
- F1805S.** 397(5): words in definition of "prior period of loss" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 74\(5\)\(c\)\(i\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F1806S.** 397(5): words in definition of "prior period of loss" 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. 74\(5\)\(c\)\(ii\)](#) (with [Sch. 2](#))
- F1807S.** 397(5): definitions of "farming" and "market gardening" 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. 74\(5\)\(d\)](#) (with [Sch. 2](#))
- F1808S.** 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](#))
- F1809**Words in s. 397(7) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 74\(6\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F1810**Words in s. 397(7) 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. 74\(6\)\(b\)](#) (with [Sch. 2](#))
- F1811**Words in s. 397(7) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 74\(6\)\(c\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F1812**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](#))
- F1813**Words in s. 397(8) 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. 74\(7\)\(a\)](#) (with [Sch. 2](#))
- F1814S.** 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](#))
- F1815**Words in s. 397(8)(a) 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. 74\(7\)\(b\)](#)
- F1816**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](#))
- F1817**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\(2\)\(a\)](#)

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- F1818**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)**
- F1819**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)**
- F1820**Words in s. 397(10) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 74(8)(a), Sch. 3 Pt. 1** (with Sch. 2)
- F1821**Words in s. 397(10) 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. 74(8)(b)** (with Sch. 2)

### 398 Transactions in deposits with and without certificates or in debts.

<sup>M331</sup>Where [<sup>F1822</sup>a company] sustains a loss on the exercise or disposal of a right to receive any amount, being a right to which section 56(2) <sup>F1823</sup>. . . applies, in a case where—

- (a) if a profit had arisen from that exercise or disposal, that profit would have been chargeable to [<sup>F1824</sup>corporation] tax by virtue of section 56(2) <sup>F1825</sup>. . . , and
- (b) [<sup>F1826</sup>the company is chargeable to corporation tax under Schedule D] in respect of interest payable on that amount,

then the amount of that interest shall be included in the amounts against which [<sup>F1827</sup>the amount of its loss may be set off under section 396.]

#### Textual Amendments

- F1822**Words in s. 398 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. 75(2)** (with Sch. 2)
- F1823**Words in s. 398 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 75(3), Sch. 3 Pt. 1** (with Sch. 2)
- F1824**Words in s. 398(a) 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. 75(4)(a)** (with Sch. 2)
- F1825**Words in s. 398(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 75(4)(b), Sch. 3 Pt. 1** (with Sch. 2)
- F1826**Words in s. 398(b) 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. 75(5)** (with Sch. 2)
- F1827**Words in s. 398 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. 75(6)** (with Sch. 2)

#### Marginal Citations

- M331** Source—1973 s.26(2); 1974 s.30(2)

### 399 Dealings in commodity futures etc: withdrawal of loss relief.

- (1) <sup>F1828</sup> . . . . .
- [<sup>F1829</sup>(1A) <sup>F1828</sup> . . . . .]
- [<sup>F1830</sup>(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.]

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- (2) <sup>M332</sup>Relief shall not be given to [<sup>F1831</sup>any company under section][<sup>F1832</sup>393A(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 <sup>F1833</sup>. . . ; 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 [<sup>F1834</sup>that company from its] interest in the partnership was the obtaining of a reduction in [<sup>F1835</sup>corporation 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 [<sup>F1836</sup>to 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) <sup>M333</sup>In this section “commodity futures”, “financial futures” and “qualifying options” have the same meanings as in section [<sup>F1837</sup>143 of the 1992 Act]. . . .

#### Textual Amendments

- F1828**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 \(with Sch. 2\)](#)
- F1829**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\(4\)](#)
- F1830**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\(2\) \(with Sch. 28\)](#)
- F1831**Words in s. 399(2) 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. 76\(2\)\(a\) \(with Sch. 2\)](#)
- F1832**Words in s. 399(2) substituted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 73\(3\)-\(5\), Sch. 15 para. 11](#)
- F1833**Words in s. 399(2)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 76\(2\)\(b\), Sch. 3 Pt. 1 \(with Sch. 2\)](#)
- F1834**Words in s. 399(2)(b) 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. 76\(2\)\(c\) \(with Sch. 2\)](#)
- F1835**Words in s. 399(2)(b) 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. 76\(2\)\(d\) \(with Sch. 2\)](#)
- F1836**Words in s. 399(3) 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. 76\(3\) \(with Sch. 2\)](#)
- F1837**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\(3\)\).](#)

#### Marginal Citations

- M332** Source—1978 s.31
- M333** Source—1985 s.72(2); 1987 Sch.15 11(2); 1987 (No.2) s.81(1)

#### 400 Write-off of government investment.

- (1) <sup>M334</sup>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

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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 <sup>F1838</sup> . . . available for relief against its trading income for the next accounting period;
  - <sup>F1839</sup>(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;]
  - <sup>F1840</sup>(bb) any losses which—
    - (i) under section 392A(2) or 392B are carried forward to the next accounting period, or
    - <sup>F1841</sup>(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 <sup>F1842</sup>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 <sup>F1843</sup>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 <sup>F1844</sup>393A(1)] or 402 of this Act or <sup>F1845</sup>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 <sup>F1846</sup>section 532 or 536 of the Capital Allowances Act] or section <sup>F1847</sup>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 <sup>F1848</sup>profits] of that body for the purposes of Case I or II of Schedule D.
- (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 <sup>F1849</sup>or the Scottish Ministers] is extinguished;



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- (b) if any of its shares for which a Minister of the Crown has [<sup>F1850</sup>, 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 [<sup>F1851</sup> or the Scottish Ministers] assumed as such under an enactment and “public dividend capital” means any amount paid by a Minister of the Crown [<sup>F1851</sup> or 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 [<sup>F1851</sup> or the Scottish Ministers].
- [<sup>F1852</sup>(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

- F1838** 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)
- F1839** 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)
- F1840** 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)
- F1841** 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)
- F1842** 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)



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- F1843** 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)).
- F1844** Words in s. 400(4) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)-(5), **Sch. 15 para. 12**
- F1845** 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)
- F1846** 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)
- F1847** 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)).
- F1848** Words in s. 400(6) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3), **Sch. 7 para. 1**
- F1849** 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)
- F1850** 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)
- F1851** 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)
- F1852** 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)**

- C232** S. 400 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 16**
- C233** 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)**
- C234** 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)**
- C235** 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.
- C236** S. 400(1) excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(1)**
- C237** 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.
- C238** S. 400(6) modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 12(2)**
- C239** 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**

- M334** Source—1981 s.48

**401 Relief for pre-trading expenditure.**

- (1) <sup>M335</sup>Where a [<sup>F1853</sup>company] incurs expenditure for the purposes of a [<sup>F1854</sup>trade or profession] before the time when [<sup>F1855</sup>the company] begins to carry it on and the expenditure—
  - (a) is incurred not more than [<sup>F1856</sup>seven] years before that time; and
  - (b) is not allowable as a deduction in computing [<sup>F1857</sup>the company's][<sup>F1858</sup>profits] from the [<sup>F1854</sup>trade 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 [<sup>F1859</sup>treated as incurred on the day on which the [<sup>F1854</sup>trade or profession] is first carried on by [<sup>F1860</sup>the company]].

[<sup>F1861</sup>(1A) <sup>F1862</sup>.....]

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[<sup>F1863</sup>(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.]

[<sup>F1864</sup>(1B) <sup>F1865</sup> ..... ]  
 (2) <sup>F1866</sup> .....

#### Textual Amendments

- F1853** 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)
- F1854** 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)
- F1855** 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)
- F1856** 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)
- F1857** 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)
- F1858** Words in s. 401(1)(b) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3), [Sch. 7 para. 1](#)
- F1859** 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\(1\)\(a\)](#)
- F1860** 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)
- F1861** 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\(2\)\(4\)](#)
- F1862** 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)

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- F1863S.** 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)
- F1864S.** 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**
- F1865S.** 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
- F1866S.** 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)

- C240** 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**
- C241** 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)**
- C242** 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)**
- C243** 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

- M335** Source—1980 s.39(1), (2), (4); 1982 s.50

## CHAPTER IV

### GROUP RELIEF

#### Modifications etc. (not altering text)

- C244** 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)*.
- C245** Pt. 10 Ch. 4 modified (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), **Sch. 3 paras. 1, 5(1)**
- C246** 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.
- C247** Pt. 10 Ch. 4 modified (19.7.2006) by Finance Act 2006 (c. 25), **s. 136(1)(2)(c)**
- C248** Pt. 10 Ch. 4 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), **regs. 1(1), 17**
- C249** Pt. 10 Ch. 4 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)

## 402 Surrender of relief between members of groups and consortia.

- (1) [<sup>F1867M336</sup> Subject to and in accordance with this Chapter and section 492(8)—
- (a) relief for trading losses and other amounts eligible for relief from corporation tax, or
  - (b) losses and other amounts not 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 claimant company”) may be allowed to the claimant company by way of a relief from corporation tax called “group relief”.

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[<sup>F1868</sup>(2) In respect of amounts falling within subsection (1)(a) above, group relief shall be available in a case where—

- (a) the surrendering company and the claimant company are both members of the same group,
- (b) the surrendering company is resident in the United Kingdom or is not so resident but carries on a trade there through a permanent establishment, and
- (c) the claimant company is resident in the United Kingdom or is not so resident but carries on a trade there through a permanent establishment,

and, in respect of amounts falling within subsection (1)(b) above, group relief shall be available in a case where the condition in subsection (2A) below is satisfied.

A claim made by virtue of this subsection is referred to as a “group claim”.

(2A) The condition in this subsection is satisfied if the surrendering company is within the charge to tax under the law of any EEA territory and—

- (a) the surrendering company is a 75 per cent. subsidiary of the claimant company and the claimant company is resident in the United Kingdom, or
- (b) both the surrendering company and the claimant company are 75 per cent. subsidiaries of a third company that is resident in the United Kingdom.

(2B) For the purposes of subsection (2A) above, the surrendering company is within the charge to tax under the law of any EEA territory if—

- (a) it is a non-resident company which is resident in any EEA territory, or
- (b) it is a non-resident company which is not resident in any EEA territory but which carries on a trade in any EEA territory through a permanent establishment.]

[<sup>F1869</sup>(3A) [<sup>F1870</sup>A consortium claim shall not be made] 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 [<sup>F1871</sup>permanent establishment].]

(4) A consortium claim shall not be made <sup>F1872</sup>. . . 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) <sup>M337</sup>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 <sup>F1873</sup>. . . ;

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

- F1867** Words in s. 402(1) substituted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 1(2)**
- F1868** S. 402(2)-(2B) substituted for s. 402(2) (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 1(3)**
- F1869** 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**
- F1870** Words in s. 402(3A) substituted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 1(4)**
- F1871** 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)**
- F1872** 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
- F1873** 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)

- C250** 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**

### Marginal Citations

- M336** Source—1970 s.258(1)  
**M337** Source—1970 s.258(3), (4)

## <sup>F1874</sup>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—
- trading losses, excess capital allowances or a non-trading deficit on its loan relationships, or
  - charges on income, Schedule A losses [<sup>F1875</sup>, 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 [<sup>F1876</sup>management 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 [<sup>F1877</sup>, 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),<sup>[F1878]</sup> and
  - section 785ZA (restrictions on use of losses: leasing partnerships),<sup>[F1879]</sup> and
  - paragraph 38 of Schedule 10 to the Finance Act 2006 (sale etc of lessor companies etc: anti-avoidance)].

#### Textual Amendments

- F1874** 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)
- F1875** Words in s. 403(1)(b) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(a)**
- F1876** Words in s. 403(3) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(b)**
- F1877** Words in s. 403(3) substituted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 2(1)(c)**
- F1878** Words in s. 403(4) inserted (with effect in accordance with s. 83(4)-(6) of the amending Act) by Finance Act 2006 (c. 25), **s. 83(1)**
- F1879** Words in s. 403(4) inserted (with effect in accordance with Sch. 10 para. 2 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 10 para. 43(3)**

#### Modifications etc. (not altering text)

- C251** 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 the 1998 amending Act) by Finance Act 1998 (c. 36), Sch 5 para. 64(3) (with **Sch 5 para. 73**))
- C252** 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
- C253** 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)
- C254** 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**
- C255** S. 403 restricted (with effect in accordance with Sch. 10 para. 2 of the affecting Act) by Finance Act 2006 (c. 25), **Sch. 10 para. 38(5)**

#### <sup>[F1880]</sup> **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



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- (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).]

**Textual Amendments**

**F1880** 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)

**[<sup>F1880</sup> 403ZA] 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 [<sup>F1881</sup> 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**

**F1880** 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)

**F1881** Words in s. 403ZA(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)**

**C256** S. 403ZA(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)

**[<sup>F1880</sup> 403ZB] 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 <sup>M338</sup> Finance Act 1996 applies.
- (2) <sup>F1882</sup> .....



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#### Textual Amendments

- F1880** 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)
- F1882** 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

**M338** 1996 c.8.

### [<sup>F1880</sup> **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).

- [<sup>F1883</sup> (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) <sup>F1884</sup> .....

- [ A non-trading loss on intangible fixed assets means a non-trading loss on intangible  
<sup>F1885</sup> (6) 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

- F1880** 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)
- F1883** 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)

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**F1884S. 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)

**F1885S. 403ZD(6)** inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 2(2)

[<sup>F1880</sup>**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—

(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 [<sup>F1886</sup>75(9)] or 392A(3) (other amounts carried forward).

(2) [<sup>F1887</sup>.....]

**Textual Amendments**

**F1880Ss. 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)

**F1886** 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)

**F1887S. 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)

[<sup>F1888</sup>**403ZA** **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—

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- (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.
- (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;

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- (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.
- (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—
- [<sup>F1889</sup>(a) if (or so far as) the claim is a group claim for the surrender of any loss or other amount other than a qualifying overseas loss, whenever the conditions in paragraphs (a) to (c) of section 402(2) are satisfied;
  - (ab) if (or so far as) the claim is a group claim for the surrender of a qualifying overseas loss, whenever the condition specified in section 402(2A) is satisfied; and]
  - (b) if the claim is a consortium claim, whenever the conditions specified in section 402(3) for the making of that claim [<sup>F1890</sup>and the condition specified

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in section 402(3B)] are satisfied in the case of the claimant company and the surrendering company.

<sup>F1891</sup> [ For the purposes of subsection (10) above a “qualifying overseas loss” means a loss (11) or other amount that is available for surrender by way of group relief in accordance with sections 403F and 403G and Schedule 18A (relief in respect of overseas losses of non-resident companies).]]

#### Textual Amendments

- F1888** 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**
- F1889** S. 403A(10)(a)(ab) substituted for s. 403A(10)(a) (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 2(2)**
- F1890** 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))
- F1891** S. 403A(11) inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), **Sch. 1 para. 2(3)**

#### Modifications etc. (not altering text)

- C257** 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**)

#### <sup>F1888</sup> [ **403A** 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

- F1888** 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)

- C258** 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**)

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[<sup>F1888</sup> [<sup>F1892</sup> **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.

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**

**F1888**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](#)

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**F1892S. 403C** substituted (retrospectively) by Finance Act 2000 (c. 17), s. 100(1)(5)

**[<sup>F1894</sup>403<sup>F1893</sup> Relief for or in respect of UK losses 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 [<sup>F1895</sup>carrying on a trade in the United Kingdom through a permanent establishment], no loss or other amount shall be treated as so available [<sup>F1896</sup>(but see also subsection (11) below)] 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,
 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.



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- (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 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.
- [ Any loss or other amount that is available for surrender by way of group relief in accordance with this section is in addition to any loss or other amount that is so available in accordance with sections 403F and 403G and Schedule 18A (relief in respect of overseas losses of non-resident companies).]

#### Textual Amendments

- F1893S.** 403D title substituted (with effect in accordance with [Sch. 1 para. 9](#) of the amending Act) by virtue of [Finance Act 2006 \(c. 25\)](#), [Sch. 1 para. 3\(4\)](#)
- F1894Ss.** 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](#)
- F1895**Words in s. 403D(1) inserted (with effect in accordance with [Sch. 1 para. 9](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 1 para. 3\(2\)\(a\)](#)
- F1896**Words in s. 403D(1) inserted (with effect in accordance with [Sch. 1 para. 9](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 1 para. 3\(2\)\(b\)](#)
- F1897S.** 403D(11) inserted (with effect in accordance with [Sch. 1 para. 9](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 1 para. 3\(3\)](#)

#### [<sup>F1894</sup>403B] 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—

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- (a) is attributable to an overseas [<sup>F1898</sup>permanent 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 [<sup>F1898</sup>permanent 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 [<sup>F1898</sup>permanent establishment] is situated, is (in any period) deductible from or otherwise allowable against non-UK profits of a person other than the resident company.
- <sup>F1899</sup>(3) .....
- (4) The reference in subsections (1) and (2) above to a loss or other amount attributable to an overseas [<sup>F1898</sup>permanent 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 [<sup>F1898</sup>permanent establishment], and
  - (b) by the application in relation to that [<sup>F1898</sup>permanent 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 [<sup>F1898</sup>permanent establishment] of a non-resident company.
- (5) In subsection (4)(b) above the reference to the UK [<sup>F1898</sup>permanent establishment] of a non-resident company is a reference to any [<sup>F1898</sup>permanent 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 [<sup>F1898</sup>permanent establishment] of a company are references to any [<sup>F1898</sup>permanent establishment] through which that company carries on a trade in a territory outside the United Kingdom.
- (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

**F1894**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

**F1898**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)

**F1899**S. 403E(3) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 5, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

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### [<sup>F1900</sup> 403 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).]

#### Textual Amendments

**F1900S. 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\(1\)](#)

### [<sup>F1901</sup> 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—

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- (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

**F1901S. 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\(2\)](#)

#### 404 Limitation of group relief in relation to certain dual resident companies.

- (1) <sup>M339</sup>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—
- [<sup>F1902</sup>(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 [<sup>F1903</sup>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.

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- (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;
    - [<sup>F1904</sup>(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;
    - (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) <sup>F1905</sup> .....

[<sup>F1906</sup>(7) In this section “debtor relationship” has the same meaning as in Chapter II of Part IV of the Finance Act 1996.]

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#### Textual Amendments

**F1902S.** 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](#))

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**F1903** 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)

**F1904** 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)

**F1905** 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)

**F1906** 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)

**C259** 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

**C260** 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

**M339** Source—1987 (No.2) s.63

### 405 Claims relating to losses etc. of members of both group and consortium.

- (1) <sup>M340</sup> 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.
- (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) <sup>M341</sup> 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 [<sup>F1907</sup> 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



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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

**F1907** 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

**M340** Source—1985 Sch.9 2

**M341** Source—1985 Sch.9 3

### 406 Claims relating to losses etc. of consortium company or group member.

- (1) <sup>M342</sup>In this section—
- (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) <sup>M343</sup>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 <sup>F1908</sup>the relevant fraction for the purposes of section 403C] where a group member is the claimant company shall be the same as <sup>F1909</sup>it would be] if the link company were the claimant company.
- <sup>F1910</sup>(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.]



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- (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) <sup>M344</sup>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 [<sup>F1908</sup>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 [<sup>F1909</sup>it would be] if the link company were the surrendering company, except that the [<sup>F1911</sup>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.
- [<sup>F1912</sup>(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 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 [<sup>F1913</sup>the 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

**F1908** 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)**

**F1909** 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)**

**F1910** 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)**

**F1911** Words in s. 406(6) substituted (retrospectively) by Finance Act 2000 (c. 17), **s. 100(2)(5)**

**F1912** 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)**

**F1913** 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)**

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### Marginal Citations

- M342** Source—1985 Sch.9 5(1), 6(1)  
**M343** Source—1985 Sch.9 5(2)-(4)  
**M344** Source—1985 Sch.9 6(2)-(5)

## 407 Relationship between group relief and other relief.

- (1) <sup>M345</sup>Group relief for an accounting period shall be allowed as a deduction against the claimant company's total profits for the period—
- before reduction by any relief derived from a subsequent accounting period, but
  - <sup>M346</sup>as reduced by any other relief from tax (including relief in respect of charges on income under section 338(1) [<sup>F1914</sup>of 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 [<sup>F1915</sup>393A(1)] of this Act and [<sup>F1916</sup>section 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—
- <sup>M347</sup>relief under section [<sup>F1917</sup>393A(1)(b)] in respect of a loss incurred in an accounting period after the accounting period the profits of which are being computed; and
  - <sup>M348</sup>relief under [<sup>F1918</sup>section 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; [<sup>F1919</sup>and]
- <sup>F1920</sup>[<sup>F1921</sup>(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 deficit for a deficit period after the accounting period the profits of which are being computed.]]
- (3) <sup>M349</sup>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

- F1914**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)
- F1915**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)**
- F1916**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)
- F1917**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)**
- F1918**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)
- F1919**Word in s. 407(2) inserted (27.7.1993 ) by 1993 c. 34, s. 170, **Sch. 18 para.4**
- F1920**S. 407(2)(c) and words inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.4**

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**F1921** 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

**M345** Source—1970 s.260(1)

**M346** Source—1970 s.260(1), (2)

**M347** Source—1970 s.260(3)(a), (d)

**M348** Source—1970 s.260(3)(b)

**M349** Source—1970 s.260(4)

### 408 Corresponding accounting periods.

**F1922**  
 .....

#### Textual Amendments

**F1922** 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.

**F1923**  
 .....

#### Textual Amendments

**F1923** 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)

### 410 Arrangements for transfer of company to another group or consortium.

- (1) <sup>M350</sup>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

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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 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 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;

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“connected persons” shall be construed in accordance with section 839 [F1924but 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) <sup>M351</sup>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

**F1924** Words in s. 410(5) inserted (19.3.1997) by Finance Act 1997 (c. 16), s. 68

#### Modifications etc. (not altering text)

- C261** S. 410 restricted (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 17**
- C262** 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.**
- C263** S. 410 restricted (19.7.1995) by Crown Agents Act 1995 (c. 24) s. 7(2)
- C264** 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**
- C265** 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)
- C266** S. 410(1)(2) restricted (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 8(1)**
- C267** 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))
- C268** 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**
- C269** 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

- M350** Source—1973 s.29, 32(6); 1981 s.40(6)
- M351** Source—1981 s.47

## 411 Exclusion of double allowances.

- (1) <sup>M352</sup>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) <sup>F1925</sup> .....

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- (3) <sup>F1925</sup> .....
- (4) <sup>F1925</sup> .....
- (5) <sup>F1925</sup> .....
- (6) <sup>F1925</sup> .....
- (7) <sup>F1925</sup> .....
- (8) <sup>F1925</sup> .....
- (9) <sup>F1925</sup> .....
- (10) <sup>F1926</sup> . . . Any reference in [<sup>F1927</sup>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.

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**Textual Amendments**

- F1925**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)**
- F1926**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)
- F1927**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)

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**Modifications etc. (not altering text)**

- C270** 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**

- M352** Source—1970 s.263(1),(2)

VALID FROM 01/04/2009

<sup>F1928</sup>**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.]

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**Textual Amendments**

- F1928**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)

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#### Modifications etc. (not altering text)

**C271 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](#))

### [<sup>F1929</sup>**411** Group relief by way of substitution for loss relief.

<sup>F1930</sup> . . . . . ]

#### Textual Amendments

**F1929**S. 411A inserted (with effect in accordance with [s. 101\(2\)](#) of the amending Act) by [Finance Act 1990 \(c. 29\)](#), **s. 101(1)**

**F1930**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

### [<sup>F1931</sup>**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

**F1931**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**

## **413 Interpretation of Chapter IV.**

- (1) The following provisions of this section have effect for the interpretation of this Chapter.
- (2) <sup>M353</sup>In this Chapter—
  - “claimant company” has the meaning given by [section 402\(1\)](#);
  - [<sup>F1932</sup>“company” means any body corporate;]
  - “consortium claim” means a claim for group relief made by virtue of [section 402\(3\)](#);
  - [<sup>F1933</sup>“EEA territory”, in relation to any time, means a territory outside the United Kingdom which is within the European Economic Area at that time;]
  - “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\(1\)](#);
  - [<sup>F1934</sup>“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



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“surrendering company” has the meaning given by section 402(1).

- [<sup>F1935</sup>(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) <sup>M354</sup>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) <sup>F1936</sup>. . . 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;<sup>F1937</sup> . . .
  - (c) <sup>F1937</sup> . . . . .
- (6) <sup>M355</sup>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 [<sup>F1938</sup>403ZA(3)], 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) <sup>M356</sup>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

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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) <sup>F1939</sup> .....

(9) <sup>F1939</sup> .....

(10) Schedule 18 shall have effect for supplementing this section.

#### Textual Amendments

- F1932** 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))
- F1933** S. 413(2): definition of "EEA territory" inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), Sch. 1 para. 5(2)
- F1934** 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))
- F1935** 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
- F1936** Words in s. 413(5) repealed (with effect 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
- F1937** S. 413(5)(c) and preceding word repealed (with effect 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
- F1938** 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)
- F1939** S. 413(8)(9) repealed (retrospectively) by Finance Act 2000 (c. 17), s. 100(3)(b)(5), Sch. 40 Pt. 2(11), Note 2

#### Modifications etc. (not altering text)

- C272** S. 413(3) applied (with modifications) (6.4.2006) by The Pension Protection Fund (Tax) Regulations 2006 (S.I. 2006/575), regs. 1, 35
- C273** S. 413(3)(a) applied (6.4.2007) by The Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045), regs. 1, 5(5) (with Sch. 1); Gazette issue 58269 dated 9.3.2007
- C274** 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

- M353** Source—1970 s.258; 1985 Sch.9 1
- M354** Source—1970 s.258(5)-(7)
- M355** Source—1970 s.258(8); 1984 s.46(2); 1985 Sch.9 1(a)
- M356** Source—1973 s.28(2)-(5); 1981 s.40(5)

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## PART XI

### CLOSE COMPANIES

#### CHAPTER I

##### INTERPRETATIVE PROVISIONS

#### 414 Close companies.

- (1) <sup>M357</sup>For the purposes of the [<sup>F1940</sup>Corporation 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.

- <sup>F1941</sup>(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
  - (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.

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- (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) <sup>M358</sup>*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*<sup>F1942</sup>.
- (4) <sup>M359</sup>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) <sup>M360</sup>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;
  - (b) if it cannot be treated as a close company except by virtue of [<sup>F1943</sup>paragraph (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) <sup>M361</sup>If shares in any company (“the first company”) are held on trust for [<sup>F1944</sup>a registered pension scheme], 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

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- (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

**F1940** Words in s. 414(1) 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. 77](#) (with [Sch. 2](#))

**F1941** 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 assumption 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."

**F1942** Repealed by 1989 ss. 104(2) and 187 and Sch. 17 Part V from 1 April 1989

**F1943** 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”.

**F1944** Words in s. 414(7) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para 18](#) (with [Sch. 36](#))

#### Modifications etc. (not altering text)

**C275** 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))

**C276** 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\(4\)](#))

**C277** 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](#))

**C278** See 1979(C) s.155(1)—*definition applied for purposes of capital gains.*

#### Marginal Citations

**M357** Source—1970 s.282(1)

**M358** Source—1970 s.282(2); 1972 Sch.17 1

**M359** Source—1970 s.282(3)

**M360** 1970 s.282(4), (5); 1972 Sch.17 1

**M361** Source—1971 s.25(6)

### 415 Certain quoted companies not to be close companies.

- (1) <sup>M362</sup>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

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- (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 [<sup>F1945</sup>listed][<sup>F1946</sup>on] 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) <sup>M363</sup>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) <sup>M364</sup>if held on trust for [<sup>F1947</sup>a registered pension scheme,] or
  - (c) <sup>M365</sup>If they are not comprised in a principal member's holding.
- (5) <sup>M366</sup>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 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.

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### Textual Amendments

**F1945** 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)

**F1946** Word in s. 415(1)(b) substituted (19.7.2007) by Finance Act 2007 (c. 11), Sch. 26 para. 7(4)

**F1947** Words in s. 415(4)(b) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para 19 (with Sch. 36)

### Marginal Citations

**M362** Source—1970 s.283(1)-(3)

**M363** Source—1970 s.283(4)(a)

**M364** Source—1970 s.283(4)(bb); 1970(F) Sch.5 Part III 12(3)

**M365** Source—1970 s.283(4)(c)

**M366** Source—1970 s.283(5)-(8)

## 416 Meaning of “associated company” and “control”.

- (1) <sup>M367</sup>For the purposes of this Part, *except paragraphs 2 and 9(1)(a), (2)(a) and (3)(a) of Schedule 19* <sup>F1948</sup>, 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) <sup>M368</sup>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.
- (5) <sup>M369</sup>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



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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

**F1948** 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)

- C279** 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**)
- C280** 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)**
- C281** 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**
- C282** 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**
- C283** 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))
- C284** S. 416(2)-(6) applied (29.4.1996) by Finance Act 1996 (c. 8), **s. 87(6)** (with Schs. 10, 11)
- C285** 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)
- C286** 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**
- C287** 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)
- C288** 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**)
- C289** 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**)
- C290** 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)**
- C291** 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**
- C292** 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)**
- C293** 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)**)
- C294** 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)**
- C295** 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)**)

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**C296** 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](#)

**C297** 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](#))

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#### Marginal Citations

**M367** Source—1970 s.302(1); 1972 Sch.24 21

**M368** Source—1970 s.302(2)-(4); 1972 Sch.17 5

**M369** Source—1970 s.302(5), (6)

### 417 Meaning of “participator”, “associate”, “director” and “loan creditor”.

- (1) <sup>M370</sup>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) <sup>M371</sup> “associate” means, in relation to a participator—
- (a) any relative or partner of the participator;
  - (b) the <sup>F1949</sup> . . . trustees of any settlement in relation to which the participator is, or any relative of his (living or dead) is or was, a settlor <sup>F1950</sup> . . . ; 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 <sup>F1949</sup> . . . trustees of the settlement concerned or, as the case may be, the personal representatives of the deceased; and
    - (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) <sup>M372</sup>In subsection (3) above “relative” means [<sup>F1951</sup>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

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- (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)<sup>M373</sup> 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)<sup>M374</sup> 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)<sup>M375</sup> 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

- F1949** Words in s. 417(3)(b)(c)(i) repealed (6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 paras. 12\(b\), 27\(1\), Sch. 26 Pt. 3\(15\)](#), Note
- F1950** Words in s. 417(3)(b) repealed (6.4.2006) by [Finance Act 2006 \(c. 25\), Sch. 13 paras. 12\(a\), 27\(1\), Sch. 26 Pt. 3\(15\)](#), Note
- F1951** 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)

- C298** S. 417 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\(2\)](#) (with [Sch. 2 Pts. 1, 2, paras. 73-75](#))
- C299** *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*  
 “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.*
- C300** 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](#))

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- C301** S. 417(1) applied (with modifications) (with effect in accordance with Sch 15 paras. 97, 98 of the modifying Act) by Finance Act 2009 (c. 10), Sch. 15 para. 82(5)(6)
- C302** See s.360(4)(b) ante with regard to loans made before 14 November 1986.
- C303** 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.
- C304** Definition applied for purposes of 1988(F) s.131—penalties; and 1989 s.134—non-payment of tax by non-residents.
- C305** Definition applied for purposes of 1989 Sch.12 Pt.I—close companies: administrative provisions.

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#### Marginal Citations

- M370** Source—1970 s.303(1), (2)
- M371** Source—1970 s.303(3); 1970(F) Sch.5 Part III 12(4); 1987 s.37(1)
- M372** Source—1970 s.303(4)-(6)
- M373** Source—1970 s.303(7)
- M374** Source—1970 s.303(8); 1972 Sch.17 7
- M375** Source—1970 s.303(7)

#### *Additional matters to be treated as distributions*

#### **[418 “Distribution” to include certain expenses of close companies.**

- (1) <sup>M376</sup>Subject 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) <sup>M377</sup>Subject 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) <sup>M378</sup>for a person employed in [<sup>F1952</sup>employment [<sup>F1953</sup>to 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 [<sup>F1954</sup>Chapters 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) <sup>M379</sup>of living accommodation for any person if the accommodation is (within the meaning of [<sup>F1955</sup>Chapter 5 of Part 3 of ITEPA 2003]) provided by reason of his employment; or
  - (c) <sup>M380</sup>for the spouse [<sup>F1956</sup>or 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.

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- (4) <sup>M381</sup>The amount of the expense to be taken into account under subsection (2) above as a distribution shall be the same as would under [<sup>F1957</sup> Chapters 6 to 10 of Part 3 of ITEPA 2003] be the cash equivalent of the resultant benefit to the participator.
- (5) <sup>M382</sup>Subsection (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

**F1952** 1989 s.53(2)(f). *Previously*

“director's or higher-paid employment (within the meaning of section 167)”.

**F1953** 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](#))

**F1954** 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](#))

**F1955** 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](#))

**F1956** 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](#)

**F1957** 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](#))

#### Marginal Citations

**M376** Source—1970 s.284(1)

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- M377 Source—1970 s.284(2)
- M378 Source—1970 s.284(2)(a); 1976 Sch.9 15
- M379 Source—1970 s.284(2)(aa); 1980 s.51(4)
- M380 Source—1970 s.284(2)(b); 1976 Sch.9 15; 1977 s.35(4)
- M381 Source—1970 s.284(3); 1976 Sch.9 16
- M382 Source—1970 s.284(4)-(7)

## CHAPTER II

### CHARGES TO TAX IN CONNECTION WITH LOANS

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#### Modifications etc. (not altering text)

- C306 See 1989 s.107 and Sch.12—close companies: administrative provisions.

#### 419 Loans to participators etc.

- (1) <sup>M383</sup> Subject 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 [<sup>F1958</sup>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) <sup>M384</sup> For 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.
- [<sup>F1959</sup>(3) Tax due by virtue of this section in relation to any loan or advance shall be due and payable [<sup>F1960</sup>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) <sup>M385</sup> Where 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
- [<sup>F1961</sup>(a)] the loan or advance or any part of it is repaid to the company, [<sup>F1962</sup>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 <sup>F1963</sup> . . . .



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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 [<sup>F1964</sup>or the release or writing off occurs].

[<sup>F1965</sup>(4A) Where

- [<sup>F1966</sup>(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, [<sup>F1967</sup> 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 [<sup>F1968</sup>, 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 [<sup>F1968</sup>, release or writing off] occurred.]

[<sup>F1969</sup>(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) <sup>M386</sup>Where, 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 <sup>F1970</sup>

(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

**F1958** 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)**

**F1959** 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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- F1960** 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**
- F1961** 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)**
- F1962** 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)**
- F1963** 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**
- F1964** 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)**
- F1965** 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)**
- F1966** 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)**
- F1967** 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)**
- F1968** 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)**
- F1969** 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**
- F1970** 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

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**Modifications etc. (not altering text)**

**C307** See 1970(M) s.109—*application of s.419 to corporation tax enactments generally.*

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**Marginal Citations**

- M383** Source—1970 s.286(1); 1972 Sch.17 3(2); 1987 (No.2) s.90(3)  
**M384** Source—1970 s.286(2)  
**M385** Source—1970 s.286(5); 1972 Sch.17 3(4); 1986 s.43(2); 1976 s.44  
**M386** Source—1970 s.286(7)-(9)

**420 Exceptions from section 419.**

- (1) <sup>M387</sup>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) <sup>M388</sup>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*<sup>F1971</sup>; 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**

**F1971** 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**

**M387** Source—1970 s.286(2)  
**M388** 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 <sup>F1972</sup>advance made to the trustees of a <sup>F1973</sup>settlement] and after the <sup>F1973</sup>settlement] has ended] releases or writes off the whole or part of the debt in respect of it, then—
  - (a) for the purpose of computing <sup>F1974</sup>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 <sup>F1975</sup>the debtor] after deduction of income tax <sup>F1976</sup>at the <sup>F1977</sup><sup>F1978</sup>dividend] ordinary rate]] from a corresponding gross amount;
  - (b) no repayment of income tax shall be made in respect of that income and <sup>F1979</sup>the debtor shall not be liable to pay corporation tax at the dividend] ordinary rate on that income;
  - (c) <sup>F1980</sup> .....
  - (d) <sup>F1980</sup> .....
- (2) <sup>F1981</sup> .....
- (3) <sup>F1981</sup> .....
- (4) This section shall be construed as one with section 419.

**Textual Amendments**

**F1972** 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)  
**F1973** Words in s. 421(1) substituted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 13, **27(1)**  
**F1974** 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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- F1975** 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)
- F1976** 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)**
- F1977** 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)**
- F1978** 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)
- F1979** 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)
- F1980** 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)
- F1981** 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) <sup>M389</sup> 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).

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**Marginal Citations**  
 M389 Source—1970 s.287A 1976 s.44(2)

[<sup>F1982</sup>CHAPTER III

APPORTIONMENT OF UNDISTRIBUTED INCOME ETC.]

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**Textual Amendments**  
**F1982Pt. 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))

<sup>F1983</sup>**423 Apportionment of certain income, deductions and interest.**

.....

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**Textual Amendments**  
**F1983Pt. 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))

<sup>F1984</sup>**424 Exclusions from section 423.**

.....

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**Textual Amendments**  
**F1984Pt. 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))

<sup>F1985</sup>**425 Manner of apportionment.**

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**Textual Amendments**

**F1985**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))

**F1986 426 Charge to income tax where apportionment is to an individual.**

.....

**Textual Amendments**

**F1986**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))

**F1987 427 Reduction of charge under section 426 in certain cases.**

.....

**Textual Amendments**

**F1987**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))

**F1988 428 Increase of apportioned sum etc. by reference to ACT.**

.....

**Textual Amendments**

**F1988**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))

**F1989 429 Payment and collection of income tax.**

.....

**Textual Amendments**

**F1989**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))

**F1990 430 Consequences of apportionment: ACT.**

.....

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### Textual Amendments

**F1990** 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

##### *Insurance companies: general*

### Modifications etc. (not altering text)

**C308** 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.

<sup>F1991M390</sup>(1) This section has effect for the interpretation of the life assurance provisions of the Corporation Tax Acts.]

(2) <sup>M391</sup>Unless the context otherwise requires—

<sup>F1992</sup>.....  
<sup>F1993</sup>.....  
<sup>F1993</sup>.....  
<sup>F1994F1995</sup>.....  
<sup>F1996</sup>.....

<sup>F1997</sup>“basic life assurance and general annuity business” has the meaning given by section 431F;]

<sup>F1998</sup>“brought into account” has the meaning given by section 83A of the Finance Act 1989;]

<sup>F1999</sup>“child trust fund business” has the meaning given by section 431BA;]

“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;

<sup>F2000</sup>“contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and

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“contract of long-term insurance” means any contract which falls within Part II of Schedule 1 to that Order;]

[<sup>F2001</sup>“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;]

[<sup>F2002</sup>“foreign currency assets”, in relation to an insurance company and any time during a period of account, means assets, other than assets linked to gross roll-up business, which—

- (a) are at that time managed under the control of a person whose normal place of work is at a permanent establishment outside the United Kingdom at or through which the company carries on gross roll-up business; or
- (b) are denominated in a foreign currency and specified in a certificate given by a director of the company no later than three months after the end of the period of account as being all of the assets of the company's long-term insurance fund which are held at that time during the period of account to enable the company to meet liabilities of its gross roll-up business which are denominated in that currency;]

[<sup>F2003</sup><sup>F2004</sup> . . . . .]

[<sup>F2005</sup>“free assets amount”, 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,
- (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, and
- (c) the amount of the shareholders' excess assets within the meaning given by section 432A(8)(b));]

[<sup>F2006</sup>“General Prudential Sourcebook” means the General Prudential Sourcebook made by the Financial Services Authority under the Financial Services and Markets Act 2000 <sup>M392</sup>;]

[<sup>F2007</sup>“gross roll-up business” has the meaning given by section 431EA;]

[<sup>F2008</sup>“the I minus E basis” means the basis under which a company carrying on life assurance business is charged to tax on the relevant profits (within the meaning of section 88(3) of the Finance Act 1989) of that business otherwise than under Case I of Schedule D;]

[<sup>F2009</sup>“immediate needs annuities business” means business which consists of the effecting or carrying out of immediate needs annuities (within the meaning of section 725 of ITTOIA 2005);]

[<sup>F2010</sup>“individual savings account business” has the meaning given by section 431BB;]

[<sup>F2011</sup> . . . . .]

[<sup>F2012</sup>[<sup>F2013</sup>[<sup>F2014</sup>“insurance business transfer scheme” means—

- (a) 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, or
- (b) a scheme which would fall within that section but for subsection (1)(b) of that section;]

“insurance company” means—



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- (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,

[<sup>F2015</sup>but does not include an insurance special purpose vehicle;]]

[<sup>F2016</sup>“the Insurance Prudential Sourcebook” means the Prudential Sourcebook for Insurers made by the Financial Services Authority under the Financial Services and Markets Act 2000;

“insurance special purpose vehicle” means any undertaking which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issue or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the reinsurance obligations of the undertaking;]

[<sup>F2017F2018</sup>.....]

[<sup>F2019</sup>“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;]

[<sup>F2020F2021</sup>.....]

[<sup>F2022F2023</sup>.....]

[<sup>F2024</sup>“liabilities”, in relation to an insurance company, means—

- (a) the mathematical reserves of the company as determined in accordance with [<sup>F2025</sup>section 1.2 of the Insurance Prudential Sourcebook], and
- (b) liabilities of the company (whose value falls to be determined in accordance with [<sup>F2026</sup>section 1.3 of the General Prudential Sourcebook]) which arise from deposit back arrangements;

and for this purpose “deposit back arrangements” has the same meaning as in that Sourcebook;]]

[<sup>F2027</sup>“life assurance business” means business which—

- (a) consists of the effecting or carrying out of contracts of insurance which fall within paragraph I, II, III or VII(b) of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, or
- (b) is capital redemption business,

other than immediate needs annuities business;]

[<sup>F2028</sup>“the life assurance provisions of the Corporation Tax Acts” means—

- (a) the provisions of this Chapter so far as relating to life assurance business, companies carrying on such business and friendly societies, 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

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includes life assurance business or any category of business that includes life assurance business;]

[<sup>F2029</sup>“life reinsurance business” has the meaning given by section 431C;

[<sup>F2030</sup>[<sup>F2031</sup>“linked assets”, and related expressions, shall be construed in accordance with section 432ZA;]

[<sup>F2032</sup>“long-term business” means business which consists of the effecting or carrying out of contracts of long-term insurance;]

“[<sup>F2033</sup>long-term insurance fund]” means the fund maintained by an insurance company in respect of its [<sup>F2034</sup>long-term] business <sup>F2035</sup> . . . ;]

[<sup>F2036</sup><sup>F2037</sup> . . . . .]

[<sup>F2038</sup>“net value”, in relation to any assets, means the excess of the value of the assets over the 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 liabilities;]

[<sup>F2039</sup>“non-profit company”, in relation to a period of account, means a company carrying on long-term business where, at the end of the period—

- (a) none of the liabilities of that business, or
- (b) none but an insignificant proportion of those liabilities,

are with-profits liabilities;]

[<sup>F2040</sup>“non-profit fund” means a fund that is not a with-profits fund;]

<sup>F2041</sup> . . . . .

[<sup>F2042</sup><sup>F2043</sup> . . . . .]

<sup>F2044</sup> . . . . .

[<sup>F2045</sup>“overseas life assurance business” has the meaning given by section 431D;

<sup>F2046</sup> . . . . .]

“overseas life insurance company” means an insurance company [<sup>F2047</sup>not resident in] the United Kingdom but carrying on life assurance business through a branch or agency in the United Kingdom; <sup>F2048</sup> . . .

[<sup>F2049</sup>“pension business” has the meaning given by section 431B;

“periodical return”, in relation to an insurance company, means a return deposited with the [<sup>F2050</sup>Financial Services Authority under section 9.6 of the Prudential Sourcebook (Insurers)].

[<sup>F2051</sup>“period of account” means the period covered by a periodical return;]

[<sup>F2052</sup>“PHI business” means long-term business other than life assurance business (including the reinsurance of such long-term business);]

<sup>F2053</sup> . . . . .

[<sup>F2054</sup>“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;]

[<sup>F2055</sup>[<sup>F2056</sup>“reinsurance” includes retrocession;]]

[<sup>F2057</sup>“shareholders' excess assets” has the meaning given by section 432A(8)(b));]

[<sup>F2058</sup><sup>F2059</sup> . . . . .]

[<sup>F2060</sup>[<sup>F2061</sup>“value”, in relation to an asset of an insurance company, means the value of the asset as determined in accordance with [<sup>F2062</sup>section 1.3 of the General Prudential Sourcebook, as read with section 2.1 of the Insurance Prudential Sourcebook;]]

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[<sup>F2063</sup>“with-profits fund” has the meaning given by the Prudential Sourcebook (Insurers);]

“with-profits liabilities” means liabilities in respect of policies or contracts under which the policy holders or annuitants are eligible to participate in surplus;]

<sup>F2064</sup>(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,
- (b) opening values or net values of assets of the transferor, <sup>F2065</sup> . . .
- (c) the opening amount of the [<sup>F2066</sup>free assets amount] of the transferor, [<sup>F2067</sup> or
- (d) the opening amount of the [<sup>F2068</sup>shareholders'] excess assets of the transferor,]

for the period of account, so far as relating to the business transferred, are to the part of those liabilities, [<sup>F2069</sup>values or amounts] 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, <sup>F2070</sup> . . .
- (c) the closing amount of the [<sup>F2071</sup>free assets amount] of the transferee, [<sup>F2072</sup> or
- (d) the closing amount of the [<sup>F2073</sup>shareholders'] excess assets of the [<sup>F2074</sup>transferee],]

for the period of account, so far as relating to the business transferred, are to the part of those liabilities, [<sup>F2075</sup>values or amounts] 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.]

<sup>F2076</sup>(2ZF) [ In this Chapter “capital redemption business” means any business of a company carrying on insurance business in so far as it consists of the effecting on the basis of actuarial calculations, and the carrying out, of contracts 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.]

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[ The Treasury may by order amend the definition of “insurance business transfer  
F2077(2ZG) scheme” given by subsection (2) above where it is expedient to do so in consequence  
of any amendment of section 105 of the Financial Services and Markets Act 2000.

(2ZH) The power conferred by subsection (2ZG) above includes power to make incidental,  
supplementary, consequential or transitional provisions and savings (including  
provision amending any provision of the Corporation Tax Acts relating to insurance  
companies).]

F2078 [ F2079 ..... ]  
(2A)  
(3) F2079 .....  
(4) F2079 .....  
(5) F2079 .....  
(6) F2079 ..... ]]]

#### Textual Amendments

- F1991S.** 431(1) substituted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 11\(2\)](#)
- F1992S.** 431(2): definition of "annuity business" repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(3\)\(a\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))
- F1993S.** 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\(5\)](#)
- F1994S.** 431(2): definitions inserted by [Finance Act 1990 \(c. 29\)](#), [Sch. 6 para. 1\(2\)](#)
- F1995S.** 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
- F1996S.** 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
- F1997S.** 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](#)
- F1998S.** 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\(2\)](#)
- F1999S.** 431(2): definition of "child trust fund business" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(2\)](#) (with [Sch. 7 Pt. 2](#))
- F2000S.** 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\(2\)](#)
- F2001S.** 431(2): definition of "fair value" inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 10\(1\)](#)
- F2002S.** 431(2): definition of "foreign currency assets" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(2\)](#) (with [Sch. 7 Pt. 2](#))
- F2003S.** 431(2): definition of "foreign income dividends" inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 16 para. 4](#)
- F2004S.** 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

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- F2005S.** 431(2): definition of "free assets amount" inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 3\(2\)\(a\)](#)
- F2006S.** 431(2): definition of "General Prudential Sourcebook" inserted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 4\(2\)\(a\)](#)
- F2007S.** 431(2): definition of "gross roll-up business" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(2\)](#) (with [Sch. 7 Pt. 2](#))
- F2008S.** 431(2): definition of "the I minus E basis" inserted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 8 para. 3](#) (with [Sch. 8 Pt. 2](#))
- F2009S.** 431(2): definition of "immediate needs annuities business" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(2\)](#) (with [Sch. 7 Pt. 2](#))
- F2010S.** 431(2): definition of "individual savings account business" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(2\)](#) (with [Sch. 7 Pt. 2](#))
- F2011S.** 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\(26\)](#)
- F2012S.** 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\(1\)](#)
- F2013S.** 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\(3\)](#)
- F2014S.** 431(2): definition of "insurance business transfer scheme" substituted (with effect in accordance with [Sch. 9 para. 17\(1\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 1\(1\)](#)
- F2015S.** 431(2): words in definition of "insurance company" inserted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 4\(2\)\(b\)](#)
- F2016S.** 431(2): definitions of "the Insurance Prudential Sourcebook" and "insurance special purpose vehicle" inserted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 4\(2\)\(c\)](#)
- F2017S.** 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\(2\)](#)
- F2018S.** 431(2): definition of "the Integrated Prudential Sourcebook" omitted (31.12.2006 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 4\(2\)\(d\)](#)
- F2019S.** 431(2): definition of "internal linked fund" inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 9\(1\)](#)
- F2020S.** 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](#)
- F2021S.** 431(2): definition of "investment reserve" omitted (6.1.2006 with effect in accordance with art. 1 of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 3\(2\)\(b\)](#)
- F2022S.** 431(2): definitions inserted by [Finance Act 1990 \(c. 29\)](#), [Sch. 6 para. 1\(2\)](#)
- F2023S.** 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
- F2024S.** 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\(3\)](#)
- F2025S.** 431(2): words in para. (a) of definition of "liabilities" substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 4\(2\)\(e\)\(i\)](#)

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- F2026S.** 431(2): words in para. (b) of definition of "liabilities" substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 4\(2\)\(e\)\(ii\)](#)
- F2027S.** 431(2): definition of "life assurance business" substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(4\)](#) (with [Sch. 7 Pt. 2](#))
- F2028S.** 431(2): definition of "the life assurance provisions of the Corporation Tax Acts" inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 11\(3\)](#)
- F2029S.** 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](#)
- F2030S.** 431(2): definitions inserted by [Finance Act 1990 \(c. 29\)](#), [Sch. 6 para. 1\(2\)](#)
- F2031S.** 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\(1\)](#)
- F2032S.** 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\(5\)](#)
- F2033S.** 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\(1\)\(b\)](#)
- F2034S.** 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\(2\)\(a\)](#)
- F2035S.** 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\(26\)](#)
- F2036S.** 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\(6\)](#)
- F2037S.** 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
- F2038S.** 431(2): definition of "net value" inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 9\(1\)](#)
- F2039S.** 431(2): definition of "non-profit company" inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(1\)](#)
- F2040S.** 431(2): definition of "non-profit fund" inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(1\)](#)
- F2041S.** 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
- F2042S.** 431(2): definitions inserted by [Finance Act 1990 \(c. 29\)](#), [Sch. 6 para. 1\(2\)](#)
- F2043S.** 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\(26\)](#)
- F2044S.** 431(2): definition of "overseas life assurance 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
- F2045S.** 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](#)
- F2046S.** 431(2): definition of "overseas life assurance fund" repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(3\)\(b\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))
- F2047S.** 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\(1\)\(3\)\(4\)](#)



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- F2048S.** 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
- F2049S.** 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](#)
- F2050S.** 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\(7\)](#)
- F2051S.** 431(2): definition of "period of account" inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 29](#)
- F2052S.** 431(2): definition of "PHI business" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(2\)](#) (with Sch. 7 Pt. 2)
- F2053S.** 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
- F2054S.** 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\(8\)](#)
- F2055S.** 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](#)
- F2056S.** 431(2): definition of "reinsurance" substituted for definition of "reinsurance business" (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 6\(5\)](#) (with Sch. 7 Pt. 2)
- F2057S.** 431(2): definition of "shareholders' excess assets" inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 3\(2\)\(c\)](#)
- F2058S.** 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\(2\)\(3\)](#)
- F2059S.** 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
- F2060S.** 431(2): definitions inserted by [Finance Act 1990 \(c. 29\)](#), [Sch. 6 para. 1\(2\)](#)
- F2061S.** 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\(5\)](#)
- F2062S.** 431(2): words in definition of "value" substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\)](#), [4\(2\)\(f\)](#)
- F2063S.** 431(2): definition of "with-profits fund" inserted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(1\)](#)
- F2064S.** 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\(1\)](#)
- F2065**Word at the end of s. 431(2ZB)(b) omitted (6.1.2006 with effect in accordance with art. 1 of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 3\(3\)\(a\)](#)
- F2066**Words in s. 431(2ZB)(c) substituted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 3\(3\)\(b\)](#)
- F2067S.** 431(2ZB)(d) and preceding word inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 3\(3\)\(e\)](#)
- F2068**Word in s. 431(2ZB)(d) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), [art. 2](#)



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- F2069** Words in s. 431(2ZB) substituted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 3(3)(d)**
- F2070** Word at the end of s. 431(2ZC)(b) omitted (6.1.2006 with effect in accordance with art. 1 of the repealing S.I.) by virtue of The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 3(4)(a)**
- F2071** Words in s. 431(2ZC)(c) substituted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 3(4)(b)**
- F2072** S. 431(2ZC)(d) and preceding word inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 3(4)(c)**
- F2073** Word in s. 431(2ZC)(d) substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), **arts. 1(1), 4(3)(a)**
- F2074** Word in s. 431(2ZC)(d) substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), **arts. 1(1), 4(3)(b)**
- F2075** Words in s. 431(2ZC) substituted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 3(4)(d)**
- F2076** S. 431(2ZF) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 6(6)** (with Sch. 7 Pt. 2)
- F2077** S. 431(2ZG)(2ZH) inserted (with effect in accordance with Sch. 9 para. 17(1) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 1(3)**
- F2078** S. 431(2A) inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 1(3)**
- F2079** 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)

- C309** 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**)
- C310** 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**)
- C311** 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**)
- C312** 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**
- C313** S. 431(2) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1, 5, 7**
- C314** 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**
- C315** 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)**

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### Marginal Citations

- M390** Source—1970 s.323(1); 1973 s.40(7); 1982 s.58(7)  
**M391** Source—1970 s.323(2); 1970(F) Sch.5 Pt.III 11(4)  
**M392** 2000 c. 8

VALID FROM 21/07/2008

### <sup>F2080</sup> **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

- F2080S. 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\(2\)](#)

### <sup>F2081</sup> <sup>F2082</sup> **Amendment of Chapter etc**

- (1) The Treasury may by order amend any [<sup>F2083</sup> of the life assurance provisions of the Corporation Tax Acts] 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 <sup>F2084</sup> . . . ;
  - (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) <sup>F2085</sup> . . . . .

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- (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) <sup>F2086</sup>.....]]

**Textual Amendments**

- F2081S.** 431A inserted (1.1.1990) by Finance Act 1990 (c. 29), Sch. 6 paras. 2, **11(2)** (with Sch. 6 para. 12)
- F2082S.** 431A substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **Sch. 9 para. 3**
- F2083** Words in s. 431A(1) substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 12(2)**
- F2084** Words in s. 431A(3)(a) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 7, **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2085S.** 431A(5) repealed (19.7.2006) by Finance Act 2006 (c. 25), Sch. 11 para. 1(2)(a), **Sch. 26 Pt. 3(14)**
- F2086S.** 431A(7) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 12(3), **Sch. 27 Pt. 2(10)**, Note

[<sup>F2087</sup>**431A** **Relevant benefits for purposes of section 431(4)(d) and (e).**

<sup>F2088</sup>.....]

**Textual Amendments**

- F2087S.** 431AA inserted (with application in accordance with s. 143(5) of the amending Act) by Finance Act 1994 (c. 9), **s. 143(4)**
- F2088S.** 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

[<sup>F2089</sup>*Classes of life assurance business*]

**Textual Amendments**

- F2089Ss.** 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**

[<sup>F2090</sup>**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 entered into for the purposes of a registered pension scheme or is the reinsurance of such business.
- (2) Where a pension scheme ceases to be a registered pension scheme by virtue of the withdrawal of registration of the pension scheme under section 157 of the Finance Act 2004, any of the company’s life assurance business that was pension business when the pension scheme was a registered pension scheme is to be treated as ceasing to be pension business at the beginning of the period of account of the company in which the pension scheme so ceases to be a registered pension scheme.

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(3) Where—

- (a) immediately before 6th April 2006 an annuity contract falls within any of the descriptions of contracts specified in subsection (2) of this section as it had effect immediately before that date, but
- (b) on or after that date the contract does not fall to be regarded for the purposes of this section as having been entered into for the purposes of a registered pension scheme,

the contract is to be treated for the purposes of this section as having been entered into for such purposes.]

#### Textual Amendments

**F2090S. 431B** substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 20](#) (as amended by [Finance Act 2005 \(c. 5\)](#), [Sch. 9 para. 18\(2\)-\(4\)\(7\)](#)) ( with [Sch. 36](#))

#### [<sup>F2091</sup>**431B** 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

**F2091Ss. 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](#))

#### [<sup>F2091</sup>**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

**F2091Ss. 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](#))

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#### 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.
- (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)

- C316** 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**)
- C317** S. 431C(1) modified (6.4.1999) by [The Individual Savings Account \(Insurance Companies\) Regulations 1998 \(S.I. 1998/1871\)](#), **regs. 1, 5, 8**
- C318** 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”.

- [<sup>F2092</sup>(1) In this Chapter “overseas life assurance business” means so much of a company's relevant life assurance business as is with a policy holder or annuitant not residing in the United Kingdom (but not including the reinsurance of such business).
- (1A) In subsection (1) above “relevant life assurance business” means life assurance business other than—
- (a) pension business
  - (b) individual savings account business,
  - (c) child trust fund business, and
  - (d) business of any description prescribed by regulations made by the Commissioners for Her Majesty's Revenue and Customs.]

[<sup>F2093</sup>(2) Regulations under subsection [<sup>F2094</sup>(1A)] 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 [<sup>F2095</sup>or 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 [<sup>F2094</sup>(1A)] or (3) above may contain such supplementary, incidental, consequential or transitional provision as appears to the Board to be appropriate [<sup>F2096</sup>(including provision amending any enactment or any instrument made under an enactment)].]

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### Textual Amendments

- F2092**S. 431D(1)(1A) substituted for s. 431D(1) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 9(2)** (with Sch. 7 Pt. 2)
- F2093**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))
- F2094**Words in s. 431D(2)(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 9(3)** (with Sch. 7 Pt. 2)
- F2095**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)
- F2096**Words in s. 431D(4) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 9(4)** (with Sch. 7 Pt. 2)

### 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.

### [<sup>F2097</sup> 431E] 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

**F2097S.** 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 [<sup>F2098</sup>other than gross roll-up business].

#### Textual Amendments

**F2098** Words in s. 431F substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 11** (with Sch. 7 Pt. 2)

#### Modifications etc. (not altering text)

**C319** S. 431F modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1, 5, 9**

**C320** 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)**

*[<sup>F2099</sup><sup>F2100</sup>Basis of taxation etc]]*

#### Textual Amendments

**F2099** 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))

**F2100** 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)

### [<sup>F2101</sup>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—



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- (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
  - (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

**F2101** 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)

**C321** 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](#))

### [<sup>F2102</sup>~~C321~~ **431K** 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

**F2102** 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)**

**C322** 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](#))

[<sup>F2103</sup> **432** **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 [<sup>F2104</sup> (“the relevant amount”)] is shown in paragraph 4(12) of Appendix 9.4 to the periodical return for the company for [<sup>F2105</sup>a] period of account which ends on or after 31st December 2006 [<sup>F2106</sup> but before 1st January 2009 (a “relevant period of account”)].

[<sup>F2107</sup>(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—

- (a) X shall be added to the closing long term business provision of the company for the relevant period of account; and
- (b) XA shall be brought into account as a trading receipt of the company for each subsequent period of account until the total sum of the amounts so brought into account is equal to X (and if that total sum would otherwise exceed X, the excess shall be ignored).

(2A) In applying subsection (2)(b) above no account shall be taken of a period of account which is deemed to exist by virtue of section [<sup>F2108</sup>444AA(4)].

(2B) X is—

- (a) where the relevant period of account ends before 1st April 2007, the whole of the relevant amount;
- (b) where the relevant period of account ends on or after 1st April 2007 but before 1st January 2008, two-thirds of the relevant amount;
- (c) where the relevant period of account ends on or after 1st January 2008, one-third of the relevant amount.

(2C) XA is the amount found by applying the following formula—

$$\frac{Y}{12} \times Z$$

Here—

Y is the number of months of the period of account in question (part of a month being counted as a month); and

Z is—

- (a) where X is the whole of the relevant amount, one-third of X;
- (b) where X is two thirds of the relevant amount, one-half of X;
- (c) where X is one third of the relevant amount, the whole of X.]

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(3) <sup>F2109</sup> .....

(4) <sup>F2109</sup> .....

(5) In this section—

“long term business provision” has the same meaning as in Schedule 9A to the Companies Act 1985;

<sup>F2110</sup> .....

<sup>F2110</sup> .....

<sup>F2111</sup> [ This section is subject to sections 82E and 82F of the Finance Act 1989 (treatment of transferors and transferees under insurance business transfer schemes) and those sections shall apply in relation to this section as if any reference in them to a provision of section 82D of that Act (treatment of profits: life assurance – adjustment consequent on change in Insurance Prudential Sourcebook) were a reference to the corresponding provision of section 432YA. ]

#### Textual Amendments

**F2103S.** 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**

**F2104** Words in s. 432YA(1) substituted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), **arts. 1(1), 3(2)(a)**

**F2105** Word in s. 432YA(1) substituted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), **arts. 1(1), 3(2)(b)**

**F2106** Words in s. 432YA(1) inserted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), **arts. 1(1), 3(2)(c)**

**F2107S.** 432YA(2)-(2C) substituted for s. 432YA(2) (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), **arts. 1(1), 3(3)**

**F2108** Words in s. 432YA(2A) substituted (with effect in accordance with [Sch. 9 para. 17\(1\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 9 para. 3(3)(a)**

**F2109S.** 432YA(3)(4) omitted (17.4.2007 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), **arts. 1(1), 3(4)**

**F2110S.** 432YA(5): definitions of "non-profit company" and "non-profit fund" repealed (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 8\(2\)\(a\)](#), **Sch. 27 Pt. 2(10)**, Note

**F2111S.** 432YA(6) added (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), **arts. 1(1), 3(5)**

#### [<sup>F2112</sup> ~~432Z~~ **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 [<sup>F2113</sup> and in a case where only part of an asset is so identified, references to a linked asset are references to that part.]

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- (2) Linked assets shall be taken—
- (a) to be linked to [F2114]long-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 [F2114]long-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 [F2114]long-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 [F2115]the 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 [F2116]432E]—
- (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.

[F2117](6) In this section—

F2118

“linked liabilities” means liabilities in respect of benefits to be determined by reference to the value of linked assets.]

- (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 [F2119]PHI] business shall be disregarded for the purposes of this section unless the benefits to be provided which constitute [F2119]PHI] business are to be determined by reference to the value of assets.]

#### Textual Amendments

**F2112 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\(2\)](#))

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**F2113** Words in s. 432ZA(1) inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 4(2)**

**F2114** 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)**

**F2115** 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)**

**F2116** Words in s. 432ZA(5) substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 15(1)**

**F2117** 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)**

**F2118** S. 432ZA(6): definition of "internal linked fund" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 9(2)(a), Sch. 27 Pt. 2(10)**, Note

**F2119** Words in s. 432ZA(7) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 12** (with Sch. 7 Pt. 2)

**[<sup>F2120</sup>432A] Apportionment of income and gains.**

[<sup>F2121</sup>(1) This section has effect [<sup>F2122</sup>for 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 [<sup>F2123</sup>long-term insurance fund], or
  - (b) gains or losses accruing on the disposal of such assets,
- are referable to any category of business.

[<sup>F2124</sup>(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 [<sup>F2125</sup>is] 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 [<sup>F2126</sup>subsections (1) and (1A)] above are—

- [<sup>F2127</sup>(a) basic life assurance and general annuity business,
- (b) gross roll-up business, and
- (c) PHI business.]

(3) Income arising from, and gains or losses accruing on the disposal of, assets linked to any category of business [<sup>F2128</sup>is] referable to that category of business.]

(4) <sup>F2129</sup> .....

[ Income arising from, and gains or losses accruing on the disposal of, foreign currency <sup>F2130</sup>(4A) assets is referable to gross roll-up business.]

(5) There [<sup>F2131</sup>is] referable to any category of business <sup>F2132</sup>... the relevant fraction of any income, gains or losses not directly referable to [<sup>F2133</sup>any category] of business.

[<sup>F2134</sup>(6) For the purposes of subsection (5) above “the relevant fraction”, in relation to basic life assurance and general annuity business, is—

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$$\frac{A}{A + B + C}$$

where—

A is the aggregate of—

- (a) the mean of the opening and closing liabilities of the basic life assurance and general annuity business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business,
- (b) if there has been a relevant reattribution, the mean of the opening and closing amounts of the shareholders' excess assets, and
- (c) the mean of the appropriate parts (that is, the parts relating to that category) of the opening and closing amounts of the free assets amounts;

B is the aggregate of—

- (a) the mean of the opening and closing liabilities of the gross roll-up business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business, and
- (b) the mean of the appropriate parts (that is, the parts relating to that category) of the opening and closing amounts of the free assets amounts; and

C is the aggregate of—

- (a) the mean of the opening and closing liabilities of the PHI business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets directly referable to that category of business, and
- (b) the mean of the appropriate parts (that is, the parts relating to that category) of the opening and closing amounts of the free assets amounts.

- (6A) For the purposes of subsection (5) above “the relevant fraction”, in relation to gross roll-up business, is—

$$\frac{B}{A + B + C}$$

where A, B and C have the same meaning as in subsection (6) above.

- (6B) For the purposes of subsection (5) above “the relevant fraction”, in relation to PHI business, is—

$$\frac{C}{A + B + C}$$

where A, B and C have the same meaning as in subsection (6) above.

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(6C) But if the denominator found in accordance with subsection (6), (6A) or (6B) above is nil, the relevant fraction for the purposes of subsection (5) above in relation to the category of business in question is such fraction as is just and reasonable.]

[<sup>F2135</sup>(7) For the purposes of subsections [<sup>F2136</sup>(5), (6) [<sup>F2137</sup>, (6A) and (6B)]] 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 [<sup>F2138</sup>(4A)] above,  
<sup>F2139</sup> . . .
- (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) [<sup>F2140</sup>or (4A)] above, [<sup>F2141</sup> and
- (c) amounts are directly referable to basic life assurance and general annuity business if they fall within any of the following provisions—
  - (i) sections <sup>F2142</sup>. . . 441B and 442A,
  - (ii) section [<sup>F2143</sup>85(2C) or 85A] of the Finance Act 1989.]]

[<sup>F2144</sup>(8) In [<sup>F2145</sup>subsection (6)] above—

- (a) “appropriate part”, in relation to the free assets amount, means—
  - (i) where none (or none but an insignificant proportion) of the liabilities of the long-term business are with-profits liabilities, the part of that amount which bears to the whole the proportion A/B where—
 

A is the amount of the liabilities of the category of business in question [<sup>F2146</sup>(but taking that amount to be nil if it would otherwise be below nil)];

B is the whole amount of the liabilities of the long-term business; and
  - (ii) in any other case the part of the free assets amount 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 long-term business; and
- (b) the amount of the shareholders' excess assets in relation to any period of account of the company is the amount equal to SXA — L27 where—
  - (i) SXA is the aggregate amount of the assets shown in its non-participating funds which are attributed to its shareholders as a result of a relevant reattribution; and
  - (ii) L27 is the amount (if any) shown in line 27 of Form 19 in its periodical return for the relevant period of account.

[<sup>F2147</sup>This is subject to subsection (8ZA) below.]

[<sup>F2148</sup>(8ZA) If for the purposes of subsection (8)(a) above either B or D is nil then, in [<sup>F2149</sup>paragraph (c) of the definition of A and paragraph (b) of the definitions of B and C in subsection (6)] above, “appropriate part”, in relation to the free assets amount, means the part of that amount which bears to the whole such proportion as is just and reasonable.]

(8A) In this section—



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“non-participating funds” means accounts which relate exclusively to policies or contracts under which the policy holders or annuitants are not eligible to participate in surplus;

“retribution” in relation to an insurance company which has an inherited estate, means the attribution of assets to shareholders' interests as a result of—

- (a) an agreement between the company and the relevant regulator as to the amount of that estate and its attribution between shareholders and policy holders; or
- (b) a decision of the company to specify and identify an amount of assets (otherwise than in connection with a transfer to the company's long-term insurance fund) as attributable only to shareholders' interests;

a retribution is “relevant” if it arises as a result of any of the following—

- (a) a transfer of business under—
  - (i) section 49 of, or Schedule 2C to, the Insurance Companies Act 1982;
  - (ii) an insurance business transfer scheme (within the meaning of section 431(2));
- (b) a scheme of arrangement under section 425 of the Companies Act 1985;
- (c) an order under section 68 of the Insurance Companies Act 1982;
- (d) a waiver under section 148 of the Financial Services and Markets Act 2000;
- (e) an amendment to the company's memorandum, articles of association or other instrument regulating the company.

(8B) In subsection (8A) above—

“inherited estate” has the same meaning as it has in the [<sup>F2150</sup>Insurance Prudential Sourcebook]; and

“relevant regulator” means the Financial Services Authority, the Treasury or the Secretary of State.]

- (9) <sup>F2151</sup> .....
- [ <sup>F2153</sup> .....
- <sup>F2152</sup>(9A) .....
- (9B) <sup>F2154</sup> ..... ]
- <sup>F2155</sup>(10) ..... ]

#### Textual Amendments

**F2120**Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**

**F2121**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)**

**F2122**Words in s. 432A(1) substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 8(2)**

**F2123**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)**

**F2124**S. 432A(1A) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 8(3)**

**F2125**Word in s. 432A(1A) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 13(2)** (with Sch. 7 Pt. 2)

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- F2126** Words in s. 432A(2) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 8\(4\)](#)
- F2127** S. 432A(2)(a)-(c) substituted for s. 432A(2)(a)-(f) (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(3\)](#) (with [Sch. 7 Pt. 2](#))
- F2128** Word in s. 432A(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(4\)](#) (with [Sch. 7 Pt. 2](#))
- F2129** S. 432A(4) repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(5\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))
- F2130** S. 432A(4A) inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(6\)](#) (with [Sch. 7 Pt. 2](#))
- F2131** Word in s. 432A(5) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(7\)\(a\)](#) (with [Sch. 7 Pt. 2](#))
- F2132** Words in s. 432A(5) repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(7\)\(b\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))
- F2133** 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\(2\)](#))
- F2134** S. 432A(6)-(6C) substituted for s. 432A(6)-(6AA) (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(8\)](#) (with [Sch. 7 Pt. 2](#))
- F2135** 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\(2\)](#))
- F2136** Words in s. 432A(7) substituted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 5\(4\)\(a\)](#)
- F2137** Words in s. 432A(7) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(9\)\(a\)](#) (with [Sch. 7 Pt. 2](#))
- F2138** Words in s. 432A(7)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(9\)\(b\)](#) (with [Sch. 7 Pt. 2](#))
- F2139** Word at the end of s. 432A(7)(a) omitted (6.1.2006 with effect in accordance with art. 1 of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 5\(4\)\(b\)](#)
- F2140** Words in s. 432A(7)(b) inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(9\)\(c\)](#) (with [Sch. 7 Pt. 2](#))
- F2141** S. 432A(7)(c) and preceding word inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 5\(4\)\(c\)](#)
- F2142** Words in s. 432A(7)(c)(i) repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(9\)\(d\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))
- F2143** Words in s. 432A(7)(c)(ii) substituted (with effect in accordance with s. 39(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 8 para. 5](#) (with [Sch. 8 Pt. 2](#))
- F2144** S. 432A(8)-(8B) substituted for s. 432A(8) (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2005 \(S.I. 2005/3465\)](#), [art. 5\(5\)](#)
- F2145** Words in s. 432A(8) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 13\(10\)](#) (with [Sch. 7 Pt. 2](#))
- F2146** Words in s. 432A(8)(a)(i) inserted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), [arts. 1\(1\)](#), 4(5)(a)
- F2147** Words in s. 432A(8) inserted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), [arts. 1\(1\)](#), 4(5)(b)
- F2148** S. 432A(8ZA) inserted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2007 \(S.I. 2007/1031\)](#), [arts. 1\(1\)](#), 4(6)

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- F2149** Words in s. 432A(8ZA) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 13(11)** (with Sch. 7 Pt. 2)
- F2150** Words in s. 432A(8B) substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), **arts. 1(1), 5**
- F2151** S. 432A(9) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 13(12), Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2152** 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)**
- F2153** S. 432A(9A) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 9(2)(b), Sch. 27 Pt. 2(10)**, Note
- F2154** 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)**
- F2155** 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)

- C323** S. 432A modified (3.5.1994) by Finance Act 1994, (c. 9), s. 169, Sch. 18 para 1(4)
- C324** 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**)
- C325** 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)
- C326** S. 432A applied (19.3.1997) by Finance Act 1997 (c. 16), **Sch. 12 para 19**
- C327** 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), **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**)
- C328** 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)**)
- C329** 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)**
- C330** 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**)
- C331** S. 432A excluded by Finance Act 1989 (c. 26), **s. 83XA(14)** (as inserted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 2(1)**)
- C332** 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**
- C333** S. 432A(2) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1, 5, 10**
- C334** 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)**

#### **[F2156] 432A 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.

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- (2) The exploitation of land held as an asset of the company's [<sup>F2157</sup>long-term insurance fund] is treated as a separate business from the exploitation of land not so held.
- (3) <sup>F2158</sup> . . . . .
- (4) The exploitation of land held as an asset linked to any of the following categories of business is regarded as a separate business—
  - [<sup>F2159</sup>(a) basic life assurance and general annuity business;
  - (b) gross roll-up business; and
  - (c) PHI business.]
- (5) Accordingly, the exploitation of land held as an asset of the company's [<sup>F2157</sup>long-term insurance fund] otherwise than as mentioned in subsection <sup>F2160</sup> . . . (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

- F2156** 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)
- F2157** 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)**
- F2158** S. 432AA(3) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 14(2), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2159** S. 432AA(4)(a)-(c) substituted for s. 432AA(4)(a)-(d) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 14(3)** (with Sch. 7 Pt. 2)
- F2160** Words in s. 432AA(5) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 14(4), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

#### Modifications etc. (not altering text)

- C335** 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**)
- C336** 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**)
- C337** S. 432AA(4) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1, 5, 11**
- C338** 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)**

#### [<sup>F2156</sup>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.

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[<sup>F2161</sup>(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) <sup>F2162</sup> . . . . . ]

#### Textual Amendments

**F2156**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)

**F2161**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)

**F2162**S. 432AB(6) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 15, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

#### Modifications etc. (not altering text)

**C339** 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)

**C340** 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

[<sup>F2163</sup>**432B** Apportionment of receipts brought into account.

(1) This section and [<sup>F2164</sup>sections 432C to [<sup>F2165</sup>432G]] have effect where it is necessary in accordance with section 83 of the Finance Act 1989 to determine what parts of any items [<sup>F2166</sup>brought into account, within the meaning of that section.] are referable to life assurance business or [<sup>F2167</sup>gross roll-up business].

[<sup>F2168</sup>(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 [<sup>F2169</sup>432G] apply separately in relation to each account.]

(3) [<sup>F2170</sup>Section 432C applies] 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 [<sup>F2171</sup>sections 432E and 432F apply] where the relevant business relates wholly or partly to other policies or contracts [<sup>F2172</sup>(and section 432G applies in either case)]. ]

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- [<sup>F2173</sup>(4) The following provisions of this section have effect where [<sup>F2174</sup>section 432C]—
- (a) [<sup>F2175</sup>applies] in relation to any account for a fund in which shareholders' excess assets are held, <sup>F2176</sup> . . .
  - (b) <sup>F2176</sup> . . . . .
- (5) The part of the amount brought into account as income which is referable in accordance with section 432C to [<sup>F2177</sup>gross roll-up business] is reduced by <sup>F2178</sup> . . . the shareholders' excess income.
- (6) The part of the amount brought into account as the increase or decrease in the value of assets or as other income which is referable in accordance with section [<sup>F2179</sup>432C to gross roll-up business] is reduced or increased as follows.
- (7) The part of that amount is—
- (a) reduced by <sup>F2180</sup> . . . the shareholders' excess gains, or
  - (b) increased by <sup>F2180</sup> . . . the shareholders' excess losses, as the case may be.
- [<sup>F2181</sup>(8) But if, in relation to the fund in question, an election in accordance with Rule 9.10(c) of the Prudential Sourcebook (Insurers) has effect for the period of account, the following rules apply.
- (8A) In any case where there are adjusted shareholders' excess gains (“amount A”) and an adjusted increase in value of inherited estate assets (“amount B”), the part of the amount mentioned in subsection (6) (“the relevant amount”) is reduced by <sup>F2182</sup> . . . the lower of amounts A and B.
  - (8B) The difference between amounts A and B is carried forward to the next period of account—
    - (a) as shareholders' excess gains (if amount A is the greater amount), or
    - (b) as an increase in value of inherited estate assets (if amount B is the greater amount).
  - (8C) In any case where there are adjusted shareholders' excess losses (“amount C”) and an adjusted decrease in value of inherited estate assets (“amount D”), the relevant amount is increased by <sup>F2183</sup> . . . the lower of amounts C and D.
  - (8D) The difference between amounts C and D is carried forward to the next period of account—
    - (a) as shareholders' excess losses (if amount C is the greater amount), or
    - (b) as a decrease in value of inherited estate assets (if amount D is the greater amount).
  - (8E) In any other case—
    - (a) the relevant amount is neither reduced nor increased, and
    - (b) the adjusted shareholders' excess gains or losses, and the adjusted increase or decrease in value of inherited estate assets, are carried forward to the next period of account as shareholders' excess gains or losses and an increase or decrease in value of inherited estate assets (as the case may be).
  - (8F) For the purposes of subsections (8A) to (8E), in relation to any period of account (“the relevant period”), the adjusted shareholders' excess gains or losses, and the adjusted increase or decrease in value of inherited estate assets, are determined as follows.



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### Step 1

Find the amount of shareholders' excess gains or losses, and the amount of the increase or decrease in value of inherited estate assets, for the relevant period.

### Step 2

Find the amount (if any) of shareholders' excess gains or losses, and the amount (if any) of the increase or decrease in value of inherited estate assets, carried forward to the relevant period (without being taken into account for the purposes of step 3 or 4 in any previous period of account).

### Step 3

This step applies if, for the relevant period, there are shareholders' excess gains or an increase in value of inherited estate assets.

In such a case—

- (a) increase that amount by the amount of any such gains or (as the case may be) of any such increase in value so carried forward to the relevant period, or
- (b) reduce that amount (but not below nil) by the amount of any shareholders' excess losses or (as the case may be) of any decrease in value of inherited estate assets so carried forward to the relevant period.

The resulting amount is the adjusted shareholders' excess gains or (as the case may be) the adjusted increase in value of inherited estate assets for the relevant period.

### Step 4

This step applies if, for the relevant period, there are shareholders' excess losses or a decrease in value of inherited estate assets.

In such a case—

- (a) increase that amount by the amount of any such losses or (as the case may be) of any such decrease in value so carried forward to the relevant period, or
- (b) reduce that amount (but not above nil) by the amount of any shareholders' excess gains or (as the case may be) of any increase in value of inherited estate assets so carried forward to the relevant period.

The resulting amount is the adjusted shareholders' excess losses or (as the case may be) the adjusted decrease in value of inherited estate assets for the relevant period.

(8G) For the purposes of subsections (8A) to (8F), in relation to any company and any period of account,—

“decrease in value of inherited estate assets” means so much of the amount of the decrease in value of assets brought into account in line 13 of Form 40 in the periodical return of the company for that period as relates to shareholders' excess assets;

“increase in value of inherited estate assets” means so much of the amount of the increase in value of assets brought into account in line 13 of Form 40 in the periodical return of the company for that period as relates to shareholders' excess assets.]

(9) For the purposes of this section—



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F2184 .....

F2185 .....

“shareholders' excess gains” means the amount by which—

- (a) [F2186] the aggregate amount of investment gains and amounts chargeable under Case VI of Schedule D by virtue of section 85(2C)(c) of the Finance Act 1989 for the accounting periods comprised in the period of account exceeds]
- (b) [F2187] the aggregate amount that would be found under paragraph (a)] if section 432A(6) were amended in accordance with subsection (10) below;

“shareholders' excess income” means the amount by which—

- (a) the investment income referable to basic life assurance and general annuity business in accordance with section 432A for the [F2188] accounting periods comprised in the] period of account exceeds
- (b) the amount that would be so referable if section 432A(6) were amended in accordance with subsection (10) below;

“shareholders' excess losses” means the amount by which—

- (a) [F2189] investment losses for the accounting periods comprised in the period of account exceeds]
- (b) the amount that would be [F2190] found under paragraph (a)] if section 432A(6) were amended in accordance with subsection (10) below.

(10) For the purposes of the definitions of “shareholders' excess gains”, “shareholders' excess income” and “shareholders' excess losses”, the amendments of section 432A(6) mentioned in those definitions are—

- (a) in [F2191] the definition of A, in paragraph (b)] the insertion after “the mean of” of “the appropriate parts of”;
- (b) in [F2191] the definition of A, in paragraph (b)] the insertion after “assets” of—

“(and for this purpose the definition of “appropriate part” in subsection (8) (a) below applies in relation to the shareholders' excess assets as it applies in relation to the free assets amount”); and

[F2192] (c) the substitution for the definitions of B and C of—

“B is the amount that would be given by A if A applied in relation to gross roll-up business; and

C is the amount that would be given by A if A applied in relation to PHI business.”.]

(11) For the purposes of subsection (9)—

- (a) the amount of a company's investment gains is the greater of LG [F2193+ OIG] + NTC - NTD and nil where—

[F2194] (i) LG is the amount of BLAGAB chargeable gains accruing from disposals of assets of the company's long-term insurance fund in each accounting period comprised in the period of account after deducting the aggregate of BLAGAB allowable losses so accruing in the accounting period and in any accounting period to which section 8(1) (b) of the Taxation of Chargeable Gains Act 1992 (company's total profits to include chargeable gains) applies];

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- [ OIG is the amount of offshore income gains accruing in each such
- <sup>F2195</sup>(ia) accounting period and charged to corporation tax under Case VI of Schedule D by virtue of section 761(1)(b)(ii);]
- (ii) NTC is the amount of non-trading credits for the period [<sup>F2196</sup>of account] which arise to the company from increases in the fair value of the company's loan relationships or from related transactions; and
- (iii) NTD is the amount of non-trading debits [<sup>F2197</sup>for the period of account] which arise to the company from decreases in the fair value of the company's loan relationships or from related transactions;
- (b) “investment income” means the aggregate of—
- (i) the non-trading credits for the period [<sup>F2198</sup>of account] which do not arise to the company from increases in the fair value of the company's loan relationships or from related transactions;
- [ annuities or other annual payments in each accounting period
- <sup>F2199</sup>(ia) comprised in the period of account that are chargeable under Case III of Schedule D by virtue of paragraph (b) of that Case;]
- (ii) income [<sup>F2200</sup>for each such accounting period] falling with Schedule A; and
- (iii) income [<sup>F2201</sup>for each such accounting period] falling within Case V of Schedule D; and
- (c) the amount of a company's investment losses is the greater [<sup>F2202</sup>of
- LA + NTD – OIG – NTC (where there is an amount LA in the period of account)
- or
- NTD – NTC – LG – OIG (where there is an amount LG in the period of account)]
- and nil where—
- [<sup>F2203</sup>(i) LA is the amount of the company's BLAGAB allowable losses accruing from disposals of assets of the company's long-term insurance fund in each accounting period comprised in the period of account after deducting BLAGAB chargeable gains so accruing; and]
- (ii) [<sup>F2204</sup>LG, OIG,] NTC and NTD have the same meanings as they have in relation to a company's investment gains.

[ In subsection (11)—

<sup>F2205</sup>(12)

“BLAGAB allowable losses” means allowable losses referable in accordance with section 432A to the company's basic life assurance and general annuity business;

“BLAGAB chargeable gains” means chargeable gains referable in accordance with section 432A to the company's basic life assurance and general annuity business;

“related transaction” has the meaning given by section 84(5) of the Finance Act 1996.]]

#### Textual Amendments

**F2163**Ss. 432A-432E inserted by Finance Act 1990 (c. 29), Sch. 6 para. 4

**F2164**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))

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- F2165** Words in s. 432B(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(2)(a)** (with Sch. 7 Pt. 2)
- F2166** 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))
- F2167** Words in s. 432B(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(2)(b)** (with Sch. 7 Pt. 2)
- F2168** 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))
- F2169** Words in s. 432B(2) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(3)** (with Sch. 7 Pt. 2)
- F2170** Words in s. 432B(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(4)(a)** (with Sch. 7 Pt. 2)
- F2171** 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))
- F2172** Words in s. 432B(3) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(4)(b)** (with Sch. 7 Pt. 2)
- F2173** S. 432B(4)-(11) inserted (6.1.2006 with effect in accordance with art. 1 of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2005 (S.I. 2005/3465), **art. 6(2)**
- F2174** Words in s. 432B(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(5)(a)** (with Sch. 7 Pt. 2)
- F2175** Word in s. 432B(4)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(5)(b)** (with Sch. 7 Pt. 2)
- F2176** S. 432B(4)(b) and preceding word repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(5)(c), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2177** Words in s. 432B(5) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(6)(a)** (with Sch. 7 Pt. 2)
- F2178** Words in s. 432B(5) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(6)(b), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2179** Words in s. 432B(6) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 16(7)** (with Sch. 7 Pt. 2)
- F2180** Words in s. 432B(7) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(8), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2181** S. 432B(8)-(8G) substituted for s. 432B(8) (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2006 (S.I. 2006/1358), **arts. 1(1), 3(2)**
- F2182** Words in s. 432B(8A) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(9), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2183** Words in s. 432B(8C) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(10), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2184** S. 432B(9): definition of "the relevant fraction" repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(11)(a), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2185** S. 432B(9): definition of "the section 83 net amount" repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 16(11)(b), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2186** S. 432B(9): para. (a) of definition of "shareholders' excess gains" substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2006 (S.I. 2006/1358), **arts. 1(1), 3(3)(c)(i)**
- F2187** S. 432B(9): words in para. (b) of definition of "shareholders' excess gains" substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2006 (S.I. 2006/1358), **arts. 1(1), 3(3)(c)(ii)**

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- F2188S.** 432B(9): words in para. (a) of definition of "shareholders' excess income" inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(3)(d)**
- F2189S.** 432B(9): para. (a) of definition of "shareholders' excess losses" substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(3)(e)(i)**
- F2190S.** 432B(9): words in para. (b) of definition of "shareholders' excess losses" substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(3)(e)(ii)**
- F2191** Words in s. 432B(10)(a)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 16(12)(a)** (with [Sch. 7 Pt. 2](#))
- F2192S.** 432B(10)(c) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 16(12)(b)** (with [Sch. 7 Pt. 2](#))
- F2193** Words in s. 432B(11)(a) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(a)(i)**
- F2194S.** 432B(11)(a)(i) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(a)(ii)**
- F2195S.** 432B(11)(a)(ia) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(a)(iii)**
- F2196** Words in s. 432B(11)(a)(ii) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(a)(iv)**
- F2197** Words in s. 432B(11)(a)(iii) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(a)(v)**
- F2198** Words in s. 432B(11)(b)(i) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(b)(i)**
- F2199S.** 432B(11)(b)(ia) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(b)(ii)**
- F2200** Words in s. 432B(11)(b)(ii) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(b)(iii)**
- F2201** Words in s. 432B(11)(b)(iii) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(b)(iv)**
- F2202** Words in s. 432B(11)(c) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(c)(i)**
- F2203S.** 432B(11)(c)(i) substituted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(c)(ii)**
- F2204** Words in s. 432B(11)(c)(ii) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(4)(c)(iii)**
- F2205S.** 432B(12) inserted (9.6.2006 with effect in accordance with art. 1(2)(3) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Amendment\) Order 2006 \(S.I. 2006/1358\)](#), **arts. 1(1), 3(5)**

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**Modifications etc. (not altering text)**

- C341** 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**)
- C342** 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**
- C343** 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)**
- C344** S. 432B modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), **reg. 9A** (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), 10** (and that modifying reg. 10 is omitted (12.8.2008 with effect in accordance with reg. 1(2) of the revoking S.I.) by virtue of S.I. 2008/1937, **regs. 1(1), 7**))

<sup>F2206</sup>**Section 432B apportionment: non-participating funds**

- (1) This section specifies the extent to which the net amount is referable to life assurance business or to gross roll-up business.
- (2) In this section “the net amount” means the aggregate of the amounts brought into account—
  - (a) as investment income,
  - (b) as an increase in the value of assets, or
  - (c) as other income,
 less the aggregate of the amounts brought into account as a decrease in the value of assets.
- (3) To the extent that the net amount is attributable to—
  - (a) assets linked to life assurance business, or
  - (b) foreign currency assets,
 it is referable to life assurance business.
- (4) There is also referable to life assurance business the appropriate fraction of so much of the net amount as is not attributable to linked assets or foreign currency assets.
- (5) For the purposes of subsection (4) above “the appropriate fraction” is—

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

where—

A is the mean of the opening and closing liabilities of the relevant business so far as referable to life assurance business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the aggregate of the mean of the opening and closing net values of assets linked to the relevant business so far as so referable and foreign currency assets; and

B is the mean of the opening and closing liabilities of the relevant business so far as referable to PHI business, reduced (but not below nil) by the mean of the opening and closing net values of any assets linked to PHI business.

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- (6) But if the denominator found in accordance with subsection (5) above is nil, the appropriate fraction for the purposes of subsection (4) above is such fraction as is just and reasonable.
- (7) To the extent that the net amount is attributable to—
- (a) assets linked to gross roll-up business, or
  - (b) foreign currency assets,
- it is referable to gross roll-up business.
- (8) There is also referable to gross roll-up business the relevant fraction of so much of the net amount as is not attributable to linked assets or foreign currency assets.
- (9) For the purposes of subsection (8) above “the relevant fraction” is—

$$\frac{C}{C + D}$$

where—

C is the mean of the opening and closing liabilities of the relevant business so far as referable to gross roll-up business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the aggregate of the mean of the opening and closing net values of any assets linked to gross roll-up business and foreign currency assets; and

D is the mean of the opening and closing liabilities of the relevant business so far as referable to basic life assurance and general annuity business or PHI business (but taking that mean to be nil if it would otherwise be below nil), reduced (but not below nil) by the mean of the opening and closing net values of any assets linked to either of those categories of business.

- (10) But if the denominator found in accordance with subsection (9) above is nil, the relevant fraction for the purposes of subsection (8) above is such fraction as is just and reasonable.
- (11) For the purposes of this section, so much of the net amount—
- (a) as is brought into account as other income in an internal linked fund of the company, and
  - (b) as is not attributable to assets of that fund,
- is to be treated as linked to a category of business to the same extent as income attributable to an asset of the fund would, by virtue of section 432ZA, be referable to that category of business.]

#### Textual Amendments

**F2206S.** 432C substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 17 (with Sch. 7 Pt. 2)



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VALID FROM 08/04/2010

**[<sup>F2207</sup> 432C] 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 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.



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- (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

**F2207S.** 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

#### **F2208** 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—
- 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,
  - 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

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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—
  - (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

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(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

**F2208S. 432CB** inserted (with effect in accordance with s. 9(2) of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [s. 9\(1\)](#)

#### [<sup>F2209</sup>**Section 432B apportionment: value of non-participating funds.**

<sup>F2210</sup> .....

#### Textual Amendments

**F2209Ss. 432A-432E** inserted by [Finance Act 1990 \(c. 29\)](#), [Sch. 6 para. 4](#)

**F2210S. 432D** repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 18](#), [Sch. 27 Pt. 2\(7\)](#), Note (with Sch. 7 Pt. 2)

#### [<sup>F2211</sup>**Section 432B apportionment: participating funds.**

[<sup>F2212</sup>(1) The part of the net amount which is referable to life assurance business or to gross roll-up business is—

- (a) the amount determined in accordance with subsections (2) and (2A) below, or
- (b) if greater, the amount determined in accordance with subsection (3) below.

(1A) In this section “the net amount” means the aggregate of the amounts brought into account—

- (a) as investment income,
- (b) as an increase in the value of assets, or
- (c) as other income,

less the aggregate of the amounts brought into account as a decrease in the value of assets.]

(2) For the purposes of subsection (1) above there shall be determined the amount which is such as to secure—

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- (a) <sup>F2213</sup> .....
- (b) <sup>F2214</sup> . . . 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 life assurance business or of gross roll-up business]; and  
 CS is so much of the surplus of the relevant business as would remain if the relevant business were confined to [<sup>F2215</sup>life assurance business or to gross roll-up business].

- (2A) In a case where [<sup>F2216</sup>an amount or amounts are] taken into account under subsection (2) of section 83 of the Finance Act 1989 by virtue of subsection (2B) of that section [<sup>F2217</sup>or by virtue of section <sup>F2218</sup> . . . [<sup>F2219</sup>[<sup>F2220</sup>444AB, 444ABC,][<sup>F2221</sup>444AEA,] 444AF(2) or 444AK(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

[<sup>F2222</sup>RP 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;
- (aa) [<sup>F2223</sup>section 444AB or 444ABC of this Act;]
- (ab) [<sup>F2224</sup>section 444AEA of this Act;]
- (b) <sup>F2218</sup> .....
- (c) [<sup>F2225</sup>subsection (2) of section 444AF of this Act (and see subsections (5) and (6) of that section);
- (d) subsection (2) of section 444AK of this Act (but only for the purposes mentioned in subsection (3) of that section).]

- (3) For the purposes of subsection (1) above there shall also be determined the aggregate of—

- (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 [<sup>F2226</sup>(but taking that mean to be nil if it would otherwise be below nil)] after deducting from it the mean of the opening and closing values of

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- any assets of the relevant business [<sup>F2227</sup>linked] to that category of business [<sup>F2228</sup>and foreign currency assets], and
- (b) the part of the net amount <sup>F2229</sup> . . . that is attributable to assets [<sup>F2227</sup>linked] to that category of business [<sup>F2230</sup>and foreign currency assets].
- (4) [<sup>F2231</sup>Subject to subsection (4A) below, for] the purposes of subsection (3) above “the applicable percentage”, in any case, [<sup>F2232</sup>is—

$$\frac{A}{B} \times 100$$

where—

A is so much of the net amount as is brought into account in respect of the relevant business less such part of it as is attributable to linked assets and foreign currency assets; and

B is the mean of the opening and closing liabilities of the relevant business reduced by the mean of the opening and closing values of any assets of the relevant business which are linked assets and foreign currency assets.]

[ If the mean of the opening and closing liabilities of the relevant business reduced by <sup>F2233</sup>(4A) the opening and closing values of any assets of the relevant business which are linked assets [<sup>F2234</sup>or foreign currency assets] is nil then, for the purposes of subsection (3) above, “the applicable percentage” is such percentage as is just and reasonable.]

- (5) <sup>F2235</sup> . . . . .
- (6) <sup>F2235</sup> . . . . . ]

### Textual Amendments

- F2211** Ss. 432A-432E inserted by Finance Act 1990 (c. 29), **Sch. 6 para. 4**
- F2212** S. 432E(1)(1A) substituted for s. 432E(1) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 19(2)** (with Sch. 7 Pt. 2)
- F2213** 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
- F2214** 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
- F2215** Words in s. 432E(2) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 19(3)(b)** (with Sch. 7 Pt. 2)
- F2216** 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)**
- F2217** Words in s. 432E(2A) inserted (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)**
- F2218** Words in s. 432E(2A) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 2(3), **Sch. 27 Pt. 2(10)**, Note
- F2219** Words in s. 432E(2A) inserted (with effect in accordance with Sch. 11 para. 2(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 2(2)**
- F2220** Words in s. 432E(2A) inserted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 4(2)(a)**; S.I. 2008/379, **art. 2**
- F2221** Words in s. 432E(2A) inserted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 8(2)**; S.I. 2008/379, **art. 2**

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- F2222** 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)**
- F2223** Words in s. 432E(2A) inserted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 4(2)(b)**; S.I. 2008/379, **art. 2**
- F2224** Words in s. 432E(2A) inserted (with effect in accordance with Sch. 9 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 9 para. 8(2)**; S.I. 2008/379, **art. 2**
- F2225** Words in s. 432E(2A) inserted (with effect in accordance with Sch. 11 para. 2(4) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 2(3)**
- F2226** Words in s. 432E(3)(a) inserted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/1031), **arts. 1(1), 7(2)**
- F2227** 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))
- F2228** Words in s. 432E(3)(a) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 19(4)(a)** (with Sch. 7 Pt. 2)
- F2229** Words in s. 432E(3)(b) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 19(4)(b)(i), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2230** Words in s. 432E(3)(b) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 19(4)(b)(ii)** (with Sch. 7 Pt. 2)
- F2231** Words in s. 432E(4) substituted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/1031), **arts. 1(1), 7(3)**
- F2232** Words in s. 432E(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 19(5)** (with Sch. 7 Pt. 2)
- F2233** S. 432E(4A) inserted (17.4.2007 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Amendment) Order 2007 (S.I. 2007/1031), **arts. 1(1), 7(4)**
- F2234** Words in s. 432E(4A) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 19(6)** (with Sch. 7 Pt. 2)
- F2235** S. 432E(5)(6) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 19(7), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

#### **Modifications etc. (not altering text)**

- C345** 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**
- C346** 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**)
- C347** 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**)
- C348** For orders see Part III Vol.5 (under “Life assurance apportionment of participating funds: applicable percentage”).

#### **[<sup>F2236</sup>432B] 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”).



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- (2) <sup>F2237</sup> . . . There shall be determined for each accounting period the amount (if any) by which the subsection (2) figure <sup>F2238</sup> . . . exceeds the subsection (3) figure (“the subsection (2) excess”).
- (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

**F2236**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\(2\)](#))

**F2237**Words in s. 432F(2) repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 20\(a\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))

**F2238**Words in s. 432F(2) repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 20\(b\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))

#### Modifications etc. (not altering text)

**C349** Ss. 432B-432G applied (1.4.2010 with effect in accordance with s. 381(1) of the affecting Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), [s. 102\(3\)](#) (with [Sch. 9](#))

**C350** 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](#)

#### [<sup>F2239</sup> [<sup>F2240</sup> **Section 432B apportionment: business transfers-in**

- (1) There is referable to the life assurance business of the transferee the appropriate fraction of the amount brought into account as a business transfer-in and of any amount taken into account as profits under section 444ABD(1).
- (2) For the purposes of subsection (1) above “the appropriate fraction” is—

$$\frac{\text{LABL}}{\text{TL}}$$

where—

LABL is the amount of the liabilities transferred that are referable to the life assurance business (but is nil if it would otherwise be below nil); and

TL is the whole of the liabilities transferred.

- (3) But if the amount of the liabilities transferred is nil, the appropriate fraction for the purposes of subsection (1) above is such fraction as is just and reasonable.



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- (4) There is referable to the gross roll-up business of the transferee the relevant fraction of the amount brought into account as a business transfer-in and of any amount taken into account as profits under section 444ABD(1).
- (5) For the purposes of subsection (4) above “the relevant fraction” is—

$$\frac{\text{GRBL}}{\text{TL}}$$

where—

GRBL is the amount of the liabilities transferred that are referable to the gross roll-up business (but is nil if it would otherwise be below nil); and

TL has the same meaning as in subsection (2) above.

- (6) But if the amount of the liabilities transferred is nil, the relevant fraction for the purposes of subsection (4) above is such fraction as is just and reasonable.]]

#### Textual Amendments

**F2239S.** 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**

**F2240S.** 432G substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 21** (with Sch. 7 Pt. 2)

#### Modifications etc. (not altering text)

**C351 Ss. 432B-432G** applied (1.4.2010 with effect in accordance with s. 381(1) of the affecting Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\)](#), **s. 102(3)** (with Sch. 9)

#### <sup>F2241</sup>**433 Profits reserved for policy holders and annuitants.**

#### Textual Amendments

**F2241S.** 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))

*[<sup>F2242</sup>Miscellaneous provisions relating to life assurance business]*

#### Textual Amendments

**F2242**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))

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**434 Franked investment income etc.**

[<sup>F2243</sup>[<sup>F2244</sup>[<sup>F2245</sup>(1) Where an insurance company makes a payment representative of a distribution made by a company resident in the United Kingdom in respect of an asset of its long-term insurance fund, the payment is to be taken into account in computing its profits in accordance with the provisions applicable to Case I of Schedule D unless the amount taken into account in accordance with section 83(2)(a) of the Finance Act 1989 includes the amount of the payment.]]]

(2) <sup>F2246</sup> .....

[<sup>F2247</sup>(3) <sup>F2248</sup> .....

(3A) [<sup>F2249</sup>So 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.]

[<sup>F2250</sup>(3B) <sup>F2251</sup> .....

(3C) <sup>F2251</sup> .....

(3D) <sup>F2251</sup> .....]

(4) <sup>M393</sup> *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".*  
<sup>F2252</sup>

(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.* <sup>F2253</sup>

(6) <sup>F2248</sup> .....

[<sup>F2254</sup>(6A) For the purposes of this section—

(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, <sup>F2255</sup> . . .

[<sup>F2256</sup>(aa) <sup>F2257</sup> .....

(ab) <sup>F2257</sup> .....

(ac) <sup>F2257</sup> .....]

(b) <sup>F2258</sup> .....

(7) <sup>F2246</sup> .....

(8) <sup>F2248</sup> .....]

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### Textual Amendments

- F2243** 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\(2\)](#))
- F2244** 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\(2\)](#)
- F2245** S. 434(1) substituted for s. 434(1)(1B) (with effect in accordance with [s. 38\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 22\(2\)](#) (with [Sch. 7 Pt. 2](#))
- F2246** 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\(5\)](#)
- F2247** S. 434(3)(3A) substituted for s. 434(3) by [Finance Act 1989 \(c. 26\)](#), [s. 84\(4\)-\(6\)](#), [Sch. 8 para. 3\(1\)](#)
- F2248** 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
- F2249** 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\(2\)](#)
- F2250** S. 434(3B)-(3D) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 16 para. 5\(4\)](#)
- F2251** 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
- F2252** 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.
- F2253** 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.
- F2254** 1990 s.45(7).
- F2255** 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\(16\)](#)
- F2256** S. 434(6A)(aa)-(ac) inserted (3.5.1994) by [Finance Act 1994 \(c. 9\)](#), [Sch. 16 para 5\(5\)](#)
- F2257** 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
- F2258** S. 434(6A)(b) repealed (with effect in accordance with [s. 38\(2\)](#) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 22\(3\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))

### Modifications etc. (not altering text)

- C352** S. 434 amended (27.7.1993) by [1993 c. 34](#), [s. 78\(6\)\(11\)](#)

### Marginal Citations

- M393** Source—1970 s.310(6)

## [<sup>F2259</sup>[<sup>F2260</sup> 434] **Computation of losses and limitation on relief.**

- (1) <sup>F2261</sup> .....
- [<sup>F2262</sup>(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 <sup>F2263</sup> .....
- (i) <sup>F2264</sup> .....
- (ii) any relevant non-trading deficit for that period on the company's debtor relationships; and
- [<sup>F2265</sup>(iii) <sup>F2266</sup> .....
- (b) if the whole or any part of that loss as so reduced is set off—

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- (i) under section 393A, or
- (ii) under section 403(1),

<sup>F2267</sup>any loss for that period under section 436A shall be reduced (but not below nil) by the total of the amounts set off as mentioned in sub-paragraphs (i) and (ii) above.]]

<sup>F2268</sup>(2A) The reference in subsection <sup>F2269</sup>(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 <sup>F2270</sup>paragraph 2(1)] 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 <sup>F2271</sup>—
- (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 <sup>F2272</sup>89] of the Finance Act 1989.]]

#### Textual Amendments

- F2259**S. 434A inserted by Finance Act 1989 (c. 26), s. 84(4)-(6), **Sch. 8 para. 4**
- F2260**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))
- F2261**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
- F2262**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)**
- F2263**Words in s. 434A(2)(a) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 23(2)(a), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2264**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
- F2265**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)**
- F2266**S. 434A(2)(a)(iii) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 23(2)(b), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2267**Words in s. 434A(2)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 23(3)** (with Sch. 7 Pt. 2)
- F2268**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)
- F2269**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)**
- F2270**Words in s. 434A(2A) substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 15(2)**
- F2271**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)

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**F2272** 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)**

**C353** 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)

**C354** S. 434A(2) modified by Finance Act 1996 (c. 8), Sch. 31 para. 2(3)

VALID FROM 21/07/2009

**<sup>F2273</sup>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.
- (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

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condition A or B is met in the periodical return for the current period of account is a negative amount.]

### Textual Amendments

**F2273** 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

### **F2273** 434AZB **Conditions 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).
- (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.]

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**Textual Amendments**

**F2273** 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

**[<sup>F2273</sup> 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**

**F2273** 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\(1\)](#)

**[<sup>F2274</sup> 434B] Treatment of interest and annuities.**

- (1) <sup>F2275</sup> .....
- (2) <sup>F2276</sup> .....

**Textual Amendments**

**F2274** 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\(2\)](#))

**F2275** 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](#))

**F2276** 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\(6\)](#)

**[<sup>F2277</sup> 434C] Interest on repayment of advance corporation tax.**

- <sup>F2278</sup> .....



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**Textual Amendments**

- F2277S. 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))
- F2278S. 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

[<sup>F2279</sup> **434D Capital allowances: management assets.**

F2280 . . . . .

**Textual Amendments**

- F2279Ss. 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))
- F2280S. 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.**

F2281 . . . . .]

**Textual Amendments**

- F2279Ss. 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))
- F2281S. 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**

<sup>F2282</sup> **435 Taxation of gains reserved for policy holders and annuitants.**

. . . . .

**Textual Amendments**

- F2282S. 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))

**436 [<sup>F2283</sup> Pension business]: separate charge on profits.**

F2284 . . . . .

**Textual Amendments**

- F2283 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))
- F2284S. 436 repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 24, **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

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**[<sup>F2285</sup>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 [<sup>F2286</sup>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
  - (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**

**F2285** 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)

**F2286** 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)**

**C355** 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)

**[<sup>F2285</sup>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—

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- (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

**F2285**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.

<sup>F2287</sup><sup>F2288</sup>(1A) In the computation <sup>F2289</sup>under the I minus E basis] of the <sup>F2290</sup>relevant profits (within the meaning of section 88(1) 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 <sup>F2291</sup>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 <sup>F2292</sup>(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 <sup>F2293</sup>and amounts exempt under section 717 of ITTOIA 2005] contained in the new annuities so paid;  
<sup>F2294</sup> . . .
- (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; <sup>F2295</sup>and
- (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.]

<sup>F2296</sup>(1CA) [ Where a new annuity (“the actual annuity”) is a steep-reduction annuity, the income limit for an accounting period of the company paying the annuity shall be computed for the purposes of this section as if—

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- (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.

(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).

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(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.]

- F2297 (2) .....
- F2298 (3) .....
- F2299 (4) .....
- F2300 (5) .....
- (6) <sup>F2301</sup> .....

#### Textual Amendments

- F2287S.** 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**
- F2288S.** 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)**
- F2289** Words in s. 437(1A) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 6** (with Sch. 8 Pt. 2)
- F2290** 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)**
- F2291** 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
- F2292** 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)**
- F2293** 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)
- F2294** 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)
- F2295S.** 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)
- F2296S.** 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)**
- F2297S.** 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
- F2298S.** 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
- F2299S.** 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

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**F2300** 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

**F2301** 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)**

**C356** 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**)

**C357** 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**)

**C358** 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**

**[<sup>F2302</sup> 437] 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

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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.
- (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

**F2302S. 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) <sup>M394</sup>Exemption from corporation tax shall be allowed in respect of income [<sup>F2303</sup>from assets solely linked to pension business.]
- (2) <sup>F2304</sup> .....
- (3) <sup>F2305</sup> .....
- [<sup>F2306</sup>(3AA) <sup>F2305</sup> .....
- (4) <sup>F2304</sup> .....
- (5) <sup>F2307</sup> .....
- (6) <sup>F2307</sup> .....
- [<sup>F2308</sup>(6A) <sup>F2309</sup> .....



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[<sup>F2310</sup>(6B) <sup>F2307</sup> .....  
 (6C) <sup>F2307</sup> .....  
 (6D) <sup>F2307</sup> .....  
 (6E) <sup>F2307</sup> ..... ]  
 (7) <sup>F2307</sup> .....  
 (8) <sup>F2311</sup> .....  
 [<sup>F2312</sup>(9) <sup>F2313</sup> ..... ]

**Textual Amendments**

- F2303** Words in s. 438(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 26(2)** (with Sch. 7 Pt. 2)
- F2304** S. 438(2)(4) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 26(3), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2305** 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
- F2306** S. 438(3AA) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 6(2)**
- F2307** 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))
- F2308** 1990 s.45(9).
- F2309** 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)**
- F2310** S. 438(6B)-(6E) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 6(4)**
- F2311** S. 438(8) repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note
- F2312** 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))
- F2313** 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)**

- C359** S. 438 amended (27.7.1993) by 1993 c. 34, s. **78(6)(11)**
- C360** S. 438 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 18 para. 1(5)**
- C361** 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**)
- C362** 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**

- M394** Source—1970 s.314(1); 1970(F) Sch.5 Part III 11(3), (6)(c)

[<sup>F2314</sup>**438** ~~Ren~~ **ension business: payments on account of tax credits and deducted tax.**  
 ..... ]  
 ..... ]

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**Textual Amendments**

**F2314S.** 438A inserted (2.10.1992) by Finance Act 1991 (c. 31, SIF 63:1), s. 49(1); S.I. 1992/1746, art.2

**F2315S.** 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)

[<sup>F2316</sup> **438B** Income or gains arising from property investment LLP

F2317 . . . . . ]

**Textual Amendments**

**F2316Ss.** 438B, 438C inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, Sch. 25 para. 5

**F2317S.** 438B repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 27, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

**438C** Determination of policy holders' share for purposes of s.438B

F2318 . . . . . ]

**Textual Amendments**

**F2316Ss.** 438B, 438C inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, Sch. 25 para. 5

**F2318S.** 438C repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 28, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

**439** Restricted government securities.

F2319 . . . . . ]

**Textual Amendments**

**F2319S.** 439 repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 29, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

[<sup>F2320</sup> **439A** Taxation of pure reinsurance business.

F2321 . . . . . ]

**Textual Amendments**

**F2320S.** 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))

**F2321S.** 439A repealed (with effect in accordance with s. 39(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 8 para. 7, Sch. 27 Pt. 2(8), Note (with Sch. 8 Pt. 2)

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[<sup>F2322</sup>**439** Life reinsurance business: separate charge on profits.

F2323 ..... ]

**Textual Amendments**

**F2322**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))

**F2323**S. 439B repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 30, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

[<sup>F2324</sup>**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 [<sup>F2325</sup>fair] value at that time.

(2) Where—

[<sup>F2326</sup>(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 [<sup>F2325</sup>fair] value at that time.

[<sup>F2328</sup> ..... ]  
<sup>F2327</sup>(2A)

[<sup>F2328</sup> ..... ]  
<sup>F2329</sup>(2B)

(3) Where, apart from this subsection, section [<sup>F2330</sup>171 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 [<sup>F2331</sup>paragraphs [<sup>F2332</sup>(a), (d) and (e)]] of subsection (4) below, that section shall not apply to the disposal or acquisition.

[<sup>F2333</sup>(4) The categories referred to in subsections (1) to (3) above are—

[<sup>F2334</sup>(a) assets which are linked solely to gross roll-up business or are foreign currency assets;]

(d) assets linked solely to basic life assurance and general annuity business;

(e) assets of the [<sup>F2335</sup>long-term insurance fund] not within [<sup>F2336</sup>either] of the preceding paragraphs;

(f) other assets.]

(5) [<sup>F2337</sup> ..... ]

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[ In a case where the profits of a company's life assurance business are charged to tax <sup>F2338</sup>(6) in accordance with Case I of Schedule D this section has effect with the modification specified in section 440B(3).]

### Textual Amendments

- F2324** 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)
- F2325** Words in s. 440(1)(2) substituted (with effect in accordance with Sch. 10 para. 17(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 10 para. 10(2)(a)**
- F2326** 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)**
- F2327** 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)
- F2328** S. 440(2A)(2B) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(b), **Sch. 27 Pt. 2(10)**, Note
- F2329** 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)
- F2330** 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))
- F2331** 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))
- F2332** Words in s. 440(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 31(2)** (with Sch. 7 Pt. 2)
- F2333** 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)
- F2334** S. 440(4)(a) substituted for s. 440(4)(a)-(c) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 31(3)** (with Sch. 7 Pt. 2)
- F2335** 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)**
- F2336** Word in s. 440(4)(e) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 31(3)** (with Sch. 7 Pt. 2)
- F2337** S. 440(5) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 10(2)(b), **Sch. 27 Pt. 2(10)**, Note
- F2338** 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)

- C363** 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**)
- C364** 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**)
- C365** 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**)
- C366** S. 440(1) excluded (25.7.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 6(4)**

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- C367** 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](#))
- C368** 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](#)
- C369** 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](#))
- C370** 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\(1\)](#)
- C371** S. 440(4) modified (6.4.1999) by [The Individual Savings Account \(Insurance Companies\) Regulations 1998 \(S.I. 1998/1871\)](#), [regs. 1, 15](#)
- C372** S. 440(4)(f) modified by [Finance Act 1989 \(c. 26\)](#), [s. 83XA\(12\)](#) (as inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 2\(1\)](#))

#### <sup>F2339</sup> **440 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—
  - <sup>F2340</sup>(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—
    - <sup>F2341</sup>(i) basic life assurance and general annuity business, or
    - (ii) gross roll-up business,]
 shall be treated for the purposes of corporation tax as a separate holding linked solely to that business,]
  - (c) <sup>F2342</sup> .....
  - (d) so many of the securities as are included in the company's <sup>F2343</sup>long-term insurance fund] but do not fall within <sup>F2344</sup>paragraph (a)] shall be treated for those purposes as a separate holding which is an asset of that fund (but not of <sup>F2345</sup>the description mentioned in that paragraph]), 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 <sup>F2346</sup>section 104 holding], for the purposes of corporation tax on chargeable gains.
- (4) In a case within subsection (3) above—

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- (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 <sup>F2346</sup>section 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 <sup>F2347</sup>[105 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.

<sup>F2348F2349</sup>(6) In this section—

- “1982 holding” has the same meaning as in section 109 of the 1992 Act;
- “<sup>F2346</sup>section 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.]

<sup>F2348</sup>(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

- F2339** 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)
- F2340** 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))
- F2341** S. 440A(2)(a)(i)(ii) substituted for s. 440A(2)(a)(i)-(iii) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 32(a) (with Sch. 7 Pt. 2)
- F2342** S. 440A(2)(c) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 32(b), Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)
- F2343** 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)
- F2344** Words in s. 440A(2)(d) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 32(c)(i) (with Sch. 7 Pt. 2)
- F2345** Words in s. 440A(2)(d) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 32(c)(ii) (with Sch. 7 Pt. 2)
- F2346** 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)
- F2347** 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))
- F2348** 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))
- F2349** 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))



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**Modifications etc. (not altering text)**

- C373** 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](#))
- C374** 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](#))
- C375** 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](#)
- C376** 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](#))
- C377** See 1990 s.41 and Sch.6 para.12(2)—subs.(d) omitted for period 1 January 1990 to 19 March 1990 inclusive.
- C378** 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”.
- C379** 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”.
- C380** S. 440A(2)(e) modified by [Finance Act 1989 \(c. 26\)](#), [s. 83XA\(13\)](#) (as inserted (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 2\(1\)](#))

**[<sup>F2350</sup>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 [<sup>F2351</sup>in accordance with section 431G(3)].

[<sup>F2353</sup>.....]  
<sup>F2352</sup>(1A)

- (2) <sup>F2353</sup>.....
- (3) [<sup>F2354</sup>Subsection (1) of section 440 applies] as if the only categories set out in subsection (4) of that section were—
- (a) assets of the [<sup>F2355</sup>long-term insurance fund], and
  - (b) other assets.
- (4) Section 440A applies as if for paragraphs [<sup>F2356</sup>(a), (d) and (e)] of subsection (2) there were substituted—



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- [<sup>F2357</sup>(“ so many of the securities as are included in the company's long-term insurance fund shall be treated for the purposes of corporation tax as a separate holding which is an asset of that fund, 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.”.
- [ Section 440(2) does not apply if either the transferor or the company by which the
- <sup>F2358</sup>(4A) asset is acquired is a company whose profits are charged to tax in accordance with Case I of Schedule D (or if they both are).
- (4B) Section 211 of the 1992 Act does not apply if the transferor is a company whose profits are charged to tax in accordance with Case I of Schedule D.]
- (5) <sup>F2359</sup> . . . . . ]

#### Textual Amendments

- F2350**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))
- F2351** Words in s. 440B(1) inserted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 8(2)** (with Sch. 8 Pt. 2)
- F2352**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)**
- F2353**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
- F2354** Words in s. 440B(3) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 8(3)** (with Sch. 8 Pt. 2)
- F2355** 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)**
- F2356** Words in s. 440B(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 33(a)** (with Sch. 7 Pt. 2)
- F2357** Words in s. 440B(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 33(b)** (with Sch. 7 Pt. 2)
- F2358**S. 440B(4A)(4B) inserted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 8 para. 8(4)** (with Sch. 8 Pt. 2)
- F2359**S. 440B(5) repealed (with effect in accordance with s. 39(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 8 para. 8(5), **Sch. 27 Pt. 2(8)**, Note (with Sch. 8 Pt. 2)

#### <sup>F2360</sup>440 Modifications for change of tax basis

- (1) Subsection (2) makes provision for a case where—
- (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

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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 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

**F2360S. 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](#))

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**[<sup>F2361</sup>440] 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**

**F2361**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)**

**441 Overseas life assurance business.**

**F2362** . . . . .

**Textual Amendments**

**F2362**S. 441 repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 34](#), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

**[<sup>F2363</sup>441] Section 441: distributions.**

(1) **F2364** . . . . .

(2) **F2365** . . . . .

**[<sup>F2366</sup>(3) F2365** . . . . .

(4) **F2365** . . . . .

(5) **F2365** . . . . . ]

(7) **F2365** . . . . .

(8) **F2365** . . . . . ]

**Textual Amendments**

**F2363**Ss. 441, 441A substituted for s. 441 by [Finance Act 1990 \(c. 29\)](#), [Sch.7 paras. 3, 10](#)

**F2364**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

**F2365**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)**

**F2366**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\(2\)](#))

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<sup>F2367</sup> **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.

<sup>F2368</sup> [ For the purposes of subsection (2) above a Schedule A business for the exploitation (2A) 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**

**F2367S.** 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))

**F2368S.** 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)

**442 Overseas business of U.K. companies.**

- (1) <sup>M395</sup> Subsections (2) and (3) below apply where a company resident in the United Kingdom carries on insurance business outside the United Kingdom through a [<sup>F2369</sup> 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

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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 <sup>F2370</sup> . . . the profit or loss shall be treated for the purposes of the [<sup>F2371</sup>1992 Act] as a chargeable gain or allowable loss accruing to the transferor company on the transfer.
- (4) <sup>F2372</sup> . . . . .

**Textual Amendments**

- F2369** 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)
- F2370** 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
- F2371** 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))
- F2372** S. 442(4) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(c), Sch. 27 Pt. 2(10), Note

**Modifications etc. (not altering text)**

- C381** 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)

**Marginal Citations**

- M395** Source—1977 s.45(1)—(4); 1979(C) Sch.7

**[<sup>F2373</sup>442] 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 [<sup>F2374</sup>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;

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- (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.

[ 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<sup>F2376</sup> . . . 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.

- (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

**F2373S.** 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\(2\)](#))

**F2374** 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\(2\)](#)

**F2375S.** 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\(3\)](#)



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**F2376** 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)**

**C382** 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**

**C383** 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**

**C384** 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.**

**F2377** . . . . .

**Textual Amendments**

**F2377** S. 443 repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(d), **Sch. 27 Pt. 2(10)**, Note

**444 Life policies issued before 5th August 1965.**

**F2378** . . . . .

**Textual Amendments**

**F2378** S. 444 repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(e), **Sch. 27 Pt. 2(10)**, Note

**[<sup>F2379</sup>444A] Transfers of business.**

**[<sup>F2380</sup>(1) <sup>F2381</sup>** . . . 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”).]

**[<sup>F2382</sup>(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 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)—



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- (a) would have been available under section [F2383 436A(4)] 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, F2384 . . .
- (b) F2384 . . . . .

shall, instead, be treated as a loss of the transferee (and available to be set off against profits of [F2385 gross roll-up business])[F2386 if 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).]

[ Where subsection (3) above has effect, sections [F2388 343(4),] (5) and (7) to (12) and F2387 (3ZA) 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.]

[ Any subsection (2) excess (within the meaning of section 432F(2)) which (assuming F2389 (3A) 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 [F2390 expenses 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 [F2391 long-term] business, [F2392 subsection (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) F2393 . . . . .
- (8) F2393 . . . . .]

**Textual Amendments**  
 F2379S. 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

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- F2380**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\(1\)](#)
- F2381**Words in s. 444A(1) repealed (with effect in accordance with Sch. 9 para. 17(1) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 2\(2\)](#), [Sch. 27 Pt. 2\(9\)](#), Note
- F2382**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\(2\)](#)
- F2383**Words in s. 444A(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 35\(a\)](#) (with [Sch. 7 Pt. 2](#))
- F2384**S. 444A(3)(b) and preceding word repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 35\(b\)](#), [Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))
- F2385**Words in s. 444A(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 35\(c\)](#) (with [Sch. 7 Pt. 2](#))
- F2386**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\(2\)](#)
- F2387**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\(3\)](#)
- F2388**Words in s. 444A(3ZA) substituted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [Sch. 7 para. 1](#)
- F2389**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\(2\)](#))
- F2390**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\(3\)](#)
- F2391**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\(2\)\(h\)](#)
- F2392**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\(2\)](#))
- F2393**S. 444A(7)(8) repealed (with effect in accordance with Sch. 9 para. 17(1) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 2\(3\)](#), [Sch. 27 Pt. 2\(9\)](#), Note

#### Modifications etc. (not altering text)

- C385** 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 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

#### <sup>F2394</sup> ~~444A(7A)~~ **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,

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- (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 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

**F2394**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

#### **F2394** 444AZB **Transfers of life assurance business: Case I losses of the transferor**

- (1) This section applies where—

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- (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.
- (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

**F2394** 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](#)

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## **Transfers of business: deemed periodical return**

- (1) This section applies where the whole, or substantially the whole, of the long-term business of a person (“the transferor”) is transferred from that person—
  - (a) by one insurance business transfer scheme, or
  - (b) by two or more insurance business transfer schemes which are associated.
- (2) For the purposes of subsection (1) above two or more insurance business transfer schemes are associated if they form part of an arrangement for the transfer of the whole, or substantially the whole, of the transferor's long-term business.
- (3) Where (apart from this subsection) there would not be a periodical return of the transferor covering a period ending immediately before a relevant transfer date, 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 relevant transfer date which is covered by a periodical return of the transferor, and
  - (b) ending immediately before the relevant transfer date,
 containing such entries as would be included in an actual periodical return of the transferor covering that period (and so making that period a period of account of the transferor).
- (4) There is to be deemed for the purposes of corporation tax to be a periodical return of the transferor—
  - (a) covering a relevant transfer date, and
  - (b) containing such entries as would be included in an actual periodical return covering the relevant transfer date,
 (and so making the relevant transfer date a period of account of the transferor).
- (5) Any actual periodical return covering a period which includes a relevant transfer date is to be ignored for the purposes of corporation tax.
- (6) Where the transferor continues to carry on long-term business after a relevant transfer date, there is to be deemed for the purposes of corporation tax to be a periodical return of the transferor covering the immediate post-RTD period containing such entries as would be included in an actual periodical return covering that period (and so making that period a period of account of the transferor).
- (7) In this section “relevant transfer date” means—
  - (a) in relation to a case within paragraph (a) of subsection (1) above, the date that is the transfer date in relation to the insurance business transfer scheme, and
  - (b) in relation to a case within paragraph (b) of that subsection—
    - (i) the earliest date that is the transfer date in relation to any of the insurance business transfer schemes, other than one that is a preliminary non-EEA transfer scheme, and
    - (ii) (where there are two or more insurance business transfer schemes that are not preliminary non-EEA transfer schemes) the latest date that is the transfer date in relation to any of them.
- (8) In subsection (6) above “the immediate post-RTD period” means the period beginning immediately after the relevant transfer date mentioned in that subsection and (subject to subsection (9) below) ending with—

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- (a) the end of the period covered by the periodical return covering a period which includes a relevant transfer date (if there is one), or
  - (b) (if there is not) the period covered by the accounts of the company prepared in accordance with generally accepted accounting practice which includes the relevant transfer date.
- (9) If the case is within subsection (1)(b) above and two or more of the insurance business transfer schemes are not preliminary non-EEA transfer schemes, the period ends with the latest date that is the transfer date in relation to any of them if that is before the end of the period mentioned in paragraph (a) or (b) of subsection (8) above.
- (10) In this section and sections 444AB to 444AEC “the transfer date”, in relation to an insurance business transfer scheme, means the date on which it takes effect.
- (11) For the purposes of this section an insurance business transfer scheme is a preliminary non-EEA transfer scheme if—
- (a) it is an insurance business transfer scheme by virtue of paragraph (b) of the definition of “insurance business transfer scheme” in section 431(2), and
  - (b) the transfer date in relation to it is earlier than the transfer date in relation to an associated insurance business transfer scheme which is an insurance business transfer scheme by virtue of paragraph (a) of that definition.]]

#### Textual Amendments

**F2395S.** 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\(1\)](#)

**F2396S.** 444AA substituted (with effect in accordance with [Sch. 9 para. 17\(1\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 3\(1\)](#)

#### [<sup>F2397</sup> **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 [<sup>F2398</sup>ending 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—
- [<sup>F2399</sup>(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]



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- (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) <sup>F2400</sup> .....
- [ In subsection (5) above—
- <sup>F2401</sup>(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, 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) <sup>F2402</sup> .....

#### Textual Amendments

- F2397S.** 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)**
- F2398** 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)**
- F2399S.** 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)**
- F2400S.** 444AB(6) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 10(3)(a), **Sch. 27 Pt. 2(10)**, Note
- F2401S.** 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)**
- F2402S.** 444AB(11) repealed (with effect in accordance with Sch. 9 para. 17(1) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 9 para. 1(2)(b), **Sch. 27 Pt. 2(9)**, Note



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## **444AB non-transferred assets**

- (1) For the purposes of section 444AB the relevant amount in relation to assets that are relevant non-transferred assets is—

$$FVA - RVA$$

where—

FVA is the fair value of the assets on the transfer date, and

RVA is the recognised value of the assets.

- (2) For the purposes of this section and section 444ABB—
- (a) the recognised value of any assets which, immediately before the transfer date, are held by the transferor in a non-profit fund which is not a Form 14 line 51 fund is the relevant Form 13 value of those assets, and
  - (b) the recognised value of any other assets is the appropriate fraction of the relevant Form 13 value of those assets.
- (3) For the purposes of subsection (2) above a non-profit fund is a Form 14 line 51 fund if an amount in respect of the fund is shown (or treated as shown) in line 51 of Form 14 in the periodical return of the transferor covering the relevant period of account.
- (4) For the purposes of subsection (2) above the relevant Form 13 value of any assets is the value which is shown (or treated as shown) in respect of the assets in Form 13 in the periodical return of the transferor covering the relevant period of account (ignoring lines 91 to 99 of that Form).
- (5) For the purposes of subsection (2)(b) above the appropriate fraction is—

$$1 - \frac{A}{B}$$

where—

A is the amount shown (or treated as shown) in line 51 of Form 14 in the periodical return of the transferor covering the relevant period of account in respect of the fund in which, immediately before the transfer date, the assets are held by the transferor, increased or reduced as mentioned in subsection (6) below, and

B is the amount shown (or treated as shown) in line 89 of Form 13 in that periodical return in respect of that fund.

- (6) The increase or reduction referred to in the definition of A in subsection (5) above is any increase or decrease deemed to be brought into account by section 83YA(3) or (4) of the Finance Act 1989 in respect of the fund for the relevant period of account.
- (7) See section 444AA for the meaning of “the transfer date”, and section 444AB for the meaning of “the relevant period of account”, in this section.]]

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### Textual Amendments

**F2403S.** 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\(1\)](#)

**F2404Ss.** 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 16/12/2010

### <sup>F2405</sup> ~~444ABA~~ **444AB** 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—

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

**F2405S.** 444ABAA inserted (with effect in accordance with [s. 15\(11\)](#) of the amending Act) by [Finance \(No. 3\) Act 2010 \(c. 33\)](#), [s. 15\(10\)](#)

### <sup>F2406</sup> ~~444ABA~~ **444AB** 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

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- (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

**F2406** 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 19/02/2008

#### **F2407** ~~444AB~~ **444AB** **Transferees 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—
- is to be irrevocable, and
  - 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—
- the amount of any additional corporation tax to which the transferor considers the election to apply, and
  - 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—
- is due in accordance with section 59D of the Management Act <sup>M396</sup> on the day on which it would have been due if no election had been made, and
  - for the purposes of that section, is to be treated as tax payable by the transferor (and not as tax payable by the transferee).

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(6) See section 444AA for the meaning of “the transfer date” in this section.]

#### Textual Amendments

**F2407S. 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

**M396** 1970 c. 9

### [<sup>F2408</sup> **444ABC** 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

**F2408Ss. 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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#### **[<sup>F2409</sup>444ABD] 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
  - (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**

**F2409S. 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 [<sup>F2410</sup>Transfers 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) [<sup>F2411</sup>the transferee's line 31 amount in relation to the transfer], exceeds
    - (b) [<sup>F2412</sup>the aggregate amount] of the liabilities to policy holders and annuitants transferred to the transferee [<sup>F2413</sup>and of any relevant debts],  
the excess is not to be regarded [<sup>F2414</sup>as a business transfer-in] of the transferee for the purposes of section [<sup>F2415</sup>83(2)(e)] of the Finance Act 1989.
- [<sup>F2416</sup>(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) [<sup>F2411</sup>the transferee's line 31 amount in relation to the transfer].
- (2B) Where this subsection applies—
- (a) [<sup>F2417</sup>the life assurance part of 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 [<sup>F2418</sup>its gross roll-up business] for the relevant period of account;
- and, for this purpose, [<sup>F2419</sup>“the life assurance part of the excess” means the proportion of the excess that the liabilities of the transferee's life assurance business that are transferred bear to the total liabilities transferred and] “the relevant proportion”, in relation to [<sup>F2420</sup>the transferee's gross roll-up business], is the proportion that the liabilities of [<sup>F2421</sup>gross roll-up business] that are transferred bear to the total liabilities transferred.

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(2C) Subsection (2B) above does not require [<sup>F2422</sup>the life assurance part of 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 [<sup>F2422</sup>the life assurance part 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.

(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 [<sup>F2423</sup>its gross roll-up 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) <sup>F2424</sup> .....

[<sup>F2425</sup>(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) [<sup>F2426</sup>the aggregate amount of any relevant reinsurance amounts and of] 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) [<sup>F2411</sup>the transferee's line 31 amount in relation to the transfer],

the amount of any relevant debts for the purposes of this section is to be reduced (but not below nil) by the excess.

[ In subsection (5)(a) above “relevant reinsurance amounts” means—

- <sup>F2427</sup>(5A) (a) amounts which are comprised in line 16 of Form 14 in the periodical return of the transferor covering the period ending immediately before the transfer (or would be so comprised if the transferor drew up a periodical return covering that period), or
- (b) other amounts which arise under contracts of reinsurance in relation to which the reinsurer is the transferee and which, as at the date of the transfer, have fallen due to the transferor,

and which (in either case) do not become assets of the transferee's long-term insurance fund as a result of the transfer because (and only because) they arise under contracts of reinsurance in relation to which the reinsurer is the transferee.]

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- (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.
- (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) [<sup>F2428</sup>its gross roll-up business.]



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- (11) F2429 . . .  
           F2429 .....  
           F2430 .....]

### Textual Amendments

- F2410**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)**
- F2411** Words in s. 444AC(2)(2A)(5) substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), **arts. 1(1), 6(a)**
- F2412** 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)**
- F2413** 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)**
- F2414** 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)**
- F2415** 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)**
- F2416**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)**
- F2417** Words in s. 444AC(2B)(a) substituted (with effect in accordance with Sch. 11 para. 3(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 3(2)(a)**
- F2418** Words in s. 444AC(2B)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 36(2)(a)** (with Sch. 7 Pt. 2)
- F2419** Words in s. 444AC(2B) inserted (with effect in accordance with Sch. 11 para. 3(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 3(2)(b)**
- F2420** Words in s. 444AC(2B) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 36(2)(b)** (with Sch. 7 Pt. 2)
- F2421** Words in s. 444AC(2B) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 36(2)(c)** (with Sch. 7 Pt. 2)
- F2422** Words in s. 444AC(2C) substituted (with effect in accordance with Sch. 11 para. 3(6) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 3(3)**
- F2423** Words in s. 444AC(2D) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 36(3)** (with Sch. 7 Pt. 2)
- F2424**S. 444AC(3) omitted (31.12.2006 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), **arts. 1(1), 6(b)**
- F2425**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)**
- F2426** Words in s. 444AC(5)(a) inserted (with effect in accordance with Sch. 11 para. 3(7) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 3(4)**
- F2427**S. 444AC(5A) inserted (with effect in accordance with Sch. 11 para. 3(7) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 11 para. 3(5)**
- F2428** Words in s. 444AC(10) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 36(4)** (with Sch. 7 Pt. 2)
- F2429**S. 444AC(11): opening words and definition of "fair value" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 10(3)(b), **Sch. 27 Pt. 2(10)**, Note

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**F2430S. 444AC(11):** definition of "insurance business transfer scheme" repealed (with effect in accordance with Sch. 9 para. 17(1) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 9 para. 1\(2\)\(c\)](#), [Sch. 27 Pt. 2\(9\)](#), Note

[<sup>F2431</sup>**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**

**F2431**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](#)

[<sup>F2432</sup><sup>F2433</sup>**444ACA** Transfers of business: transferor shares are assets of transferee's long-term insurance fund etc

<sup>F2434</sup>.....]]

**Textual Amendments**

**F2432**Ss. 444AC-444AE inserted (with effect in accordance with [Sch. 33 para. 20\(3\)\(4\)](#) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 33 para. 20\(1\)](#)

**F2433**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\(1\)](#)

**F2434**S. 444ACA repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 2\(2\)](#), [Sch. 27 Pt. 2\(10\)](#), Note

**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”).

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(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 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—

- [<sup>F2435</sup>(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) [<sup>F2436</sup>the transferee's line 31 amount in relation to the transfer] representing the transferor's long-term insurance fund.

(5) <sup>F2437</sup> .....

[<sup>F2438</sup>(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).]

#### Textual Amendments

**F2435S.** 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\(1\)](#)

**F2436** Words in s. 444AD(4)(b) substituted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), [arts. 1\(1\), 7](#)

**F2437S.** 444AD(5) repealed (with effect in accordance with [Sch. 10 para. 17\(2\)](#) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 10\(3\)\(c\)](#), [Sch. 27 Pt. 2\(10\)](#), Note

**F2438S.** 444AD(6) inserted (with effect in accordance with [Sch. 11 para. 4\(3\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 11 para. 4\(2\)](#)

#### 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

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- (b) the contingent loan were made to the transferee immediately after the transfer.

#### **444AE** 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 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.

#### **444AEB** Case I advantage: transferor

- (1) A Case I advantage is obtained by the transferor if—

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- (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 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.

#### **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),
  - (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

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- (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

<sup>F2439</sup> **444AECB** ~~444AECB~~ **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 444AECB), 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.]

**Textual Amendments**

**F2439** Ss. 444AECB-444AECB 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**

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**[<sup>F2439</sup> 444AECB] ~~444AECB~~ 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 444AEEC “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.]

**Textual Amendments**

**F2439** 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**



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**[<sup>F2439</sup>444AEC** **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.]

**Textual Amendments**

**F2439** Ss. 444AECA-444AECB 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**

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#### **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—
  - (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.

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- (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.

### *<sup>F2440</sup>Surpluses of mutual and former mutual businesses*

#### **Textual Amendments**

**F2440**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—
- at any time in the relevant period the company carries on life assurance business that is not mutual business,
  - the company has an amount of undistributed demutualisation surplus for the relevant period (see subsection (7)), and
  - 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—
- the amount of the reduction mentioned in subsection (1)(c) above;
  - the amount of the company's undistributed demutualisation surplus for the relevant period;
  - 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—
- 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
  - for that purpose, any amount that falls to be determined in order to determine—
    - whether that subsection applies in relation to any such separate revenue account, and
    - 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.

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- (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 [<sup>F2441</sup>section 432C applies],
- 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 [<sup>F2442</sup>profits of the company chargeable under Case VI of Schedule D under section 436A (gross roll-up business)].
- (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,

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).

#### Textual Amendments

**F2441** Words in s. 444AF(4)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 37(2)** (with Sch. 7 Pt. 2)

**F2442** Words in s. 444AF(5)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 37(3)** (with Sch. 7 Pt. 2)

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#### **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—
    - (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.

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- (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.

#### **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—

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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.
- (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



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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 <sup>[F2443]</sup> Mutual surplus: gross roll-up 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  
<sup>[F2444]</sup>(b) the company carries on gross roll-up business.]
- (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).

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- (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 [<sup>F2445</sup>the company's gross roll-up business].
- (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 [<sup>F2446</sup>section 432C applies],
- 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 company to begin on or after 1st January 2003 and to end on or after 9th April 2003.

#### Textual Amendments

**F2443S. 444AK** heading substituted (with effect in accordance with s. 38(2) of the amending Act) by virtue of Finance Act 2007 (c. 11), **Sch. 7 para. 38(5)** (with Sch. 7 Pt. 2)

**F2444S. 444AK(1)(b)** substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 38(2)** (with Sch. 7 Pt. 2)

**F2445** Words in s. 444AK(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 38(3)** (with Sch. 7 Pt. 2)

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**F2446** Words in s. 444AK(5)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 38(4)** (with Sch. 7 Pt. 2)

**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.]

*[<sup>F2447</sup> Provisions applying in relation to overseas life insurance companies*

**Textual Amendments**  
**F2447S. 444B** and cross heading inserted (27.7.1993) by 1993 c.34, s. 97(1)

**<sup>F2448</sup> 444B Modification of Act in relation to overseas life insurance companies.**

<sup>F2449</sup> ..... ]

**Textual Amendments**  
**F2448S. 444B** and cross heading inserted (27.7.1993) by 1993 c. 34, s. 97(1)  
**F2449S. 444B** repealed (31.12.2006 with effect in accordance with reg. 1 of the repealing S.I.) by The Overseas Life Insurance Companies Regulations 2006 (S.I. 2006/3271), reg. 43(1), **Sch. Pt. 1**

*[<sup>F2450</sup> Equalisation reserves*

**Textual Amendments**  
**F2450Ss. 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 [F2451equalisation reserve rules], to maintain an equalisation reserve.

- (2) Those rules are—
- (a) that amounts which, in accordance with [F2451equalisation 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 [F2451equalisation 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 [F2451equalisation 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 [F2451equalisation 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 [F2451equalisation 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 [F2451 equalisation 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 [F2451 equalisation 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 [F2451 equalisation 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 [F2451 equalisation 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 [F2452 the rules].
- [F2453 (11) In this section, and in sections 444BB to 444BD, “equalisation reserves rules” means the rules in [F2454 chapter 7.5 of the Integrated Prudential Sourcebook].]

#### Textual Amendments

**F2451** 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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**F2452** 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\(3\)](#)

**F2453** 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\(4\)](#)

**F2454** 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)**

**C386** 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 [<sup>F2455</sup>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 [<sup>F2456</sup>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

**F2455** 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)**

**F2456** 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 [F2457] 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 M397 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

**F2457** 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

**M397** 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 [<sup>F2458</sup>equalisation 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 [<sup>F2458</sup>equalisation reserve rules], either—
- [<sup>F2459</sup>(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 [<sup>F2458</sup>equalisation 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 [<sup>F2458</sup>equalisation 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—
- [<sup>F2460c</sup>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; <sup>F2461</sup> . . .

<sup>F2461</sup> . . . . .

**Textual Amendments**

**F2458** 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)**

**F2459** 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)**

**F2460** 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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**F2461S. 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.

F2462 .....

##### Textual Amendments

**F2462Ss. 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.

F2463 .....

##### Textual Amendments

**F2463Ss. 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.

F2464 ..... ]

##### Textual Amendments

**F2464Ss. 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*

F2465 **445** .....

##### Textual Amendments

**F2465S. 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.

F2466 (1) .....

F2467 (2) .....

F2467 (3) .....

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F2468(4) .....

**Textual Amendments**

- F2466S. 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
- F2467S. 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
- F2468S. 446(4) repealed by **Finance Act 1990** (c. 29, SIF 63:1), s. 132, **Sch. 19 Pt. IV**.

<sup>447</sup>F2469(1) .....

F2469(2) .....

F2470(3) .....

F2469(4) .....

**Textual Amendments**

- F2469S. 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
- F2470S. 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

F2471 <sup>448</sup> .....

**Textual Amendments**

- F2471S. 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

F2472 <sup>449</sup> .....

**Textual Amendments**

- F2472S. 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*

F2473 <sup>450</sup> .....

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**Textual Amendments**

**F2473**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

**F2474** **451** .....

**Textual Amendments**

**F2474**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

**F2475** **452** .....

**Textual Amendments**

**F2475**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

**F2476** **453** .....

**Textual Amendments**

**F2476**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)

**F2477** **454** .....

**Textual Amendments**

**F2477**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

**F2478** **455** .....

**Textual Amendments**

**F2478**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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F2479 **456** .....

**Textual Amendments**

**F2479** 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

F2480 **457** .....

**Textual Amendments**

**F2480** 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.**

F2481 .....

**Textual Amendments**

**F2481** Ss. 458, 458A repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 39, **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

[<sup>F2482</sup> **458 Capital redemption business: power to apply life assurance provisions.**

F2483 ..... ]

**Textual Amendments**

**F2482** S. 458A inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 168(3)

**F2483** Ss. 458, 458A repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 39, **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)

**CHAPTER II**

FRIENDLY SOCIETIES, TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

*Unregistered friendly societies*

**459 Exemption from tax.**

<sup>M398</sup> An unregistered friendly society [<sup>F2484</sup> (that is, a friendly society which is neither an incorporated friendly society nor a registered friendly society)] whose income does

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not exceed £160 a year shall, on making a claim, be entitled to exemption from <sup>F2485</sup> . . . corporation tax (whether on income or chargeable gains).

#### Textual Amendments

**F2484** 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**

**F2485** Words in s. 459 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 79**, **Sch. 3 Pt. 1** (with Sch. 2)

#### Marginal Citations

**M398** Source—1970 s.331

### *Registered friendly societies*

#### **460 Exemption from tax in respect of life or endowment business.**

- (1) <sup>M399</sup> Subject to subsection (2) below, a [<sup>F2486</sup>friendly society] shall, on making a claim, be entitled to exemption from <sup>F2487</sup> . . . corporation tax (whether on income or chargeable gains) on its profits arising from life or endowment business.
- (2) Subsection (1) above—
- (a) <sup>M400</sup> shall not, subject to section 462, exempt a [<sup>F2488</sup>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;
- [<sup>F2489</sup>(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) <sup>M401</sup> shall not apply to profits arising from [<sup>F2490</sup>gross roll-up business];
- (c) <sup>M402</sup> shall not apply to profits arising from life or endowment business consisting—
- [<sup>F2491</sup>(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 of 12 months exceed £270 or of the granting of annuities of annual amounts exceeding £156;]
- [<sup>F2492</sup>(ai) where the profits relate to contracts made on or after the day on which the Finance Act 1991 was passed [<sup>F2493</sup>but 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 [<sup>F2494</sup>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 [<sup>F2495</sup>£150] or of the granting of annuities of annual amounts exceeding £156;
- [<sup>F2496</sup>(ia) where the profits relate to contracts made after 31st August 1987 but before 1st September 1990, of the assurance of gross sums under



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- contracts under which the total premiums payable in any period of 12 months exceed £100 [<sup>F2497</sup> or 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;
- [<sup>F2498</sup>(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;][<sup>F2499</sup> and]
- [<sup>F2500</sup>(cb) <sup>F2501</sup> ..... ]
- (d) <sup>M403</sup> as respects other life or endowment business (“tax exempt life or endowment business”), has effect subject to the following provisions of this Chapter.
- (3) <sup>M404</sup> In determining for the purposes of [<sup>F2502</sup> [<sup>F2503</sup> subsection (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 [<sup>F2504</sup> or disability] is involved shall be disregarded;
- and in applying the limit of £156 in [<sup>F2505</sup> [<sup>F2503</sup> subsection (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.
- [<sup>F2506</sup>(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 [<sup>F2507</sup> the 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 [<sup>F2508</sup> 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) <sup>M405</sup> A [<sup>F2509</sup> friendly 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) <sup>M406</sup> In the case of a [<sup>F2509</sup> friendly 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

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- (b) references in this Chapter to tax exempt life or endowment business shall be construed accordingly.
- (7) <sup>M407</sup>Where at any time a [<sup>F2509</sup>friendly 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 [<sup>F2509</sup>friendly 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 [<sup>F2509</sup>friendly society] not within subsection (5) above acquires by way of transfer of engagements or amalgamation from another [<sup>F2509</sup>friendly 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 [<sup>F2509</sup> friendly society] within subsection (5) above acquires by way of transfer of engagements or amalgamation from another [<sup>F2509</sup>friendly 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.
- <sup>F2510</sup>(10A) [<sup>F2511</sup>Where 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 [<sup>F2512</sup>, 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.]
- <sup>F2513</sup>(10B) <sup>F2514</sup> . . . . . ]
- (11) <sup>M408</sup>Where at any time a [<sup>F2515</sup>friendly society] ceases <sup>F2516</sup> . . . by virtue of [<sup>F2515</sup>section 91 of the Friendly Societies Act 1992] (conversion into company) to be registered under [<sup>F2517</sup>that 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 [<sup>F2518</sup>continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.]

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- [<sup>F2519</sup>(12) Where at any time an insurance company acquires by way of transfer of engagements from a friendly 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 continue to be exempt from corporation tax (whether on income or chargeable gains) on profits arising from it.
- (13) But if any contracts constituting or forming part of the business of a company covered by subsection (11) or (12) above are varied during an accounting period of the company so as to increase the premiums payable under them, the business relating to those contracts is not exempt from corporation tax for that or any subsequent accounting period.
- (14) For the purposes of the Corporation Tax Acts any part of a company's business which is exempt from corporation tax by virtue of subsection (11) or (12) above shall be treated as a separate business from any other business carried on by the company.]
- [<sup>F2520</sup>(15) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (11) or (12) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.
- (16) Regulations under subsection (15) 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

- F2486** 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**
- F2487** Words in s. 460(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 80, **Sch. 3 Pt. 1** (with Sch. 2)
- F2488** 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**
- F2489** 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**
- F2490** Words in s. 460(2) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 40(a)** (with Sch. 7 Pt. 2)
- F2491** S. 460(2)(c)(zai) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(2)**
- F2492** S. 460(2)(ai) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(3)**
- F2493** Words in s. 460(2)(c)(ai) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(3)**
- F2494** Words in s. 460(2)(c)(i) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(4)**
- F2495** 1990 s.49(1)(a) Previously £100
- F2496** 1990 s.49(1)(b).
- F2497** Words in s. 460(2)(c)(ia) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(5)**
- F2498** 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)**
- F2499** Word at the end of s. 460(2)(ca) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 40(b)** (with Sch. 7 Pt. 2)
- F2500** S. 460(2)(cb) inserted (6.4.2001) by Finance Act 2001 (c. 9), s. 76, **Sch. 25 para. 8(1)**

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- F2501**S. 460(2)(cb) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 40(c), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2502**Words in s. 460(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(7)(a)**
- F2503**Words in s. 460(3) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(4)**
- F2504**Words in s. 460(3)(b) inserted (retrospectively) by Finance Act 2003 (c. 14), s. 172(5)(6)
- F2505**Words in s. 460(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(7)(b)**
- F2506**S. 460(4A)(4B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 1(8)**
- F2507**Words in s. 460(4A) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(5)**
- F2508**Words in s. 460(4B) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 1(6)**
- F2509**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**
- F2510**1990 s. 48 and Sch. 9 para. 6 in relation to transfers of business on or after 1 January 1990
- F2511**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)**
- F2512**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)**
- F2513**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)**
- F2514**S. 460(10B) repealed (with effect in accordance with Sch. 9 para. 17(1) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 9 para. 1(2)(d), **Sch. 27 Pt. 2(9)**, Note
- F2515**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**
- F2516**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)**
- F2517**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)**
- F2518**Words in s. 460(11) substituted (retrospectively) by Finance Act 2007 (c. 11), Sch. 12 paras. 1(3), **6(1)**
- F2519**S. 460(12)-(14) substituted for s. 460(12) (with effect in accordance with Sch. 12 para. 6(3) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 1(4)**
- F2520**S. 460(15)(16) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 12 para. 1(5)**

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#### Modifications etc. (not altering text)

- C387** 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)**)
- C388** 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)**

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#### Marginal Citations

- M399** Source—1970 s.332(1). 1974 s.27(1)(a)
- M400** Source—1970 s.333(1)
- M401** Source—1970 s.332(2)(aa); 1987 (No.2) Sch.2 2(1)
- M402** Source—1970 s.332(2)(a); 1984 s.73(2); 1987 s.30(2)
- M403** Source—1970 s.332(2)(b)
- M404** Source—1970 s.332(3); 1987 s.30(3)
- M405** Source—1970 s.332(4); 1975 (No.2) s.52(1); 1980 s.57(1)

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**M406** Source—1970 s.332(5); 1975 (No.2) s.52(1); 1984 s.73(3)  
**M407** Source—1970 s.332(6)—(9); 1975 (No.2) s.52(1)  
**M408** Source—1970 s.332(10); 1976 s.48(1)

**461 Taxation in respect of other business.**

(1) <sup>M409</sup>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 <sup>F2521</sup>. . . corporation tax (whether on income or chargeable gains) on its profits other than those arising from life or endowment business.

(2) <sup>M410</sup>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 such other group of persons as is for the time being approved for the purposes of this section by the [<sup>F2522</sup>Board]; 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 [<sup>F2522</sup>Board] 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 [<sup>F2523</sup>(7)] below is in force.

(3) <sup>M411</sup>If 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.

[<sup>F2524</sup>(3A) <sup>F2525</sup> . . . . .]

(4) <sup>M412</sup>Where a registered friendly society—

- (a) at any time ceases <sup>F2526</sup>. . . by virtue of [<sup>F2527</sup>section 91 of the Friendly Societies Act 1992] (conversion into company) to be registered under [<sup>F2528</sup>that Act]; and
- (b) immediately before that time was exempt from <sup>F2529</sup>. . . 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.

[<sup>F2530</sup>(4A) Where—

- (a) at any time an insurance company acquires by way of transfer of engagements from a registered friendly society any business other than life or endowment business, and

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- (b) immediately before that time the society was exempt from corporation tax on profits arising from that business,  
the insurance company shall be exempt from corporation tax on its profits arising from any part of that business which relates to contracts made before that time.
- (4B) But if during an accounting period of the insurance company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on any such part of that business, the company shall not be exempt from corporation tax by virtue of subsection (4A) above for that or any subsequent accounting period.]
- (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) [F2531or (4A)] above shall be treated as a separate business from any other business carried on by the company.
- (6) M413If—
- (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 [F2532the 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 [F2532the 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;
- [F2533the Board may give a direction to the society under subsection (7) below.]
- [F2534(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.
- [F2535(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

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- (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.]

[<sup>F2536</sup>(12) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (4) or (4A) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.

(13) Regulations under subsection (12) 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

**F2521** Words in s. 461(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 81\(2\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**F2522** 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)**

**F2523** 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)**

**F2524** S. 461(3A) inserted (6.4.2001) by [Finance Act 2001 \(c. 9\), s. 76, Sch 25 para. 8\(2\)](#)

**F2525** S. 461(3A) repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\), Sch. 7 para. 41, Sch. 27 Pt. 2\(7\)](#), Note (with [Sch. 7 Pt. 2](#))

**F2526** 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)**

**F2527** 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**

**F2528** 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)**

**F2529** Words in s. 461(4)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 81\(3\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**F2530** S. 461(4A)(4B) inserted (with effect in accordance with [Sch. 12 para. 6\(3\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 12 para. 4\(2\)](#)

**F2531** Words in s. 461(5) inserted (with effect in accordance with [Sch. 12 para. 6\(3\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 12 para. 4\(3\)](#)

**F2532** 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)**

**F2533** 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)**

**F2534** 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)**



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**F2535S.** 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)**

**F2536S.** 461(12)(13) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 12 para. 4(4)**

#### Marginal Citations

**M409** Source—1970 s.332(1); 1974 s.27(1)(a)

**M410** Source—1974 s.27(2)

**M411** Source—1974 s.27(1)(b)

**M412** Source—1970 s.332(11), (12)(b); 1976 s.48(1)

**M413** Source—1974 s.27(3)—(7); 1985 s.41(10); 1987 Sch.15 6

### [461A <sup>F2537</sup> **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 [<sup>F2538</sup>Board].

(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.

[ For the purposes of this section and section 461C, any group of persons which was <sup>F2539</sup>(4) 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.]]

#### Textual Amendments

**F2537Ss.** 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**

**F2538**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)**

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**F2539S. 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\(3\)](#)

**F2540 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 <sup>F2541</sup> . . . 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).

[<sup>F2542</sup>(2A) <sup>F2543</sup> . . . . .]

- (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 [<sup>F2544</sup>(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 <sup>F2545</sup> . . . 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.

[<sup>F2546</sup>(6) But if during an accounting period of the company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on any such part of its business, the company shall not be exempt from corporation tax by virtue of subsection (5) above for that or any subsequent accounting period.

(6A) Where—

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- (a) at any time an insurance company acquires by way of transfer of engagements from a qualifying society any business other than life or endowment business, and
  - (b) immediately before that time the society was exempt from corporation tax on profits arising from that business,
- the insurance company shall be exempt from corporation tax on its profits arising from any part of that business which relates to contracts made before that time.
- (6B) But if during an accounting period of the insurance company there is an increase in the scale of benefits which it undertakes to provide in the course of carrying on any such part of that business, the company shall not be exempt from corporation tax by virtue of subsection (6A) above for that or any subsequent accounting period.]
- (7) Any part of a company's business to which an exemption under subsection (5) [<sup>F2547</sup>or (6A)] 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.
- [<sup>F2548</sup>(8) The Treasury may by regulations provide that, where any part of the business of a company is exempt from corporation tax by virtue of subsection (5) or (6A) above, the Corporation Tax Acts have effect subject to such modifications (or exceptions) as the Treasury consider appropriate.
- (9) Regulations under subsection (8) 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

- F2540** 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**
- F2541** Words in s. 461B(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 82(2)**, **Sch. 3 Pt. 1** (with **Sch. 2**)
- F2542** S. 461B(2A) inserted (6.4.2001) by Finance Act 2001 (s. 9), s. 76, **Sch. 25 para. 8(3)**
- F2543** S. 461B(2A) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 42**, **Sch. 27 Pt. 2(7)**, Note (with **Sch. 7 Pt. 2**)
- F2544** 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**
- F2545** Words in s. 461B(5) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 82(3)**, **Sch. 3 Pt. 1** (with **Sch. 2**)
- F2546** S. 461B(6)-(6B) substituted for s. 461B(6) (with effect in accordance with **Sch. 12 para. 6(3)** of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 5(2)**
- F2547** Words in s. 461B(7) inserted (with effect in accordance with **Sch. 12 para. 6(3)** of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 5(3)**
- F2548** S. 461B(8)(9) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 12 para. 5(4)**

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**F2549 461 Taxation in respect of other business: withdrawal of “qualifying” status from incorporated friendly society.**

- (1) Subject to subsection (2) below, subsections (3) [F2550] 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 [F2551]Board], begins to carry on business other than life or endowment business on an enlarged scale or of a new character.
- (2) Subsections (3) [F2552] 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 [F2553]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 [F2554]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 [F2554]Board] may [F2555]give a direction to the society under subsection (4) below.]
- [F2556](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.]

**Textual Amendments**

**F2549** 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**

**F2550** 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)**

**F2551** 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)**

**F2552** 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)**

**F2553** 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)**

**F2554** 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)**

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**F2555** 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\(4\)\(b\)](#)

**F2556** 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

**[<sup>F2557</sup>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
- (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**

**F2557** 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\(1\)](#)

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## 462 Conditions for tax exempt business.

- [<sup>F2558</sup>(1) Subject to subsections (2) to (4) below, section 460 does not afford any exemption from corporation tax in relation to so much of the profits arising to a friendly society or insurance company from any business as is attributable to a policy which—
- (a) is not a qualifying policy (by virtue of sub-paragraph (2) of paragraph 6 of Schedule 15) and is not an excluded policy, and
  - (b) would not be a qualifying policy (by virtue of that sub-paragraph) if all excluded policies were left out of account.
- (1A) For the purposes of subsection (1) above a policy is an excluded policy if—
- (a) it is a policy held otherwise than with the friendly society or insurance company, or
  - (b) the person who has the contract effecting the policy acquired the rights under it on an assignment (or, in Scotland, assignation) otherwise than for money or money's worth.]

(2) [<sup>F2559M414</sup>Section 460(2)(a) or (aa)] and subsection (1) above shall not withdraw exemption [<sup>F2560</sup>in relation to profits arising from any part of a] 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 [<sup>F2561</sup>460 does not afford any exemption from corporation tax in relation to so much as is attributable to that policy of the profits of the friendly society or insurance company concerned.]

(4) Nothing in subsection (3) above shall be taken to affect the status of a policy as a qualifying policy.

### Textual Amendments

**F2558**S. 462(1)(1A) substituted for s. 462(1) (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\), s. 45\(2\)\(6\)](#)

**F2559**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](#)

**F2560**Words in s. 462(2) substituted (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\), s. 45\(3\)\(6\)](#)

**F2561**Words in s. 462(3) substituted (retrospective to 1.1.2007) by [Finance Act 2007 \(c. 11\), s. 45\(4\)\(6\)](#)

### Marginal Citations

**M414** Source—1970 s.336; 1985 Sch.10 Part II

## [<sup>F2562</sup>462] 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.



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- (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 [<sup>F2563</sup> “policies”] of “and all policies issued in pursuance of contracts to which an election under section 462A(1) or (2) relates”.
- <sup>F2564</sup>(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 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

**F2562S.** 462A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 2**

**F2563** Word in s. 462A(8)(b) substituted (retrospective to 1.1.2007) by Finance Act 2007 (c. 11), s. 45(5)(6)

**F2564S.** 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



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#### 463 Life or endowment business: application of the Corporation Tax Acts.

- (1) <sup>M415</sup>Subject to section 460(1), the Corporation Tax Acts shall apply to the life or endowment business carried on by [<sup>F2565</sup>friendly societies] in the same way as they apply to mutual life assurance business [<sup>F2566</sup>(or other [<sup>F2567</sup>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.
- <sup>F2568</sup>(2) The provisions of the Corporation Tax Acts which apply on the transfer of the whole or part of the [<sup>F2567</sup>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 [<sup>F2567</sup>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

**F2565** 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**

**F2566** 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)**

**F2567** 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)**

**F2568** 1990 s.50(2).

#### Modifications etc. (not altering text)

**C389** See 1990 s.50(1)—s.463 was renumbered as s.463(1).

**C390** For regulations see Part III Vol.5 (under “Friendly Societies”).

#### Marginal Citations

**M415** Source—1970 s.335(1)

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#### 464 Maximum benefits payable to members.

- [<sup>F2569</sup>(1) Subject to subsections (2) and (3) below, a person is not entitled to have at any time outstanding contracts with any one or more friendly societies, registered branches or insurance companies which (taking them all together) are for the assurance of—
- (a) more than £750 by way of gross sum under business which is afforded exemption from corporation tax by section 460, or
  - (b) more than £156 by way of annuity under such 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) [<sup>F2570</sup>With respect to contracts for the assurance of gross sums under business which is afforded exemption from corporation tax by section 460, a person is not entitled to have outstanding at any time with any one or more friendly societies, registered branches or insurance companies—]

[<sup>F2571</sup>(zza) contracts under which the total premiums payable in any period of 12 months exceed £270; or]

[<sup>F2572</sup>(za) contracts [<sup>F2573</sup>made 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 [<sup>F2574</sup>made 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 [<sup>F2575</sup>limits] 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.

[<sup>F2576</sup>(4A) Subsection (4B) below applies to contracts for the assurance of gross sums under [<sup>F2577</sup>business which is afforded exemption from corporation tax by section 460 if they are] made after 31st August 1987 and before the day on which [<sup>F2578</sup>the 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 [<sup>F2579</sup>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 (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;

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- [<sup>F2580</sup>(b) any policy of insurance or annuity contract by means of which the benefits to be provided under an occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004) are secured or any annuity contract which constitutes a registered pension scheme or is issued or held in connection with a registered pension scheme other than such an occupational pension scheme;]
- (c) any increase in a benefit under a friendly society contract, as defined in section 6 of the <sup>M416</sup>Decimal 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 [<sup>F2581</sup>friendly 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 [<sup>F2582</sup>person has outstanding with one or more societies, branches or companies] 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 [<sup>F2583</sup>friendly society [<sup>F2584</sup>, registered branch or insurance company]] may require a [<sup>F2585</sup>person] to make and sign a statutory declaration that the total amount assured under outstanding contracts entered into by that [<sup>F2585</sup>person] with any one or more [<sup>F2583</sup>friendly societies][<sup>F2586</sup>, registered branches or insurance companies (taken together)] 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

**F2569**S. 464(1): first sentence substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(2)**

**F2570**Words in s. 464(3) substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(3)**

**F2571**S. 464(3)(zza) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(2)**

**F2572**S. 464(3)(za) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(2)**

**F2573**Words in s. 464(3)(za) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(3)**

**F2574**Words in s. 464(3)(a) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(3)**

**F2575**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

**F2576**S. 464(4A)(4B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 3(4)**

**F2577**Words in s. 464(4A) substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(4)**

**F2578**Words in s. 464(4A) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(4)**

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- F2579** Words in s. 464(4B) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 2(5)**
- F2580** S. 464(5)(b) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 21** (with Sch. 36)
- F2581** 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**
- F2582** Words in s. 464(6) substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(5)**
- F2583** 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**
- F2584** Words in s. 464(7) substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(6)(a)**
- F2585** Words in s. 464(7) substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(6)(b)**
- F2586** Words in s. 464(7) substituted (with effect in accordance with Sch. 12 para. 6(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 12 para. 2(6)(c)**

#### Modifications etc. (not altering text)

- C391** 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

- M416** 1969 c. 19.

## 465 Old societies.

- (1) <sup>M417</sup> 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) <sup>F2587</sup> . . . 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.
- [<sup>F2588</sup> (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.]

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#### Textual Amendments

- F2587** Words in s. 465(3) repealed by Finance Act 1991 (c. 31, SIF 63:1), s. 123, **Sch. 19 Pt. V**, Note 7  
**F2588** 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

- M417** Source—1985 Sch.10 Part III

### [465A <sup>F2589</sup> 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

- F2589** 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.

[<sup>F2590</sup>[<sup>F2591</sup>(1) In this Chapter “life or endowment business” means, subject to subsections (1A) and (1B) below—

- (a) any life assurance business, and
- (b) any PHI business.]

(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.

(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

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policy of assurance forming part of the tax exempt life or endowment business of the friendly society.]

(2) In this Chapter—

[<sup>F2592</sup><sup>F2593</sup> “friendly society”, without qualification, means (except in section 459) an incorporated friendly society or a registered friendly society;

[<sup>F2592</sup> “gross roll-up business” shall be construed in accordance with section 431;]

“incorporated friendly society” means a society incorporated under the Friendly Societies Act 1992;]

[<sup>F2594</sup> “insurance company” shall be construed in accordance with section 431;]

<sup>F2595</sup>

[<sup>F2596</sup> “<sup>F2597</sup>long-term] business” shall be construed in accordance with section 431;]

[<sup>F2598</sup> “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;]

<sup>F2599</sup>

“policy”, in relation to life or endowment business, includes an instrument evidencing a contract to pay an annuity upon human life;

[<sup>F2600</sup> “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);]

<sup>F2601</sup>

“tax exempt life or endowment business” has, subject to subsections (7) to [<sup>F2602</sup>(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 [<sup>F2603</sup>include, in the case of a registered friendly society, references to any branch of that society].

[<sup>F2604</sup>(2ZA) <sup>F2605</sup> . . . . .]

[<sup>F2606</sup>(2A) <sup>F2605</sup> . . . . .]

(2B) <sup>F2605</sup> . . . . .]

(3) <sup>M418</sup>It is hereby declared that for the purposes of this Chapter (except where provision to the contrary is made) a [<sup>F2607</sup>friendly 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.
- [<sup>F2608</sup>(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

- F2590S.** 466(1)-(1B) substituted for s. 466(1) (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **s. 171(1)**
- F2591S.** 466(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 43(2)** (with Sch. 7 Pt. 2)
- F2592S.** 466(2): definition of "gross roll-up business" inserted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 43(3)(b)** (with Sch. 7 Pt. 2)
- F2593S.** 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**
- F2594S.** 466(2): definition of "insurance company" inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **s. 171(2)(a)**
- F2595S.** 466(2): definition of "life assurance business" repealed (with effect in accordance with s. 38(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 43(3)(a)**, **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2596S.** 466(2): definition of "long term business" inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **s. 171(2)(b)**
- F2597S.** 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)**
- F2598S.** 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**
- F2599S.** 466(2): definition of "pension business" repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), **Sch. 35 para. 22(2)**, **Sch. 42 Pt. 3**, Note (with Sch. 36)
- F2600S.** 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**
- F2601S.** 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**
- F2602S.** 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)**
- F2603S.** 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**
- F2604S.** 466(2ZA) 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. 83** (with Sch. 2)



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- F2605S.** 466(2ZA)(2A)(2B) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 43(4), **Sch. 27 Pt. 2(7)**, Note (with Sch. 7 Pt. 2)
- F2606S.** 466(2A)(2B) inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 22(3)** (as amended by Finance Act 2005 (c. 5), **Sch. 9 para. 18(5)-(7)**) (with Sch. 36)
- F2607** 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**)
- F2608S.** 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)

- C392** S. 466(2) modified (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), **regs. 1, 5, 17**
- C393** 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

- M418** Source—1970 s.337(4); 1985 s.41(7)(e)

### *Trade unions and employers' associations*

#### 467 Exemption for trade unions and employers' associations.

- (1) <sup>M419</sup>A trade union which is precluded by Act of Parliament or by its rules from assuring to any person a sum exceeding [<sup>F2609</sup>£4,000] by way of gross sum or [<sup>F2610</sup>£825] by way of annuity shall on making a claim be entitled [<sup>F2611</sup>to exemption from corporation tax]—
- <sup>F2612</sup> . . . in respect of its income which is not trading income and which is applicable and applied for the purpose of provident benefits;
  - <sup>F2613</sup> . . . 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 [<sup>F2614</sup>spouse][<sup>F2615</sup>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 [<sup>F2616</sup>£825] by way of annuity, there shall be disregarded any [<sup>F2617</sup>annuity contract which constitutes a registered pension scheme or is issued or held in connection with a registered pension scheme other than an occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004)].
- [<sup>F2618</sup>(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—

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- (a) <sup>M420</sup> any trade union the name of which is entered in the list of trade unions maintained by the [<sup>F2619</sup>Certification Officer] under [<sup>F2620</sup>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 [<sup>F2619</sup>Certification Officer] under [<sup>F2621</sup>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;
- <sup>F2622</sup>(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) <sup>M421</sup>the 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

- F2609** Words in s. 467(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 74(2)(a),(6)
- F2610** Words in s. 467(1) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 74(2)(b),(6)
- F2611** Words in s. 467(1) 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. 84(2) (with Sch. 2)
- F2612** Words in s. 467(1)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 84(3), Sch. 3 Pt. 1 (with Sch. 2)
- F2613** Words in s. 467(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 84(4), Sch. 3 Pt. 1 (with Sch. 2)
- F2614** 1988(F) s.35 and Sch.3 para.17 for chargeable period beginning on or after 6 April 1990. Previously "wife".
- F2615** 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
- F2616** Words in s. 467(3) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 74(3)(6)
- F2617** Words in s. 467(3) substituted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 23 (with Sch. 36)
- F2618** S. 467(3A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 74(4)
- F2619** Words in s. 467(4)(a)(b) substituted (*retrospectively*) by Finance Act 1991 (c. 31, SIF 63:1), s. 74(5)(a),(7)
- F2620** 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)
- F2621** 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)
- F2622** 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)

- C394** See 1970 s.338 for amounts applicable in earlier years.
- C395** 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.

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**Marginal Citations**

- M419** Source—1970 s.338(1)—(3); 1982 s.36(1); 1974 s.28(1)(b); 1987 s.31
- M420** Source—1974 s.28(1)(a)
- M421** Source—1977 s.47

**CHAPTER III**

**UNIT TRUST SCHEMES, DEALERS IN SECURITIES ETC.**

*Unit trust schemes*

**468 Authorised unit trusts.**

- (1) <sup>M422</sup>In 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;

<sup>F2623</sup>but paragraph (b) above is without prejudice to the making of distributions which are interest distributions (within the meaning of <sup>F2624</sup>regulations made under section 17(3) of the Finance (No. 2) Act 2005 (as at 1st April 2006, see regulation 18(3) of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964))) to unit holders].
- <sup>F2625</sup>(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 <sup>F2626</sup>savings rate] is charged for the year of assessment which begins on 6th April in the financial year concerned <sup>F2627</sup>and section 13 shall not apply].]
- (2) <sup>F2628</sup> . . . . .
- (3) References in the Corporation Tax Acts to a body corporate shall be construed in accordance with <sup>F2629</sup>subsection (1) above], and section <sup>F2630</sup>234A] shall apply with any necessary modifications.
- (4) <sup>F2631</sup> . . . . .
- (5) <sup>F2632</sup> . . . . .
- (6) <sup>F2633</sup> 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 <sup>F2634</sup>243 of the Financial Services and Markets Act 2000] is in force during the whole or part of that accounting period;
  - <sup>F2635</sup> . . . . .
  - “unit holder” means a person entitled to a share of the investments subject to the trusts of a unit trust scheme; <sup>F2636</sup> . . . . .
  - <sup>F2636</sup> . . . . .
- <sup>F2637</sup>(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.

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- (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 [F2634]243 of the Financial Services and Markets Act 2000] is in force;
- 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

- F2623** 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)**
- F2624** Words in s. 468(1) substituted (1.4.2006 with effect in accordance with reg. 1(2) of the amending S.I.) by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **regs. 1(1), 88(2)**
- F2625** 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)**
- F2626** Words in s. 468(1A) 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. 85(2)** (with Sch. 2)
- F2627** Words in s. 468(1A) substituted (with effect in accordance with s. 26(8)-(11) of the amending Act) by Finance Act 2006 (c. 25), **s. 26(4)**
- F2628** 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
- F2629** 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)**
- F2630** Words in s. 468(3) substituted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), **s. 32(3)(4)**
- F2631** 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
- F2632** S. 468(5) repealed by Finance Act 1990 (c. 29), s. 52, **Sch. 19 Pt. 4**, Note 7
- F2633** 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)**
- F2634** 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)**
- F2635** 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
- F2636** S. 468(6): definition of "unit trust scheme" and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 85(3), **Sch. 3 Pt. 1** (with Sch. 2)
- F2637** 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)**

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**Modifications etc. (not altering text)**

**C396** 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](#))

**C397** Definition employed for the purposes of s.46(7)—insurance companies: annual deemed disposal of holdings of unit trusts etc.

**Marginal Citations**

**M422** Source—1970 ss.354, 358; 1980 s.60; 1987 s.38, 40(1); 1987 (No.2) s.40(1)

[<sup>F2638</sup> **468AA** **Authorised unit trusts: futures and options.**

F2639 . . . . . ]

**Textual Amendments**

**F2638**S. 468AA inserted by [Finance Act 1990](#) (c. 29), [s. 81\(1\)\(5\)](#)

**F2639**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)

[<sup>F2640</sup> **468AC** **Certified unit trusts.**

F2641 . . . . . ]

**Textual Amendments**

**F2640**Ss. 468A-468C inserted by [Finance Act 1989](#) (c. 26), [s. 78](#)

**F2641**Ss. 468A-468D repealed by [Finance Act 1990](#) (c. 29), s. 52, [Sch. 19 Pt. 4](#), Note 7

[<sup>F2642</sup> **468AD** **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 [<sup>F2643</sup>savings rate] is charged for the year of assessment which begins on 6th April in the financial year concerned [<sup>F2644</sup>(and section 13 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

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- (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**

**F2642**S. 468A inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 16

**F2643**Words in s. 468A(1) 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. 86 (with Sch. 2)

**F2644**Words in s. 468A(1) substituted (with effect in accordance with s. 26(8)-(11) of the amending Act) by Finance Act 2006 (c. 25), s. 26(5)

**F2645** ~~468K~~ **468J Certified unit trusts: corporation tax.**

**F2646** .....

**Textual Amendments**

**F2645**Ss. 468A-468C inserted by Finance Act 1989 (c. 26), s. 78

**F2646**Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, Sch. 19 Pt. 4, Note 7

**F2647** ~~468C~~ **468B Certified unit trusts: distributions.**

**F2648** .....

**Textual Amendments**

**F2647**Ss. 468A-468C inserted by Finance Act 1989 (c. 26), s. 78

**F2648**Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, Sch. 19 Pt. 4, Note 7

**[** **F2649** ~~468D~~ **468A Funds of funds: distributions.**

**F2650** ..... ]

**Textual Amendments**

**F2649**S. 468D inserted by Finance Act 1989 (c. 26), s. 79

**F2650**Ss. 468A-468D repealed by Finance Act 1990 (c. 29), s. 52, Sch. 19 Pt. 4, Note 7

**[** **F2651** ~~468E~~ **468A Authorised unit trusts: corporation tax.**

**F2652** ..... ]

**Textual Amendments**

**F2651**Ss. 468E-468G inserted by Finance Act 1990 (c. 29), s. 51

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**F2652S. 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

[<sup>F2653</sup>**468EE** Corporation tax: cases where lower rate applies.

<sup>F2654</sup> . . . . . ]

**Textual Amendments**

**F2653S. 468EE** inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 111(2)**

**F2654S. 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

<sup>F2655</sup>**468F** Authorised unit trusts: distributions.

<sup>F2656</sup> . . . . .

**Textual Amendments**

**F2655Ss. 468E-468G** inserted by Finance Act 1990 (c. 29), **s. 51**

**F2656S. 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

<sup>F2657</sup>**468G** Dividends paid to investment trusts.

<sup>F2658</sup> . . . . .

**Textual Amendments**

**F2657Ss. 468E-468G** inserted by Finance Act 1990 (c. 29), **s. 51**

**F2658S. 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

*[<sup>F2659</sup> Distributions of authorised unit trusts: general*

**Textual Amendments**

**F2659Ss. 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.**

<sup>F2660</sup> . . . . .



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**Textual Amendments**  
**F2660**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, **art. 2**) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), **Sch. 11 Pt. 2(3)**, Note 2

**468I Distribution accounts.**

**F2661** .....

.....

**Textual Amendments**  
**F2661**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, **art. 2**) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), **Sch. 11 Pt. 2(3)**, Note 2

*Dividend and foreign income distributions*

**468J Dividend distributions.**

**F2662** .....

.....

**Textual Amendments**  
**F2662**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, **art. 2**) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), **Sch. 11 Pt. 2(3)**, Note 2

**468K Foreign income distributions.**

**F2663** .....

.....

**Textual Amendments**  
**F2663**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.**

**F2664** .....

.....

**Textual Amendments**  
**F2664**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, **art. 2**) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), **Sch. 11 Pt. 2(3)**, Note 2

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[<sup>F2665</sup> **468M Cases where no obligation to deduct tax**

<sup>F2666</sup> ..... ]

**Textual Amendments**

**F2665**Ss. 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)

**F2666**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, art. 2) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), Sch. 11 Pt. 2(3), Note 2

**468O Residence condition [<sup>F2667</sup> and reputable intermediary condition].**

<sup>F2668</sup> .....

**Textual Amendments**

**F2667**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)

**F2668**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, art. 2) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), Sch. 11 Pt. 2(3), Note 2

**468P Residence declarations.**

<sup>F2669</sup> .....

**Textual Amendments**

**F2669**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, art. 2) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), Sch. 11 Pt. 2(3), Note 2

[<sup>F2670</sup> **Section 468O(1A): consequences of reasonable but incorrect belief**

<sup>F2671</sup> ..... ]

**Textual Amendments**

**F2670**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)

**F2671**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, art. 2) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), Sch. 11 Pt. 2(3), Note 2

**468PB Regulations supplementing sections 468M to 468PA**

<sup>F2672</sup> ..... ]

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**Textual Amendments**  
**F2670**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)  
**F2672**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, art. 2) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), Sch. 11 Pt. 2(3), Note 2

*Distributions to corporate unit holder*

**468Q Dividend distribution to corporate unit holder.**

F2673  
 .....

**Textual Amendments**  
**F2673**Ss. 468H-468Q repealed (in force in accordance with S.I. 2006/982, art. 2) by Finance (No. 2) Act 2005 (c. 22), ss. 17(1)(a), 19(1), Sch. 11 Pt. 2(3), Note 2

**468R Foreign income distribution to corporate unit holder.**

F2674  
 .....

**Textual Amendments**  
**F2674**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) <sup>M423</sup>any unit trust scheme [<sup>F2675</sup>that is neither an authorised unit trust nor an umbrella scheme]; <sup>F2676</sup> . . .
  - (b) <sup>F2676</sup> . . . . .
- 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 [<sup>F2677</sup>Corporation Tax Acts] as income of the trustees (and not as income of the unit holders) <sup>F2678</sup> . . . .

[<sup>F2679</sup>(2A) <sup>F2680</sup> . . . . .

[<sup>F2681</sup>(2B) <sup>F2680</sup> . . . . .]]

(3) <sup>F2680</sup> . . . . .

(4) <sup>F2680</sup> . . . . .

[<sup>F2682</sup>(4A) For the purposes of the Corporation Tax Acts, the trustees are treated as making an annual payment (under deduction of income tax) to each unit holder if an amount is

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shown in the scheme's accounts as income available for payment to unit holders or for investment.

(4B) The amount of an annual payment to a unit holder for a distribution period before the deduction of income tax is its gross amount.

(4C) Section 548(2) of ITTOIA 2005 applies for the purpose of calculating the gross amount of an annual payment for a distribution period as it applies for the purpose of calculating the gross amount of income treated as received for a distribution period under Chapter 10 of Part 4 of that Act.

(4D) Section 941 of ITA 2007 deals with the deduction of income tax from the gross amount so calculated.]

(5) The date on which the annual [<sup>F2683</sup>payment is] 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 [<sup>F2683</sup>payment is] treated as made shall be the last day of the period.

[<sup>F2684</sup>(5A) <sup>F2685</sup> .....

(5B) <sup>F2685</sup> .....

(5C) <sup>F2685</sup> .....

(5D) <sup>F2685</sup> .....]

(6) In this section “distribution period” [<sup>F2686</sup> means 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).

[<sup>F2687</sup>(6A) In this section “umbrella scheme” has the same meaning as in section 468.]

(7) <sup>F2685</sup> .....

(8) <sup>F2685</sup> .....

(9) <sup>F2685</sup> .....

(10) <sup>F2685</sup> .....

(11) This section shall have effect in relation to distribution periods beginning on or after 6th April 1987.

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### Textual Amendments

- F2675** 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)
- F2676** 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)
- F2677** Words in s. 469(2) 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. 87(2)(a) (with Sch. 2)
- F2678** Words in s. 469(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 87(2)(b), Sch. 3 Pt. 1 (with Sch. 2)
- F2679** 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)
- F2680** S. 469(2A)-(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 87(3), Sch. 3 Pt. 1 (with Sch. 2)
- F2681** 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)
- F2682** S. 469(4A)-(4D) 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. 87(4) (with Sch. 2)
- F2683** Words in s. 469(5) 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. 87(5) (with Sch. 2)
- F2684** S. 469(5A)-(5D) inserted by Finance Act 1988 (c. 39), s. 71
- F2685** S. 469(5A)-(5D)(7)-(10) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 87(6), Sch. 3 Pt. 1 (with Sch. 2)
- F2686** 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
- F2687** S. 469(6A) inserted (with effect in accordance with s. 113(4)-(11) of the amending Act) by Finance Act 1994 (c. 9), s. 113(3)(b)

### Modifications etc. (not altering text)

- C398** S. 469 extended (27.7.1993) by 1993 c. 37, s. 12, Sch. 2 Pt. 1 para. 22(1)(2)

### Marginal Citations

- M423** Source—1970 s.354A; 1987 s.39; 1987 (No.2) s.40(1)

## [<sup>F2688</sup> 469] Court common investment funds.

- (1) The Tax Acts shall have effect in relation to any common investment fund established under section 42 of the <sup>M424</sup>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) [<sup>F2689</sup>the persons with qualifying interests] were the unit holders in that authorised unit trust.

- [ For the purposes of subsection (1)(c) above, the persons with qualifying interests are—
- <sup>F2690</sup>(1A) (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")—

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- (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 <sup>F2691</sup> . . . 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) <sup>F2692</sup> . . . . . ]

**Textual Amendments**

- F2688**S. 469A inserted (with effect in accordance with s. 68(3)-(5) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 68\(1\)](#)
- F2689**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\(2\)](#)
- F2690**S. 469A(1A) inserted (with effect in accordance with s. 183(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 183\(3\)](#)
- F2691**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\(17\)](#)
- F2692**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**

- M424** 1982 c.53.

**470 Transitional provisions relating to unit trusts.**

- (1) <sup>F2693</sup> . . . . .
- <sup>F2694</sup> (2) . . . . .
- (3) <sup>F2693</sup> . . . . .

**Textual Amendments**

- F2693**S. 470(1)(3) repealed (31.7.1998) by [Finance Act 1998 \(c. 36\), Sch. 27 Pt. 3\(23\)](#)
- F2694**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.**

- <sup>F2695</sup> . . . . .

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#### Textual Amendments

**F2695S.** 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.

F2696

#### Textual Amendments

**F2696S.** 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

## [<sup>F2697</sup>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 [<sup>F2698</sup>company] 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 [<sup>F2699</sup>company'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.
- (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

**F2697S.** 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\(7\)](#))



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- F2698** 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)
- F2699** 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)<sup>M425</sup> Subsections (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 [<sup>F2700</sup>company] 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 <sup>F2701</sup> . . . —
- (a) [<sup>F2702</sup>results] in the original holding being equated with a new holding by virtue of sections [<sup>F2703</sup>126 to 136 of the 1992] Act (capital gains tax roll-over relief in cases of conversion etc.); or
  - (b) [<sup>F2704</sup>is] treated by virtue of section [<sup>F2703</sup>134] of that Act (compensation stock) as an exchange for a new holding which does not involve a disposal of the original holding;
- <sup>F2705</sup> . . . . .
- [<sup>F2706</sup>(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 [<sup>F2700</sup>company] 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)<sup>F2707</sup> . . . . .
- (6) In this section “securities” includes shares, any security within the meaning of section [<sup>F2708</sup>132 of the 1992 Act] and any rights, interests or options which by virtue of section [<sup>F2708</sup>[<sup>F2709</sup>135(5), 136(5)], 147 or 99] of that Act are treated as shares for the purposes of sections [<sup>F2708</sup>126 to 136] of that Act.

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- (7) In determining for the purposes of subsection (2)(a) above whether a transaction [F2702 results] in the original holding being equated with a new holding by virtue of section [F2710 135 or 136 of the 1992] Act the reference in section [F2710 137(1)] of that Act to capital gains tax shall be construed as a reference to income tax.

#### Textual Amendments

- F2700** 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](#))
- F2701** 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
- F2702** 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\(1\)\(b\)](#)
- F2703** 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))
- F2704** 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\(1\)\(c\)](#)
- F2705** 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
- F2706** 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\(2\)](#)
- F2707** 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
- F2708** 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))
- F2709** 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\(4\)](#)
- F2710** 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))

#### Marginal Citations

- M425** Source—1977 s.46; 1979(C) Sch.7

#### 474 Treatment of tax-free income.

- (1) <sup>F2711</sup> .....
- (2) <sup>F2712</sup> .....
- [ <sup>F2711</sup> ..... ]
- <sup>F2713</sup>(3)

#### Textual Amendments

- F2711** 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\(2\)](#)
- F2712** 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

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**F2713**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.**

- [<sup>F2714</sup>(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 <sup>F2715</sup> . . . , and
  - [<sup>F2716</sup>(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 [<sup>F2717</sup>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 [<sup>F2718</sup>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).]
- (5) <sup>F2719</sup> . . . 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) <sup>F2720</sup> . . . . .
- (7) <sup>F2720</sup> . . . . .
- (8) For the purposes of this section the cost of a holding of [<sup>F2717</sup>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, <sup>F2721</sup> . . . . .
- (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.

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**Textual Amendments**

- F2714**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\(1\)](#)
- F2715**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
- F2716**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)
- F2717**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\(2\)](#)
- F2718**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)
- F2719**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
- F2720**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
- F2721**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.**

**F2722** .....

**Textual Amendments**

- F2722**S. 476 repealed by [Finance Act 1990 \(c. 29\), Sch. 5 para. 2, Sch. 19 Pt. 4](#), Note 8

**477 Investments becoming or ceasing to be relevant building society investments.**

**F2723** .....

**Textual Amendments**

- F2723**S. 477 repealed by [Finance Act 1990 \(c. 29\), Sch. 5 para. 3, Sch. 19 Pt. 4](#), Note 8

**[<sup>F2725</sup>477 Building societies: [<sup>F2724</sup>loan relationships].**

- (1) <sup>F2726</sup> .....
- [ <sup>F2726</sup> ..... ]
- <sup>F2727</sup>(1A)
- (2) <sup>F2726</sup> .....

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[<sup>F2726</sup> .....]  
F2728(2A)

(3)<sup>F2729</sup> . . . 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—

[<sup>F2730</sup>(a) [<sup>F2731</sup>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, [<sup>F2732</sup>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;]

(b) no part of any such dividends or interest <sup>F2733</sup> . . . shall be treated as a distribution of the society or as franked investment income of any company resident in the United Kingdom.

[<sup>F2735</sup> .....]  
F2734(3A)

(3B) <sup>F2735</sup> .....

(3C) <sup>F2735</sup> .....

(4) Subsection (3)(a) above shall apply to any [<sup>F2736</sup>interest] paid by the society under a certified [<sup>F2737</sup>SAYE savings arrangement] as if it were a dividend on a share in the society.

(5) <sup>F2738</sup> .....

(6) <sup>F2738</sup> .....

(7) <sup>F2739</sup> .....

(8) <sup>F2740</sup> .....

[<sup>F2741</sup>(9) In this section “dividend” includes any distribution (whether or not described as a dividend).]

[ In this section—  
F2742(10) [<sup>F2743</sup>“certified SAYE savings arrangement” has the meaning given by section 703 of ITTOIA 2005  
<sup>F2744</sup> .....  
<sup>F2744</sup> .....]  
<sup>F2745</sup>F2744 ..... ]]

### Textual Amendments

**F2724** Words in s. 477A sidenote 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. 88\(7\)](#) (with [Sch. 2](#))

**F2725** 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\(1\)](#)

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- F2726S.** 477A(1)-(2A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 88(2), **Sch. 3 Pt. 1** (with Sch. 2)
- F2727S.** 477A(1A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 2(2)**
- F2728S.** 477A(2A) inserted (28.7.2000) by Finance Act 2000 (c. 17), **s. 111(4)**
- F2729** Words in s. 477A(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 88(3)(a), **Sch. 3 Pt. 1** (with Sch. 2)
- F2730S.** 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)
- F2731** 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)**
- F2732** 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)**
- F2733** Words in s. 477A(3)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 88(3)(b), **Sch. 3 Pt. 1** (with Sch. 2)
- F2734S.** 477A(3A)-(3C) inserted by Finance Act 1991 (c. 31, SIF 63:1), **s. 52(2)(3)**
- F2735S.** 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)
- F2736** 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)
- F2737** 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)
- F2738S.** 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)
- F2739S.** 477A(7) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 88(4), **Sch. 3 Pt. 1** (with Sch. 2)
- F2740S.** 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
- F2741S.** 477A(9) 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. 88(5)** (with Sch. 2)
- F2742S.** 477A(10) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 52(1), **Sch. 11 para. 2(3)**
- F2743S.** 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)
- F2744S.** 477A(10): definitions of "qualifying certificate of deposit", "qualifying deposit right" and "security" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 88(6), **Sch. 3 Pt. 1** (with Sch. 2)
- F2745S.** 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)**

- C399** S. 477A applied (with effect in accordance with s. 56 of the affecting Act) by Finance Act 2005 (c. 7), **Sch. 2** para., 5
- C400** 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."*



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[<sup>F2746</sup> **477 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.

[ A deduction shall not be allowed by virtue of subsection (1) above to the extent that the  
<sup>F2747</sup>(1A) 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 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 [<sup>F2748</sup>117(4) of the 1992 Act].

**Textual Amendments**

**F2746S.** 477B inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 51, **Sch. 10 para. 3(1)(2)**

**F2747S.** 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**

**F2748**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.**

<sup>F2749</sup> .....

**Textual Amendments**

**F2749S.** 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**



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#### 479 Interest paid on deposits with banks etc.

F2750 .....

##### Textual Amendments

F2750S. 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.

F2751 .....

##### Textual Amendments

F2751S. 480 repealed by Finance Act 1990 (c. 29), Sch. 5 para. 6, Sch. 19 Pt. 4, Note 8

#### [<sup>F2752</sup>480~~B~~ Relevant deposits: deduction of tax from interest payments.

F2753 .....]

##### Textual Amendments

F2752Ss. 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)

F2753Ss. 480A-482 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 89, Sch. 3 Pt. 1 (with Sch. 2)

#### [<sup>F2754</sup>480~~B~~ Relevant deposits: exception from section 480A.

F2755 .....]

##### Textual Amendments

F2754Ss. 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)

F2755Ss. 480A-482 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 89, Sch. 3 Pt. 1 (with Sch. 2)

#### [<sup>F2756</sup>480~~C~~ Relevant deposits: computation of tax on interest.

F2757 .....]

##### Textual Amendments

F2756Ss. 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)

F2757S. 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)

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## 481 “Deposit-taker”, “deposit” and “relevant deposit”.

F2758 .....

### Textual Amendments

**F2758**Ss. 480A-482 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 89, **Sch. 3 Pt. 1** (with Sch. 2)

## 482 Supplementary provisions.

F2759 .....

### Textual Amendments

**F2759**Ss. 480A-482 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 89, **Sch. 3 Pt. 1** (with Sch. 2)

## [<sup>F2760</sup>482A Audit powers in relation to non-residents.

F2761 .....]

### Textual Amendments

**F2760**S. 482A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\)](#), **s.75**

**F2761**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.

F2762(1) .....

F2762(2) .....

F2762(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 that that subsection is not re-enacted by this Act, apply for the purposes of sections 476 and 479 for the year 1988-89.

F2762(5) .....

### Textual Amendments

**F2762**S. 483(1)-(3)(5) repealed by [Finance Act 1990 \(c. 29\)](#), Sch. 5 para. 12, **Sch. 19 Part IV**, Note 8

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**484 Savings banks: exemption from tax.**

F2763 .....

**Textual Amendments**

**F2763S. 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.**

F2764 .....

**Textual Amendments**

**F2764S. 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) <sup>M426</sup>Notwithstanding 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 [<sup>F2765</sup>for the purposes of corporation tax]; [<sup>F2766</sup>but interest payable by such a society (whether as share interest or loan interest) shall be treated for [<sup>F2767</sup>those purposes] as interest under a loan relationship of the society.]
- (2) <sup>F2768</sup> .....
- (3) <sup>F2768</sup> .....
- (4) Any share interest or loan interest paid by a registered industrial and provident society shall be chargeable under Case III of Schedule D [<sup>F2769</sup>for the purposes of corporation tax].
- (5) <sup>F2770</sup> .....
- (6) <sup>F2768</sup> .....
- (7) If for any accounting period a return under [<sup>F2771</sup>section 887(2) of ITA 2007] above is not duly made by a registered industrial and provident society, share and loan interest paid by the society in that period shall [<sup>F2772</sup>not 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

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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 [<sup>F2773</sup>profits] chargeable under Case I of Schedule D (“the tax computation”), any [<sup>F2773</sup>profits] 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 [<sup>F2774</sup>Secretary of State], as regards England and Wales;

the Secretary of State, as regards Scotland; and

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 <sup>M427</sup>Industrial and Provident Societies Act 1965 or under the <sup>M428</sup>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

**F2765** 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](#))

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- F2766** 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)
- F2767** 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)
- F2768** S. 486(2)(3)(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 90(2), **Sch. 3 Pt. 1** (with Sch. 2)
- F2769** 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)
- F2770** 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)
- F2771** Words in s. 486(7) 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. 90(3)** (with Sch. 2)
- F2772** 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)
- F2773** Words in s. 486(10) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**
- F2774** 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)

- C401** See 1988(F) Sch.8 para.1—*re-basing to 1982.*
- C402** 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)**
- C403** 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

- M426** Source—1970 s.340, 345; CUA 1979 s.25(2)
- M427** 1965 c. 12.
- M428** 1969 c. 24 (N.I.).

## 487 Credit unions.

- (1) <sup>M429</sup> Subject to subsection (2) below, in computing for the purposes of corporation tax the income of a credit union for any accounting period—
- (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
- [<sup>F2775</sup>(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 [<sup>F2776</sup>section 887(2) of ITA 2007] 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) [<sup>F2777</sup>An 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 [<sup>F2778</sup>not] 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 <sup>F2779</sup>. . . .

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[<sup>F2780</sup>(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 [<sup>F2781</sup>a company with investment business] for the purposes of section 75 above or [<sup>F2782</sup>Part 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 <sup>M430</sup>Industrial and Provident Societies Act 1965 or the <sup>M431</sup>Credit 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

**F2775**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)

**F2776**Words in s. 487(2) 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. 91** (with Sch. 2)

**F2777**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)

**F2778**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)

**F2779**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

**F2780**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)

**F2781**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

**F2782**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

**M429** Source—1970 s.340A; CUA 1979 s.25(1)

**M430** 1965 c. 12.

**M431** 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—

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- (a) <sup>M432</sup>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 [<sup>F2783</sup>in relation to the association as if there were no interest so payable].
- (c) <sup>F2784</sup> .....
- (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; <sup>F2785</sup> . . .
- (b) <sup>F2785</sup> .....
- (3) <sup>F2786</sup> .....
- (4) Where a claim under subsection (1) above has effect, any adjustment of the liability to tax of <sup>F2787</sup> . . . 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 <sup>M433</sup>Industrial and Provident Societies Act 1965 or the <sup>M434</sup>Industrial and Provident Societies Act (Northern Ireland) 1969, and is a housing association within the meaning of the <sup>M435</sup>Housing Associations Act 1985 or [<sup>F2788</sup>Article 3 of the Housing (Northern Ireland) Order 1992];
- (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 [<sup>F2789</sup>the 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.



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[<sup>F2790</sup>(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,<sup>F2791</sup> . . .
- (b) <sup>F2791</sup> . . . . .

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<sup>M436</sup> Statutory Rules (Northern Ireland) Order 1979.

[<sup>F2792</sup>(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, [<sup>F2793</sup>no 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.

[<sup>F2794</sup>(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) [<sup>F2795</sup>into 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,

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an amendment is made to the association's [<sup>F2796</sup>return] or, as the case may be, to the claim, the liability of [<sup>F2797</sup>the association] to tax for all relevant years or accounting periods may also be adjusted by the making of assessments or otherwise.]

(12) <sup>F2798</sup> .....

### Textual Amendments

- F2783** 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)**
- F2784** 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
- F2785** 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
- F2786** 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
- F2787** 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
- F2788** 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**
- F2789** 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
- F2790** 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.)
- F2791** 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**
- F2792** 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)**
- F2793** 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)**
- F2794** 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)**
- F2795** 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**
- F2796** 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**
- F2797** 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)**
- F2798** 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)

- C404** 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**
- C405** See reference to approved housing associations in 1988(F) s.43(3) and 44.
- C406** 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

- M432** Source—1970 s.341; 1972 Sch.11 6
- M433** 1965 c. 12.
- M434** 1969 c.24 (N.I.).

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M435 1985 c. 68.

M436 S.I. 1979/1573 (N.I.12.).

#### 489 Self-build societies.

- (1) <sup>M437</sup>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 <sup>M438</sup>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.
- [<sup>F2799</sup>(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, <sup>F2800</sup> . . .
  - (b) <sup>F2800</sup> . . . . .
- to such extent and subject to such conditions as he may specify.]
- (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.
  - [<sup>F2801</sup>(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, [<sup>F2802</sup>no 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

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- (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.
- [<sup>F2803</sup>(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) [<sup>F2804</sup>into 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 [<sup>F2805</sup>return] 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 <sup>M439</sup>Housing Associations Act 1985 or, in Northern Ireland, Part VII of the <sup>M440</sup>Housing (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 <sup>M441</sup>Industrial and Provident Societies Act 1965 shall be construed as a reference to the <sup>M442</sup>Industrial and Provident Societies Act (Northern Ireland) 1969; and
- (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

**F2799S.** 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.](#))

**F2800S.** 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](#)

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**F2801** 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)**

**F2802** 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)**

**F2803** 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)**

**F2804** 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**

**F2805** 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)

**C407** 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**

**C408** See 1976(D)—*exemption of certain housing associations from development land tax*. 1976(D) *repealed from 19 March 1985*.

**C409** See reference to approved self-build societies in 1988(F) s.43(3) and s.44.

**C410** 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

**M437** Source—1970 s.341A

**M438** 1965 c. 12.

**M439** 1985 c. 68.

**M440** S.I. 1981/156 (N.I. 3).

**M441** 1965 c. 12.

**M442** 1969 c. 24 (N.I.).

## 490 Companies carrying on a mutual business or not carrying on a business.

- (1) <sup>M443</sup> 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 <sup>F2806</sup> . . . <sup>F2807</sup> . . . .
- (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 <sup>F2808</sup> . . . .
- (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

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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 <sup>F2809</sup> . . . .

(5) <sup>F2810</sup> . . . . .

#### Textual Amendments

**F2806** 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

**F2807** 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

**F2808** 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)**

**F2809** 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

**F2810** 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)

**C411** S. 490 amended (27.7.1993) by 1993 c. 34, s. 78(6)(11)

#### Marginal Citations

**M443** Source—1970 s.346

### 491 Distribution of assets of body corporate carrying on mutual business.

- (1) <sup>M444</sup> Where [<sup>F2811</sup> 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
  - (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, [<sup>F2812</sup> the 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 [<sup>F2813</sup> the purposes of corporation tax] in computing the [<sup>F2814</sup> profits] or losses of a trade, then—
- (a) if at the time of the receipt [<sup>F2815</sup> the recipient company] is the person, or one of the persons, carrying on that trade, the amount or value of the receipt shall



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- be treated for [F2813the purposes of corporation tax] as a trading receipt of that trade; and
- (b) if at the time of the receipt [F2815the 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 [F2813the purposes of corporation tax] in computing the [F2814profits] or losses of the trade, [F2815the recipient company] shall, subject to subsection (6) below, be charged [F2816to corporation tax] under Case VI of Schedule D for the [F2817accounting 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 [F2814profits] are under section F2818 . . . 337(1) determined as if it had been permanently discontinued and a new trade set up and commenced.
- (5) F2819 . . . . .
- (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 [F2814profits] 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—
- (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 [F2814profits] charged to tax as being [F2814profits] 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 F2820 . . . ; and
- (b) to the occupation of woodlands the profits or gains of which are assessable under Schedule D;



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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 [<sup>F2814</sup>profits] 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

- F2811** 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)
- F2812** 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)
- F2813** 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)
- F2814** 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*
- F2815** 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)
- F2816** 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)
- F2817** 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)
- F2818** 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)
- F2819** 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)
- F2820** 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)

- C412** See 1988(F) Sch.14 Part V—repeal of (b) from 6 April 1993.

#### Marginal Citations

- M444** Source—1970 s.347

## CHAPTER V

#### Modifications etc. (not altering text)

- C413** Pt. 12 Ch. 5 modified (27.7.1999) by *Finance Act 1999 (c. 16), s. 98*

### PETROLEUM EXTRACTION ACTIVITIES

#### 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

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- (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 [<sup>F2821</sup> for 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) <sup>F2822</sup> .....

(3) Relief in respect of a loss incurred by a person shall not be given under section [<sup>F2823</sup>393A(1)] against his ring fence profits except to the extent that the loss arises from oil extraction activities or from oil rights.

<sup>F2824</sup>(4) In any case where—

- (a) in any accounting period a company incurs a loss in activities (“separate activities”) which, for that or any subsequent accounting period, are treated by virtue of subsection (1) above as a separate trade for the purposes specified in that subsection, and
- (b) in any subsequent accounting period any of its trading income is derived from activities (“related activities”) which are not part of the separate activities but which, apart from subsection (1) above, would together with those activities constitute a single trade,

then, notwithstanding anything in subsection (1) above, the amount of the loss may be set off, in accordance with section 393(1), against so much of its trading income in any subsequent accounting period as is derived from the related activities.]

(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 [<sup>F2825</sup>section 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 [<sup>F2826</sup>section 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 [<sup>F2827</sup>section 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.

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#### Textual Amendments

**F2821** 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)

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**F2822**S. 492(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 92(2), Sch. 3 Pt. 1** (with Sch. 2)

**F2823**Words in s. 492(3) substituted by **Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), Sch. 15 para. 17**

**F2824**S. 492(4) 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. 92(3)** (with Sch. 2)

**F2825**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)**

**F2826**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)**

**F2827**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)**

**C414** 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.**

[<sup>F2828</sup>(A1) Where the conditions in subsection (A2) below are met in the case of a disposal of oil by a person, section 2(5A) of the Oil Taxation Act 1975 (“the 1975 Act”) (transportation etc) is to apply in determining the amount which the person is to bring into account for the purposes of the charge to corporation tax on income in respect of the disposal as it applies (or would apply) for the purposes of petroleum revenue tax.

(A2) The conditions are that—

- (a) the oil is oil won from an oil field in the United Kingdom,
- (b) the disposal is a disposal of the oil by the person crude in a sale at arm's length, as defined in paragraph 1 of Schedule 3 to the 1975 Act,
- (c) the circumstances are such that the price received or receivable—
  - (i) falls to be taken into account under section 2(5)(a) of that Act in computing for the purposes of petroleum revenue tax the assessable profit or allowable loss accruing to the person in any chargeable period from the oil field, or
  - (ii) would fall to be so taken into account, had the oil field been a taxable field, as defined in section 185 of the Finance Act 1993,
- (d) the terms of the contract are such as are described in the opening words of section 2(5A) of the 1975 Act,
- (e) apart from subsection (A1) above, the person is not entitled to a transportation allowance in respect of the oil (see subsection (A3)) in computing his ring fence profits,
- (f) the person does not claim a transportation allowance in respect of the oil in computing for the purposes of corporation tax any profits of his that are not ring fence profits.

(A3) In subsection (A2) above “transportation allowance”, in relation to any oil, means any of the following—

- (a) a deduction in respect of the expense of transporting the oil as mentioned in the opening words of section 2(5A) of the 1975 Act,
- (b) a deduction in respect of any costs of or incidental to the transportation of the oil as there mentioned,

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- (c) any such reduction in the price to be regarded as received or receivable for the oil as would result from the application of section 2(5A) of the 1975 Act, if that provision applied for the purposes of corporation tax.]
- (1) Where a person disposes of any oil in circumstances such that the market value of that oil <sup>F2829</sup> . . . falls to be taken into account under section 2 of [<sup>F2830</sup>the 1975 Act], otherwise than by virtue of paragraph 6 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).
- [<sup>F2831</sup>(1A) Where an excess of nominated proceeds in a chargeable period (within the meaning given by section 61 of the Finance Act 1987) is taken into account in computing a person's profits under section 2(5)(e) of the 1975 Act (or would be taken into account if the person were chargeable to tax under that Act in respect of a field)—
- (a) for the purposes of subsection (1) the amount of the excess shall be added to the consideration which the person is deemed to have received in respect of oil disposed of by him in the period, and
- (b) for the purposes of corporation tax, that amount shall be available to the person as a deduction in computing the profits of any trade to which section 492(1) does not apply.]
- (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 <sup>F2832</sup> . . . 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 [<sup>F2833</sup> 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

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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 <sup>F2834</sup> . . . .

(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 <sup>F2835</sup> . . . .

<sup>F2836</sup>(5) For the purposes of subsections (3) and (4) above, paragraph 2 of Schedule 3 to the 1975 Act shall apply as it applies for the purposes of Part 1 of that Act, but with the following modifications—

(a) sub-paragraph (4) shall be treated as omitted;

(b) any reference in paragraphs 2 and 2A to oil being relevantly appropriated shall be construed as a reference to its being appropriated as mentioned in section 493(4) of the Taxes Act; and

(c) any reference in paragraph 2 to the notional delivery day for the actual oil shall be construed as a reference to the day on which the oil is disposed of or appropriated as mentioned in subsection (3) or (4) above.]

<sup>F2837</sup>(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

**F2828**S. 493(A1)-(A3) inserted (with effect in accordance with s. 147(1)(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 18 para. 12\(2\)](#)

**F2829**Words in s. 493(1) omitted (with effect in accordance with s. 147(1)(2) of the repealing Act) by virtue of [Finance Act 2006 \(c. 25\)](#), [Sch. 18 para. 12\(3\)\(a\)](#)

**F2830**Words in s. 493(1) substituted (with effect in accordance with s. 147(1)(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 18 para. 12\(3\)\(b\)](#)

**F2831**S. 493(1A) inserted (with effect in accordance with s. 151(2) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 151\(1\)](#)

**F2832**Words in s. 493(2) omitted (with effect in accordance with s. 147(1)(2) of the repealing Act) by virtue of [Finance Act 2006 \(c. 25\)](#), [Sch. 18 para. 12\(4\)](#)

**F2833**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](#))

**F2834**Words in s. 493(3) omitted (with effect in accordance with s. 147(1)(2) of the repealing Act) by virtue of [Finance Act 2006 \(c. 25\)](#), [Sch. 18 para. 12\(5\)](#)

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- F2835** Words in s. 493(4)(b) omitted (with effect in accordance with s. 147(1)(2) of the repealing Act) by virtue of Finance Act 2006 (c. 25), **Sch. 18 para. 12(6)**
- F2836** S. 493(5) substituted (with effect in accordance with s. 147(1)(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 18 para. 12(7)**
- F2837** 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)**

**494** [<sup>F2838</sup>**Loan relationships etc.**]

(1) <sup>F2839</sup> . . . [<sup>F2840</sup>Chapter II of Part IV of the Finance Act 1996 (loan relationships)] shall have effect subject to the following provisions of this section.

<sup>F2841</sup>(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;
- (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; [<sup>F2842</sup>and]
- (c) in the case of debits in respect of [<sup>F2843</sup>a relationship to which section 100 of that Act applies,] to the extent that—
  - <sup>F2844</sup>(i) the payment of interest under that relationship is expenditure incurred as mentioned in sub-paragraph (i) of paragraph (a) above; [<sup>F2845</sup>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; [<sup>F2846</sup> . . .

(d) <sup>F2846</sup> . . . . .  
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 [<sup>F2847</sup>any relationship to which section 100 of that Act applies].]

Section 839 shall apply for the purposes of this subsection.  
[<sup>F2848</sup><sup>F2849</sup> . . . . .]

<sup>F2850</sup>(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



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relationship, it would have been brought into account by virtue of any of paragraphs (a) to (c) of subsection (2) above.]

[<sup>F2851</sup>(2A) Where any debit [<sup>F2852</sup>or 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) [<sup>F2853</sup>or (2ZA)] above cannot be brought into account in a manner that results in any reduction [<sup>F2854</sup>or, 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 [<sup>F2855</sup>or credit] shall be brought into account for those purposes as a non-trading debit [<sup>F2856</sup>or, as the case may be, non-trading credit].]

[<sup>F2857</sup>(2B) <sup>F2858</sup> .....

(3) <sup>F2859</sup> .....

[<sup>F2860</sup>(4) <sup>F2861</sup> .....

(5) <sup>F2861</sup> .....

#### Textual Amendments

**F2838**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)

**F2839**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

**F2840**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)

**F2841**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)

**F2842**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)

**F2843**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))

**F2844**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))

**F2845**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))

**F2846**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

**F2847**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))

**F2848**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))

**F2849**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

**F2850**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))

**F2851**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)

**F2852**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))



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- F2853** 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))
- F2854** 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))
- F2855** 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))
- F2856** 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))
- F2857** 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))
- F2858** 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
- F2859** 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
- F2860** 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)
- F2861** 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

**[<sup>F2862</sup> 494 Sale and lease-back.**

- (1) This section applies where—
  - (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 [<sup>F2863</sup> generally accepted accounting practice], to be treated in the accounts of the lessee as a finance charge,<sup>F2864</sup> . . . [<sup>F2865</sup> or]
  - (b) <sup>F2864</sup> . . . . .
  - <sup>F2866</sup> (c) [ falls, if the case is one where the lease is a long funding operating lease, to be deductible in computing the profits of the lessee for the purposes of corporation tax (after first making against any such expenditure any reductions falling to be made by virtue of section 502K).]
- (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—

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- (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 <sup>M445</sup>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 [<sup>F2867</sup>—

“long funding operating lease” means a long funding operating lease for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act);]

“lease”, in relation to an asset, has the same meaning as in sections 781 to 784.]

#### Textual Amendments

**F2862S.** 494AA inserted (with application in accordance with s. 100(2)(3) of the amending Act) by Finance Act 1999 (c. 16), s. 100(1)

**F2863** Words in s. 494AA(2) substituted (24.7.2002) by Finance Act 2002 (c. 23), s. 103(4)(a)

**F2864S.** 494AA(2)(b) and preceding word repealed (24.7.2002) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(16)

**F2865** Word at the end of s. 494AA(2)(a) inserted (with effect in accordance with Sch. 9 para. 1(5) of the amending Act) by Finance Act 2006 (c. 25), Sch. 9 para. 1(2)

**F2866S.** 494AA(2)(c) inserted (with effect in accordance with Sch. 9 para. 1(5) of the amending Act) by Finance Act 2006 (c. 25), Sch. 9 para. 1(3)

**F2867S.** 494AA(6): definition of "long funding operating lease" inserted (with effect in accordance with Sch. 9 para. 1(5) of the amending Act) by Finance Act 2006 (c. 25), Sch. 9 para. 1(4)

#### Marginal Citations

**M445** 1996 c.8.

### [<sup>F2868</sup> **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 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, <sup>F2869</sup> . . .
  - (b) <sup>F2869</sup> . . . . .
 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, <sup>F2870</sup> . . .
  - (b) <sup>F2870</sup> . . . . . ]

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### Textual Amendments

- F2868S. 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](#))
- F2869S. 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
- F2870S. 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 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
  - 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 [<sup>F2871</sup>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 [<sup>F2872</sup>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—
- 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
  - notwithstanding the provisions of section 137 of the <sup>M446</sup>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 expenditure falls to be taken into account [<sup>F2873</sup>Part 2, 3 or 6 of the Capital Allowances Act]; and
  - 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—
- 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

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- 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” [<sup>F2874</sup>means 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

- F2871** 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\(1\)](#)
- F2872** 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 \(with Sch. 2\)](#)
- F2873** 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\(2\)](#)
- F2874** 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\(3\)](#)

#### Marginal Citations

**M446** 1982 c. 39

### 496 [<sup>F2875</sup>Tariff receipts and tax-exempt tariffing receipts]

- (1) Any sum which—
- (a) constitutes a tariff receipt [<sup>F2876</sup>or 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 [<sup>F2877</sup>section 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

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way which gives rise to tariff receipts [<sup>F2878</sup>or 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 [<sup>F2879</sup>or 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 [<sup>F2880</sup>or 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 <sup>M447</sup>the Oil Taxation Act 1983.

#### Textual Amendments

**F2875**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)**

**F2876**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)**

**F2877**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)

**F2878**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)**

**F2879**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)**

**F2880**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

**M447** 1983 c. 56.

### [<sup>F2881</sup>**496A** Exploration expenditure supplement

Schedule 19B to this Act (exploration expenditure supplement) shall have effect.]

#### Textual Amendments

**F2881**S. 496A inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 286(2)**

### [<sup>F2882</sup>**496B** Ring fence expenditure supplement

Schedule 19C to this Act (ring fence expenditure supplement) shall have effect.]

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**Textual Amendments**

**F2882**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.**

**F2883**  
 .....

**Textual Amendments**

**F2883**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.**

**F2884**  
 .....

**Textual Amendments**

**F2884**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.**

**F2885**  
 .....

**Textual Amendments**

**F2885**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 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.

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(4) [<sup>F2886</sup>Subject 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 [<sup>F2887</sup>calendar year] in which the first-mentioned tax was repaid.

[<sup>F2888</sup>(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
- (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.



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- (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

**F2886** Words in s. 500(4) inserted by Finance Act 1990 (c. 29), s. 62(1)(a)

**F2887** Words in s. 500(4) substituted by Finance Act 1990 (c. 29), s. 62(1)(b)

**F2888** 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.

### [<sup>F2889</sup>501] **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 [<sup>F2890</sup>20 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
  - (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) [<sup>F2891</sup>, other than debits in respect of exchange losses from such relationships (see section 103(1A) and (1B) of that Act)];
  - [<sup>F2892</sup>(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;]

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- [<sup>F2893</sup>(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;
- [<sup>F2894</sup>(dd) where the company is the lessee under a long funding operating lease, the amount deductible in respect of payments under the lease in computing the profits of the lessee for the purposes of corporation tax (after first making against any such amount any reductions falling to be made by virtue of section 502K); 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.
- (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
- [<sup>F2895</sup>(b) are drawn up in accordance with generally accepted accounting practice.]
- [ In this section “long funding operating lease” means a long funding operating lease
- <sup>F2896</sup>(11) for the purposes of Part 2 of the Capital Allowances Act (see section 70YI(1) of that Act).]

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### Textual Amendments

- F2889S.** 501A inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **ss. 91, 93**
- F2890** Words in s. 501A(1) substituted (with effect in accordance with s. 152(2)(3) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **s. 152(1)**
- F2891** 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))
- F2892S.** 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))
- F2893S.** 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](#))
- F2894S.** 501A(5)(dd) substituted for word at the end of s. 501A(5)(d) (with effect in accordance with [Sch. 9 para. 2\(4\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 9 para. 2(2)**
- F2895S.** 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**
- F2896S.** 501A(11) inserted (with effect in accordance with [Sch. 9 para. 2\(4\)](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), **Sch. 9 para. 2(3)**

### [<sup>F2897</sup> **501A** 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

- F2897S.** 501B inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **ss. 92(1), 93**

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## 502 Interpretation of Chapter V.

(1) In this Chapter—

“the 1975 Act” means the Oil Taxation Act 1975<sup>M448</sup>;

“oil” means any substance won or capable of being won under the authority of a licence granted under either [F2898Part I of the Petroleum Act 1998] or the<sup>M449</sup>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<sup>F2899</sup> . . . oil extracted at any such place not on dry land under rights authorising the extraction and so held [F2900where 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 [F2901 meaning given by subsection (1A) below] or, in any case where that subsection does not apply, means ring fence income; [F2902and

“ring fence trade” means activities which—

- (a) fall within [F2903 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 [F2904 section 16(1) of ITTOIA 2005 or section 492(1) above] or otherwise)].

[F2905(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<sup>M450</sup>Continental Shelf Act 1964;
- (b) “initial treatment” has the same meaning as in Part I of the 1975 Act; and

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- (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 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.
- [<sup>F2906</sup>(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

- F2898S.** 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\(1\)](#)
- F2899S.** 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](#)
- F2900S.** 502(1): words in definition of "oil extraction activities" inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), [s. 55\(1\)\(b\)\(2\)](#)
- F2901S.** 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))
- F2902S.** 502(1): definition of "ring fence trade" added by [Finance Act 1990 \(c. 29\)](#), [s. 62\(3\)](#)
- F2903S.** 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](#))
- F2904S.** 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](#))
- F2905S.** 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))
- F2906S.** 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

- M448 1975 c. 22.
- M449 1964 c. 28 (N.I.)
- M450 1964 c. 29.

## CHAPTER 5A

### SPECIAL RULES FOR LONG FUNDING LEASES OF PLANT OR MACHINERY: CORPORATION TAX

#### *f<sup>2907</sup> Introductory*

#### Textual Amendments

- F2907** 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)

- C415** S. 502B excluded (21.7.2008) by Finance Act 2008 (c. 9), Sch. 20 para. 11(2)  
**C416** S. 502B excluded (21.7.2009) by Finance Act 2009 (c. 10), Sch. 33 para. 5

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### **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)**

C417 S. 502C excluded (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 20 para. 11\(8\)](#)

C418 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.

*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—



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- (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 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;

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“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—
- “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;

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“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—
  - (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).

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- (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—
  - (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).

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**[<sup>F2908</sup> 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**

**F2908S.** 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)

**[<sup>F2909</sup> 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.
- (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,

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- (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

**F2909S. 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

#### [<sup>F2911</sup>~~502GB~~<sup>F2910</sup> 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.
- (2) “Film” has the same meaning as in Part 15 of CTA 2009 (see section 1181 of that Act).]

#### Textual Amendments

**F2910S. 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\(2\)](#)

**F2911S. 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](#)

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### *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) [F2912PHI] business, F2913 . . .
  - (b) F2913 . . . . .
- (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) [F2912PHI] 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
  - (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,



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- (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) <sup>F2914</sup> .....
- (9) <sup>F2914</sup> .....
- (10) <sup>F2914</sup> .....

#### Textual Amendments

**F2912** Words in s. 502H(2)(a)(ii)(4)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 44** (with [Sch. 7 Pt. 2](#))

**F2913** S. 502H(2)(b) and preceding word repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 4\(4\)\(a\)](#), **Sch. 27 Pt. 2(10)**, Note

**F2914** S. 502H(8)-(10) repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 4\(4\)\(a\)](#), **Sch. 27 Pt. 2(10)**, Note

#### Modifications etc. (not altering text)

**C419** S. 502H modified by [The Friendly Societies \(Modification of the Corporation Tax Acts\) Regulations 2005 \(S.I. 2005/2014\)](#), **reg. 20A** (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), 19**); and that modifying reg. 20A is omitted (12.8.2008 with effect in accordance with reg. 1(2) of the revoking S.I.) by virtue of [S.I. 2008/1937](#), **regs. 1(1), 9**

### *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, 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.

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- (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—

  - (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.

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- (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.
- (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**

#### **[<sup>F2916</sup>503 Letting of furnished holiday accommodation treated as a trade for certain [<sup>F2915</sup>corporation tax] purposes.**

- (1) For the purposes [<sup>F2917</sup>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 <sup>F2918</sup>. . . shall be treated as if it were a trade the profits of which are chargeable to [<sup>F2919</sup>corporation] tax under Case I of Schedule D, and

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(b) all such lettings made by a [<sup>F2920</sup>particular company or partnership] shall be treated as one trade.

The “commercial letting of furnished holiday accommodation” is defined below in section 504.

- (2) <sup>F2921</sup> .....
- (3) <sup>F2921</sup> .....
- (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 [<sup>F2922</sup>Chapter 2 of Part 10] as applied by this section and under any other provision of the [<sup>F2923</sup>Corporation] Tax Acts.]

#### Textual Amendments

- F2915** 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)
- F2916** 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)
- F2917** 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)
- F2918** 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)
- F2919** 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)
- F2920** 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)
- F2921** 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)
- F2922** 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)
- F2923** 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)

- C420** 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)
- C421** 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) <sup>M451</sup> 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.

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- (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) <sup>F2924</sup> . . . . .
- (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 <sup>F2925</sup> . . . accounting period, a [<sup>F2926</sup> company] lets furnished accommodation which is treated as holiday accommodation for the purposes of this section in that <sup>F2927</sup> . . . period (“the qualifying accommodation”), [<sup>F2928</sup> the company] may make a claim under this subsection, within [<sup>F2929</sup> the time specified in subsection (6A) below], for averaging treatment to apply for that <sup>F2927</sup> . . . period to that and any other accommodation specified in the claim which was let by [<sup>F2930</sup> the company] as furnished accommodation during that <sup>F2927</sup> . . . period and would fall to be treated as holiday accommodation in that <sup>F2927</sup> . . . period if subsection (3)(b) above were satisfied in relation to it.
- <sup>F2931</sup>(6A) The time mentioned in subsection (6) [<sup>F2932</sup> above 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 <sup>F2933</sup> . . . accounting period, any such other accommodation shall be treated as being holiday accommodation in that <sup>F2934</sup> . . . 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 <sup>F2934</sup> . . . 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 <sup>F2935</sup> . . . accounting period.

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(9) For the purposes of this section [<sup>F2936</sup>a company] lets accommodation if [<sup>F2937</sup>it] permits another person to occupy it, whether or not in pursuance of a lease; and “letting” and “tenant” shall be construed accordingly.

#### Textual Amendments

- F2924** 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)
- F2925** 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)
- F2926** 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)
- F2927** 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)
- F2928** 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)
- F2929** 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\(2\)](#)
- F2930** 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)
- F2931** 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\(3\)](#)
- F2932** 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)
- F2933** 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)
- F2934** 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)
- F2935** 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)
- F2936** 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)
- F2937** 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)

#### Modifications etc. (not altering text)

- C422** 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

- M451** Source—1984 s.50(2)-(9)

[<sup>F2938</sup>**504A** Letting of furnished holiday accommodation treated as trade for certain income tax purposes

<sup>F2939</sup> . . . . . ]

#### Textual Amendments

- F2938** 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)

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**F2939S. 504A** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 93, Sch. 3 Pt. 1** (with Sch. 2)

**505** [<sup>F2940</sup>**Charitable companies]: general.**

(1) <sup>M452</sup>Subject to subsections (2) and (3) below, the following exemptions shall be granted on a claim in that behalf to the Board—

[<sup>F2941</sup>(a) exemption from tax under Schedules A and D <sup>F2942</sup> . . . 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;]

[<sup>F2943</sup>(aa) exemption from tax under Schedules A and D, or under Parts 2 and 3 of ITTOIA 2005, in respect of distributions to which section 121 of the Finance Act 2006 (Real Estate Investment Trusts: distributions) applies to the extent that the distributions—

(i) arise in respect of shares vested in a person for charitable purposes; and

(ii) are applied to charitable purposes only;]

<sup>F2944</sup>(b) . . . . .

(c) exemption—

(i) <sup>F2945</sup> . . . . .

[<sup>F2946</sup>(ii) from tax under Case III of Schedule D <sup>F2947</sup> . . . ,

(iia) from tax under Case <sup>F2948</sup> . . . 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,

[<sup>F2949</sup>(iiaa) <sup>F2950</sup> . . . . .]

(iib) from tax under Case V of Schedule D in respect of [<sup>F2951</sup>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,]

[<sup>F2952</sup>(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) <sup>F2950</sup> . . . . .

where the income in question forms part of the income of a [<sup>F2953</sup>charitable company], or is, according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only;

[<sup>F2954</sup>(d) exemption from tax under Schedule D <sup>F2955</sup> . . . 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;]



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- (e) exemption from tax under Schedule D <sup>F2956</sup> . . . in respect of the profits of any trade carried on by a [<sup>F2957</sup>charitable company][<sup>F2958</sup>(whether in the United Kingdom or elsewhere)], if the profits are applied solely to the purposes of the [<sup>F2957</sup>charitable company] and either—
    - (i) the trade is exercised in the course of the actual carrying out of a primary purpose of the [<sup>F2957</sup>charitable company]; or
    - (ii) the work in connection with the trade is mainly carried out by beneficiaries of the [<sup>F2957</sup>charitable company];
  - <sup>F2959</sup>(f) exemption from tax under Schedule D <sup>F2960</sup> . . . in respect of profits accruing to a [<sup>F2961</sup>charitable company] from a lottery if—
    - (i) the lottery is promoted and conducted in accordance with section 3 or 5 of the <sup>M453</sup>Lotteries and Amusements Act 1976 or Article 133 or 135 of the <sup>M454</sup>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; and
    - (ii) the profits are applied solely to the [<sup>F2962</sup>charitable company's] purposes.]
- <sup>F2963</sup>(1AA) In subsection [<sup>F2964</sup>(1)(c)(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.]
- <sup>F2965</sup>(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.]
- <sup>F2966</sup>(1B) For the purpose of subsection (1)(e)—
  - (a) where a trade is exercised partly in the course of the actual carrying out of a primary purpose of the [<sup>F2967</sup>charitable company] and partly otherwise, each part shall be treated as a separate trade (for which purpose reasonable apportionment of expenses and receipts shall be made), and
  - (b) where the work in connection with the trade is carried out partly but not mainly by beneficiaries, the part in connection with which work is carried on by beneficiaries and the other part shall be treated as separate trades (for which purpose reasonable apportionment of expenses and receipts shall be made).]
- (2) <sup>M455</sup>Any payment which—
  - (a) is received by [<sup>F2968</sup>a charitable company] from another charity; and
  - (b) is not made for full consideration in money or money’s worth; and
  - (c) is not chargeable to [<sup>F2969</sup>corporation 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 <sup>F2970</sup> . . . [<sup>F2971</sup>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.
- <sup>F2972</sup>(3) In subsections (4) to (7)—
  - (a) “charitable expenditure” has the meaning given by section 506,

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- (b) “relief” means relief or exemption under—
    - (i) subsection (1) above,
    - (ii) section 56(3)(c) above,
    - (iii) section 761(6) below,
    - (iv) section 256 of the 1992 Act (charities), or
    - (v) section 46 of the Finance Act 2000 (small trades),
  - (c) “relievable income and gains” means income and gains which would be eligible for relief or exemption under any of those provisions (disregarding subsections (4) to (6)), and
  - (d) “total income and gains” means the aggregate of—
    - (i) relievable income and gains,
    - (ii) income and gains, other than relievable income and gains, chargeable to tax, and
    - (iii) donations, legacies and other similar receipts that are not chargeable to tax.
- (4) If a [<sup>F2973</sup>charitable company] incurs (or is treated as incurring) non-charitable expenditure in [<sup>F2974</sup>an accounting] period, relief shall be disallowed in respect of such amount of relievable income and gains as equals the amount of the non-charitable expenditure.
- (5) If in [<sup>F2975</sup>an accounting] period a [<sup>F2976</sup>charitable company's] non-charitable expenditure exceeds its total income and gains the excess shall be treated as non-charitable expenditure of the previous period for the purposes of subsection (4); and any necessary adjustments shall be made, whether by making assessments or otherwise.
- (6) Subsection (5) may apply to [<sup>F2977</sup>an accounting] period wholly or partly as a result of the application of that subsection in respect of a later period; but no excess of non-charitable expenditure shall be treated as non-charitable expenditure of [<sup>F2977</sup>an accounting] period which ended more than six years before the end of the period in which the expenditure was actually incurred.
- (7) Where an amount of a [<sup>F2978</sup>charitable company's] relievable income and gains is disallowed for relief by subsection (4) (whether or not as a result of the application of subsection (5))—
- (a) the [<sup>F2979</sup>charitable company] may by notice to the Board specify which items of income or gains are to be disallowed, but
  - (b) if the Board requires the [<sup>F2979</sup>charitable company] to give a notice under paragraph (a) and the [<sup>F2979</sup>charitable company] fails to comply within the period of 30 days beginning with the date on which the requirement is imposed, the Board shall determine which items to disallow.]

#### Textual Amendments

**F2940** Words in s. 505 sidenote 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. 94\(10\)](#) (with [Sch. 2](#))

**F2941** 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\(2\)](#)

**F2942** Words in s. 505(1)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 94\(2\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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- F2943**S. 505(1)(aa) inserted (with effect in accordance with s. 52(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 17 para. 17**
- F2944**Repealed by 1988(F) s.148and Sch.14 Part Vfrom 6April 1988.
- F2945**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)
- F2946**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)**
- F2947**Words in s. 505(1)(c)(ii) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 94(2)(b)(i), **Sch. 3 Pt. 1** (with Sch. 2)
- F2948**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)
- F2949**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)
- F2950**S. 505(1)(c)(iiaa)(iii) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 94(2)(b)(ii), **Sch. 3 Pt. 1** (with Sch. 2)
- F2951**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)
- F2952**S. 505(1)(c)(iic) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 3**
- F2953**Words in s. 505(1)(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. 94(2)(b)(iii)** (with Sch. 2)
- F2954**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)
- F2955**Words in s. 505(1)(d) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 94(2)(c), **Sch. 3 Pt. 1** (with Sch. 2)
- F2956**Words in s. 505(1)(e) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 94(2)(d)(i), **Sch. 3 Pt. 1** (with Sch. 2)
- F2957**Words in s. 505(1)(e) 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. 94(2)(d)(ii)** (with Sch. 2)
- F2958**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)**
- F2959**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)**
- F2960**Words in s. 505(1)(f) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 94(2)(e)(i), **Sch. 3 Pt. 1** (with Sch. 2)
- F2961**Words in s. 505(1)(f) 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. 94(2)(e)(ii)** (with Sch. 2)
- F2962**Words in s. 505(1)(f)(ii) 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. 94(2)(e)(iii)** (with Sch. 2)
- F2963**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)
- F2964**Words in s. 505(1AA) 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. 94(3)** (with Sch. 2)
- F2965**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)
- F2966**S. 505(1B) inserted (with effect in accordance with s. 56(2) of the amending Act) by Finance Act 2006 (c. 25), **s. 56(1)**
- F2967**Words in s. 505(1B)(a) 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. 94(4)** (with Sch. 2)
- F2968**Words in s. 505(2)(a) 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. 94(5)(a)** (with Sch. 2)

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- F2969** Words in s. 505(2)(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. 94(5)(b)** (with Sch. 2)
- F2970** Words in s. 505(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 94(5)(c), Sch. 3 Pt. 1** (with Sch. 2)
- F2971** 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)
- F2972** S. 505(3)-(7) substituted for s. 505(3)-(8) (with effect in accordance with s. 55(5) of the amending Act) by **Finance Act 2006 (c. 25), s. 55(1)**
- F2973** Words in s. 505(4) 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. 94(6)(a)** (with Sch. 2)
- F2974** Words in s. 505(4) 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. 94(6)(b)** (with Sch. 2)
- F2975** Words in s. 505(5) 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. 94(7)(a)** (with Sch. 2)
- F2976** Words in s. 505(5) 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. 94(7)(b)** (with Sch. 2)
- F2977** Words in s. 505(6) 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. 94(8)** (with Sch. 2)
- F2978** Words in s. 505(7) 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. 94(9)(a)** (with Sch. 2)
- F2979** Words in s. 505(7) 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. 94(9)(b)** (with Sch. 2)

#### Modifications etc. (not altering text)

**C423** S. 505 modified (3.5.1994) by **Finance Act 1994 (c. 9), s. 171**

#### Marginal Citations

**M452** Source—1970 s.360(1)

**M453** 1976 c. 32.

**M454** S.I. 1985/1204 (N.I.11).

**M455** Source—1986 s.30(1)

## 506 [F2980 Charitable and non-charitable expenditure]

- (1) <sup>M456</sup>In this section, section 505 and Schedule 20—
- “charity” means any body of persons or trust established for charitable purposes only;
- [<sup>F2981</sup>“charitable company” means any body of persons established for charitable purposes only;]
- [<sup>F2982</sup>“charitable expenditure” means (subject to subsections (3) to (5) below) expenditure which is exclusively for charitable purposes.]
- (2) <sup>M457</sup>For the purposes of section 505 <sup>F2983</sup>. . . , where expenditure which is not actually incurred in a particular [<sup>F2984</sup>accounting] period properly falls to be charged against the income of that [<sup>F2984</sup>accounting] period as being referable to commitments (whether or not of a contractual nature) which the [<sup>F2985</sup>charitable company] 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 [<sup>F2986</sup>charitable expenditure] by virtue of this section unless the [<sup>F2987</sup>charitable company] concerned has taken such steps as may be reasonable in the circumstances to ensure that the payment will be applied for charitable purposes.

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- (4) <sup>M458</sup>If in any [<sup>F2988</sup>accounting] period a [<sup>F2989</sup>charitable company]—
- (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 [<sup>F2989</sup>charitable company], and, accordingly, as being [<sup>F2990</sup>non-charitable expenditure].
- (5) If, in any [<sup>F2991</sup>accounting] period, a [<sup>F2992</sup>charitable company] 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 [<sup>F2993</sup>non-charitable expenditure] incurred in that period.
- (6) <sup>F2994</sup> .....

#### Textual Amendments

- F2980**S. 506(3) heading substituted (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 55\(2\)\(g\)](#)
- F2981**S. 506(1): definition of "charitable company" 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. 95\(2\)](#) (with [Sch. 2](#))
- F2982**S. 506(1): definition of "charitable expenditure" substituted for definitions of "qualifying expenditure" and "non-qualifying expenditure" (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 55\(2\)\(a\)](#)
- F2983**Words in s. 506(2) repealed (with effect in accordance with s. 55(5) of the repealing Act) by [Finance Act 2006 \(c. 25\), s. 55\(2\)\(b\), Sch. 26 Pt. 3\(5\)](#)
- F2984**Words in s. 506(2) 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. 95\(3\)\(a\)](#) (with [Sch. 2](#))
- F2985**Words in s. 506(2) 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. 95\(3\)\(b\)](#) (with [Sch. 2](#))
- F2986**Words in s. 506(3) substituted (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 55\(2\)\(c\)](#)
- F2987**Words in s. 506(3) 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. 95\(4\)](#) (with [Sch. 2](#))
- F2988**Word in s. 506(4) 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. 95\(5\)\(a\)](#) (with [Sch. 2](#))
- F2989**Words in s. 506(4) 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. 95\(5\)\(b\)](#) (with [Sch. 2](#))
- F2990**Words in s. 506(4) substituted (with effect in accordance with s. 55(5) of the amending Act) by [Finance Act 2006 \(c. 25\), s. 55\(2\)\(d\)](#)
- F2991**Word in s. 506(5) 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. 95\(6\)\(a\)](#) (with [Sch. 2](#))
- F2992**Words in s. 506(5) 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. 95\(6\)\(b\)](#) (with [Sch. 2](#))



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**F2993** Words in s. 506(5) substituted (with effect in accordance with s. 55(5) of the amending Act) by Finance Act 2006 (c. 25), s. 55(2)(e)

**F2994** S. 506(6) repealed (with effect in accordance with s. 55(5) of the repealing Act) by Finance Act 2006 (c. 25), s. 55(2)(f), Sch. 26 Pt. 3(5)

**Modifications etc. (not altering text)**

**C424** *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**

**M456** Source—1970 s.360(3); 1986 s.31(1)(a), (c), Sch.7 1(1)

**M457** Source—1986 Sch.7 1(2), (3)

**M458** Source—1986 s.31(4)-(6)

**[<sup>F2995</sup>506] Transactions with substantial donors**

- (1) This section applies to the following transactions—
- (a) the sale or letting of property by a [<sup>F2996</sup>charitable company] to a substantial donor,
  - (b) the sale or letting of property to a [<sup>F2996</sup>charitable company] by a substantial donor,
  - (c) the provision of services by a [<sup>F2996</sup>charitable company] to a substantial donor,
  - (d) the provision of services to a [<sup>F2996</sup>charitable company] by a substantial donor,
  - (e) an exchange of property between a [<sup>F2996</sup>charitable company] and a substantial donor,
  - (f) the provision of financial assistance by a [<sup>F2996</sup>charitable company] to a substantial donor,
  - (g) the provision of financial assistance to a [<sup>F2996</sup>charitable company] by a substantial donor, and
  - (h) investment by a [<sup>F2996</sup>charitable company] in the business of a substantial donor.

- (2) For the purposes of this section a person is a substantial donor to a [<sup>F2996</sup>charitable company] in respect of [<sup>F2997</sup>an accounting] period if—

- (a) the [<sup>F2996</sup>charitable company] receives relievably gifts of at least £25,000 from him in a period of 12 months in which [<sup>F2998</sup>the accounting] period wholly or partly falls, or
- (b) the [<sup>F2996</sup>charitable company] receives relievably gifts of at least £100,000 from him in a period of six years in which [<sup>F2998</sup>the accounting] period wholly or partly falls;

and if a person is a substantial donor to a [<sup>F2996</sup>charitable company] in respect of [<sup>F2997</sup>an accounting] period by virtue of paragraph (a) or (b), he is a substantial donor to the [<sup>F2996</sup>charitable company] in respect of the following [<sup>F2999</sup>five accounting] periods.

- (3) A payment made by a [<sup>F2996</sup>charitable company] 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 [<sup>F2996</sup>charitable company] than terms which might be expected in a transaction at arm's

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length, the [<sup>F2996</sup>charitable company] 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 [<sup>F2996</sup>charitable company] of the difference in terms.

- (5) A payment by a [<sup>F2996</sup>charitable company] 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

**F2995**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)

**F2996**Words in s. 506A 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. 96(2) (with Sch. 2)

**F2997**Words in s. 506A(2) 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. 96(3)(a) (with Sch. 2)

**F2998**Words in s. 506A(2) 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. 96(3)(b) (with Sch. 2)

**F2999**Words in s. 506A(2) 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. 96(3)(c) (with Sch. 2)

#### [<sup>F2995</sup>506]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 [<sup>F3000</sup>charitable company] 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 [<sup>F3000</sup>charitable company], 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 [<sup>F3000</sup>charitable company] by a substantial donor if the Commissioners determine that the assistance—
- (a) is on terms which are no less beneficial to the [<sup>F3000</sup>charitable company] 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.



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- (4) Section 506A shall not apply to investment by a [<sup>F3000</sup>charitable company] 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 [<sup>F3001</sup>in respect of which relief is available under section 587B of this Act or section 431 of ITA 2007 (gifts of shares, securities and real property to charities etc)] 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 [<sup>F3000</sup>charitable company], or benefits arising to a substantial donor from a transaction, shall be disregarded in so far as [<sup>F3002</sup>they relate to a donation by the donor, and—
- (a) if the donation is made by a company, the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 339 because of subsection (3B)(b) of that section (restrictions on associated benefits), or
  - (b) if the donation is made by an individual, the payments or benefits do not prevent the donation being a qualifying donation for the purposes of section 416 of ITA 2007 because of subsection (7)(b) of that section (restrictions on associated benefits).]
- (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 [<sup>F3003</sup>a charitable company which owns it (or any part of it)].
- (9) A registered social landlord or housing association shall not be treated as a substantial donor in relation to a [<sup>F3000</sup>charitable company] 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,
    - (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 [<sup>F3000</sup>charitable company] 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

**F2995**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)

**F3000**Words in s. 506B(1)-(4)(7)(9) 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. 97(2) (with Sch. 2)

**F3001**Words in s. 506B(5) 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. 97(3) (with Sch. 2)

**F3002**Words in s. 506B(7) 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. 97(4) (with Sch. 2)

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**F3003** Words in s. 506B(8) 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. 97(5) (with Sch. 2)

**[<sup>F2995</sup>506 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) <sup>F3004</sup> .....
  - (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), <sup>F3005</sup> . . .
  - (i) sections 628 and 630 of ITTOIA 2005 (gifts from settlor-interested trusts),  
[<sup>F3006</sup>or]  
[ Chapters 2 and 3 of Part 8 of ITA 2007 (gift aid and gifts of shares, securities  
<sup>F3007</sup>(j) and real property).]
- (2) A [<sup>F3008</sup>charitable company] 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 [<sup>F3009</sup>an accounting] 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 [<sup>F3008</sup>charitable company] 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) [<sup>F3010</sup>A charitable company and any other charities with which it is connected are to be treated as a single charitable company] 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—
  - (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.

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- (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**

**F2995**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)

**F3004**S. 506C(1)(d) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 98(2)(a), Sch. 3 Pt. 1 (with Sch. 2)

**F3005**Word at the end of s. 506C(1)(h) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 98(2)(b), Sch. 3 Pt. 1 (with Sch. 2)

**F3006**Word at the end of s. 506C(1)(i) 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. 98(2)(c) (with Sch. 2)

**F3007**S. 506C(1)(j) 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. 98(2)(d) (with Sch. 2)

**F3008**Words in s. 506C(2)(4) 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. 98(3) (with Sch. 2)

**F3009**Words in s. 506C(3) 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. 98(4) (with Sch. 2)

**F3010**Words in s. 506C(5) 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. 98(5) (with Sch. 2)

**507 The National Heritage Memorial Fund, the Historic Buildings and Monuments Commission for England and the British Museum.**

- (1) <sup>M459</sup>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;
  - <sup>F3011</sup>(c) the Trustees of the British Museum;
  - (d) the Trustees of the [<sup>F3012</sup>Natural History Museum];]
  - <sup>F3013</sup>(e) <sup>F3014</sup>.....]
  - <sup>F3015</sup>(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 [<sup>F3016</sup>charitable company] the whole income of which is applied to charitable purposes.
- <sup>F3017</sup>(2) .....

**Textual Amendments**

**F3011** 1989 s.60(1)in relation to accounting periods ending on or after 14March 1989.

**F3012**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

**F3013**S. 507(1)(e) inserted (1.11.1992) by S.I. 1992/2383, reg. 2(2), Sch. para.11

**F3014**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

**F3015**S. 507(1)(f) inserted (2.7.1998) by National Lottery Act 1998 (c. 22), s. 24(1), 27(4)(b)

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**F3016** Words in s. 507(1) 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. 99** (with **Sch. 2**)

**F3017** 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.

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**Modifications etc. (not altering text)**

**C425** 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**

**M459** Source—1980 s.118(1); 1983 s.46(1)

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## 508 Scientific research organisations.

(1) <sup>M460</sup>Where—

- [<sup>F3018</sup>(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 [<sup>F3019</sup>in 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 [<sup>F3020</sup>charitable company] the whole income of which is applied to charitable purposes.

[<sup>F3021</sup>(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.

[<sup>F3022</sup>(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

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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**

**F3018**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)

**F3019**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)

**F3020**Words in s. 508(1) 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. 100 (with Sch. 2)

**F3021**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)

**F3022**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**

**M460** Source—1970 s.362

[<sup>F3023</sup>**508** Investment trusts investing in housing.

F3024  
.....

**Textual Amendments**

**F3023**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

**F3024**Ss. 508A, 508B repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2006 (c. 25), s. 143(a), Sch. 26 Pt. 4

**508B Interpretation of section 508A.**

F3025  
..... ]

**Textual Amendments**

**F3023**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

**F3025**Ss. 508A, 508B repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2006 (c. 25), s. 143(a), Sch. 26 Pt. 4

**509 Reserves of marketing boards and certain other statutory bodies.**

- (1) <sup>M461</sup>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,

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then, in computing for the purposes of tax the [<sup>F3026</sup>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 [<sup>F3026</sup>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.

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**Textual Amendments**

**F3026** Words in s. 509(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1

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**Modifications etc. (not altering text)**

**C426** S. 509(1) extended (with modifications) (27.7.1993) by 1993 c. 37, s. 12, Sch. 2 Pt. I para. 23

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**Marginal Citations**

**M461** Source—1970 s.348; 1971 s.28(1)

**510 Agricultural societies.**

- (1) <sup>M462</sup> 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.

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**Marginal Citations**

**M462** Source—1970 s.361



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**[<sup>F3027</sup>510] European economic interest groupings.**

- (1) <sup>M463</sup>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 [<sup>F3028</sup>corporation tax] 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; <sup>F3029</sup> . . .
  - (b) <sup>F3029</sup> . . . . .
- [<sup>F3030</sup>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) <sup>F3031</sup> . . . Where any trade or profession is carried on by a grouping it shall be regarded for the purposes of charging [<sup>F3032</sup>corporation tax] as carried on in partnership by the members of the grouping.

[ Chapter 2 of Part 4 of the Finance Act 1996 (loan relationships) shall have effect in <sup>F3033</sup>(6A) 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).]

- (7) <sup>F3034</sup> . . . . .
- (8) <sup>F3034</sup> . . . . . ]

**Textual Amendments**

- F3027**S. 510A inserted (retrospective to 1.7.1989) by [Finance Act 1990 \(c. 29\)](#), [Sch. 11 paras. 1, 5](#)
- F3028**Words in s. 510A(2) 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. 101\(2\)](#) (with [Sch. 2](#))
- F3029**S. 510A(3)(b) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 101\(3\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3030**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\(3\)](#)
- F3031**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\(16\)](#)
- F3032**Words in s. 510A(6) 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. 101\(4\)](#) (with [Sch. 2](#))
- F3033**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\(4\)](#)



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**F3034S. 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**

**M463** Source—O.J. No. L199/1.

**511 The Electricity Council and Boards, the Northern Ireland Electricity Service and the Gas Council.**

(1) <sup>F3035</sup> .....

(2) <sup>F3035</sup> .....

(3) <sup>F3035</sup> .....

<sup>F3036</sup>(4) .....

<sup>F3036</sup>(5) .....

(6) <sup>F3035</sup> .....

(7) <sup>M464</sup>The 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 <sup>M465</sup>Gas 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**

**F3035S. 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**

**F3036S. 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)**

**C427** 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.

**Marginal Citations**

**M464** Source—1970 s.350(3)

**M465** 1948 c. 67.

**512 Atomic Energy Authority and National Radiological Protection Board.**

<sup>F3037</sup> .....

**Textual Amendments**

**F3037S. 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)

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### 513 British Airways Board and National Freight Corporation.

- (1) <sup>M466</sup>Subject to subsection (2) below, the successor company in which the property, rights, liabilities and obligations of the British Airways Board are vested by the <sup>M467</sup>Civil 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 <sup>M468</sup>Transport Act 1980 shall be treated for those purposes as if it were the same person as the National Freight Corporation.
- (2) <sup>M469</sup>The 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 [<sup>F3038</sup>170(12) of the 1992 Act].

#### Textual Amendments

**F3038** 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

**M466** Source—1973 s.36(1)

**M467** 1980 c.60.

**M468** 1980 c.34.

**M469** Source—1980 s.119(1)-(3)

### 514 Funds for reducing the National Debt.

**F3039**  
 .....

#### Textual Amendments

**F3039** 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.

**F3040**  
 .....

#### Textual Amendments

**F3040** S. 515 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 102, **Sch. 3 Pt. 1** (with Sch. 2)

### 516 Government securities held by non-resident central banks.

**F3041**  
 .....

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**Textual Amendments**

**F3041** S. 516 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 103, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**517 Issue departments of the Reserve Bank of India and the State Bank of Pakistan.**

<sup>M470</sup>There shall be exempt from [<sup>F3042</sup>corporation] 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 <sup>M471</sup>Indian Independence Act 1947.

**Textual Amendments**

**F3042** Word in [s. 517](#) 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. 104](#) (with [Sch. 2](#))

**Marginal Citations**

**M470** Source—1970 s.371  
**M471** 1947 c. 30.

**518 Harbour reorganisation schemes.**

- (1) <sup>M472</sup>This 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 [<sup>F3043</sup>393A(1)].
- (4) There shall be made to or on the transferee in accordance with [<sup>F3044</sup>the 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.

<sup>F3045</sup>(6) .....

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- (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) <sup>M473</sup>Where 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 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) <sup>M474</sup>In this section—
- “harbour authority” has the same meaning as in the <sup>M475</sup>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

- F3043** 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)**
- F3044** 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**
- F3045** 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

- M472** Source—1970 s.352(1)-(6); 1971 Sch.8 16; 1986 s.56(7)(a), Sch.13 2(5)(a)
- M473** Source—1970 s.352(8), (9)
- M474** Source—1970 s.352(11)
- M475** 1964 c. 40.

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## 519 Local authorities.

- [<sup>F3046</sup>(1) A local authority in the United Kingdom shall be exempt from corporation tax.]
- (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.

<sup>F3047</sup>(4) .....

### Textual Amendments

**F3046**S. 519(1) 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. 105](#) (with [Sch. 2](#))

**F3047**Subs.(4)repealed by 1990 s.127and Sch.18 para.5(2)and 132and Sch.19 Part IVon and after 1April 1990.

### Modifications etc. (not altering text)

**C428** 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](#)

**C429** Definition applied for purposes of—1979(C) s.149B(3)—*miscellaneous exemptions*.1988 s.832(1) —*interpretation of Tax Acts*.

## [<sup>F3048</sup>519] Health service bodies.

- [<sup>F3049</sup>(1) A health service body shall be exempt from corporation tax.]
- (2) In this section “health service body” means—
- [<sup>F3050</sup>(a) a [<sup>F3051</sup>Strategic Health Authority [<sup>F3052</sup>established under section 13 of the National Health Service Act 2006]]<sup>F3053</sup> . . . . <sup>F3054</sup> . . . . ;
  - (aa) a Special Health Authority established under [<sup>F3055</sup>section 28 of that Act or section 22 of the National Health Service (Wales) Act 2006];]
  - [<sup>F3056</sup>(ab) a Primary Care Trust;]
  - [<sup>F3057</sup>(aba) a Local Health Board;]
  - (b) a National Health Service trust established under [<sup>F3058</sup>section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006];
  - [<sup>F3059</sup>(bb) an NHS foundation trust]
  - (c) <sup>F3060</sup> .....

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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) <sup>F3061</sup> .....
  - (f) <sup>F3062</sup> .....
  - (g) the Scottish Dental Practice Board; <sup>F3063</sup> . . .
  - (h) <sup>F3064</sup> .....
  - <sup>F3065</sup> (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.]
- <sup>F3066</sup> [ The Treasury may by order disapply [<sup>F3067</sup>subsection (1)] in relation to a specified (3) 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 [<sup>F3067</sup>subsection (1)].
  - (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 [<sup>F3068</sup>section 43(1) of the National Health Service Act 2006] shall not be treated as an activity of a commercial nature for the purposes of subsection (7)(a).]]

### Textual Amendments

- F3048**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**
- F3049**S. 519A(1) 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. 106(2)** (with Sch. 2)
- F3050**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)
- F3051**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**
- F3052**Words in s. 519A(2)(a) inserted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 100(a)(i)**
- F3053**Words in s. 519A(2)(a) omitted (1.4.2007) by virtue of The References to Health Authorities Order 2007 (S.I. 2007/961), art. 1(1), **Sch. para. 19**
- F3054**Words in s. 519A(2)(a) omitted (1.3.2007) by virtue of National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 100(a)(ii)**
- F3055**Words in s. 519A(2)(aa) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 100(b)**
- F3056**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)**
- F3057**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.**
- F3058**Words in s. 519A(2)(b) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 100(c)**
- F3059**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**
- F3060**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)
- F3061**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**
- F3062**S. 519A(2)(f) repealed (1.4.2006) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1), **Sch. 14 Pt. 4**; S.I. 2005/2925, **art. 11**
- F3063**Word in s. 519A(2)(g) repealed by S.I. 1991/195, **art. 6**
- F3064**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)**
- F3065**S. 519A(2)(i) (j) (k) added by S.I. 1991/195, **art. 6**
- F3066**S. 519A(3)-(8) added (22.7.2004) by Finance Act 2004 (c. 12), s. **148**
- F3067**Words in s. 519A(3)(4) 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. 106(3)** (with Sch. 2)



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**F3068** Words in s. 519A(8) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 101**

## PART XIII

### MISCELLANEOUS SPECIAL PROVISIONS

#### CHAPTER I

#### INTELLECTUAL PROPERTY

**Modifications etc. (not altering text)**

**C430** Pt. 13 Ch. 1 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 20**

#### *Patents and know-how*

**520 Allowances for expenditure on purchase of patent rights: post-31st March 1986 expenditure.**

**F3069**  
 .....

**Textual Amendments**

**F3069** 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.**

**F3070**  
 .....

**Textual Amendments**

**F3070** 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.**

**F3071**  
 .....

**Textual Amendments**

**F3071** 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**

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## 523 Lapses of patent rights, sales etc.

F3072 .....

### Textual Amendments

F3072 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) <sup>M476</sup>Subject to subsection (2) below, where a [<sup>F3073</sup>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, [<sup>F3073</sup>the company] shall, subject to the provisions of this Chapter, be charged to [<sup>F3074</sup>corporation tax] under Case VI of Schedule D, for the [<sup>F3075</sup>accounting] period in which the sum is received by [<sup>F3073</sup>it] and successive [<sup>F3075</sup>accounting] periods, being charged in each period on the same fraction of the sum as the period is of six years (or such less fraction as has not already been charged).
  - (2) If the [<sup>F3076</sup>company] by notice served on [<sup>F3077</sup>an officer of the Board within the period specified in subsection (2A) below], elects that the whole of the sum shall be charged to [<sup>F3078</sup>corporation] tax for [<sup>F3079</sup>the [<sup>F3080</sup>accounting] period in which it was received], it shall be charged to [<sup>F3078</sup>corporation] tax accordingly.
- [<sup>F3081</sup>(2A) The period mentioned in subsection (2) above is—
- (a) <sup>F3082</sup> .....
  - (b) <sup>F3083</sup> . . . the period of two years beginning at the end of the accounting period in which the sum was received.]
- (3) [<sup>F3084M477</sup>Where 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) [<sup>F3085</sup>the company shall be chargeable to corporation tax] in respect of that sum under Case VI of Schedule D; <sup>F3086</sup> . . .
    - (b) <sup>F3086</sup> .....
    - (c) <sup>F3086</sup> .....
  - (4) <sup>F3087</sup> .....
- [<sup>F3088</sup>(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, <sup>F3089</sup> . . . 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.

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- (7) <sup>M478</sup> Subject to subsections (8) and (9) below, where the [<sup>F3090</sup> company] 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 [<sup>F3091</sup> it] consisted wholly or partly of a capital sum, the preceding provisions of this section shall apply as if any capital sum received by [<sup>F3091</sup> it] when [<sup>F3092</sup> it] 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 [<sup>F3093</sup> it] 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.
- <sup>F3094</sup>(9) If a company is chargeable to corporation tax under subsection (3) above, nothing in subsections (7) and (8) above shall affect the sum representing income tax which is to be deducted under section 910 of ITA 2007 (payments to non-UK residents) from payments of, or of instalments of, the proceeds of the sale.
- (9A) If any sum representing income tax is deducted under section 910 of ITA 2007, any adjustment necessary to give effect to the provisions of subsection (9) above shall be made by way of repayment of tax.]
- (10) <sup>M479</sup> A claim for relief under this section shall be made to the Board.

#### Textual Amendments

- F3073** 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)
- F3074** 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)
- F3075** 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)
- F3076** 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)
- F3077** 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)**
- F3078** 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)
- F3079** 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)**
- F3080** 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)
- F3081** 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)**
- F3082** 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)
- F3083** 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)
- F3084** 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)
- F3085** 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)

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- F3086S.** 524(3)(b)(c) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 107(2), Sch. 3 Pt. 1** (with Sch. 2)
- F3087S.** 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)
- F3088S.** 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)
- F3089** 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)
- F3090** 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)
- F3091** 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)
- F3092** 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)
- F3093** 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)
- F3094S.** 524(9)(9A) substituted for s. 524(9) (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. 107(3)** (with Sch. 2)

#### Marginal Citations

- M476** Source - 1970 s.380(1)  
**M477** Source - 1970 s.380(2)  
**M478** Source - 1970 s.380(4)  
**M479** Source - 1970 s.380(5)

## 525 Capital sums: <sup>F3095</sup> . . . winding up or partnership change.

- [<sup>F3096</sup>(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) <sup>F3097</sup> . . . . .
- (3) <sup>M480</sup>Where, under [<sup>F3098</sup>section 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 [<sup>F3099</sup>accounting 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 <sup>F3100</sup> . . . shall be charged separately for [<sup>F3101</sup>its] proportion; <sup>F3102</sup> . . .

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- (b) <sup>F3102</sup> .....
- (5) <sup>F3103</sup> .....

#### Textual Amendments

- F3095** 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)
- F3096** 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)
- F3097** 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)
- F3098** 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**
- F3099** 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)
- F3100** 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)
- F3101** 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)
- F3102** 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)
- F3103** 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

- M480** Source - 1970 s.381(2)

## 526 Relief for expenses.

<sup>M481</sup>(1) Where—

- (a) a [<sup>F3104</sup>company], otherwise than for the purposes of a trade carried on by [<sup>F3105</sup>it], 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 [<sup>F3106</sup>profits] of that trade,

there shall be made to [<sup>F3107</sup>the company for the purposes of corporation tax], for the [<sup>F3108</sup>accounting] period in which those expenses were paid or incurred, an allowance equal to the amount thereof.

- (2) <sup>F3109</sup> .....

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**Textual Amendments**

- F3104** 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)
- F3105** 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)
- F3106** Word in s. 526(1)(b) substituted (31.7.1998) by **Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1**
- F3107** 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)
- F3108** 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)
- F3109** 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**

**M481** Source - 1970 s.382

**527 Spreading of royalties over several years.**

[<sup>F3110M482</sup>(1) Where—

- (a) a royalty or other sum is paid to a company in respect of the user of a patent,
- (b) the user extended over a period of six complete years or more, and
- (c) the payment is one from which a sum representing income tax must be deducted under section 903 of ITA 2007,

the company may on the making of a claim require that the corporation tax payable by it by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of corporation tax which would have been payable by it 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) <sup>F3111</sup> .....

(4) <sup>F3112</sup> .....

**Textual Amendments**

- F3110** S. 527(1) 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. 108(2)** (with Sch. 2)
- F3111** 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**
- F3112** S. 527(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 108(3), Sch. 3 Pt. 1** (with Sch. 2)

**Marginal Citations**

**M482** Source - 1970 s.384



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**528 Manner of making allowances and charges.**

- M483 (1) <sup>F3113</sup> . . . . .
- (2) <sup>F3114</sup> . . . . .
- (3) Where an allowance falls to be made to a company for any accounting period under [<sup>F3115</sup>section 526]<sup>F3116</sup> . . . , 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.
- [<sup>F3117</sup>(3A) In this section references to <sup>F3118</sup> . . . 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 <sup>F3118</sup> . . . 480 of the Capital Allowances Act.]
- (4) <sup>F3113</sup> . . . . .

**Textual Amendments**

**F3113** 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](#)

**F3114** 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 \(with Sch. 2\)](#)

**F3115** 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\(2\)](#)

**F3116** 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 \(with Sch. 2\)](#)

**F3117** 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\(3\)](#)

**F3118** 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 \(with Sch. 2\)](#)

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**Marginal Citations**

**M483** Source-1970 s.385; 1985 s.64(2)(d)-(f)

**529 Patent income to be earned income in certain cases.**

- <sup>F3119</sup> . . . . .

**Textual Amendments**

**F3119** 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 \(with Sch. 2\)](#)



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## 530 Disposal of know-how.

F3120 .....

### Textual Amendments

**F3120S. 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) <sup>M484</sup>Subject to subsection (7) below, where, after 19th March 1968, [<sup>F3121</sup>a company] disposes of know-how which has been used in a trade carried on by [<sup>F3122</sup>the company], and continues to carry on the trade after the disposal, the amount or value of any consideration received by [<sup>F3122</sup>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 [<sup>F3123</sup>as a disposal value under section 462 of the Capital Allowances Act], nor is chargeable to [<sup>F3124</sup>corporation tax] as a revenue or income receipt;
  - (b) in any other case, so far as it is not chargeable to [<sup>F3124</sup>corporation tax] as a revenue or income receipt,
- be treated for [<sup>F3125</sup>the purposes of corporation tax] as a trading receipt.

- [<sup>F3126</sup>(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) [<sup>F3127</sup>if, 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;

F3128 .....

- [<sup>F3129</sup>(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).]

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- (4) <sup>M485</sup>Subject to subsections (5) and (7) below, any consideration received by a [<sup>F3130</sup>company] 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 [<sup>F3131</sup>as a disposal value under section 462 of the Capital Allowances Act], or
  - (b) if it is neither chargeable to [<sup>F3132</sup>corporation tax] under subsection (1) above or otherwise as a revenue or income receipt, nor dealt with in relation to [<sup>F3133</sup>the 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 [<sup>F3132</sup>corporation tax] under Case VI of Schedule D.
- (5) <sup>M486</sup>Where the [<sup>F3134</sup>company] 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 [<sup>F3135</sup>corporation 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) <sup>F3136</sup>.....
- (7) Subsections (1) and (3) to [<sup>F3137</sup>(5)] above <sup>F3138</sup>... 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) <sup>M487</sup>Where 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

**F3121** 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)

**F3122** 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)

**F3123** 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)**

**F3124** 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)

**F3125** 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)

**F3126** 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)

**F3127** 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)

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- F3128** 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](#)
- F3129** 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)
- F3130** 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)
- F3131** 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\(3\)](#)
- F3132** 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)
- F3133** 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)
- F3134** 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)
- F3135** 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)
- F3136** 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)
- F3137** 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)
- F3138** 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](#)

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**Modifications etc. (not altering text)**

- C431** S. 531(2)(7) excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\), Sch. 3 para. 19\(2\)](#)

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**Marginal Citations**

- M484** Source-1970 s.386(2); 1985 s.65(3)(a)  
**M485** Source-1970 s.386(4); 1985 s.65(3)(b)  
**M486** Source-1970 s.386(4)-(6)  
**M487** Source-1970 s.386(8); 1985 Sch.18 Part II 8

**[<sup>F3139</sup>532] Application of Capital Allowances Act**

The [<sup>F3140</sup>Corporation Tax Acts] have effect as if sections 524 to [<sup>F3141</sup>528] and 531, this section and section 533 were contained in the Capital Allowances Act.]

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**Textual Amendments**

- F3139** 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](#)
- F3140** Words in s. 532 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. 109](#) (with Sch. 2)
- F3141** 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) <sup>M488</sup>In [<sup>F3142</sup>sections 524 to [<sup>F3143</sup>528]]—  
    [<sup>F3144</sup>“income from patents” means—  
    (a) any royalty or other sum paid in respect of the use of a patent; and

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(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.]

<sup>F3145</sup>  
 . . . . .

“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 [<sup>F3142</sup>sections 524 to [<sup>F3146</sup>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 [<sup>F3142</sup>sections 524 to [<sup>F3146</sup>528]] as thereby selling the whole of the rights.
- (4) Where, under sections 46 to 49 of the Patents Act 1949 [<sup>F3147</sup>, 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, [<sup>F3142</sup>sections 524 to [<sup>F3146</sup>528]] 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 [<sup>F3142</sup>sections 524 to [<sup>F3146</sup>528]] 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) <sup>M489</sup>In [<sup>F3148</sup>section 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

**F3142** 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)**

**F3143** 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)

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- F3144**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)
- F3145**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**
- F3146**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)
- F3147**Words in s. 533(4) inserted (with retrospective effect) by Finance Act 1988, Sch. 13 Pt. 1 paras. 5, 1
- F3148**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)**

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**Marginal Citations**

- M488** Source-1970 s.388; 1985 s.64(2)(g)  
**M489** Source-1970 s.386(8); 1985 Sch.18 Part II 8

*Copyright and public lending right*

**534 Relief for copyright payments etc.**

**F3149**  
.....

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**Textual Amendments**

- F3149**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.**

**F3150**  
.....

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**Textual Amendments**

- F3150**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.**

**F3151**  
.....

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**Textual Amendments**

- F3151**Ss. 536, 537, 537B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 110, **Sch. 3 Pt. 1** (with Sch. 2)

**537 Public lending right.**

**F3152**  
.....

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#### Textual Amendments

**F3152**Ss. 536, 537, 537B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 110](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### *f<sup>F3153</sup> Designs*

#### Textual Amendments

**F3153**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.

**F3154** .....

#### Textual Amendments

**F3154**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.

**F3155** ..... ]

#### Textual Amendments

**F3155**Ss. 536, 537, 537B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 110](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### *Artists' receipts*

### 538 Relief for painters, sculptors and other artists.

**F3156** .....

#### Textual Amendments

**F3156**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\(6\)](#)



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## CHAPTER II

### LIFE POLICIES, LIFE ANNUITIES AND CAPITAL REDEMPTION POLICIES

#### Modifications etc. (not altering text)

- C432** 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)
- C433** 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**)
- C434** 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**)
- C435** Pt. 13 Ch. 2 modified (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 3**
- C436** Pt. 13 Ch. 2 modified (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 15**
- C437** 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)**
- C438** Pt. 13 Ch. 2 modified (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **Sch. 7 para. 14(5)-(7)**
- C439** Pt. 13 Ch. 2 modified (with effect in accordance with Sch. 13 para. 5 of the modifying Act) by Finance Act 2008 (c. 9), **Sch. 13 para. 6**

#### 539 Introductory.

- (1) <sup>M490</sup>This Chapter shall have effect for the purposes of imposing, in the manner and to the extent therein provided, charges to [<sup>F3157</sup>corporation tax]<sup>F3158</sup> . . . 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) <sup>M491</sup>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
  - [<sup>F3159</sup>(b) to any policy of insurance which constitutes, or is issued or held in connection with, a registered pension scheme; or]
  - [<sup>F3160</sup>(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 <sup>M492</sup>Conveyancing (Scotland) Act 1924 (but including a security constituted by ex facie absolute disposition or assignation).

- (3) <sup>M493</sup>In this Chapter—



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“assignment”, in relation to Scotland, means an assignment;

“capital redemption policy” means any [<sup>F3161</sup>contract] effected in the course of a capital redemption business [<sup>F3162</sup>, within the meaning of Chapter 1 of Part 12];

[<sup>F3163</sup>“charitable trust” means any trust established for charitable purposes only;]

[<sup>F3164</sup>“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;]

[<sup>F3165</sup>“excepted group life policy” shall be construed in accordance with subsection (2)(f) above;]

[<sup>F3166</sup><sup>F3167</sup>“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);]

[<sup>F3166</sup>“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;]

[<sup>F3168</sup>“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));]

[<sup>F3169</sup>“non-charitable trust” means any trust other than a charitable trust.]

[<sup>F3170</sup>(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) <sup>M494</sup>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.
- (5) <sup>M495</sup>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.

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(8) <sup>F3171</sup> .....

[<sup>F3172</sup>(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

**F3157** 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](#))

**F3158** 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](#)

**F3159** S. 539(2)(b) substituted for s. 539(2)(b)-(d) (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 25](#) (with [Sch. 36](#))

**F3160** 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\(2\)](#)

**F3161** 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)

**F3162** S. 539(3): words in definition of "capital redemption policy" substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 45](#) (with [Sch. 7 Pt. 2](#))

**F3163** 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](#)

**F3164** 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\(3\)](#)

**F3165** 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\(3\)](#)

**F3166** 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\(3\)](#)

**F3167** 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](#)

**F3168** 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](#))

**F3169** 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](#)

**F3170** 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](#)

**F3171** 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](#))

**F3172** 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

**M490** Source-1970 s.393(1); 1971 Sch.6 41; 1972 Sch.24 23

**M491** Source-1970 s.393(2)(a), (c); 1971 Sch.3 11

**M492** 1924 c. 27.

**M493** Source-1970 s.393(3); 1985 s.41(8) 56, Sch. 9 para. 15

**M494** Source-1975 Sch.2 15

**M495** Source-1970 s.393(4), (5)

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**[<sup>F3173</sup>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**

**F3173S. 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](#))

**[<sup>F3174</sup>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.

- (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

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(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
  - (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
- <sup>F3175</sup>(ii) “tax advantage” has the meaning given by section 840ZA.]

#### Textual Amendments

**F3174S.** 539A inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), Sch. 34 para. 2

**F3175S.** 539A(8)(ii) 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. 111 (with Sch. 2)

## 540 Life policies: chargeable events.

- (1) <sup>M496</sup>Subject to the provisions of this section, in this Chapter “chargeable event” means, in relation to a policy of life insurance—

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- (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) [<sup>F3176</sup>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 [<sup>F3177</sup>(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) <sup>F3178</sup> .....
- (3) <sup>M497</sup> 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) <sup>M498</sup> No account shall be taken for the purposes of [<sup>F3179</sup>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 [<sup>F3180</sup>or between civil partners living together].
- (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.
- [<sup>F3181</sup>(5A) Sub-paragraphs (i) and (ii) of subsection (1)(b) above shall not apply in relation 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) <sup>M499</sup> This section has effect subject to paragraph 20 of Schedule 15.

#### Textual Amendments

**F3176** 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)**

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- F3177** 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)**
- F3178** 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)
- F3179** 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)**
- F3180** 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**
- F3181** 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

- M496** Source-1970 s.394(1), (2); 1975 Sch.2 9(1), (2)
- M497** Source-1970 s.394(4); 1983 s.18(1) 1975 Sch.2 10
- M498** Source-1970 s.394(5), (6); 1975 Sch.2 10
- M499** Source-1982 s.34

## 541 Life policies: computation of gain.

- (1) <sup>M500</sup> On 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 [<sup>F3182</sup>or 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—
- (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 [<sup>F3182</sup>or 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 [<sup>F3183</sup>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 [<sup>F3182</sup>or 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 [<sup>F3184</sup>(subject to section 546B(3)(a))] .

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- (2) <sup>M501</sup>Where, 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.
- [<sup>F3185</sup>(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) <sup>F3186</sup> .....
- [<sup>F3187</sup>(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 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)



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- (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) <sup>M502</sup>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; [<sup>F3188</sup>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 <sup>M503</sup>Finance Act 1984 as an additional premium.

#### Textual Amendments

- F3182** 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)**
- F3183** 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)**
- F3184** 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)**
- F3185** 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)**
- F3186** 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
- F3187** 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)**
- F3188** 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)

- C440** 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

- M500** Source-1970 s.395(1); 1975 Sch.2 11(1)  
**M501** Source-1970 s.395 (2), (3)  
**M502** Source-1970 s.395(4); 1982 s.34; 1975 Sch.2 10  
**M503** 1984 c. 43

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## 542 Life annuity contracts: chargeable events.

- (1) <sup>M504</sup> 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) [<sup>F3189</sup>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) <sup>M505</sup> Except as provided by section 544, an event referred to in subsection (1) above [<sup>F3190</sup>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

**F3189** 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)

**F3190** 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)

### Marginal Citations

**M504** Source-1970 s.396(1); 396(1); 1975 Sch.2 9(3), 12

**M505** Source-1970 s.396(2), (3); 1983 s.18(2); 1975 Sch.2 12

## 543 Life annuity contracts: computation of gain.

- <sup>M506</sup>(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 [<sup>F3191</sup>any payments have been made on account of the annuity, by so much of those payments as is determined to be

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- 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 [<sup>F3192</sup>or 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 [<sup>F3193</sup>, 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 [<sup>F3192</sup>or 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 [<sup>F3194</sup>(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.
- [<sup>F3195</sup>(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

**F3191** 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](#))

**F3192** 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\(2\)](#)

**F3193** 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\(6\)](#)

**F3194** 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\(3\)](#)

**F3195** [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

**M506** [Source-1970 s.397](#); [1975 Sch.2 13](#)

## 544 Second and subsequent assignment of life policies and contracts.

- (1) <sup>M507</sup>In this section “assigned policy” means a policy of life assurance—

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- (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) <sup>M508</sup>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) <sup>M509</sup>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 [<sup>F3196</sup>or between civil partners living together].
- (5) <sup>M510</sup>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.
- (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 [<sup>F3197</sup>section 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.

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- (8) <sup>M511</sup>Where 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

**F3196** 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](#)

**F3197** 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

**M507** Source-1983 Sch.4 1

**M508** Source-1983 s.18(3), Sch.4 2(1)

**M509** Source-1983 Sch.4 2(2)

**M510** Source-1983 Sch.4 2(3)

**M511** Source-1983 Sch.4 2(4)

### 545 Capital redemption policies.

<sup>M512</sup>(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 [<sup>F3198</sup>—
- (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;
- (c) the assignment for money or money’s worth of those rights; and
- (d) [<sup>F3199</sup>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) 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

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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

**F3198S.** 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)

**F3199** 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

**M512** Source-1970 s.398; 1975 Sch.2 14, 9(4)

### 546 Calculation of certain amounts for purposes of sections 540, 542 and 545.

(1) <sup>M513</sup>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—
  - <sup>F3200</sup>(i) has been [<sup>F3201</sup>assigned 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; [<sup>F3202</sup>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) <sup>M514</sup>The reckonable aggregate value referred to in those sections shall be—

- (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) <sup>M515</sup>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



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- (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 <sup>M516</sup>Finance Act 1984 as an additional premium.
- [<sup>F3203</sup>(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

**F3200** 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)**

**F3201** 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)**

**F3202** 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)**

**F3203** 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

**M513** Source-1975 Sch.2 9(5), (8)

**M514** Source-1975 Sch.2 9(6), (7)

**M515** Source-1975 Sch.2 9(9)

**M516** 1984 c. 43

#### [<sup>F3204</sup>546] **Treatment of certain assignments etc involving co-ownership**

- (1) This section applies in any case where—
- 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”);
  - 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
  - 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—
- 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;



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- (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

**F3204S. 546A** inserted (with effect in accordance with s. 83(2) of the amending Act) by [Finance Act 2001 \(c. 9\)](#), [Sch. 28 para. 9](#)

#### [<sup>F3205</sup>**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.

[<sup>F3206</sup>This subsection is subject to subsection (1A) below.]
- [<sup>F3207</sup>(1A) In the case of a policy which is a qualifying policy (whether or not the premiums under 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

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- (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 mentioned 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

- F3205**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](#)
- F3206**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\(9\)](#)
- F3207**S. 546B(1A) inserted (with effect in accordance with s. 87(12) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 87\(10\)](#)

#### [<sup>F3205</sup>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—

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- (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.
- (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 [<sup>F3208</sup>section 547(1)(b)] as forming part of the income of any [<sup>F3209</sup>company] for—
- (a) <sup>F3210</sup> .....

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- (b) the accounting period in which [<sup>F3211</sup>the chargeable event in question] happened,  
that <sup>F3212</sup> . . . 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

- F3205**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](#)
- F3208**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)
- F3209**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)
- F3210**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)
- F3211**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)
- F3212**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)

#### [<sup>F3205</sup>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.
- (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

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(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

**F3205**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) <sup>M517</sup>Where under section 541, 543 [<sup>F3213</sup>, 545 or 546C] a gain is to be treated as arising in connection with any policy or contract—

(a) <sup>F3214</sup> .....

[<sup>F3215</sup>(b) if, immediately before the happening of [<sup>F3216</sup>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 [<sup>F3217</sup>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) <sup>F3214</sup> .....

[<sup>F3218</sup>(cc) <sup>F3214</sup> .....

[<sup>F3219</sup>(d) <sup>F3214</sup> .....

(e) <sup>F3214</sup> .....

[<sup>F3220</sup>(1A) In [<sup>F3221</sup>its] application in relation to a gain which is treated as arising by virtue of section 546C(7)(b), subsection (1) above [<sup>F3222</sup>is] subject to section 546C(8).]

(2) Nothing in subsection (1) above shall apply to any amount which is chargeable to tax apart from that subsection.

(3) <sup>F3223</sup> .....

[<sup>F3224</sup>(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.]

[<sup>F3225</sup>(4A) <sup>F3226</sup> .....

(5) <sup>F3226</sup> .....

[<sup>F3227</sup>(5AA) <sup>F3226</sup> .....

[<sup>F3228</sup>(5A) <sup>F3226</sup> .....

(6) <sup>F3226</sup> .....

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[<sup>F3229</sup>(6A) <sup>F3226</sup> .....

(7) <sup>F3226</sup> .....

[<sup>F3230</sup>(7A) <sup>F3226</sup> .....

[<sup>F3231</sup>(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.]

[<sup>F3232</sup>(9) <sup>F3226</sup> .....

[<sup>F3226</sup> .....

<sup>F3233</sup>(9A)

(10) <sup>F3226</sup> .....

(11) <sup>F3226</sup> .....

(12) <sup>F3226</sup> .....

[<sup>F3234</sup>(13)] <sup>F3226</sup> .....

[<sup>F3235</sup>(14) <sup>F3226</sup> .....

### Textual Amendments

**F3213** 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)**

**F3214** 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)

**F3215** 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)

**F3216** 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)

**F3217** 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)**

**F3218** S. 547(1)(cc) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(4)**

**F3219** 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)**

**F3220** 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)**

**F3221** 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)

**F3222** 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)

**F3223** 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

**F3224** 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)**

**F3225** S. 547(4A) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(8)**

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- F3226S.** 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)
- F3227S.** 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)**
- F3228S.** 547(5A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(1)**
- F3229S.** 547(6A) inserted (with effect in accordance with s. 56(4) of the amending Act) by Finance Act 1995 (c. 4), s. 56(1)
- F3230S.** 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)
- F3231S.** 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)**
- F3232S.** 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)**
- F3233S.** 547(9A) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 7(11)**
- F3234S.** 547(9) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 48, **Sch. 7 para. 9(3)**
- F3235S.** 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)**

- C441 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**

- M517** Source-1970 s.399(1); 1972 Sch.24 24

**[<sup>F3236</sup>547] Method of charging gain to tax: multiple interests.**

[<sup>F3237</sup>(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,

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.]

[<sup>F3238</sup>(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 [<sup>F3239</sup>non-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 [<sup>F3240</sup>non-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;



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- [ in the case of trustees of a charitable trust, if a share in the rights is held by  
<sup>F3241</sup>(cc) them or as security for a debt owed by them;]
- (d) in the case of trustees [<sup>F3242</sup>of 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;
- [ if a share in the rights is held by them which does not also fall within  
<sup>F3243</sup>(ia) 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 [<sup>F3244</sup>non-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—

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- (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 [<sup>F3245</sup>non-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 [<sup>F3246</sup>non-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,
- in which case section 547 applies.
- (15) In this section—
- [<sup>F3247</sup>“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.
- [<sup>F3248</sup>(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.]]

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### Textual Amendments

- F3236S.** 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**
- F3237S.** 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)
- F3238S.** 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**
- F3239**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)**
- F3240**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)**
- F3241S.** 547A(3)(cc) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(4)**
- F3242**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)**
- F3243S.** 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)**
- F3244**Word in s. 547A(6) inserted (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 8(7)**
- F3245**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)**
- F3246**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)**
- F3247S.** 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)
- F3248S.** 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—<sup>M518</sup>
- [<sup>F3249</sup>(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 [<sup>F3250</sup>or company][<sup>F3251</sup>or 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 [<sup>F3252</sup>subsections (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.

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- (3) Subsections (1) and (2) above do not apply in relation—
- [<sup>F3253</sup>(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.
- [<sup>F3254</sup>(3A) Subsections (1) and (2) do not apply where the rights conferred by the policy or contract are in the beneficial ownership of a company, or are held on trusts created, or as security for a debt owed, by a company, if the policy was issued in respect of an insurance made before 14th March 1989 or the contract was made before that date.]
- (4) In this section “final year” has the same meaning as in section 546.

#### Textual Amendments

- F3249S.** 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](#))
- F3250** 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\(2\)\(b\)](#)
- F3251** Words in s. 548(1)(c) inserted (9.4.2003) by [Finance Act 2003 \(c. 14\), s. 171\(1\)\(3\), Sch. 34 para. 9\(3\)](#)
- F3252** 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\(2\)\(c\)](#)
- F3253S.** 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](#)
- F3254S.** 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

- M518** Source-1975 Sch.2 16; 1976 s.35

#### [<sup>F3255</sup>548] **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.

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- (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”.]

#### Textual Amendments

**F3255** 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)

#### [<sup>F3255</sup> **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.

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- (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
  - (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

**F3255** 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.

**F3256** .....

#### Textual Amendments

**F3256** 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.

**F3257** .....

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#### Textual Amendments

**F3257S. 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.

F3258

#### Textual Amendments

**F3258S. 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 \(with Sch. 2\)](#)

### [<sup>F3259</sup>551] ~~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 [<sup>F3260</sup>rights, or the part or share,] in question were held immediately before the happening of the chargeable event on [<sup>F3261</sup>non-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.

(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

**F3259Ss. 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](#)

**F3260** 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](#)

**F3261** Words in s. 551A(1)(b) substituted (9.4.2003) by [Finance Act 2003 \(c. 14\), s. 171\(1\)\(3\), Sch. 34 para. 11](#)



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**[<sup>F3262</sup>552] Information: duty of insurers.**

- (1) Where a chargeable event <sup>F3263</sup> . . . 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,
 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) [<sup>F3264</sup> of this Act and section 514(1) of ITTOIA 2005 (chargeable events where

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- 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 [<sup>F3265</sup> and Chapter 9 of Part 4 of ITTOIA 2005]—
- (i) the amount or value of any relevant capital payments [<sup>F3266</sup> and 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 [<sup>F3267</sup> determined 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 [<sup>F3268</sup> and 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;
- [<sup>F3269</sup>(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;]
- [<sup>F3270</sup>(f) on the assumption that section 465 of ITTOIA 2005 (person liable: individuals) has effect in relation to the gain —
- (i) whether an individual would fall to be treated as having paid income tax at the [<sup>F3271</sup>savings 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) [<sup>F3272</sup> of this Act (and section 514(1) of ITTOIA 2005)], the period of three months following the end of the year [<sup>F3273</sup> (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) [<sup>F3274</sup> of 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—

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- (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) [<sup>F3275</sup>of this Act (and section 514(1) of ITTOIA 2005)], the period of three months following the end of the year [<sup>F3276</sup>(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) [<sup>F3277</sup>of 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 excess in question occurs [<sup>F3278</sup>(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) [<sup>F3279</sup>of 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;
- [<sup>F3280</sup>“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;

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“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.

[<sup>F3281</sup>(13) For the purposes of this section, no account is to be taken of the effect of section 548A above or section 541A of ITTOIA 2005.]]

#### Textual Amendments

**F3262**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**

**F3263**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)

**F3264**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)

**F3265**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)

**F3266**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)

**F3267**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)

**F3268**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)

**F3269**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)

**F3270**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)

**F3271**Words in s. 552(5)(f)(i) 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. 112** (with Sch. 2)

**F3272**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)

**F3273**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)

**F3274**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)

**F3275**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)

**F3276**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)

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**F3277** 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)

**F3278** 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)

**F3279** 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)

**F3280** 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)

**F3281** S. 552(13) inserted (with effect in accordance with s. 29(4) of the amending Act) by Finance Act 2007 (c. 11), **s. 29(2)**

**Modifications etc. (not altering text)**

**C442** S. 552(6) modified (9.4.2003) by Finance Act 2003 (c. 14), s. 171(1)(3), **Sch. 34 para. 5**

**[<sup>F3282</sup> 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) [<sup>F3283</sup> 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—
  - (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;

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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

**F3282** 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**

**F3283** 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

#### <sup>F3284</sup> ~~B~~ Regulations in relation to qualifying policies

- (1) The Commissioners for Her Majesty's Revenue and Customs may make regulations—
- (a) requiring relevant persons—
    - (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;

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- (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

**F3284S. 552ZB** inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 9 para. 10](#)

#### [<sup>F3285</sup>**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.
- (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—



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- (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<sup>F3286</sup> . . . 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;
  - (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;

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- (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—
- [<sup>F3287</sup>“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;]
- [<sup>F3288</sup>“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;
- [<sup>F3289</sup>“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

**F3285**Ss. 552A, 552B inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 87**

**F3286**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)

**F3287**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)

**F3288**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)

**F3289**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)

**C443** S. 522A restricted (6.4.1999) by The Overseas Insurers (Tax Representatives) Regulations 1999 (S.I. 1999/881), **reg. 11(2)**

#### [<sup>F3285</sup>552] **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.

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- [<sup>F3290</sup>(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 <sup>F3291</sup>(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

**F3285**Ss. 552A, 552B inserted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 87](#)

**F3290**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](#)

**F3291**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 \(with Sch. 2\)](#)

### 553 Non-resident policies and off-shore capital redemption policies.

- <sup>M519</sup>(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 [<sup>F3292</sup>the 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.

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- (3) Subject to [F3293 subsections (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 [F3294 or 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.

- [F3295(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.

- [F3296(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.]

(6) F3297 .....

[F3298(6A) F3297 .....

(7) F3297 .....

[F3299(7A) F3297 .....

(8) F3297 .....

(9) F3297 .....

- (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 [F3300 or 546C(7)(a)];

[F3301“foreign institution” has the same meaning as in [F3302 section 547A];]

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“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 [<sup>F3303</sup>a contract] made after 22nd February 1984; and
- (b) is so issued by a company resident outside the United Kingdom.

#### Textual Amendments

- F3292** Words in s. 553(2) substituted (1.5.1995) by Finance Act 1995 (c. 4), s. 55(8)(a) (with saving)
- F3293** 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)
- F3294** 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)
- F3295** 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)
- F3296** 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)
- F3297** 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)
- F3298** 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)
- F3299** 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)
- F3300** 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)
- F3301** 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)
- F3302** 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)
- F3303** 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)

#### Modifications etc. (not altering text)

- C444** 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

- M519** Source-1984 Sch.15 Part III; 1984 s.76(5); 1985 s.51

#### [<sup>F3304</sup>553] 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.

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- (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) <sup>F3305</sup> .....
- (4) In this section—
- “new non-resident policy” means a new non-resident policy as defined in paragraph 24 of Schedule 15 (and in [<sup>F3306</sup>subsection (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

**F3304S.** 553A inserted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), **s. 88(1)**

**F3305S.** 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**)

**F3306S.** 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**)

#### <sup>F3307</sup>**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;

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“overseas policy” means a capital redemption policy which, by virtue of section [F3308 431D(1)], 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 [F3309 on or after 23rd March 1999.]

#### Textual Amendments

**F3307S. 553B** inserted (31.7.1998) by **Finance Act 1998 (c. 36), s. 88(2)**

**F3308S. 553B(2):** words in definition of "overseas policy" substituted (with effect in accordance with s. 38(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 7 para. 46(2)** (with **Sch. 7 Pt. 2**)

**F3309** Words in s. 553B(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by **Finance Act 2007 (c. 11), Sch. 7 para. 46(3)** (with **Sch. 7 Pt. 2**)

#### [F3310 553 Personal portfolio bonds.

- (1) The Treasury may by regulations make provision imposing a yearly charge to [F3311 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 [F3312 corporation tax] under this section is in addition to any other charge to [F3312 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 [F3313 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;
  - (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 [F3314 corporation 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; [F3315 or]
  - (c) deeming an amount determined in accordance with the regulations to be income of a [F3316 company]; F3317 . . .
  - (d) F3317 . . . . .



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- (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.
- [ The Treasury may by regulations make provision, in relation to any policy or contract
- <sup>F3318</sup>(9A) 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.
- (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

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(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**

- F3310**S. 553C inserted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [s. 89](#)
- F3311** 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](#))
- F3312** 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](#))
- F3313** 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](#))
- F3314** 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](#))
- F3315** 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](#))
- F3316** 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](#))
- F3317** 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](#))
- F3318** 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.**

**F3319**  
.....

**Textual Amendments**

- F3319**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](#))

**CHAPTER III**

**ENTERTAINERS AND SPORTSMEN**

**555 Payment of tax.**

**F3320**  
.....

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### Textual Amendments

**F3320**S. 555 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 113, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

## 556 Activity treated as trade etc. and attribution of income.

(1) <sup>F3321</sup> . . . . .

[<sup>F3322</sup>(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) <sup>F3323</sup> . . . . .
- (b) that any liability to [<sup>F3324</sup>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) <sup>M520</sup>References in this section to a payment include references to a transfer.

[<sup>F3325</sup>(4A) In this section “payment” and “transfer” have the same meanings as in section 13 of ITTOIA 2005.]

(5) <sup>M521F3326</sup> . . . Subsections (2) and (3) above shall not apply in such circumstances as may be prescribed.

### Textual Amendments

**F3321**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](#))

**F3322**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](#))

**F3323**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](#))

**F3324**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](#))

**F3325**S. 556(4A) 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. 114\(2\)](#) (with [Sch. 2](#))

**F3326**Words in s. 556(5) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 114\(3\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### Modifications etc. (not altering text)

**C445** For regulations see Part III Vol.5 (under “Entertainers and sportsmen”).

### Marginal Citations

**M520** Source-1986 Sch.11 6(4) 7(6)

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M521 Source-1986 Sch.11 6(2), 7(5)

**557 Charge on [<sup>F3327</sup>profits].**

<sup>F3328</sup> .....

**Textual Amendments**

**F3327**Word in s. 557 sidenote substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1

**F3328**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) <sup>F3329</sup> .....

(2) <sup>F3329</sup> .....

(3) <sup>F3329</sup> .....

(4) <sup>F3329</sup> .....

(5) <sup>M522</sup>Regulations may make provision generally for giving effect to this Chapter, and may make different provision for different cases or descriptions of case.

(6) <sup>M523</sup>In this Chapter—  
“regulations” means regulations made by the Treasury; and  
“prescribed” means prescribed by regulations.

**Textual Amendments**

**F3329**S. 558(1)-(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 115, Sch. 3 Pt. 1 (with Sch. 2)

**Modifications etc. (not altering text)**

**C446** For regulations see Part III Vol.5 (under “Entertainers and sportsmen”).

**Marginal Citations**

**M522** Source-1986 Sch.11 10, 11(2)

**M523** 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.**

<sup>F3330</sup> .....

*Status: Point in time view as at 19/07/2007. This version of this Act contains provisions that are not valid for this point in time.*

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#### Textual Amendments

**F3330** Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 12 para. 9(2), **Sch. 42 Pt. 2(7)**, Note; S.I. 2006/3240, **art. 2**

### [<sup>F3331</sup> 559A Treatment of sums deducted under s.559

<sup>F3332</sup> . . . . . ]

#### Textual Amendments

**F3331** S. 559A inserted (with effect in accordance with s. 40(4) of the amending Act) by Finance Act 2002 (c. 23), **s. 40(1)**

**F3332** Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 12 para. 9(2), **Sch. 42 Pt. 2(7)**, Note; S.I. 2006/3240, **art. 2**

### 560 Persons who are sub-contractors or contractors for purposes of Chapter IV.

<sup>F3333</sup> . . . . .

#### Textual Amendments

**F3333** Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 12 para. 9(2), **Sch. 42 Pt. 2(7)**, Note; S.I. 2006/3240, **art. 2**

### 561 Exceptions from section 559.

<sup>F3334</sup> . . . . .

#### Textual Amendments

**F3334** Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 12 para. 9(2), **Sch. 42 Pt. 2(7)**, Note; S.I. 2006/3240, **art. 2**

### 562 Conditions to be satisfied by individuals.

<sup>F3335</sup> . . . . .

#### Textual Amendments

**F3335** Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by Finance Act 2004 (c. 12), Sch. 12 para. 9(2), **Sch. 42 Pt. 2(7)**, Note; S.I. 2006/3240, **art. 2**

### 563 Conditions to be satisfied by partners who are individuals.

<sup>F3336</sup> . . . . .

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**Textual Amendments**

**F3336**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.**

**F3337** .....

**Textual Amendments**

**F3337**Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 9\(2\)](#), [Sch. 42 Pt. 2\(7\)](#), Note; S.I. 2006/3240, [art. 2](#)

**565 Conditions to be satisfied by companies.**

**F3338** .....

**Textual Amendments**

**F3338**Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 9\(2\)](#), [Sch. 42 Pt. 2\(7\)](#), Note; S.I. 2006/3240, [art. 2](#)

**566 General powers to make regulations under Chapter IV.**

**F3339** .....

**Textual Amendments**

**F3339**Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 9\(2\)](#), [Sch. 42 Pt. 2\(7\)](#), Note; S.I. 2006/3240, [art. 2](#)

**567 Meaning of “construction operations”.**

**F3340** .....

**Textual Amendments**

**F3340**Pt. 13 Ch. 4 (ss. 559-567) repealed (with effect in accordance with s. 77 of the repealing Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 9\(2\)](#), [Sch. 42 Pt. 2\(7\)](#), Note; S.I. 2006/3240, [art. 2](#)

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## CHAPTER V

### SCHEMES FOR RATIONALIZING INDUSTRY

#### 568 Deductions from profits of contributions paid under certified schemes.

<sup>M524</sup>(1) Notwithstanding anything contained in section 74 [<sup>F3341</sup>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, [<sup>F3342</sup>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 [<sup>F3343</sup>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
  - (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

**F3341** 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)

**F3342** 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)

**F3343** 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

**M524** Source-1970 s.406



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## 569 Repayment of contributions.

- <sup>M525</sup>(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.

### Marginal Citations

M525 Source-1970 s.407; 1971 Sch.6 45

## 570 Payments under certified schemes which are not repayments of contributions.

- <sup>M526</sup>(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 [<sup>F3344</sup>profits] of the trade for those purposes.
- (2) Where <sup>F3345</sup> . . . 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, [<sup>F3346</sup>and a claim is made to that effect,] then, subject to and in accordance with the provisions of [<sup>F3347</sup>Schedule 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, [<sup>F3348</sup>and 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.

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- (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 [<sup>F3349</sup>section 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

- F3344** Words in s. 570(1) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**
- F3345** 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
- F3346** 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)**
- F3347** 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)**
- F3348** 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)**
- F3349** 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

- M526** Source-1970 s.408

### 571 Cancellation of certificates.

- <sup>M527</sup>(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 [<sup>F3350</sup>(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.
- [<sup>F3351</sup>(1A) An amount charged to income tax under subsection (1) above is treated for income tax purposes as an amount of income.]
- (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

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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.

#### Textual Amendments

- F3350** 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](#))
- F3351** S. 571(1A) 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. 116](#) (with [Sch. 2](#))

#### Marginal Citations

- M527** Source-1970 s.409

## 572 Application to statutory redundancy schemes.

- <sup>M528</sup>(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.

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### Marginal Citations

M528 Source-1970 s.410

## [<sup>F3352</sup>CHAPTER 5A

### SHARE LOSS RELIEF

### Textual Amendments

**F3352Pt. 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](#))

#### *Relief for losses on unquoted shares in trading companies*

### 573 Relief for companies.

- (1) <sup>M529</sup>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.

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- (4) [<sup>F3353</sup>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; <sup>F3354</sup> . . . .

[<sup>F3355</sup>This subsection is subject to subsection (4A) below.]

- [<sup>F3356</sup>(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.

- (6) <sup>M530</sup>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

**F3353** 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)**

**F3354** Words in s. 573(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 117(2)**, **Sch. 3 Pt. 1** (with **Sch. 2**)

**F3355** 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)**

**F3356** 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)

**C447** S. 573 transposed from Pt. 13 Ch. 6 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 para. 117(3)** (with **Sch. 2**)

**C448** 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

**M529** Source-1981 s.36(1)-(5)

**M530** Source-1981 s.36(6); 1980 s.37(3)

### 575 Exclusion of relief under section 573 <sup>F3357</sup> . . . in certain cases.

<sup>M531</sup>(1) [<sup>F3358</sup>Section 573 does] 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
- [<sup>F3359</sup>(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 [<sup>F3360</sup>24(2) of the 1992 Act] (claim that value of asset has become negligible).

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- (2) Where a <sup>F3361</sup>company] disposes of shares (“the new shares”) which by virtue of section <sup>F3362</sup>[127 of the 1992 Act] (reorganisation etc. treated as not involving disposal) are identified with other shares (“the old shares”) previously held by <sup>F3363</sup>[it], relief shall not be given under section 573 <sup>F3364</sup>. . . on the disposal of the new shares unless—
- (a) relief under section 573 <sup>F3364</sup>. . . could (or if this section had been in force could) have been given on a disposal of the old shares if <sup>F3363</sup>[it] 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 <sup>F3362</sup>[127 of the 1992 Act]; or
  - (b) <sup>F3363</sup>[it] gave new consideration for the new shares;
- but in a case within paragraph (b) above the amount of relief under section 573 <sup>F3364</sup>. . . 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.
- (3) Where the shares are the subject of an exchange or arrangement of the kind mentioned in section <sup>F3365</sup>[135 or 136 of the 1992 Act] (company reconstructions etc.) which by reason of section <sup>F3365</sup>[137] of that Act involves a disposal of the shares, section 573 <sup>F3366</sup>. . . shall not apply to any allowable loss incurred on the disposal.
- <sup>F3367</sup>(4) In this section “new consideration” means consideration in money or money's worth other than consideration of the kind excluded by paragraph (a) or (b) of section 128(2) of the 1992 Act.]

#### Textual Amendments

- F3357** Words in s. 575 sidenote repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 119\(2\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3358** Words in s. 575(1) 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. 119\(3\)](#) (with [Sch. 2](#))
- F3359** 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\(3\)](#)
- F3360** 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))
- F3361** Word in s. 575(2) 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. 119\(4\)\(a\)](#) (with [Sch. 2](#))
- F3362** 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))
- F3363** Words in s. 575(2) 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. 119\(4\)\(b\)](#) (with [Sch. 2](#))
- F3364** Words in s. 575(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 119\(4\)\(c\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3365** 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))
- F3366** Words in s. 575(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 119\(5\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3367** S. 575(4) 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. 119\(6\)](#) (with [Sch. 2](#))



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**Modifications etc. (not altering text)**

**C449** 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\(3\)](#)

**C450** S. 575 transposed from Pt. 13 Ch. 6 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 para. 119\(7\)](#) (with [Sch. 2](#))

**Marginal Citations**

**M531** Source-1980 s.37(6)-(8); 1981 s.36(6)

**576 Provisions supplementary to <sup>F3368</sup>sections 573 and 575].**

(1) <sup>F3369</sup>Subject to <sup>F3370</sup>subsection (1C) below,] where <sup>F3371</sup>a company] holds shares in <sup>F3372</sup>another company] which constitute a holding and comprise—

- (a) shares for which <sup>F3373</sup>it] has subscribed (“qualifying shares”); and
- (b) shares which <sup>F3373</sup>it] has acquired otherwise than by subscription,

any question whether a disposal by <sup>F3373</sup>it] of shares forming part of the holding is of qualifying shares shall be determined by treating that and any previous disposal by <sup>F3373</sup>it] out of the holding as relating to shares acquired later rather than earlier; and if a disposal by <sup>F3373</sup>it] is of qualifying shares forming part of a holding and <sup>F3373</sup>it] makes a claim under section 573 <sup>F3374</sup>. . . 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.

<sup>F3375</sup>(1A) <sup>F3376</sup> . . . . .

(1B) <sup>F3376</sup> . . . . .]

<sup>F3377</sup>(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.]

<sup>F3378</sup>(1D) In this section “holding” means any number of shares of the same class held by one company in one capacity, growing or diminishing as shares of that class are acquired or disposed of.

For this purpose—

- (a) shares are not to 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 in on such an exchange, and
- (b) subsection (4) of section 104 of the 1992 Act applies as it applies for the purposes of subsection (1) of that section.]



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- (2) <sup>F3379</sup> .....
- (3) <sup>F3379</sup> .....
- [<sup>F3380</sup>(4) <sup>F3379</sup> .....
- (4A) <sup>F3379</sup> .....
- (4B) <sup>F3379</sup> ..... ]
- (5) <sup>F3379</sup> .....

### Textual Amendments

- F3368** Words in s. 576 sidenote 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. 120(2)** (with Sch. 2)
- F3369** 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)**
- F3370** Words in s. 576(1) 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. 120(3)(a)** (with Sch. 2)
- F3371** Words in s. 576(1) 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. 120(3)(b)** (with Sch. 2)
- F3372** Words in s. 576(1) 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. 120(3)(c)** (with Sch. 2)
- F3373** Words in s. 576(1) 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. 120(3)(d)** (with Sch. 2)
- F3374** Words in s. 576(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 120(2)(e), **Sch. 3 Pt. 1** (with Sch. 2)
- F3375** 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)**
- F3376** S. 576(1A)(1B) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 120(4), **Sch. 3 Pt. 1** (with Sch. 2)
- F3377** 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)**
- F3378** S. 576(1D) 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. 120(5)** (with Sch. 2)
- F3379** S. 576(2)-(5) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 120(6), **Sch. 3 Pt. 1** (with Sch. 2)
- F3380** 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)**

### Modifications etc. (not altering text)

- C451** 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)**
- C452** S. 576 transposed from Pt. 13 Ch. 6 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 para. 120(7)** (with Sch. 2)

### [<sup>F3381</sup> 576] **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—

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- (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
    - (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.]

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**Textual Amendments**

**F3381S. 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](#))

*[<sup>F3382</sup>Qualifying trading companies: the requirements*

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**Textual Amendments**

**F3382S. 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.

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- (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—
- (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

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- (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,
  - “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).
- [<sup>F3383</sup>(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**

**F3383S.** 576B(9) inserted (6.4.2007) by [Finance Act 2007 \(c. 11\)](#), Sch. 16 paras. 11(3), 13

[<sup>F3384</sup>**576C** **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.

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- (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.]

#### Textual Amendments

**F3384**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](#))

### [<sup>F3385</sup>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.]  
<sup>F3386</sup>(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

**F3385**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](#))

**F3386**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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### [<sup>F3387</sup> 576H] **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**

**F3387S. 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)

### [<sup>F3388</sup> 576H] **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**

**F3388S. 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)

### [<sup>F3389</sup> 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

**F3389S. 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](#))

#### [<sup>F3390</sup>**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 [<sup>F3391</sup>1005(1)(b)] 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

**F3390S. 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](#))

**F3391** Words in s. 576H(2)(a) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 7\(5\)](#)



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### [<sup>F3392</sup>576 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

**F3392**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](#))

*[<sup>F3393</sup>Qualifying trading companies: supplementary provisions*

#### Textual Amendments

**F3393**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 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”),
  - the consideration for the old shares consists wholly of the issue of shares (“new shares”) in the new company,
  - the consideration for the new shares of each description consists wholly of old shares of the corresponding description,
  - 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
  - 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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## [<sup>F3394</sup>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.

[ Nothing in subsection (2) applies in relation to section 195(7) of ITA 2007 as applied  
<sup>F3395</sup>(4) by section 576B(7) above for the purposes mentioned in section 576B(8).]

### Textual Amendments

**F3394S. 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](#))

**F3395S. 576K(4)** inserted (6.4.2007) by [Finance Act 2008 \(c. 9\)](#), [Sch. 16 paras. 11\(4\), 13](#)

### [<sup>F3396</sup>Supplemental]

### Textual Amendments

**F3396S. 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)

**C453** 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.**

F3397

#### Textual Amendments

**F3397S.** 574 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 118, **Sch. 3 Pt. 1** (with Sch. 2)

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### *Miscellaneous*

#### 577 Business entertaining expenses.

- (1) <sup>M532</sup>Subject to the provisions of this section—
- (a) no deduction shall be made in computing [<sup>F3398</sup>profits] chargeable to [<sup>F3399</sup>corporation tax] under <sup>F3400</sup> . . . Schedule D for any expenses incurred in providing business entertainment, and such expenses—
- <sup>F3401</sup>(i) shall not be included in computing any expenses of management in respect of which relief may be given under [<sup>F3402</sup>the Corporation Tax Acts]; [<sup>F3403</sup>and
- (ii) shall not be brought into account under section 76 as expenses payable]. [<sup>F3404</sup><sup>F3405</sup> . . . ]
- (b) <sup>F3405</sup> . . . . .
- (c) <sup>F3406</sup> . . . . .
- (2) <sup>F3407</sup> . . . . .
- (3) The expenses to which paragraph (a) of subsection (1) above applies include, in the case of [<sup>F3408</sup>any company], any sums paid [<sup>F3409</sup>by the company] to, or on behalf of, or placed [<sup>F3409</sup>by the company] at the disposal of [<sup>F3410</sup>an employee of the company] exclusively for the purpose of defraying expenses incurred or to be incurred by him in providing business entertainment <sup>F3411</sup> . . . .
- (4) <sup>F3407</sup> . . . . .
- (5) For the purposes of this section “business entertainment” means entertainment (including hospitality of any kind) provided by [<sup>F3412</sup>a company], or by [<sup>F3413</sup>an employee of the company], in connection with a trade carried on by [<sup>F3414</sup>the company], but does not include anything provided by [<sup>F3415</sup>the company] for bona fide [<sup>F3416</sup>employees of the company] unless its provision for them is incidental to its provision also for others.
- (6) <sup>F3407</sup> . . . . .
- (7) In this section—
- (a) any reference to expenses incurred in <sup>F3417</sup> . . . providing entertainment includes a reference to expenses incurred in <sup>F3417</sup> . . . providing anything incidental thereto;
- (b) references to a trade include references to any business [<sup>F3418</sup>or profession]; and
- (c) references to [<sup>F3419</sup>a company's employees] are references to persons employed by [<sup>F3420</sup>the company], directors of [<sup>F3421</sup>the company] or persons engaged in the management of [<sup>F3421</sup>the 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

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- (b) the cost of which to the donor, taken together with the cost to [<sup>F3422</sup>the donor] of any other such articles given by [<sup>F3422</sup>the donor] to that person in the same [<sup>F3423</sup>accounting period], does not exceed [<sup>F3424</sup>£50].

[<sup>F3425</sup>(8A) <sup>F3426</sup> . . . . .]

- (9) <sup>M533</sup>Subsection (8) above shall not preclude the deduction, in computing [<sup>F3398</sup>profits] under <sup>F3400</sup> . . . 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) <sup>M534</sup>Nothing in this section shall be taken as precluding the deduction of expenses incurred in <sup>F3427</sup> . . . the provision by [<sup>F3428</sup>any company] of anything which it is [<sup>F3429</sup>its trade] to provide, and which is provided [<sup>F3430</sup>by the company] in the ordinary course of that trade for payment or, with the object of advertising to the public generally, gratuitously.

#### Textual Amendments

- F3398** 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**
- F3399** 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)
- F3400** 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
- F3401** 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)
- F3402** 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)
- F3403** 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)
- F3404** 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)**
- F3405** 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)
- F3406** 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**
- F3407** 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**
- F3408** 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)
- F3409** 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)
- F3410** 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)
- F3411** 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)

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- F3412** 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)
- F3413** 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)
- F3414** 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)
- F3415** 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)
- F3416** 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)
- F3417** 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**
- F3418** 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)
- F3419** 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)
- F3420** 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)
- F3421** 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)
- F3422** 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)
- F3423** 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)
- F3424** 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)
- F3425** 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)
- F3426** 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)
- F3427** 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**
- F3428** 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)
- F3429** 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)
- F3430** 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

- M532** Source-1970 s.411(1)-(8); 1985 s.43; 1971 s.50(8)  
**M533** Source-1980 s.54, 118(3); 1983 s.46(3)(b)  
**M534** Source-1970 s.411(9)

#### [<sup>F3431</sup>577] Expenditure involving crime.

- (1) In computing [<sup>F3432</sup>profits] chargeable to [<sup>F3433</sup>corporation tax] under <sup>F3434</sup> . . . Schedule D, no deduction shall be made for any expenditure incurred —



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- [ in making a payment the making of which constitutes the commission of a  
<sup>F3435</sup>(a)] criminal offence<sup>F3436</sup>, 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.]
- [ In computing [<sup>F3432</sup>profits] chargeable to [<sup>F3433</sup>corporation tax] under <sup>F3434</sup> . . . Schedule  
<sup>F3437</sup>(1A) 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) [<sup>F3438</sup>Any expenditure mentioned in subsection (1) or (1A) above]—
- [<sup>F3439</sup>(a)] shall not be included in computing any expenses of management in respect of which relief may be given under [<sup>F3440</sup>the Corporation Tax Acts][<sup>F3441</sup>; and  
(b) shall not be brought into account under section 76 as expenses payable].]

#### Textual Amendments

- F3431**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)
- F3432**Words in s. 577A(1)(1A) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1
- F3433**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)
- F3434**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
- F3435**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)
- F3436**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)
- F3437**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)
- F3438**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)
- F3439**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)
- F3440**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)
- F3441**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)



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## 578 Housing grants.

<sup>M535</sup>(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 [<sup>F3442</sup>corporation 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

**F3442** 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

**M535** Source-1970 s.376

## [<sup>F3443</sup>578A] Expenditure on car hire

(1) This section provides for a reduction in the amounts—

- (a) allowable as deductions in computing profits chargeable to [<sup>F3444</sup>corporation tax] under Case I or II of Schedule D, [<sup>F3445</sup> or]
- (b) which can be included as expenses of management of [<sup>F3446</sup>a company with investment business] (as defined by section 130), <sup>F3447</sup> . . . [<sup>F3448</sup> or
- (bb) which can be brought into account under section 76 as expenses payable,]
- (c) <sup>F3447</sup> . . . . .

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.

[ This section does not apply to the hiring of a car, other than a motorcycle, if—

- <sup>F3449</sup>(2A) (a) it is an electrically-propelled car, or  
 (b) it is a car with low CO<sub>2</sub> emissions.

(2B) In subsection (2A) above—

“car” has the meaning given by section 578B;  
 “car with low CO<sub>2</sub> emissions” has the meaning given by section 45D of the Capital Allowances Act 2001 (expenditure on cars with low CO<sub>2</sub> 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—

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$$\frac{\pounds 12,000 + P}{2P}$$

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

- F3443** 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](#))
- F3444** 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](#))
- F3445** 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\(a\)](#)
- F3446** 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)
- F3447** 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\(1\)](#)
- F3448** 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)
- F3449** 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)

- C454** 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](#))

#### [<sup>F3443</sup>578] 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

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- (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**  
**F3443** 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.**

- M536 (1) <sup>F3450</sup> .....
- (2) Where a redundancy payment or other employer’s payment is made [<sup>F3451</sup>by a company] in respect of employment wholly in a [<sup>F3452</sup>trade or profession] carried on by [<sup>F3453</sup>the 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 [<sup>F3454</sup>profits] or losses of the [<sup>F3452</sup>trade or profession], but—
    - (a) <sup>F3455</sup> .....
    - (b) if the employer’s payment was made after the discontinuance of the [<sup>F3452</sup>trade or profession] the <sup>F3456</sup> . . . amount so deductible shall be treated as if it were a payment made on the last day on which the [<sup>F3452</sup>trade or profession] was carried on.
  - <sup>F3457</sup>(3) Where a redundancy payment or other employer’s payment is made [<sup>F3458</sup>by a company] in respect of employment wholly in a business carried on by [<sup>F3459</sup>the 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) <sup>F3460</sup> .....
  - (5) Relief shall not be given under [<sup>F3461</sup>subsections (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 [<sup>F3462</sup>corporation tax purposes] to be treated in different ways—

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- (a) the amount [<sup>F3463</sup>of 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) [<sup>F3461</sup>subsections (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 <sup>F3464</sup> . . . .
- (6) Where the Minister pays a sum under [<sup>F3465</sup>section 166 of the Employment Rights Act 1996] or [<sup>F3466</sup>Article 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 [<sup>F3467</sup>the company] has reimbursed the Minister, it had been so paid by [<sup>F3467</sup>the company].

#### Textual Amendments

- F3450S.** 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)
- F3451** 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)
- F3452** 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)
- F3453** 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)
- F3454** Words in s. 579(2) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\), Sch. 7 para. 1](#)
- F3455S.** 579(2)(a) repealed (22.8.1996) by [Employment Rights Act 1996 \(c. 18\), s. 243, Sch. 3 Pt. 1](#)
- F3456** Word in s. 579(2)(b) repealed (22.8.1996) by [Employment Rights Act 1996 \(c. 18\), s. 243, Sch. 3 Pt. 1](#)
- F3457S.** 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\(2\)](#)
- F3458** 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)
- F3459** 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)
- F3460S.** 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)
- F3461** 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)
- F3462** 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)
- F3463** Words in s. 579(5)(a) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\), s. 243, Sch. 1 para. 35\(2\)\(a\)](#)
- F3464** Words in s. 579(5)(b) repealed (22.8.1996) by [Employment Rights Act 1996 \(c. 18\), s. 243, Sch. 3 Pt. 1](#)
- F3465** Words in s. 579(6) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\), s. 243, Sch. 1 para. 35\(2\)\(b\)](#)
- F3466** 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)
- F3467** 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)

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#### Modifications etc. (not altering text)

**C455** 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

**M536** Source-1970 s.412(1)-(6)

### 580 Provisions supplementary to section 579.

<sup>M537</sup>(1) In section 579—

- (a) “redundancy payment”<sup>F3468</sup> and “employer’s payment” have the same meaning as in Part XI of the Employment Rights Act 1996] or [<sup>F3469</sup>Part 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 [<sup>F3470</sup>which would have been payable as a redundancy payment had one been payable;]
- (c) “the Minister” in relation to [<sup>F3471</sup>the Employment Rights Act 1996] means the Secretary of State and in relation to [<sup>F3472</sup>the Employment Rights (Northern Ireland) Order 1996] means the Department of Health and Social Services.

(2) <sup>F3473</sup> .....

(3) <sup>F3474</sup> .....

#### Textual Amendments

**F3468** Words in s. 580(1)(a) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, [Sch. 1 para. 35\(3\)\(a\)](#)

**F3469** 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](#))

**F3470** Words in s. 580(1)(b) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, [Sch. 1 para. 35\(3\)\(b\)](#)

**F3471** Words in s. 580(1)(c) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, [Sch. 1 para. 35\(3\)\(c\)](#)

**F3472** 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](#))

**F3473** S. 580(2) repealed (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, [Sch. 3 Pt. 1](#)

**F3474** 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

**M537** Source-1970 s.412(7), (8)

[<sup>F3475</sup>**580** Relief from tax on annual payments under certain insurance policies.

<sup>F3476</sup> .....

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**Textual Amendments**

- F3475**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)
- F3476**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.**

F3477 . . . . . ]

**Textual Amendments**

- F3475**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)
- F3477**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)

[<sup>F3478</sup> **580C Relief from tax on annual payments under immediate needs annuities**

F3479 . . . . . ]

**Textual Amendments**

- F3478**S. 580C inserted (with effect in accordance with s. 147(6) of the amending Act) by Finance Act 2004 (c. 12), s. 147(3)
- F3479**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.**

F3480 . . . . .

**Textual Amendments**

- F3480**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)

[<sup>F3481</sup> **581A Interest on foreign currency securities etc.**

F3482 . . . . . ]

**Textual Amendments**

- F3481**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)
- F3482**S. 581A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 133, **Sch. 3 Pt. 1** (with Sch. 2)



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## 582 Funding bonds issued in respect of interest on certain debts.

- <sup>M538</sup>(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 [<sup>F3483</sup>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) [<sup>F3484</sup>where paragraph (a) above <sup>F3485</sup>. . . applies] the redemption of the bonds shall not be treated for those purposes as the payment of any amount of that interest.
- [<sup>F3486</sup>(2) Subsection (2A) applies if an issue of funding bonds is treated as a payment of interest as mentioned in subsection (1)(a) and—
- (a) the person by or through whom the bonds are issued is required to retain bonds under section 939(2) of ITA 2007, but
  - (b) it is impracticable for the person to do so.
- (2A) In that case, tax in respect of the amount of interest treated by virtue of subsection (1) (a) as having been paid by the issue of the bonds shall be charged under Case VI of Schedule D for the chargeable period in which the bonds are issued on the persons receiving or entitled to the bonds.]
- (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.
- [<sup>F3487</sup>(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

- F3483** 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](#))
- F3484** 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](#))
- F3485** Words in s. 582(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 134\(2\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3486** S. 582(2)(2A) 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. 134\(3\)](#) (with [Sch. 2](#))
- F3487** 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)

- C456** 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

- M538** Source-1970 s.417; 1971 Sch.6 47



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[<sup>F3488</sup>**582** Designated international organisations: miscellaneous exemptions.

<sup>F3489</sup> . . . . . ]

**Textual Amendments**

**F3488S. 582A** inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 118(1)

**F3489S. 582A** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 135, Sch. 3 Pt. 1 (with Sch. 2)

**583 Inter-American Development Bank.**

<sup>F3490</sup> . . . . .

**Textual Amendments**

**F3490S. 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) <sup>M539</sup>Where [<sup>F3491</sup>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 [<sup>F3492</sup>for the purposes of corporation tax] this section shall apply to the overseas income in so far as—
- (a) [<sup>F3493</sup>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) [<sup>F3493</sup>the company] has not realised the overseas income outside that territory for a consideration in sterling or a consideration in some other currency which [<sup>F3493</sup>the company] is not prevented from transferring to the United Kingdom.

Overseas income to which this section applies is referred to below as unremittable.

- [<sup>F3494</sup>(2) Subject to subsection (2A) below, where [<sup>F3495</sup>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 [<sup>F3496</sup>its] part,

then, in the first instance, account shall not be taken of that income, [<sup>F3497</sup>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.]

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- (4) Where [<sup>F3498</sup>[<sup>F3499</sup>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) <sup>M540</sup>Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 11 of the <sup>M541</sup>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 [<sup>F3500</sup>to which paragraphs (a) and (b) of subsection (2) above do not apply (and accordingly cannot cease to apply)].
- <sup>F3501</sup>(6) A claim under subsection (2) above—
- (a) <sup>F3502</sup>.....
- (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) <sup>F3502</sup>.....
- (8) Subject to subsections (2) and [<sup>F3503</sup>(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) <sup>M542</sup>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

**F3491** 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)

**F3492** 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)

**F3493** 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)

**F3494** 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)**

**F3495** 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)

**F3496** 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)

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- F3497** 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)
- F3498** 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)**
- F3499** 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)
- F3500** 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)**
- F3501** 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)**
- F3502** 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)
- F3503** 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)**

**C457** See 1979(C) s.13—*delayed remittances of capital gains.*

**Marginal Citations**

- M539** Source-1970 s.418(1), (2), (2A), (2B); 1987 (No.2) Sch.6 6
- M540** Source-1972 s.124(2)(a)
- M541** 1978 c. 18.
- M542** Source-1987 (No.2) Sch.6 6(5)

**585 Relief from tax on delayed remittances.**

**F3504**  
.....

**Textual Amendments**

**F3504** 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.**

- <sup>M543</sup>(1) In computing the amount of the profits or gains of any person for any [<sup>F3505</sup>corporation 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.

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- (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

**F3505** 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

**M543** Source-1970 s.420

### 587 Disallowance of certain payments in respect of war injuries to employees.

- <sup>M544</sup>(1) In computing the amount of the profits or gains <sup>F3506</sup> . . . of any person for any [<sup>F3507</sup>corporation 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 [<sup>F3508</sup>section 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.

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- (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,  
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.

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#### Textual Amendments

- F3506** 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)
- F3507** 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)
- F3508** 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)
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#### Marginal Citations

- M544** Source-1970 s.421

[<sup>F3509</sup> **587A** **New issues of securities: extra return.**

<sup>F3510</sup> ..... ]

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#### Textual Amendments

- F3509** 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)
- F3510** S. 587A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 136, Sch. 3 Pt. 1](#) (with Sch. 2)

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### **[<sup>F3512</sup>587B<sup>F3511</sup> Gifts of shares, securities and real property to charities etc]**

- (1) [<sup>F3513</sup>Subsection (2) below applies] where, otherwise than by way of a bargain made at arm's length, [<sup>F3514</sup>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) <sup>F3515</sup> .....
    - (ii) <sup>F3516</sup> . . . 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 [<sup>F3517</sup>of this Act]<sup>F3518</sup> . . . ;
- <sup>F3519</sup> .....
- (3) <sup>F3520</sup> .....
- [<sup>F3521</sup>(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—
    - (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 [<sup>F3522</sup>the company] making the disposal or a person connected with [<sup>F3523</sup>it], 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 [<sup>F3524</sup>company] 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 [<sup>F3525</sup>company] 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) <sup>F3526</sup> .....
- [ The value of the net benefit to the charity is—
- <sup>F3527</sup>(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—

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- (a) the charity is, or becomes, subject to an obligation to any person (whether or not <sup>F3528</sup>the company] making the disposal or a person connected with <sup>F3529</sup>it]), 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 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—

<sup>F3530</sup>“authorised unit trust” has the meaning given by section 468;]

“charity” has the same meaning as in section 506 and includes

- (a) <sup>F3531</sup>the Trustees of the National Heritage Memorial Fund;
- (b) the Historic Buildings and Monuments Commission for England; and
- (c) the National Endowment for Science, Technology and the Arts;]

“the incidental costs of making the disposal to the <sup>F3532</sup>company] making it” shall be construed in accordance with section 38(2) of the 1992 Act;

<sup>F3533</sup>

<sup>F3534</sup>“obligation” includes a reference to each of the following—

- (a) any scheme, arrangement or understanding of any kind, whether or not legally enforceable;



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- (b) a series of obligations (whether or not between the same parties);  
 [ <sup>F3535</sup>“offshore fund” has the same meaning as in Chapter 5 of Part 17;]  
 [ <sup>F3536</sup>“open-ended investment company” is to be read in accordance with section 468A(2) to (4);]  
 “qualifying investment” means any of the following—
- (a) shares or securities which are listed [ <sup>F3537</sup>on a recognised stock exchange or dealt in on any designated market in the United Kingdom];
  - (b) units in an authorised unit trust;
  - (c) shares in an open-ended investment company, <sup>F3538</sup> . . .
  - (d) an interest in an offshore fund [ <sup>F3539</sup>; and
  - (e) a qualifying interest in land];
- [ <sup>F3540</sup>“related liabilities” shall be construed in accordance with subsection (8E) above;]  
 [ <sup>F3541</sup>“value of the net benefit to the charity” shall be construed in accordance with subsection (8A) above.]

[ In paragraph (a) of the definition of “qualifying investment” in subsection (9) above, <sup>F3542</sup>(9ZA) “designated” means designated by an order made by the Commissioners for Her Majesty's Revenue and Customs for the purposes of that paragraph.

(9ZB) An order under subsection (9ZA) above may—

- (a) designate a market by name or by reference to any class or description of market, and
- (b) vary or revoke a previous order under that subsection.]

[ In this section a “qualifying interest in land” means—

- <sup>F3543</sup>(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 [ <sup>F3544</sup>company] makes a disposal to a charity of—

- (a) the whole of [ <sup>F3545</sup>its] 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 [ <sup>F3544</sup>company] of the whole of [ <sup>F3545</sup>its] beneficial interest in a qualifying interest in land.

(9C) Where [ <sup>F3546</sup>a company which] 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 [ <sup>F3547</sup>the company] 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,

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- (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.

<sup>F3548</sup>(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.

<sup>F3549</sup>(12) [ This section is supplemented by [<sup>F3550</sup>sections 587BA and 587C] below.]]

#### Textual Amendments

**F3511** S. 587B sidenote substituted (with effect in accordance with s. 97(6) of the amending Act) by [Finance Act 2002 \(c. 23\), s. 97\(4\)](#)

**F3512** S. 587B inserted (with effect in accordance with s. 43(3) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 43\(1\)](#)

**F3513** Words in s. 587B(1) 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. 137\(2\)\(a\)](#) (with Sch. 2)

**F3514** Words in s. 587B(1) 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. 137\(2\)\(b\)](#) (with Sch. 2)

**F3515** S. 587B(2)(a)(i) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 137\(3\)\(a\), Sch. 3 Pt. 1](#) (with Sch. 2)

**F3516** Words in s. 587B(2)(a)(ii) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 137\(3\)\(b\), Sch. 3 Pt. 1](#) (with Sch. 2)

**F3517** 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)

**F3518** Words in s. 587B(2)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 137\(3\)\(c\), Sch. 3 Pt. 1](#) (with Sch. 2)

**F3519** Words in s. 587B(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 137\(3\)\(d\), Sch. 3 Pt. 1](#) (with Sch. 2)

**F3520** S. 587B(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 137\(4\), Sch. 3 Pt. 1](#) (with Sch. 2)

**F3521** S. 587B(4) substituted (with effect in accordance with s. 139(6) of the amending Act) by [Finance Act 2004 \(c. 12\), s. 139\(2\)](#)

**F3522** Words in s. 587B(5) 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. 137\(5\)\(a\)](#) (with Sch. 2)

**F3523** Word in s. 587B(5) 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. 137\(5\)\(b\)](#) (with Sch. 2)

**F3524** Word in s. 587B(6) 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. 137\(6\)](#) (with Sch. 2)

**F3525** Word in s. 587B(7)(a) 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. 137\(7\)](#) (with Sch. 2)

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- F3526**S. 587B(8) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(f), **Sch. 27 Pt. 2(10)**, Note
- F3527**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)**
- F3528**Words in s. 587B(8B)(a) 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. 137(9)(a)** (with Sch. 2)
- F3529**Word in s. 587B(8B)(a) 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. 137(9)(b)** (with Sch. 2)
- F3530**S. 587B(9): definition of "authorised unit trust" substituted for definition of "authorised unit trust" and "open-ended investment company" (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. 137(10)(a)** (with Sch. 2)
- F3531**S. 587B(9): words in definition of "charity" 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. 137(10)(b)** (with Sch. 2)
- F3532**S. 587B(9): word in definition of "the incidental costs of making the disposal to the person making it" 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. 137(10)(c)** (with Sch. 2)
- F3533**S. 587B(9): definition of "life assurance business" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by virtue of Finance Act 2007 (c. 11), Sch. 10 para. 14(2)(c), **Sch. 27 Pt. 2(10)**, Note
- F3534**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)**
- F3535**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)
- F3536**S. 587B(9): definition of "open-ended investment company" 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. 137(10)(d)** (with Sch. 2)
- F3537**S. 587B(9): words in definition of "qualifying investment" substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 26 para. 7(6)(a)**
- F3538**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
- F3539**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)**
- F3540**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)**
- F3541**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)**
- F3542**S. 587B(9ZA)(9ZB) inserted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 26 para. 7(6)(b)**
- F3543**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)**
- F3544**Words in s. 587B(9B) 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. 137(11)(a)** (with Sch. 2)
- F3545**Words in s. 587B(9B) 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. 137(11)(b)** (with Sch. 2)
- F3546**Words in s. 587B(9C) 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. 137(12)(a)** (with Sch. 2)
- F3547**Words in s. 587B(9C) 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. 137(12)(b)** (with Sch. 2)
- F3548**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)**
- F3549**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)**
- F3550**Words in s. 587B(12) 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. 137(13)** (with Sch. 2)

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**Modifications etc. (not altering text)**

- C458** 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**)
- C459** 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**
- C460** 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)**

[<sup>F3551</sup> **587B** **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.

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- (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.
- (12) <sup>F3552</sup> . . . . .
- (13) A company is a qualifying company if—
- (a) it is not itself a charity, <sup>F3553</sup> . . .
  - (b) <sup>F3553</sup> . . . . . ]

#### Textual Amendments

**F3551** 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)

**F3552** S. 587BA(12) repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(10)**, Note

**F3553** S. 587BA(13)(b) and preceding word repealed (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 27 Pt. 2(10)**, Note

#### <sup>F3554</sup> **587** 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) <sup>F3555</sup> . . . . .
- (3) <sup>F3555</sup> . . . . .
- (4) No [<sup>F3556</sup> company] may make a claim for a relief under subsection (2) of section 587B unless [<sup>F3557</sup> it] 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 [<sup>F3558</sup> following] shall be treated as never having been entitled to relief under section 587B in respect of the disposal—
- <sup>F3559</sup> (a) in a case to which section 587BA does not apply, the company which made the disposal, and
  - (b) in a case to which section 587BA applies, each qualifying company which is an owner.]
- (7) All such assessments and adjustments of assessments are to be made as are necessary to give effect to subsection (6) above.

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- (8) For the purposes of subsection (6) above a disqualifying event occurs if [<sup>F3560</sup>a person mentioned in subsection (8A)]—
- (a) becomes entitled to an interest or right in relation to all or part of the land to which the disposal relates, or
  - (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.

- [ The persons are—
- <sup>F3561</sup>(8A) (a) in a case to which section 587BA does not apply—
- (i) the company which made the disposal, or
  - (ii) a person connected with that company, and
- (b) in a case to which section 587BA applies—
- (i) a person who is an owner, or
  - (ii) a person connected with such a person.]

- (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) <sup>F3562</sup> . . . . .
  - (b) <sup>F3563</sup> . . . 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

- F3554S.** 587C inserted (with effect in accordance with s. 97(6) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 97\(5\)](#)
- F3555S.** 587C(2)(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 139\(2\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3556** Word in s. 587C(4) 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. 139\(3\)\(a\)](#) (with [Sch. 2](#))
- F3557** Word in s. 587C(4) 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. 139\(3\)\(b\)](#) (with [Sch. 2](#))
- F3558** Word in s. 587C(6) 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. 139\(4\)\(a\)](#) (with [Sch. 2](#))
- F3559S.** 587C(6)(a)(b) 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. 139\(4\)\(b\)](#) (with [Sch. 2](#))
- F3560** Words in s. 587C(8) 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. 139\(5\)](#) (with [Sch. 2](#))
- F3561S.** 587C(8A) 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. 139\(6\)](#) (with [Sch. 2](#))
- F3562S.** 587C(10)(a) and word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 139\(7\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))



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**F3563** Words in s. 587C(10)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 139(7)(b), Sch. 3 Pt. 1 (with Sch. 2)

## 588 Training courses for employees.

<sup>F3564M545</sup>(1) This section applies where a <sup>F3565</sup>company] (“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—

- <sup>F3566</sup>(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 <sup>F3567</sup>profits] of the <sup>F3568</sup>trade or profession] of the employer for the purposes of which the employee is or was employed.

<sup>F3569</sup>(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.”

.]

(5) In any case where—

- (a) <sup>F3570</sup>.....
- (b) an employer’s liability to <sup>F3571</sup>corporation tax] for any <sup>F3572</sup>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), <sup>F3573</sup>it] is entitled to a deduction on account of any expenditure and, subsequently, there is <sup>F3574</sup>a failure to meet a condition of the kind mentioned in section 312(1)(b)(i) or (ii) of ITEPA 2003];

an assessment under <sup>F3575</sup> . . . <sup>F3576</sup>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 <sup>F3577</sup>accounting period] in which the failure occurred.

<sup>F3578</sup>(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 <sup>F3579</sup>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.



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- (7) If the inspector has reason to believe that an employer has not given a notice which <sup>F3580</sup>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 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 section.

#### Textual Amendments

- F3564** 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](#))
- F3565** 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](#))
- F3566** 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](#))
- F3567** Word in s. 588(3) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), s. 46(3)(a), [Sch. 7 para. 1](#)
- F3568** 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](#))
- F3569** 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)
- F3570** 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](#))
- F3571** 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](#))
- F3572** 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](#))
- F3573** 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](#))
- F3574** 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](#))
- F3575** 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](#))
- F3576** 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](#)
- F3577** 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](#))
- F3578** 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)
- F3579** 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](#))
- F3580** 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)

- C461** 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)

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**Marginal Citations**  
 M545 Source-1987 s.35(1)-(7)

**589 Qualifying courses of training etc.**

F3581 .....

**Textual Amendments**  
**F3581 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](#))

**[<sup>F3582</sup>589] Counselling services for employees.**

- [<sup>F3583</sup>(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) <sup>F3584</sup> .....
- (3) <sup>F3584</sup> .....
- (4) <sup>F3584</sup> .....
- (5) <sup>F3584</sup> .....
- (6) <sup>F3584</sup> .....

(7) Subsections [<sup>F3585</sup>(8) and (9)] below apply where any relevant expenditure is incurred by the [<sup>F3586</sup>company 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 [<sup>F3587</sup>profits] of the [<sup>F3588</sup>trade or profession] of the employer for the purposes of which the employee is or was employed.

[<sup>F3589</sup>(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—

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- (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) <sup>F3590</sup> . . . . . ]

**Textual Amendments**

- F3582** Ss. 589A, 589B inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 108
- F3583** 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)
- F3584** 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)
- F3585** 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)
- F3586** 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)
- F3587** Word in s. 589A(8) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1
- F3588** 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)
- F3589** 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)
- F3590** 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)**

- C462** 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 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** <sup>F3591</sup> **Qualifying counselling services etc.**

- (1) <sup>F3592</sup> . . . . .
- (2) <sup>F3592</sup> . . . . .
- (3) <sup>F3592</sup> . . . . .
- [<sup>F3593</sup>(4) <sup>F3592</sup> . . . . .
- (4A) <sup>F3592</sup> . . . . . ]

- (5) Any reference in <sup>F3594</sup> . . . 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**

- F3591** Ss. 589A, 589B inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 108

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**F3592**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)

**F3593**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**

**F3594**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)

**C463** 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.

**F3595** .....

###### Textual Amendments

**F3595**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

#### [<sup>F3596</sup>**590**Section 590: supplementary provisions.

**F3597** .....

###### Textual Amendments

**F3596**Ss. 590A-590C inserted by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 4, **18(4)**

**F3597**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

#### [<sup>F3598</sup>**590**Section 590: further supplementary provisions.

**F3599** .....

###### Textual Amendments

**F3598**Ss. 590A-590C inserted by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 4, **18(4)**

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**F3599**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

[<sup>F3600</sup>**590Earnings cap.**

F3601 ..... ]

**Textual Amendments**

**F3600**Ss. 590A-590C inserted by Finance Act 1989 (c. 26), s. 75, Sch. 6 paras. 4, 18(4)

**F3601**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**591 Discretionary approval.**

F3602 ..... ]

**Textual Amendments**

**F3602**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

[<sup>F3603</sup>**591AEffect on approved schemes of regulations under section 591.**

F3604 ..... ]

**Textual Amendments**

**F3603**S. 591A inserted by Finance Act 1991 (c. 31), s.35

**F3604**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

[<sup>F3605</sup>**591B**Cessation of approval: general provisions.

F3606 ..... ]

**Textual Amendments**

**F3605**S. 591B inserted (retrospectively) by Finance Act 1991 (c. 31), s. 36(1)(3)

**F3606**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

[<sup>F3607</sup>**591C**Cessation of approval: tax on certain schemes.

F3608 ..... ]

**Textual Amendments**

**F3607**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)

**F3608**Ss. 590-594 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

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## 591D Section 591C: supplementary.

F3609 ..... ]

### Textual Amendments

**F3607**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)**

**F3609**Ss. 590-594 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

### *Tax reliefs*

## 592 Exempt approved schemes.

F3610 .....

### Textual Amendments

**F3610**Ss. 590-594 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

## 593 Relief by way of deductions from contributions.

F3611 .....

### Textual Amendments

**F3611**Ss. 590-594 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

## 594 Exempt statutory schemes.

F3612 .....

### Textual Amendments

**F3612**Ss. 590-594 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

### *Charge to tax in certain cases*

## 595 Charge to tax in respect of certain sums paid by employer etc.

F3613 .....

### Textual Amendments

**F3613**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)

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## 596 Exceptions from section 595.

F3614 .....

### Textual Amendments

**F3614**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)

## [<sup>F3615</sup>596] Charge to tax: benefits under non-approved schemes.

F3616 .....

### Textual Amendments

**F3615**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**

**F3616**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)

## [<sup>F3617</sup>596] Section 596A: supplementary provisions.

F3618 .....

### Textual Amendments

**F3617**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**

**F3618**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)

## [<sup>F3619</sup>596] Notional interest treated as paid if amount charged in respect of beneficial loan.

F3620 .....

### Textual Amendments

**F3619**S. 596C inserted (with effect in accordance with s. 93(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 93(3)**

**F3620**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.

F3621 .....



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#### Textual Amendments

**F3621**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.

F3622 .....

#### Textual Amendments

**F3622**Ss. 598-599A repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36) (with savings in [S.I. 2006/5072](#), **arts. 1(1)**, 38)

### 599 Charge to tax: commutation of entire pension in special circumstances.

F3623 .....

#### Textual Amendments

**F3623**Ss. 598-599A repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36) (with savings in [S.I. 2006/5072](#), **arts. 1(1)**, 38)

### [<sup>F3624</sup>599] Charge to tax: payments out of surplus funds.

F3625 .....]

#### Textual Amendments

**F3624**S. 599A inserted (with effect in accordance with Sch. 6 para. 18(9) of the amending Act) by [Finance Act 1989 \(c. 26\)](#), **Sch. 6 para. 12**

**F3625**Ss. 598-599A repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36) (with savings in [S.I. 2006/5072](#), **arts. 1(1)**, 38)

### 600 Charge to tax: unauthorised payments to or for employees.

F3626 .....

#### Textual Amendments

**F3626**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.

F3627 .....

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**Textual Amendments**

**F3627**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**602 Regulations relating to pension fund surpluses.**

**F3628** .....

.....

**Textual Amendments**

**F3628**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**603 Reduction of surpluses.**

**F3629** .....

.....

**Textual Amendments**

**F3629**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

*Supplementary provisions*

**604 Application for approval of a scheme.**

**F3630** .....

.....

**Textual Amendments**

**F3630**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**605 Information.**

**F3631** .....

.....

**Textual Amendments**

**F3631**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3632</sup>**605A False statements etc.**

**F3633** .....]

.....

**Textual Amendments**

**F3632**S. 605A inserted (with application in accordance with s. 106(2) of the amending Act) by [Finance Act 1994 \(c. 9\)](#), s. 106(1)

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**F3633**Ss. 601-612 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**606 Default of administrator etc.**

F3634  
.....

**Textual Amendments**  
F3634Ss. 601-612 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

[<sup>F3635</sup>**606A Recourse to scheme members.**

F3636  
.....]

**Textual Amendments**  
F3635S. 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)  
F3636Ss. 601-612 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**607 Pilots’ benefit fund.**

F3637  
.....

**Textual Amendments**  
F3637Ss. 601-612 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**608 Superannuation funds approved before 6th April 1980.**

F3638  
.....

**Textual Amendments**  
F3638Ss. 601-612 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**609 Schemes approved before 23rd July 1987.**

F3639  
.....

**Textual Amendments**  
F3639Ss. 601-612 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**610 Amendments of schemes.**

F3640  
.....

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**Textual Amendments**

**F3640**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**611 Definition of “retirement benefits scheme”.**

**F3641** . . . . .

**Textual Amendments**

**F3641**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3642</sup>**611A Definition of relevant statutory scheme.**

**F3643** . . . . .

**Textual Amendments**

**F3642**S. 611A inserted (14.3.1989) by [Finance Act 1989 \(c. 26\)](#), [Sch. 6 paras. 15, 18\(1\)](#)  
**F3643**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3644</sup>**611A Definition of the administrator.**

**F3645** . . . . . ]

**Textual Amendments**

**F3644**S. 611AA inserted (with application in accordance with s. 103(3) of the amending Act) by [Finance Act 1994 \(c. 4\)](#), [s. 103\(1\)](#)  
**F3645**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**611A Definition of relevant statutory scheme.**

**F3643** . . . . . ]

**Textual Amendments**

**F3642**S. 611A inserted (14.3.1989) by [Finance Act 1989 \(c. 26\)](#), [Sch. 6 paras. 15, 18\(1\)](#)  
**F3643**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**612 Other interpretative provisions, and regulations for purposes of this Chapter.**

**F3646** . . . . .

**Textual Amendments**

**F3646**Ss. 601-612 repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

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## CHAPTER II

### OTHER PENSION FUNDS AND SOCIAL SECURITY BENEFITS AND CONTRIBUTIONS

#### 613 Parliamentary pension funds.

[<sup>F3647</sup>(1) <sup>M546</sup>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 <sup>M547</sup>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 reference to amounts deducted includes a reference to amounts required to be set aside under that subsection, and "deduction" shall be construed accordingly.]

(3) <sup>F3648</sup> .....

(4) <sup>M548</sup>The <sup>F3649</sup> . . . trustees of—

(a) the House of Commons Members' Fund established under section 1 of that Act of 1939;

(b) <sup>F3650</sup> .....

[<sup>F3651</sup>(bb) <sup>F3650</sup> .....

(c) <sup>F3650</sup> .....

(d) <sup>F3650</sup> .....

shall be entitled to exemption from income tax in respect of all income derived from [<sup>F3652</sup>that Fund] or any investment of [<sup>F3652</sup>that Fund].

A claim under this subsection shall be made to the Board.

#### Textual Amendments

**F3647**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](#)

**F3648**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)

**F3649**Word in s. 613(4) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), s. 284\(1\), Sch. 35 para. 26\(a\), Sch. 42 Pt. 3](#), Note (with Sch. 36)

**F3650**S. 613(4)(b)-(d) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), s. 284\(1\), Sch. 35 para. 26\(a\), Sch. 42 Pt. 3](#), Note (with Sch. 36)

**F3651**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](#)

**F3652**Words in s. 613(4) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\), s. 284\(1\), Sch. 35 para. 26\(b\)](#) (with Sch. 36)

#### Marginal Citations

**M546** Source-1970 s.211(1), (4)

**M547** 1939 c. 49.

**M548** Source-1970 s.211(2) 1981 s.50(1); PPA 1987 Sch.3 2(1)

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## 614 Exemptions and reliefs in respect of income from investments etc. of certain pension schemes.

- (1) <sup>F3653</sup> . . . . .
- (2) <sup>M549</sup> Any interest or dividends received by the person in whom is vested any of the Family Pension Funds mentioned in section 273 of the <sup>M550</sup>Government of India Act 1935, and having effect as a scheme made under section 2 of the <sup>M551</sup>Overseas Pensions Act 1973, on sums forming part of that fund shall be exempt from income tax.
- [<sup>F3654</sup>(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 [<sup>F3655</sup>Chapter 8 of Part 4 of ITTOIA 2005 (profits from deeply] discounted securities) and derives from any investment forming part of that fund.]
- (3) <sup>M552</sup>Income derived from investments or deposits of any fund referred to in [<sup>F3656</sup>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) <sup>M553</sup>In respect of income derived from investments or deposits of the Overseas Service Pensions Fund established pursuant to section 7(1) of the <sup>M554</sup>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) <sup>M555</sup>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) <sup>M556</sup>A claim under this section shall be made to the Board.

### Textual Amendments

**F3653**S. 614(1) repealed (3.5.1994) by Finance Act 1994 (c. 9), Sch. 26 Pt. 5(22)

**F3654**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)

**F3655**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)

**F3656**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

**M549** Source-1970 s.213(1)

**M550** 1935 c. 2.

**M551** 1973 c. 21.

**M552** Source-1970 s.214(2), 216(2); 1973 s.53(1)

**M553** Source-1970 s.217(2), (4)

**M554** 1966 c. 21.

**M555** Source-1970 s.218(1)

**M556** Source-1970 s.212(3), 213(1), 214(3), 216(2), 217(2), 218(1); 1987 Sch.15 2(13)

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## **615 Exemption from tax in respect of certain pensions.**

- (1) <sup>F3657</sup> .....
- (2) <sup>F3657</sup> .....
- (3) <sup>M557</sup> 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 [<sup>F3658</sup>Chapter 6 of Part 15 of ITA 2007 (deduction from annual payments and patent royalties)] by the trustees or other persons having the control of the fund.
- (4) <sup>F3657</sup> .....
- (5) <sup>F3657</sup> .....
- (6) <sup>M558</sup> 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 [<sup>F3659</sup>(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) <sup>M559</sup> 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 <sup>M560</sup>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) <sup>F3657</sup> .....

<sup>F3660</sup>(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



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(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 administering services which are common to, or relate to matters of common interest to, two or more such territories.]

**Textual Amendments**

**F3657**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](#))

**F3658**Words in s. 615(3) 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. 140](#) (with [Sch. 2](#))

**F3659**Words in s. 615(6)(b) inserted (27.7.1999) by [Finance Act 1999 \(c. 16\), Sch. 10 para. 11](#)

**F3660**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**

**M557** Source-1970 s.218(3)

**M558** Source-1970 s.218(4)

**M559** Source-1970 s.214(5), 215(3), 216(4), 217(4)

**M560** 1971 c. 56.

**616 Other overseas pensions.**

**F3661** .....

**Textual Amendments**

**F3661**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) **F3662** .....

(2) **F3662** .....

(3) **M561** Subject to [**F3663** subsections (4) and (5) below], no relief or deduction shall be given or allowed [**F3664** for corporation tax purposes] in respect of any contribution paid by any person under—

(a) Part I of the Social Security [**F3665** Contributions and Benefits Act 1992], or

(b) Part I of the Social Security [**F3666** Contributions and Benefits (Northern Ireland) Act 1992].

[**F3667**(4) Subsection (3) above shall not apply to a contribution if it is a secondary Class 1 contribution [**F3668**, 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;

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- (b) as expenses of management deductible under section 75 or <sup>F3669</sup> falls to be brought into account under section 76 as expenses payable];<sup>F3670</sup> or]
- (c) as expenses of management or supervision deductible under section 121;
- <sup>F3671</sup>(d) <sup>F3672</sup> .....
- (e) <sup>F3672</sup> .....]]
- <sup>F3673</sup>(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).]
- (5) <sup>F3674</sup> .....
- (6) <sup>F3675</sup> .....

### Textual Amendments

- F3662**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)
- F3663**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)
- F3664**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)
- F3665**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\(4\)](#)
- F3666**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\(4\)](#)
- F3667**S. 617(4) substituted (with effect in accordance with s. 65(5) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 65\(3\)](#)
- F3668**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\(1\)](#)
- F3669**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\(2\)](#)
- F3670**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)
- F3671**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)
- F3672**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)
- F3673**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)
- F3674**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
- F3675**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

- M561** Source-1970 s.219(3)

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[<sup>F3676</sup> **617A Tax credits under Part 1 of Tax Credits Act 2002**

F3677 ..... ]

**Textual Amendments**

**F3676S. 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)**)

**F3677S. 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)

**CHAPTER III**

**RETIREMENT ANNUITIES**

**618 Termination of relief under this Chapter, and transitional provisions.**

F3678 .....

**Textual Amendments**

**F3678Ss. 618-626** repealed (6.4.2006) by **Finance Act 2004 (c. 12)**, **Sch. 42 Pt. 3**, Note (with Sch. 36)

**619 Exemption from tax in respect of qualifying premiums.**

F3679 .....

**Textual Amendments**

**F3679Ss. 618-626** repealed (6.4.2006) by **Finance Act 2004 (c. 12)**, **Sch. 42 Pt. 3**, Note (with Sch. 36)

**620 Qualifying premiums.**

F3680 .....

**Textual Amendments**

**F3680Ss. 618-626** repealed (6.4.2006) by **Finance Act 2004 (c. 12)**, **Sch. 42 Pt. 3**, Note (with Sch. 36)

**621 Other approved contracts.**

F3681 .....

**Textual Amendments**

**F3681Ss. 618-626** repealed (6.4.2006) by **Finance Act 2004 (c. 12)**, **Sch. 42 Pt. 3**, Note (with Sch. 36)

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**622 Substituted retirement annuity contracts.**

F3682  
.....

.....  
**Textual Amendments**  
F3682Ss. 618-626 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**623 Relevant earnings.**

F3683  
.....

.....  
**Textual Amendments**  
F3683Ss. 618-626 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**624 Sponsored superannuation schemes and controlling directors.**

F3684  
.....

.....  
**Textual Amendments**  
F3684Ss. 618-626 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**625 Carry-forward of unused relief under section 619.**

F3685  
.....

.....  
**Textual Amendments**  
F3685Ss. 618-626 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**626 Modification of section 619 in relation to persons over 50.**

F3686  
.....

.....  
**Textual Amendments**  
F3686Ss. 618-626 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

F3687 **627 Lloyd’s underwriters.**

.....

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### Textual Amendments

**F3687S. 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.

F3688  
.....

### Textual Amendments

**F3688S. 628** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

## 629 Annuity premiums of Ministers and other officers.

<sup>M562</sup>(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 <sup>M563</sup>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

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(b) in any other case, a Member’s yearly salary at the rate specified in or determined under the resolution.

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**Modifications etc. (not altering text)**  
C464 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**

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**Marginal Citations**  
M562 Source-1970 s.229  
M563 1987 c. 45.

**CHAPTER IV**

**PERSONAL PENSION SCHEMES**

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**Modifications etc. (not altering text)**  
C465 Pt. 14 Ch. 5 excluded (1.5.1995) by Finance Act 1995 (c. 4), **s. 60(5)**

*Preliminary*

**630 Interpretation.**

F3689 .....

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**Textual Amendments**  
F3689Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**631 Approval of schemes.**

F3690 .....

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**Textual Amendments**  
F3690Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

[<sup>F3691</sup>**631 Conversion of certain approved retirement benefits schemes.**

F3692 .....]

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**Textual Amendments**  
F3691S. 631A inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 13 para. 7** (with Sch. 13 Pt. 2)  
F3692Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

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### Restrictions on approval

#### 632 Establishment of schemes.

F3693 .....

##### Textual Amendments

F3693Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

#### [<sup>F3694</sup>632A Eligibility to make contributions.

F3695 .....

##### Textual Amendments

F3694Ss. 632A, 632B inserted (6.4.2001) by Finance Act 2000 (c. 17), Sch. 13 para. 8 (with Sch. 13 Pt. 2)  
F3695Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

#### 632B Eligibility to make contributions: concurrent membership.

F3696 ..... ]

##### Textual Amendments

F3694Ss. 632A, 632B inserted (6.4.2001) by Finance Act 2000 (c. 17), Sch. 13 para. 8 (with Sch. 13 Pt. 2)  
F3696Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

#### 633 Scope of benefits.

F3697 .....

##### Textual Amendments

F3697Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

#### 634 Annuity to member.

F3698 .....

##### Textual Amendments

F3698Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

#### [<sup>F3699</sup>634A Income withdrawals by member.

F3700 ..... ]



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**Textual Amendments**

**F3699S. 634A** inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 11 para. 4](#)  
**F3700Ss. 630-640A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**635 Lump sum to member.**

**F3701** .....

**Textual Amendments**

**F3701Ss. 630-640A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**636 Annuity after death of member.**

**F3702** .....

**Textual Amendments**

**F3702Ss. 630-640A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3703</sup> **636** ~~Income withdrawals after death of member.~~

**F3704** ..... ]

**Textual Amendments**

**F3703S. 636A** inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 11 para. 7](#)  
**F3704Ss. 630-640A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**637 Death benefit.**

**F3705** .....

**Textual Amendments**

**F3705Ss. 630-640A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3706</sup> **637** ~~Return of contributions on or after death of member.~~

**F3707** ..... ]

**Textual Amendments**

**F3706Ss. 637, 637A** substituted for s. 637 (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 11 para. 8](#)  
**F3707Ss. 630-640A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

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## 638 Other restrictions on approval.

F3708 .....

### Textual Amendments

F3708Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## [<sup>F3709</sup>638ZA Personal pension arrangements with more than one pension date etc.

F3710 .....]

### Textual Amendments

F3709S. 638ZA inserted (6.4.2001) by Finance Act 2000 (c. 17), Sch. 13 para. 14 (with Sch 13 Pt. 2)

F3710Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## [<sup>F3711</sup>638A Power to prescribe restrictions on approval.

F3712 .....]

### Textual Amendments

F3711S. 638A inserted (31.7.1998) by Finance Act 1998 (c. 36), s. 94(1)

F3712Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## *Tax reliefs*

## 639 Member's contributions.

F3713 .....

### Textual Amendments

F3713Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## 640 Maximum amount of deductions.

F3714 .....

### Textual Amendments

F3714Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## [<sup>F3715</sup>640A Earnings cap.

F3716 .....]

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**Textual Amendments**  
F3715S. 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)**  
F3716Ss. 630-640A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**641 Carry-back of contributions.**

F3717 . . . . .

**Textual Amendments**  
F3717S. 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)

[<sup>F3718</sup> **641 Election for contributions to be treated as paid in previous year.**

F3719 . . . . .]

**Textual Amendments**  
F3718S. 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)  
F3719S. 641A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**642 Carry-forward of relief.**

F3720 . . . . .

**Textual Amendments**  
F3720S. 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.**

F3721 . . . . .

**Textual Amendments**  
F3721Ss. 643-646D repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**644 Meaning of “relevant earnings”.**

F3722 . . . . .

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**Textual Amendments**

**F3722**Ss. 643-646D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**645 Earnings from pensionable employment.**

**F3723** .....

**Textual Amendments**

**F3723**Ss. 643-646D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**646 Meaning of “net relevant earnings”.**

**F3724** .....

**Textual Amendments**

**F3724**Ss. 643-646D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3725</sup>**646A** **Earnings from associated employments.**

**F3726** .....]

**Textual Amendments**

**F3725**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\(1\)](#)  
**F3726**Ss. 643-646D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3727</sup>**646B** **Presumption of same level of relevant earnings etc for 5 years.**

**F3728** .....

**Textual Amendments**

**F3727**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](#))  
**F3728**Ss. 643-646D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), [Sch. 42 Pt. 3](#), Note (with Sch. 36)

**646C Provisions supplementary to section 646B.**

**F3729** .....

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**Textual Amendments**

- F3727Ss. 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)
- F3729Ss. 643-646D repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

[<sup>F3730</sup> **646D Higher level contributions after cessation of actual relevant earnings: modification of section 646B.**

F3731 .....]

**Textual Amendments**

- F3730S. 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)
- F3731Ss. 643-646D repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

*Charge to tax*

**647 Unauthorised payments.**

F3732 .....

**Textual Amendments**

- F3732Ss. 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.**

F3733 .....

**Textual Amendments**

- F3733Ss. 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)

[<sup>F3734F3735</sup> .....

**Textual Amendments**

- F3734S. 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)**
- F3735Cross-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.

F3736 .....

### Textual Amendments

**F3734S. 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)**

**F3736Ss. 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](#))

[  
F3737 **648B** F3738 ..... ]]

### Textual Amendments

**F3734S. 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)**

**F3737S. 648B** inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), **Sch. 11 para. 12**

**F3738Ss. 648B-651A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with [Sch. 36](#))

## Miscellaneous

## 649 Minimum contributions under Social Security Act 1986.

F3739 .....

### Textual Amendments

**F3739Ss. 648B-651A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with [Sch. 36](#))

## 650 Withdrawal of approval.

F3740 .....

### Textual Amendments

**F3740Ss. 648B-651A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with [Sch. 36](#))

[  
F3741 **650A** Charge on withdrawal of approval from arrangements.

F3742 ..... ]

### Textual Amendments

**F3741S. 650A** inserted (with effect in accordance with s. 95(4) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 95(1)**

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**F3742**Ss. 648B-651A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**651 Appeals.**

**F3743** .....

**Textual Amendments**  
**F3743**Ss. 648B-651A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

[<sup>F3744</sup>**651** **Information powers.**

**F3745** ..... ]

**Textual Amendments**  
**F3744**S. 651A inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 96(1)**  
**F3745**Ss. 648B-651A repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**652 Information about payments.**

**F3746** .....

**Textual Amendments**  
**F3746**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.**

**F3747** .....

**Textual Amendments**  
**F3747**Ss. 653-655 repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)

[<sup>F3748</sup>**653** **Notices to be given to scheme administrator.**

**F3749** ..... ]

**Textual Amendments**  
**F3748**S. 653A inserted (with effect in accordance with s. 97(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 97(1)**  
**F3749**Ss. 653-655 repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3**, Note (with Sch. 36)



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## 654 Remuneration of Ministers and other officers.

F3750  
.....

### Textual Amendments

F3750Ss. 653-655 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## 655 Transitional provisions.

F3751  
.....

### Textual Amendments

F3751Ss. 653-655 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

## CHAPTER V

### PURCHASED LIFE ANNUITIES

## 656 Purchased life annuities other than retirement annuities.

- (1) <sup>M564</sup>Subject to section 657, a purchased life annuity shall, for the purposes of the provisions of the [<sup>F3752</sup>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 [<sup>F3753</sup>other corporation tax purposes] in any circumstances in which a lump sum payment would be taken into account.
- (2) <sup>M565</sup>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—

$$\frac{1}{E}$$

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- 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 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) <sup>M566</sup>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) <sup>M567</sup>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) <sup>M568</sup>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

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tax which [<sup>F3754</sup>the person] is entitled or required to deduct from the payment, or for which [<sup>F3754</sup>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 the capital element, the amount of income tax which [<sup>F3754</sup>the person] is entitled or required to deduct from the payment, or for which [<sup>F3754</sup>the 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.

[<sup>F3755</sup>(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

- F3752** 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)
- F3753** 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)
- F3754** 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)
- F3755** S. 656(7)-(9) inserted (retrospectively) by *Finance Act 1991 (c. 31, SIF 63:1)*, **s. 76(1)**

#### Marginal Citations

- M564** Source-1970 s.230(1)  
**M565** Source-1970 s.230(2A); 1970(F) Sch.4 8  
**M566** Source-1970 s.230(2)(a)-(c)  
**M567** Source-1970 s.230(2)(d), (2A); 1970(F) Sch.4 8  
**M568** Source-1970 s.230(3)-(5)

### 657 Purchased life annuities to which section 656 applies.

<sup>M569</sup>(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

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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.

(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 [<sup>F3756</sup>Corporation 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 [<sup>F3757</sup>266 or 273 [<sup>F3758</sup>of this Act or section 459 of ITA 2007];]
- (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);
- [<sup>F3759</sup>(d) to any annuity under, or purchased with sums or assets held for the purposes of, a registered pension scheme; or
- (e) to any annuity purchased by any person in recognition of another’s services (or past services) in any office or employment.]

#### Textual Amendments

**F3756** 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)

**F3757** Words in s. 657(2)(b) substituted (6.4.2006) by **Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 27(2)** (with Sch. 36)

**F3758** Words in s. 657(2)(b) 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. 141** (with Sch. 2)

**F3759** S. 657(2)(d)(e) substituted for s. 657(2)(d)-(f) (6.4.2006) by **Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 27(3)** (with Sch. 36)

#### Marginal Citations

**M569** Source-1970 s.230(6), (7); 1978 s.26(4); 1987 (No.2), s.41(3)

## 658 Supplementary.

- <sup>M570</sup>(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.

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- (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 <sup>F3760</sup> . . . 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) [<sup>F3761</sup>Any person who], for the purpose of obtaining <sup>F3762</sup> . . . any relief from or repayment of tax under this Chapter, knowingly makes any false statement or false representation <sup>F3762</sup> . . . shall be liable to a penalty not exceeding [<sup>F3763</sup>£3,000].

[<sup>F3764</sup>(6) It does not matter for whom that relief or repayment is to be obtained.]

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**Textual Amendments**

- F3760** Words in s. 658(4)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 142, Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F3761** 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](#))
- F3762** 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](#))
- F3763** 1989 s.170(4)(c) *in relation to things done or omitted to be done on or after 27 July 1989. Previously* “£500”.
- F3764** 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](#))

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**Modifications etc. (not altering text)**

- C466** *For regulations see Part III Vol.5 (under “Life annuities, purchased”).*

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**Marginal Citations**

- M570** Source-1970 s.231

**CHAPTER VI**

**MISCELLANEOUS**

[<sup>F3765</sup>**658** **Charges and assessments on administrators.**

<sup>F3766</sup> . . . . . ]

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**Textual Amendments**

- F3765** S. 658A inserted (retrospectively) by [Finance Act 1998 \(c. 36\), s. 98\(1\)](#)

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**F3766S. 658A** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**F3767 659 Financial futures and traded options.**

.....

**Textual Amendments**  
**F3767S. 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

**F3768 659 Futures and options.**

- (1) For the purposes of sections <sup>F3769</sup> . . . 613(4), 614(3) and (4) <sup>F3769</sup> . . . —
  - (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.

<sup>F3769</sup> .....

- (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**  
**F3768S. 659A** inserted (with effect in accordance with s. 81(5) of the amending Act) by [Finance Act 1990 \(c. 29\)](#), s. 81(2)  
**F3769** Words in s. 659A(1) repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**F3770 659 Definition of insurance company.**

<sup>F3771</sup> .....

**Textual Amendments**  
**F3770Ss. 659B, 659C** inserted (with effect in accordance with s. 60 of the amending Act) by [Finance Act 1995 \(c. 4\)](#), s. 59(5)  
**F3771Ss. 659B-659D** repealed (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), **Sch. 42 Pt. 3**, Note (with Sch. 36)

**659C Effect of appointment or arrangements under section 659B.**

<sup>F3772</sup> .....

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**Textual Amendments**

- F3770**Ss. 659B, 659C inserted (with effect in accordance with s. 60 of the amending Act) by [Finance Act 1995 \(c. 4\), s. 59\(5\)](#)
- F3772**Ss. 659B-659D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3773</sup>**659D** Interpretation of provisions about pension sharing.

<sup>F3774</sup> .....

**Textual Amendments**

- F3773**S. 659D inserted (27.7.1999) by [Finance Act 1999 \(c. 16\), Sch. 10 para. 17](#)
- F3774**Ss. 659B-659D repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 3](#), Note (with Sch. 36)

[<sup>F3775</sup>**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 [<sup>F3776</sup>(see section 1004 of ITA 2007)].
- (2) The exemptions are those provided by—
  - <sup>F3777</sup> .....
  - <sup>F3777</sup> .....
  - 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),
  - <sup>F3777</sup> .....
  - <sup>F3777</sup> .....
- (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.
- (4) Section 659A (treatment of futures and options) applies for the purposes of subsection (1) above.]

**Textual Amendments**

- F3775**S. 659E inserted (6.4.2001) by [Finance Act 2001 \(c. 9\), s. 76\(2\), Sch. 25 para. 2](#)
- F3776**Words in s. 659E(1) 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. 143](#) (with Sch. 2)
- F3777**S. 659E(2): entries repealed (6.4.2006) by [Finance Act 2004 \(c. 12\), Sch. 42 Pt. 3](#), Note (with Sch. 36)



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## PART XV

### SETTLEMENTS

#### Modifications etc. (not altering text)

**C467** 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](#))

## [<sup>F3778</sup>CHAPTER 1A

### LIABILITY OF SETTLOR

#### Textual Amendments

**F3778** 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)

**C468** 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\(1\)](#)

**C469** 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.

<sup>F3779</sup> .....

#### Textual Amendments

**F3779** 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.

<sup>F3780</sup> .....

#### Textual Amendments

**F3780** 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) <sup>F3781</sup> .....

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F3782	[	F3781	.....]
(1A)			
(2)	F3781	.....	
(3)	F3783	.....	
F3784	[	F3785	.....]
(4)			

#### Textual Amendments

**F3781S.** 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](#))

**F3782S.** 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\(3\)](#)

**F3783S.** 660C(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 144](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F3784S.** 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](#))

**F3785S.** 660C(4) repealed (with effect in accordance with [Sch. 5 para. 2\(2\)\(3\)](#) of the repealing Act) by [Finance Act 2007 \(c. 11\), Sch. 5 para. 2\(1\)](#), [Sch. 27 Pt. 2\(3\)](#), Note

### 660D Adjustments between settlor and trustees, &c.

F3786 .....

#### Textual Amendments

**F3786Ss.** 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](#))

#### *Supplementary provisions*

### 660E Application to settlements by two or more settlors.

F3787 .....

#### Textual Amendments

**F3787Ss.** 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.

F3788 .....

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**Textual Amendments**

**F3788**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.**

**F3789** . . . . . ]

**Textual Amendments**

**F3789**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**

**F3778 660 Dispositions for period which cannot exceed six years.**

. . . . .

**Textual Amendments**

**F3778**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**

**F3778 661 Adjustments between disporor and trustees.**

. . . . .

**Textual Amendments**

**F3778**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**

**F3778 662 Application of Chapter I to dispositions by two or more disporors.**

. . . . .

**Textual Amendments**

**F3778**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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## CHAPTER II

### SETTLEMENTS ON CHILDREN

F3778 **663 The general rule.**

.....

**Textual Amendments**

F3778Pt. 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

F3778 **664 Accumulation settlements.**

.....

**Textual Amendments**

F3778Pt. 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

F3778 **665 Meaning of “irrevocable”.**

.....

**Textual Amendments**

F3778Pt. 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

F3778 **666 Interest paid by trustees.**

.....

**Textual Amendments**

F3778Pt. 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

F3778 **667 Adjustments between disponor and trustees.**

.....

**Textual Amendments**

F3778Pt. 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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**F3778 668 Application of Chapter II to settlements by two or more settlors.**

.....

**Textual Amendments**  
F3778Pt. 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

**F3778 669 Power to obtain information under Chapter II.**

.....

**Textual Amendments**  
F3778Pt. 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

**F3778 670 Interpretation of Chapter II.**

.....

**Textual Amendments**  
F3778Pt. 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

[<sup>F3790</sup>CHAPTER 1B

PROVISIONS AS TO CAPITAL SUMS PAID TO SETTLOR]

**Textual Amendments**  
F3790Pt. 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

**F3778 671 Revocable settlements allowing release of obligation.**

.....

**Textual Amendments**  
F3778Pt. 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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**F3778 672 Revocable settlements allowing reversion of property.**

.....

**Textual Amendments**

**F3778Pt. 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](#)

**F3778 673 Settlements where settlor retains an interest.**

.....

**Textual Amendments**

**F3778Pt. 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](#)

**F3778 674 Settlements: discretionary power for benefit of settlor etc.**

.....

**Textual Amendments**

**F3778Pt. 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](#)

**F3778 674A<sup>F3791</sup> Other settlements where settlor retains interest in settled property.]**

.....

**Textual Amendments**

**F3778Pt. 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](#)

**F3791**1989 s.109(1).

**F3778 675 Provisions supplementary to sections 671 to 674.**

.....

**Textual Amendments**

**F3778Pt. 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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**F3778 676 Disallowance of deduction from total income of certain sums paid by settlor.**

.....

**Textual Amendments**  
**F3778Pt. 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.**

**F3792**  
.....

**Textual Amendments**  
**F3792S. 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.**

**F3793**  
.....

**Textual Amendments**  
**F3793S. 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.**

**F3794**  
.....

**Textual Amendments**  
**F3794Ss. 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.**

**F3795**  
.....

**Textual Amendments**  
**F3795Ss. 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.**

**F3796**  
.....



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**Textual Amendments**

**F3796**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.**

**F3797** . . . . .

**Textual Amendments**

**F3797**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)

[<sup>F3798</sup>**682A Supplementary provisions.**

**F3799** . . . . .]

**Textual Amendments**

**F3798**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**

**F3799**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)

[<sup>F3800</sup>**CHAPTER 1C**

**LIABILITY OF TRUSTEES]**

**Textual Amendments**

**F3800**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)**

**C470** 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)

**F3801** . . . . .

**Textual Amendments**

**F3801**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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## 683 Settlements made after 6th April 1965.

F3802  
.....

### Textual Amendments

**F3802** 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.

F3803  
.....

### Textual Amendments

**F3803** 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.

F3804  
.....

### Textual Amendments

**F3804** 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)**

F3805  
.....

### Textual Amendments

**F3805** 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**

## [<sup>F3806</sup> 685A] Meaning of “settled property”

F3807  
.....

### Textual Amendments

**F3806** 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)**

**F3807** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

## 685B Meaning of “settlor”

F3808  
.....

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**Textual Amendments**

- F3806**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)**
- F3808**Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 145](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**685C Transfer between settlements: identification of settlor**

**F3809**  
.....

**Textual Amendments**

- F3806**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)**
- F3809**Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 145](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**685D Variation of will or intestacy, etc: identification of settlor**

**F3810**  
.....

**Textual Amendments**

- F3806**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)**
- F3810**Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 145](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**685E Trustees of settlements**

**F3811**  
.....

**Textual Amendments**

- F3806**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)**
- F3811**Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 145](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

**685F Application of section 739 and 740**

**F3812**  
.....

**Textual Amendments**

- F3806**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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**F3812** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

**685G Sub-funds**

**F3813** ..... ]

**Textual Amendments**

**F3806** 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)**

**F3813** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

**686** [<sup>F3814</sup> **Accumulation and discretionary trusts: special rates of tax.**]

**F3815** ..... ]

**Textual Amendments**

**F3814** 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)**

**F3815** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

[<sup>F3816</sup> **686A Receipts to be treated as income to which section 686 applies**

**F3817** ..... ]

**Textual Amendments**

**F3816** 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)**

**F3817** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2) (subject to an amendment to s. 686A(2)(a) by Finance Act 2007 (c. 11), **s. 55(1)(3)**)

[<sup>F3818</sup> **686B Share incentive plans: distributions in respect of unappropriated shares**

**F3819** ..... ]

**Textual Amendments**

**F3818** 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)

**F3819** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

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## 686C Interpretation of section 686B

F3820 ..... ]

### Textual Amendments

- F3818** 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)
- F3820** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

## [<sup>F3821</sup>686D Special trust rates not to apply to first slice of trust income

F3822 ..... ]

### Textual Amendments

- F3821** S. 686D inserted (with effect in accordance with s. 14(5) of the amending Act) by Finance Act 2005 (c. 7), s. 14(1)
- F3822** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

## [<sup>F3823</sup>686E Application of section 686D where settlor has made more than one settlement

F3824 ..... ]

### Textual Amendments

- F3823** S. 686E inserted (6.4.2006) by Finance Act 2006 (c. 25), **Sch. 13 para. 4(2)(3)**
- F3824** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

## 687 Payments under discretionary trusts.

F3825 ..... ]

### Textual Amendments

- F3825** Ss. 685A-687 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 145, **Sch. 3 Pt. 1** (with Sch. 2)

## [<sup>F3827</sup>687A<sup>F3826</sup> Discretionary payments by trustees to companies].

(1) This section applies where—

- (a) [<sup>F3828</sup>the trustees of a settlement] make a payment to a company;
- [<sup>F3829</sup>(b) sections 494 and 495 of ITA 2007 apply in relation to the payment;]
- (c) the company is chargeable to corporation tax and does not fall within subsection (2) below.

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- (2) A company falls within this subsection if it is—
- (a) a [<sup>F3830</sup>charitable company], 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) [<sup>F3831</sup>section 952 of ITA 2007 (set off of income tax suffered against income tax payable)],
 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 [<sup>F3832</sup>section 494 of ITA 2007] 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

- F3826** Words in s. 687A sidenote 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. 146\(5\)](#) (with Sch. 2)
- F3827** 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\(1\)](#)
- F3828** Words in s. 687A(1)(a) substituted (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 paras. 18, 27\(1\)](#)
- F3829** S. 687A(1)(b) 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. 146\(2\)](#) (with Sch. 2)
- F3830** Words in s. 687A(2)(a) 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. 146\(3\)](#) (with Sch. 2)
- F3831** Words in s. 687A(3)(a)(iii) 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. 146\(4\)\(a\)](#) (with Sch. 2)
- F3832** Words in s. 687A(3)(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. 146\(4\)\(b\)](#) (with Sch. 2)

## 688 Schemes for employees and directors to acquire shares.

F3833

#### Textual Amendments

- F3833** 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.

F3834 .....

### Textual Amendments

**F3834S. 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\(8\)](#)

## [<sup>F3835</sup>CHAPTER 1D

### TRUST MANAGEMENT EXPENSES

### Textual Amendments

**F3835Pt. 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.

F3836 .....

### Textual Amendments

**F3836S. 689A** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 147, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

## 689B Order in which expenses to be set against income.

- (1) The expenses of [<sup>F3837</sup>the trustees of a settlement] 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) [<sup>F3838</sup>, (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) [<sup>F3839</sup>or (2A)] below before being set against income falling within subsection (3) below; [<sup>F3840</sup> 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—
  - [<sup>F3841</sup>(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



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- (c) income chargeable under Chapter 6 of that Part (release of loan to participator in close company).]

[<sup>F3842</sup>(2A) Income falls within this subsection if it is [<sup>F3843</sup>—

- (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).]]

[<sup>F3844</sup>(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 [<sup>F3845</sup>of the trustees which is savings income (within the meaning of section 18 of ITA 2007).]

(4) <sup>F3846</sup> .....

[<sup>F3847</sup>(5) This section applies for corporation tax purposes only.]

#### Textual Amendments

- F3837** Words in s. 689B(1) substituted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 20, **27(1)**
- F3838** 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)**
- F3839** 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)**
- F3840** 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)**
- F3841** 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)
- F3842** 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)**
- F3843** 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)
- F3844** 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)
- F3845** Words in s. 689B(3) 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. 148(2)** (with Sch. 2)
- F3846** S. 689B(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 148(3), **Sch. 3 Pt. 1** (with Sch. 2)
- F3847** S. 689B(5) 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. 148(4)** (with Sch. 2)

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## CHAPTER V

### MAINTENANCE FUNDS FOR HISTORIC BUILDINGS

#### 690 Schedule 4 directions.

F3848 .....

##### Textual Amendments

**F3848**Ss. 690-694 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 149, **Sch. 3 Pt. 1** (with Sch. 2)

#### 691 Certain income not to be income of settlor etc.

F3849 .....

##### Textual Amendments

**F3849**Ss. 690-694 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 149, **Sch. 3 Pt. 1** (with Sch. 2)

#### 692 Reimbursement of settlor.

F3850 .....

##### Textual Amendments

**F3850**Ss. 690-694 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 149, **Sch. 3 Pt. 1** (with Sch. 2)

#### 693 Severance of settled property for certain purposes.

F3851 .....

##### Textual Amendments

**F3851**Ss. 690-694 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 149, **Sch. 3 Pt. 1** (with Sch. 2)

#### 694 [<sup>F3852</sup>Trustees chargeable to income tax in certain cases at higher rate reduced by rate applicable to trusts]

F3853 .....

##### Textual Amendments

**F3852**S. 694 sidenote substituted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 4 para. 2**

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**F3853** Ss. 690-694 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 149, **Sch. 3 Pt. 1** (with Sch. 2)

## PART XVI

### ESTATES OF DECEASED PERSONS IN COURSE OF ADMINISTRATION

#### 695 Limited interests in residue.

- <sup>M571</sup>(1) The following provisions of this section shall have effect in relation to a [<sup>F3854</sup>company 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 <sup>F3855</sup> . . . be deemed for [<sup>F3856</sup>corporation tax] purposes to have been paid to that [<sup>F3857</sup>company] as income for the [<sup>F3858</sup>accounting 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 [<sup>F3858</sup>accounting period] in which it was subsisting.
- <sup>F3859</sup>(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 [<sup>F3860</sup>corporation tax] purposes to have been paid to that [<sup>F3861</sup>company] as income for the [<sup>F3862</sup>accounting 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 [<sup>F3863</sup>the administration period], for the last [<sup>F3862</sup>accounting period] in which that interest was subsisting.]
- (4) Any amount which is deemed to have been paid to that [<sup>F3864</sup>company] as income [<sup>F3865</sup>for 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 [<sup>F3866</sup>the 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 [<sup>F3867</sup>applicable rate]; and
  - (b) in the case of a foreign estate, be deemed to be income of the amount deemed to have been so paid <sup>F3868</sup> . . . .
- (5) Where—
- (a) a [<sup>F3869</sup>company] has been charged to [<sup>F3870</sup>corporation tax for any accounting period] by virtue of this section in respect of an amount deemed to have been paid to [<sup>F3871</sup>it] 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 [<sup>F3872</sup>the relevant year of assessment] has borne United Kingdom income tax by deduction or otherwise (“the aggregate income”),
- the tax so charged on [<sup>F3871</sup>it] 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.

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- (6) Where relief has been given under subsection (5) above, such part of the amount in respect of which [<sup>F3873</sup>the company] has been charged [<sup>F3874</sup>to corporation tax] as corresponds to the proportion mentioned in that subsection shall <sup>F3875</sup> . . . 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.
- [<sup>F3876</sup>(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

- F3854** 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)
- F3855** 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)**
- F3856** 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)
- F3857** 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)
- F3858** 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)
- F3859** 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)**
- F3860** 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)
- F3861** 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)
- F3862** 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)
- F3863** 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)
- F3864** 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)
- F3865** 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)
- F3866** 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)
- F3867** 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)**
- F3868** 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)
- F3869** 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)
- F3870** 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)
- F3871** 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)

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- F3872** 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)
- F3873** 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)
- F3874** 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)
- F3875** 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)
- F3876** 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)

- C471** 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

- M571** Source-1970 s.426; 1971 Sch.6 52

## 696 Absolute interests in residue.

- <sup>M572</sup>(1) The following provisions of this section shall have effect in relation to a [<sup>F3877</sup>company 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 [<sup>F3878</sup>company] had that interest;
- and the amount so ascertained in respect of any year or part of a year or, in the case of a [<sup>F3878</sup>company] having an absolute interest in a part of a residue, a proportionate part of that amount, is in this Part referred to as the “residuary income” of that [<sup>F3878</sup>company] for that year of assessment [<sup>F3879</sup>]; and references to the residuary income of a company for an accounting period are to be construed in accordance with subsection (8)].
- <sup>F3880</sup>(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 [<sup>F3881</sup>corporation tax] purposes to have been paid to that [<sup>F3882</sup>company] as income for the [<sup>F3883</sup>accounting 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 [<sup>F3884</sup>company] as income [<sup>F3885</sup>(whether or not the company was a company liable to corporation tax at the time of payment)],
- exceeds the aggregated income entitlement of that [<sup>F3884</sup>company] for the [<sup>F3886</sup>accounting period] in which the sum is paid.

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- (3B) For the purposes of this section the aggregated income entitlement of that [F3887 company] for any [F3888 accounting period] is the amount which would be the aggregate of the amounts received for that [F3888 accounting period] and all previous [F3889 accounting periods] in respect of the interest if that [F3887 company] had a right in [F3890 each accounting period] to receive, and had received—
- (a) in the case of a United Kingdom estate, [F3891 its] residuary income for [F3892 that accounting period] less income tax at the applicable rate for [F3892 that accounting period]; and
  - (b) in the case of a foreign estate, [F3891 its] residuary income for [F3892 that accounting period].]
- (4) In the case of a United Kingdom estate, any amount which is deemed to have been paid to that [F3893 company] as income for [F3893 any 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 [F3893 that accounting period], be equal to the amount deemed to have been so paid, and to be income that has borne income tax at the [F3894 applicable rate].
- [F3895] (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 [F3896 company] as income, is exceeded by the aggregated income entitlement of that [F3896 company] for the [F3897 accounting 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 [F3898 company] as income for any [F3899 accounting period] by virtue of this section shall be deemed to be income of that amount <sup>F3900</sup> . . . .
- (7) Where—
- (a) a [F3901 company] has been charged to [F3902 corporation tax] for any accounting period] by virtue of this section in respect of an amount deemed to have been paid to [F3903 it] 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 [F3904 the relevant year of assessment] has borne United Kingdom income tax by deduction or otherwise (“the aggregate income”),
- the tax so charged on [F3903 it] 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) <sup>F3905</sup> . . . 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.
- [F3906] (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



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to have been paid as income if references in subsections (3) to (6) to accounting periods were references to years of assessment.]

### Textual Amendments

- F3877** 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)
- F3878** 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)
- F3879** 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)
- F3880** 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\(1\)](#)
- F3881** 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)
- F3882** 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)
- F3883** 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)
- F3884** 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)
- F3885** 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)
- F3886** 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)
- F3887** 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)
- F3888** 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)
- F3889** 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)
- F3890** 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)
- F3891** 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)
- F3892** 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)
- F3893** 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)
- F3894** 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\(1\)](#)
- F3895** 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\(2\)](#)
- F3896** 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)
- F3897** 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)
- F3898** 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)
- F3899** 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)



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- F3900** 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)
- F3901** 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)
- F3902** 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)
- F3903** 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)
- F3904** 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)
- F3905** 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)
- F3906** 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)

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#### Marginal Citations

**M572** Source-1970 s.427; 1971 Sch.6 53

### 697 Supplementary provisions as to absolute interests in residue.

- <sup>M573</sup>(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
  - (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.

[<sup>F3907</sup>(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 [<sup>F3908</sup>company] 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 [<sup>F3908</sup>company] having that interest, [<sup>F3909</sup>section 696 shall have effect as if the amount of the deficiency were to be applied in reducing the amount taken to be [<sup>F3910</sup>its] residuary income for the year in which the administration of the estate is completed and, in so far as the deficiency

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exceeds that income, in reducing the amount taken to be [<sup>F3910</sup>its] 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 <sup>F3911</sup> . . . .
- [<sup>F3912</sup>(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

- F3907S.** 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)**
- F3908** 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](#))
- F3909** 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)**
- F3910** 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](#))
- F3911** 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](#))
- F3912S.** 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

**M573** [Source-1970 s.428](#); [1971 Sch.6 54](#)

### 698 Special provisions as to certain interests in residue.

- <sup>M574</sup>(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

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part of the aggregate income of the estate of the person whose personal representatives they are.

[<sup>F3913</sup>(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 [<sup>F3914</sup>accounting period] to any of the persons entitled thereto were sums previously 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 [<sup>F3915</sup>accounting 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.]

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(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 [<sup>F3916</sup>corporation tax] purposes to have been paid to that person as income for the [<sup>F3917</sup>accounting 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.

[<sup>F3918</sup>(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
- (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

**F3913S.** 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)**

**F3914** 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)

**F3915** 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)

**F3916** 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)

**F3917** 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)

**F3918S.** 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)

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**Marginal Citations**

M574 Source-1970 s.429; 1971 Sch.6 55

[<sup>F3920</sup> **698A Taxation of income of beneficiaries at lower rate or at rates applicable to**  
<sup>F3919</sup> **distribution] income.**

<sup>F3921</sup> . . . . . ]

**Textual Amendments**

- F3919** 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](#))
- F3920** 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\(1\)](#)
- F3921** S. 698A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 150, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**699 Relief from higher rate tax for inheritance tax on accrued income.**

<sup>F3922</sup> . . . . .

**Textual Amendments**

- F3922** 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](#))

[<sup>F3923</sup> **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 [<sup>F3924</sup> 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;

[<sup>F3925</sup> or out of any sums included in the aggregate income of the estate of the deceased which fall within subsection (1A) below.]

[ A sum falls within this subsection if it is a sum in respect of—

- <sup>F3926</sup>(1A) [ a distribution chargeable under [<sup>F3928</sup> Chapter 3 of Part 4 of ITTOIA 2005
- <sup>F3927</sup>(a) (dividends etc. from UK resident companies etc.); <sup>F3929</sup> . . .
- (b) <sup>F3929</sup> . . . . . ]

(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.]

(2) In determining for the purposes of this Part whether any amount is a relevant amount—

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- (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 <sup>F3930</sup>assumptions] 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 <sup>F3931</sup>section 701(8)(c) or (d), at the dividend][<sup>F3932</sup>ordinary rate], and
  - (b) in the case of sums included by virtue of <sup>F3933</sup>section 701(8)(e)], at [<sup>F3934</sup>the <sup>F3935</sup>savings rate]][<sup>F3936</sup>, and
  - (c) in the case of sums falling within subsection (1A) above, at the <sup>F3932</sup>[<sup>F3937</sup>dividend] 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) <sup>F3938</sup>.....]

**Textual Amendments**

- F3923**S. 699A inserted (with effect in accordance with s. 76(6) of the amending Act) by Finance Act 1995 (c. 4), s. 76(4)
- F3924**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)
- F3925**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)
- F3926**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)
- F3927**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)
- F3928**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)
- F3929**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)
- F3930**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)
- F3931**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)



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- F3932** 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)
- F3933** 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)
- F3934** 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
- F3935** Words in s. 699A(4)(b) 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. 151 (with Sch. 2)
- F3936** 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)
- F3937** 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)
- F3938** 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.

<sup>M575</sup>(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 [<sup>F3939</sup>company] as income for any [<sup>F3940</sup>accounting period] and—

- (a) that amount is greater than the amount that has previously been deemed to have been paid to [<sup>F3941</sup>it] as income for [<sup>F3942</sup>that accounting period] by virtue of this Part; or
- (b) no amount has previously been so deemed to have been paid to [<sup>F3941</sup>it] as income for [<sup>F3942</sup>that accounting period];

an assessment may be made upon [<sup>F3941</sup>it] for [<sup>F3942</sup>that accounting period] and [<sup>F3943</sup>corporation tax] charged accordingly or, on a claim being made for the purpose, any relief or additional relief to which [<sup>F3944</sup>it] 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 [<sup>F3945</sup>company] as income for any [<sup>F3946</sup>accounting period], and that amount is less than the amount that has previously been so deemed to have been paid to [<sup>F3947</sup>it], then—

- (a) if an assessment has already been made upon [<sup>F3947</sup>it] for [<sup>F3948</sup>that 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 [<sup>F3949</sup>corporation tax] overpaid shall be repaid; and
- (b) if—
  - (i) any relief has been allowed to [<sup>F3947</sup>it] by reference to the amount which has been previously deemed by virtue of this Part to have been paid to [<sup>F3947</sup>it] as income for [<sup>F3948</sup>that 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 [<sup>F3947</sup>it] as income for [<sup>F3948</sup>that 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 [<sup>F3945</sup>company] 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 <sup>F3950</sup>period of three years beginning with the 31st January next] following the <sup>F3951</sup>accounting 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 <sup>F3952</sup>or Chapter 6 of Part 5 of ITTOIA 2005].
- <sup>F3953</sup>(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 <sup>F3954</sup>an accounting period]; <sup>F3955</sup> . . .
  - <sup>F3956</sup>(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) <sup>F3957</sup>or (aa)] above is deemed to have borne;
- and, where an amount deemed to have been paid as income to any person for <sup>F3958</sup>any accounting period under this Part or treated as estate income under that Chapter] is deemed for any of the purposes of this Part <sup>F3959</sup>or that Chapter] to have borne tax on different parts of it at different applicable rates, the matters to be set out in pursuance of <sup>F3960</sup>paragraphs (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

- F3939** 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)
- F3940** 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)
- F3941** 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)
- F3942** 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)
- F3943** 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)
- F3944** 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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- F3945** 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)
- F3946** 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)
- F3947** 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)
- F3948** 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)
- F3949** 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)
- F3950** 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**
- F3951** 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)
- F3952** 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)
- F3953** S. 700(5)(6) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 18 para. 6**
- F3954** 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)
- F3955** 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)
- F3956** 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)
- F3957** 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)
- F3958** 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)
- F3959** 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)
- F3960** 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

**M575** Source-1970 s.431; 1971 Sch.6 57

## 701 Interpretation.

- (1) <sup>M576</sup>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.

[<sup>F3961</sup>(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 [<sup>F3962</sup>, the [<sup>F3963</sup>savings rate] or the [<sup>F3964</sup>dividend] 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 [<sup>F3962</sup>, the [<sup>F3963</sup>savings rate] or the [<sup>F3964</sup>dividend] 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  
<sup>F3965</sup>(i) before they are made out of income bearing tax at the [<sup>F3963</sup>savings rate][<sup>F3966</sup>or the [<sup>F3964</sup>dividend] ordinary rate][<sup>F3967</sup>; and

(ii) that payments are to be made out of income bearing tax at the [<sup>F3963</sup>savings rate] before they are made out of income bearing tax at the [<sup>F3964</sup>dividend] 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 <sup>M577</sup>Administration 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;<sup>F3968</sup> . . .
  - (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;
  - <sup>F3969</sup>(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.

F3970

.....

- (9) “United Kingdom estate” means, as regards any year of assessment [<sup>F3971</sup>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 [<sup>F3972</sup>or accounting period], an estate which is not a United Kingdom estate.

<sup>F3973</sup>(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—

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- (a) for references to the estate of references to that part of the estate; and
  - (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) <sup>M578</sup>In this Part references to the administration period shall be construed in accordance with section 695(1).
- (14) <sup>F3974</sup> .....

#### Textual Amendments

- F3961**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)**
- F3962**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)**
- F3963**Words in s. 701(3A) 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. 152** (with Sch. 2)
- F3964**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)
- F3965**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)**
- F3966**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)**
- F3967**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)**
- F3968**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)
- F3969**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)
- F3970**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)
- F3971**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)
- F3972**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)

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**F3973S.** 701(10A) inserted (with effect in accordance with s. 76(6) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 76\(5\)](#)

**F3974S.** 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)**

**C472** Definition applied for purposes of 1979(C)—see 1979(C) s.155(1).

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**Marginal Citations**

**M576** Source-1970 s.432; 1972 Sch.24 25; 1975 (No.2) s.34(5)

**M577** 1925 c. 23.

**M578** Source-1970 s.426(1)

## 702 Application to Scotland.

<sup>M579</sup>For 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 [<sup>F3975</sup>or civil partner] on intestacy and legal rights of surviving spouse [<sup>F3975</sup>or 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 [<sup>F3975</sup>or civil partner] or in respect of legal rights by surviving spouse [<sup>F3975</sup>or civil partner] or children.

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**Textual Amendments**

**F3975** 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](#)

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**Marginal Citations**

**M579** Source-1970 s.433; 1987 Sch.15 2(15)



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**PART XVII**

TAX AVOIDANCE

**CHAPTER I**

CANCELLATION OF [F3976CORPORATION TAX] ADVANTAGES  
 FROM CERTAIN TRANSACTIONS IN SECURITIES

**Textual Amendments**

**F3976** Words in Pt. 17 Ch. 1 heading 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. 153** (with Sch. 2)

**703 Cancellation of [F3977corporation tax] advantage.**

- (1) <sup>M580</sup>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 [F3978company] is in a position to obtain, or has obtained, a [F3979corporation tax] advantage, then unless [F3980it] 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 [F3979corporation tax] advantages to be obtained, this section shall apply to [F3981it] in respect of that transaction or those transactions.
- (2) For the purposes of this Chapter a [F3982corporation tax] advantage obtained or obtainable by a [F3983company] shall be deemed to be obtained or obtainable by [F3984it] 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 [F3985company] in respect of any transaction or transactions, the [F3986corporation tax advantage] obtained or obtainable by [F3987it] 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 <sup>F3988</sup> . . . under Case VI of Schedule D and recoverable accordingly), or the computation or recomputation of profits or gains, or [F3989liability to corporation tax], on such basis as the Board may specify by notice served on [F3987it] as being requisite for counteracting the [F3986corporation tax advantage] so obtained or obtainable.

[F3990(3A) <sup>F3991</sup> . . . . .]

(4) <sup>F3992</sup> . . . . .

(5) <sup>F3992</sup> . . . . .

(6) <sup>F3992</sup> . . . . .

(7) <sup>M581</sup> *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*



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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<sup>F3993</sup>.

- (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<sup>F3994</sup>.
- (9) The Board shall not give a notice under subsection (3) above until they have notified the [<sup>F3995</sup>company] in question that they have reason to believe that this section may apply to [<sup>F3996</sup>it] in respect of a transaction or transactions specified in the notification; and if within 30 days of the issue of the notification that [<sup>F3995</sup>company], being of opinion that this section does not so apply to [<sup>F3996</sup>it], makes a statutory declaration to that effect stating the facts and circumstances upon which [<sup>F3997</sup>its] opinion is based, and sends it to the Board, then subject to subsection (10) below, this section shall not apply to [<sup>F3996</sup>it] 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 [<sup>F3998</sup>company] 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) <sup>F3999</sup> .....

- (12) This section applies whether the [<sup>F4000</sup>corporation tax advantage] in question relates to a chargeable period ending before or after the commencement of this Act, but nothing in this section shall authorise the making of an assessment later than six years after the [<sup>F4001</sup>accounting period] to which the [<sup>F4000</sup>corporation tax advantage] relates; and no other provision contained in the [<sup>F4002</sup>Corporation Tax Acts] shall be construed as limiting the powers conferred by this section.

### Textual Amendments

**F3977** Words in s. 703 sidenote 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. 154\(10\)](#) (with [Sch. 2](#))

**F3978** Word in s. 703(1) 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. 154\(2\)\(a\)](#) (with [Sch. 2](#))

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- F3979** Words in s. 703(1) 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. 154(2)(b)** (with Sch. 2)
- F3980** Word in s. 703(1) 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. 154(2)(c)** (with Sch. 2)
- F3981** Word in s. 703(1) 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. 154(2)(d)** (with Sch. 2)
- F3982** Words in s. 703(2) 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. 154(3)(a)** (with Sch. 2)
- F3983** Word in s. 703(2) 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. 154(3)(b)** (with Sch. 2)
- F3984** Word in s. 703(2) 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. 154(3)(c)** (with Sch. 2)
- F3985** Word in s. 703(3) 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. 154(4)(b)** (with Sch. 2)
- F3986** Words in s. 703(3) 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. 154(4)(a)** (with Sch. 2)
- F3987** Words in s. 703(3) 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. 154(4)(c)** (with Sch. 2)
- F3988** Words in s. 703(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(4)(d), Sch. 3 Pt. 1** (with Sch. 2)
- F3989** Words in s. 703(3) 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. 154(4)(e)** (with Sch. 2)
- F3990** 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)**
- F3991** S. 703(3A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(5), Sch. 3 Pt. 1** (with Sch. 2)
- F3992** 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
- F3993** *Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.*
- F3994** *Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.*
- F3995** Words in s. 703(9) 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. 154(6)(a)** (with Sch. 2)
- F3996** Words in s. 703(9) 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. 154(6)(b)** (with Sch. 2)
- F3997** Word in s. 703(9) 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. 154(6)(c)** (with Sch. 2)
- F3998** Word in s. 703(10) 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. 154(7)** (with Sch. 2)
- F3999** S. 703(11) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 154(8), Sch. 3 Pt. 1** (with Sch. 2)
- F4000** Words in s. 703(12) 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. 154(9)(a)** (with Sch. 2)
- F4001** Words in s. 703(12) 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. 154(9)(b)** (with Sch. 2)
- F4002** Words in s. 703(12) 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. 154(9)(c)** (with Sch. 2)

#### Marginal Citations

**M580** Source—1970 s.460(1)-(3)

**M581** Source—1970 s.460(5)-(9)

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## 704 The prescribed circumstances.

<sup>M582</sup>The circumstances mentioned in section 703(1) are [<sup>F4003</sup> as follows (and in this section references to “the section 703(1) company” are references to the company referred to in that section)]

- (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 [<sup>F4004</sup> section 703(1) company] 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 [<sup>F4005</sup> corporation tax], or
  - (b) the setting-off of losses against profits or income, or
  - (c) the giving of group relief, or
  - (d) <sup>F4006</sup> .....
  - (e) <sup>F4007</sup> .....
  - (f) <sup>F4008</sup> .....
  - (g) <sup>F4008</sup> .....

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 [<sup>F4009</sup> section 703(1) company] becomes entitled—
- (a) in respect of securities held or sold by [<sup>F4010</sup> it], or
  - (b) in respect of securities formerly held by [<sup>F4010</sup> it] (whether sold by [<sup>F4010</sup> it] 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 in relation to any [<sup>F4011</sup> corporation 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 [<sup>F4012</sup> section 703(1) company] 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 [<sup>F4013</sup> or section 687 of ITA 2007],
- 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

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(iii) is, or represents the value of, trading stock of the company,

and the [<sup>F4012</sup>section 703(1) company] so receives the consideration that [<sup>F4014</sup>it] 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 [<sup>F4015</sup>section 703(1) company] 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), [<sup>F4016</sup>are [<sup>F4017</sup>included in the official UK list, and are dealt in on a recognised stock exchange in the United Kingdom] 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 [<sup>F4018</sup>section 703(1) company] 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.
- (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 [<sup>F4019</sup>company] by virtue of sub-paragraph (1) above on the repayment of any share capital, any assessment to [<sup>F4020</sup>corporation tax] under subsection (3) of that section shall be an assessment to [<sup>F4020</sup>corporation tax] for [<sup>F4021</sup>the accounting period] 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 [<sup>F4022</sup>section 703(1) company] receiving consideration, means that the recipient does not pay or bear [<sup>F4023</sup>corporation tax] on it as income (apart from the provisions of this Chapter);

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“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

- F4003** Words in s. 704 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. 155\(2\)](#) (with Sch. 2)
- F4004** Words in s. 704 para. A 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. 155\(3\)\(a\)](#) (with Sch. 2)
- F4005** Words in s. 704 para. A(a) 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. 155\(3\)\(b\)](#) (with Sch. 2)
- F4006** 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
- F4007** 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
- F4008** S. 704 para. A(f)(g) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by virtue of [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 155\(3\)\(c\)](#), [Sch. 3 Pt. 1](#) (with Sch. 2)
- F4009** Words in s. 704 para. B(1) 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. 155\(4\)\(a\)](#) (with Sch. 2)
- F4010** Words in s. 704 para. B(1) 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. 155\(4\)\(b\)](#) (with Sch. 2)
- F4011** Words in s. 704 para. B(2) 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. 155\(5\)](#) (with Sch. 2)
- F4012** Words in s. 704 para. C(1) 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. 155\(6\)\(a\)](#) (with Sch. 2)
- F4013** Words in s. 704 para. C(1)(b) 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. 155\(6\)\(b\)](#) (with Sch. 2)
- F4014** Word in s. 704 para. C(1) 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. 155\(6\)\(c\)](#) (with Sch. 2)
- F4015** Words in s. 704 para. D(1) 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. 155\(7\)](#) (with Sch. 2)
- F4016** 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\(1\)–\(3\)](#)
- F4017** Words in s. 704 para. D(2)(b) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 7\(7\)](#)
- F4018** Words in s. 704 para. E(1) 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. 155\(8\)\(a\)](#) (with Sch. 2)
- F4019** Word in s. 704 para. E(2) 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. 155\(8\)\(b\)\(i\)](#) (with Sch. 2)
- F4020** Words in s. 704 para. E(2) 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. 155\(8\)\(b\)\(ii\)](#) (with Sch. 2)
- F4021** Words in s. 704 para. E(2) 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. 155\(8\)\(b\)\(iii\)](#) (with Sch. 2)
- F4022** Words in s. 704 para. E(3) 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. 155\(8\)\(c\)\(i\)](#) (with Sch. 2)
- F4023** Words in s. 704 para. E(3) 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. 155\(8\)\(c\)\(ii\)](#) (with Sch. 2)

### Modifications etc. (not altering text)

- C473** 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](#)

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**Marginal Citations**

M582 Source—1970 s.461; 1973 s.54, Sch.11 2(a), (b)

**705 Appeals against Board’s notices under section 703.**

- (1) <sup>M583</sup> Any [<sup>F4024</sup> company to which] 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 [<sup>F4025</sup> it] in respect of the transaction or transactions in question, or that the adjustments directed to be made are inappropriate.
- (2) If [<sup>F4026</sup> the company] or the Board are dissatisfied with the determination of the Special Commissioners [<sup>F4027</sup> the company or the Board] 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 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) <sup>F4028</sup> .....
- (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) <sup>F4029</sup> .....
- (7) <sup>F4029</sup> .....
- (8) <sup>F4029</sup> .....

**Textual Amendments**

- F4024** Words in s. 705(1) 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. 156(2)(a)** (with [Sch. 2](#))
- F4025** Word in s. 705(1) 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. 156(2)(b)** (with [Sch. 2](#))
- F4026** Words in s. 705(2) 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. 156(3)(a)** (with [Sch. 2](#))
- F4027** Words in s. 705(2) 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. 156(3)(b)** (with [Sch. 2](#))
- F4028** 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**
- F4029** 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



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### Marginal Citations

M583 Source—1970 s.462

## [<sup>F4030</sup>705] 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 [<sup>F4031</sup>its] or their dissatisfaction to the tribunal.
- (2) The appellant or the Board, as the case may be, having declared [<sup>F4031</sup>its] 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 [<sup>F4032</sup>that party] 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 [<sup>F4033</sup>that party] transmits the case to the High Court, [<sup>F4033</sup>that party] shall send notice in writing of the fact that the case has been stated on [<sup>F4034</sup>that party's] 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.
- (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, [<sup>F4035</sup>corporation 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 [<sup>F4035</sup>corporation 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 [<sup>F4035</sup>corporation tax] has been charged, the amount undercharged shall be due and payable at the expiration of a period of thirty days beginning



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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

- F4030** 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**
- F4031** Words in s. 705A(1)(2) 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. 157(2)** (with Sch. 2)
- F4032** Words in s. 705A(3) 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. 157(3)** (with Sch. 2)
- F4033** Words in s. 705A(5) 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. 157(4)(a)** (with Sch. 2)
- F4034** Words in s. 705A(5) 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. 157(4)(b)** (with Sch. 2)
- F4035** Words in s. 705A(10)(11)(a)(b) 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. 157(5)** (with Sch. 2)

#### <sup>F4030</sup> 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 <sup>F4036</sup> [the Management Act and the Corporation Tax Acts 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 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

- F4030** 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**

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**F4036** Words in s. 705B(1) 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. 158](#) (with [Sch. 2](#))

## 706 The tribunal.

**[<sup>F4037</sup>(1)]** <sup>M584</sup> For 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.

**[<sup>F4038</sup>(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

**F4037** 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](#)

**F4038** 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)

**C474** 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).*

### Marginal Citations

**M584** Source—1970 s.463; 1982 Sch.21 3(1)

## 707 Procedure for clearance in advance.

<sup>M585</sup>(1) The following provisions shall have effect where in pursuance of this section a [<sup>F4039</sup>company] furnishes to the Board particulars of a transaction or transactions effected or to be effected by [<sup>F4040</sup>it], 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 [<sup>F4039</sup>company] 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 [<sup>F4039</sup>company] 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 [<sup>F4040</sup>it] that they are so satisfied, section 703 shall not apply to [<sup>F4040</sup>it] in respect of that transaction or those transactions.

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- (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 [F4041 company] in respect of transactions which include that transaction or all or some of those transactions and also include another transaction or other transactions.

#### Textual Amendments

- F4039** Words in s. 707(1) 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. 159\(2\)\(a\)](#) (with [Sch. 2](#))
- F4040** Words in s. 707(1) 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. 159\(2\)\(b\)](#) (with [Sch. 2](#))
- F4041** Word in s. 707(3) 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. 159\(3\)](#) (with [Sch. 2](#))

#### Marginal Citations

**M585** Source—1970 s.464

### 708 Power to obtain information.

<sup>M586</sup>Where it appears to the Board that by reason of any transaction or transactions a [F4042 company] may be a [F4042 company] to [F4043 which] section 703 applies, the Board may by notice served on [F4044 it] require [F4044 it], within such time not less than 28 days as may be specified in the notice, to furnish information in [F4045 its] 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 [F4044 it].

#### Textual Amendments

- F4042** Words in s. 708 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. 160\(a\)](#) (with [Sch. 2](#))
- F4043** Word in s. 708 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. 160\(b\)](#) (with [Sch. 2](#))
- F4044** Words in s. 708 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. 160\(c\)](#) (with [Sch. 2](#))
- F4045** Word in s. 708 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. 160\(d\)](#) (with [Sch. 2](#))

#### Marginal Citations

**M586** Source—1970 s.465

### 709 Meaning of [F4046 “corporation tax advantage”] and other expressions.

- (1) <sup>M587</sup>In this Chapter “[F4047 corporation tax] advantage” means a relief or increased relief from, or repayment or increased repayment of, [F4047 corporation tax], or the avoidance

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or reduction of a charge to [<sup>F4047</sup>corporation tax] or an assessment to [<sup>F4047</sup>corporation 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 [<sup>F4047</sup>corporation tax] on them, or by a deduction in computing profits or gains.

(2) <sup>M588</sup>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.

[<sup>F4048</sup>(2A) In this Chapter references to a relief <sup>F4049</sup> . . . include <sup>F4049</sup> . . . references to a tax credit <sup>F4049</sup> . . . .]

(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 [<sup>F4050</sup>the recipient] had been entitled only to so much of the dividend as accrued while [<sup>F4050</sup>the recipient] 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 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

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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 [<sup>F4051</sup>the recipient] acquired them, or if no consideration was provided by [<sup>F4052</sup>the recipient] 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 [<sup>F4051</sup>the recipient] 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

- F4046** Words in s. 709 sidenote 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. 161\(5\)](#) (with [Sch. 2](#))
- F4047** Words in s. 709(1) 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. 161\(2\)](#) (with [Sch. 2](#))
- F4048** S. 709(2A) inserted (with effect in accordance with s. 73(2) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [s. 73\(1\)](#)
- F4049** 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\(9\)](#)
- F4050** Words in s. 709(4)(a) 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. 161\(3\)](#) (with [Sch. 2](#))
- F4051** Words in s. 709(6)(a) 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. 161\(4\)\(a\)](#) (with [Sch. 2](#))
- F4052** Words in s. 709(6)(a) 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. 161\(4\)\(b\)](#) (with [Sch. 2](#))

#### Modifications etc. (not altering text)

**C475** Definition applied for purposes of 1990 Sch.10—*convertible securities*.

#### Marginal Citations

- M587** Source—1970 s.466(1); 1973 Sch.11 4
- M588** Source—1970 s.467; 1973 Sch.11 5

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## 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.**

F4053  
.....

##### **Textual Amendments**

**F4053** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, Sch. 3 Pt. 1 (with Sch. 2)

#### **711 Meaning of “interest”, “transfers with or without accrued interest” etc.**

F4054  
.....

##### **Textual Amendments**

**F4054** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, Sch. 3 Pt. 1 (with Sch. 2)

#### **712 Meaning of “settlement day” for purposes of sections 711 to 728.**

F4055  
.....

##### **Textual Amendments**

**F4055** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, Sch. 3 Pt. 1 (with Sch. 2)

#### *Transfers with or without accrued interest: charge to tax and reliefs*

#### **713 Deemed sums and reliefs.**

F4056  
.....

##### **Textual Amendments**

**F4056** Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, Sch. 3 Pt. 1 (with Sch. 2)

#### **714 Treatment of deemed sums and reliefs.**

F4057  
.....

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**Textual Amendments**  
F4057 [Ss. 710-727A](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**715 Exceptions from sections 713 and 714**

F4058 .....

**Textual Amendments**  
F4058 [Ss. 710-727A](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**716 Transfer of unrealised interest.**

F4059 .....

**Textual Amendments**  
F4059 [Ss. 710-727A](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**717 Variable interest rate.**

F4060 .....

**Textual Amendments**  
F4060 [Ss. 710-727A](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**718 Interest in default.**

F4061 .....

**Textual Amendments**  
F4061 [Ss. 710-727A](#) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**719 Unrealised interest in default**

F4062 .....



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**Textual Amendments**

**F4062**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

*Transfers with or without accrued interest: supplemental*

**720 Nominees, trustees etc.**

**F4063** . . . . .

**Textual Amendments**

**F4063**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

**721 Death.**

**F4064** . . . . .

**Textual Amendments**

**F4064**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

**722 Trading stock.**

**F4065** . . . . .

**Textual Amendments**

**F4065**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

[<sup>F4066</sup>**722. Gilt strips: deemed transfer.**

**F4067** . . . . .]

**Textual Amendments**

**F4066**S. 722A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 6**  
**F4067**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, **Sch. 3 Pt. 1** (with Sch. 2)

**723 Foreign securities: delayed remittances**

**F4068** . . . . .

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**Textual Amendments**  
F4068Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, Sch. 3 Pt. 1 (with Sch. 2)

**724 Insurance companies.**

F4069 .....

**Textual Amendments**  
F4069S. 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

F4070 725 .....

**Textual Amendments**  
F4070S. 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

F4071 726 .....

**Textual Amendments**  
F4071S. 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

[<sup>F4072</sup>726 **New issues of securities.**

F4073 .....]

**Textual Amendments**  
F4072S. 726A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 54, Sch. 12 paras. 2, 5  
F4073Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 162, Sch. 3 Pt. 1 (with Sch. 2)

**727 Stock lending.**

F4074 .....

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**Textual Amendments**

**F4074**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[<sup>F4075</sup>**727A** **Exception for sale and repurchase of securities.**

<sup>F4076</sup> . . . . . ]

**Textual Amendments**

**F4075**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))

**F4076**Ss. 710-727A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 162, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**728 Information.**

<sup>M589</sup>(1) In order to obtain for the purposes of [<sup>F4077</sup>Part 12 of ITA 2007 (accrued income profits)] particulars relating to securities, an inspector may by notice require a return under subsection (2) or (3) below.

(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.

<sup>F4078</sup> . . . . .

(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 [<sup>F4079</sup>Part 12 of ITA 2007 (accrued income profits)] 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—

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- (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 [<sup>F4080</sup>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.

[<sup>F4081</sup>(9) In this section “securities” has the meaning given by section 619 of ITA 2007.]

#### Textual Amendments

- F4077** Words in s. 728(1) 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. 163(2)** (with Sch. 2)
- F4078** Words in s. 728(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 163(3), Sch. 3 Pt. 1** (with Sch. 2)
- F4079** Words in s. 728(5) 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. 163(4)** (with Sch. 2)
- F4080** 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)**
- F4081** S. 728(9) 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. 163(5)** (with Sch. 2)

#### Modifications etc. (not altering text)

- C476** 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)
- C477** 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)
- C478** Ss. 711-728 modified (31.7.1998) by **Finance Act 1998 (c. 36), s. 161(2)(a)** (with s. 161(7))

#### Marginal Citations

- M589** Source—1985 Sch.23 44(1)-(5A); 1986 Sch.17 6

### *Other transfers of securities*

## 729 Sale and repurchase of securities.

F4082

#### Textual Amendments

- F4082** 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

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### 730 [F4083] **Transfers of rights to receive distributions in respect of shares**

M590 (1) Where in any chargeable period the owner of any [F4084] shares] (“the owner”) sells or transfers the right to receive any [F4085] distribution] payable (whether before or after the sale or transfer) in respect of the [F4084] shares] without selling or transferring the [F4084] shares], then, for all the purposes of the Tax Acts, that [F4085] distribution], whether it would or would not be chargeable to tax apart from the provisions of this section—

- (a) shall be [F4086] treated as] the income of the owner or, in a case where the owner is not the beneficial owner of the [F4084] shares] and some other person (“a beneficiary”) is beneficially entitled to the income arising from the [F4084] shares], the income of the beneficiary, and
- (b) shall be [F4087] treated as] the income of the owner or beneficiary for that chargeable period, F4088 . . .
- (c) F4088 . . . . .

[F4089] (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.]

[F4090] (2A) F4091 . . . . .]

[F4092] (3) F4093 . . . . .]

(4) Where—

- (a) the [F4084] shares] are of such a character that the [F4085] distribution] 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 [F4085] distribution] which is deemed to be his income by virtue of this section have been charged to [F4094] income tax under Chapter 13 of Part 4 of ITTOIA 2005 (sales of foreign dividend coupons)],

[F4095] then that [F4096] distribution] shall be charged to income tax.

(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 [F4097] distribution] 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 [F4098] distribution] is shown to have borne.]

(5) [F4099] But], in any case where, if the [F4085] distribution] had been [F4100] relevant foreign income], the computation of tax would have been made by reference to the amount received in the United Kingdom, [F4101] the 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 [F4084] shares].

(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 [F4085] distribution] 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 [F4085] distribution] have been charged to tax [F4102] by virtue of section 18(3B)].

[F4103] (7) In this section—

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- “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 [<sup>F4084</sup>shares] 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 <sup>F4104</sup> . . . .

### Textual Amendments

- F4083**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)**
- F4084**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)**
- F4085**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)**
- F4086**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)**
- F4087**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)**
- F4088**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
- F4089**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)**
- F4090**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**
- F4091**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
- F4092**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)**
- F4093**S. 730(3) repealed (with effect in accordance with Sch. 6 para. 2(3) of the repealing Act) by Finance Act 2006 (c. 25), Sch. 6 para. 2(2), **Sch. 26 Pt. 3(12)**, Note
- F4094**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)
- F4095**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)
- F4096**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)**
- F4097**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)**
- F4098**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)**
- F4099**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)
- F4100**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)

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- F4101** 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)
- F4102** 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)
- F4103** 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)**
- F4104** 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**

**M590** Source—1970 s.470; 1971 Sch.6 71

[<sup>F4105</sup>**730A** Treatment of price differential on sale and repurchase of securities.

<sup>F4106</sup> . . . . . ]

**Textual Amendments**

- F4105** 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)**
- F4106** Ss. 730A, 730B repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 4, **Sch. 27 Pt. 2(14)**, Note

**730B Interpretation of section 730A.**

<sup>F4107</sup> . . . . . ]

**Textual Amendments**

- F4105** 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)**
- F4107** Ss. 730A, 730B repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 4, **Sch. 27 Pt. 2(14)**, Note

[<sup>F4108</sup>**730BB** Exchange gains and losses on sale and repurchase of securities

<sup>F4109</sup> . . . . . ]

**Textual Amendments**

- F4108** 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**
- F4109** S. 730BB repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 5, **Sch. 27 Pt. 2(14)**, Note

[<sup>F4110</sup>**730C** Exchanges of gilts: traders etc.

<sup>F4111</sup> . . . . . ]



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### Textual Amendments

**F4110 S. 730C** inserted (29.4.1996) by **Finance Act 1996 (c. 8), Sch. 40 para. 7**

**F4111 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.**

<sup>M591</sup>(1) In this section “the relevant provisions” means sections 732, 733, 734 and this section.

(2) [<sup>F4112</sup>Subject to subsections (2A) to (10) below], the relevant provisions [<sup>F4113</sup>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.

[<sup>F4114</sup>(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 <sup>F4115</sup> . . . [<sup>F4116</sup>section 602(1) of ITA 2007][<sup>F4117</sup>or paragraph 13(1) of Schedule 13 to the Finance Act 2007] as required to make such a payment.]

[<sup>F4118</sup>(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

(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”) [<sup>F4119</sup>and the original owner—

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- (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.

[<sup>F4120</sup>(2F) For the purposes of subsections (2B) to (2E) above—

- (a) 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); and
- (b) references to buying back securities include buying similar securities even if the securities bought have not previously been held by the purchaser (and references in those subsections to repurchase are to be construed accordingly).

(2G) For the purposes of subsection (2F) above securities are similar if they entitle their holders to—

- (a) the same rights against the same persons as to capital, interest and dividends, and
- (b) the same remedies for the enforcement of those rights,

in spite of 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.]]

(3) The relevant provisions do not [<sup>F4121</sup>apply] 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 [<sup>F4122</sup>the 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.

<sup>F4123</sup> .....

(4) The reference in subsection (3) above to the first buyer taking steps to dispose of the securities shall be construed—

- (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.

[<sup>F4124</sup>(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.

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- (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 [F4125(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 [F4126, 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.
- [F4127(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) <sup>M592</sup>For the purposes of the relevant provisions—
- “interest” includes a qualifying distribution and any dividend which is not a qualifying distribution <sup>F4128</sup>. . . ;
- “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 [F4129 within the meaning of Chapter 2 of Part 12 of ITA 2007 (accrued income profits)].

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- [<sup>F4130</sup>(9A) In applying references in the relevant provisions to interest in relation to a qualifying distribution <sup>F4131</sup> . . . —
- (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) <sup>F4132</sup> . . . . .
- (9C) <sup>F4132</sup> . . . . .
- (9D) <sup>F4132</sup> . . . . . ]
- (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

- F4112** 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)
- F4113** 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)
- F4114** 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)
- F4115** Words in s. 731(2A) repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 6(2)(a), Sch. 27 Pt. 2(14), Note
- F4116** Words in s. 731(2A) 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. 167(2) (with Sch. 2)
- F4117** Words in s. 731(2A) inserted (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 6(2)(b)
- F4118** 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)
- F4119** 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
- F4120** S. 731(2F)(2G) substituted for s. 731(2F) (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 6(3)
- F4121** 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)
- F4122** 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)
- F4123** 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
- F4124** S. 731(4A)(4B)(4C) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 55(1)(2)
- F4125** 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))
- F4126** 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)

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- F4127S.** 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)
- F4128S.** 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)**
- F4129S.** 731(9): words in definition of "securities" 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. 167(3)** (with Sch. 2)
- F4130S.** 731(9A)-(9D) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 17(3)**
- F4131** 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
- F4132S.** 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)

**C479** See s.343—*company reconstruction without change of ownership.*

#### Marginal Citations

**M591** Source—1970 s.471(1)-(5)

**M592** Source—1970 s.471(6); 1973 sch.11 6; 1986 Sch.18 2(1)

## 732 Dealers in securities.

- <sup>M593</sup>(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.
- [<sup>F4133</sup>(1A) Subsection (1) above shall not apply if the interest receivable by the first buyer falls to be taken into account [<sup>F4134</sup>either—
- (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) <sup>F4135</sup> .....
- [<sup>F4136</sup>(2A) <sup>F4135</sup> .....
- (3) <sup>F4137</sup> .....
- (4) Subsection (1) above shall not apply if the securities are overseas securities bought by the first buyer <sup>F4138</sup> . . . 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.
- [<sup>F4139</sup>In 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) <sup>F4140</sup> .....
- [<sup>F4141</sup>(5A) <sup>F4140</sup> .....
- (6) <sup>F4140</sup> .....
- [<sup>F4142</sup>(7) <sup>F4140</sup> .....

**Textual Amendments**

- F4133S.** 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)
- F4134** 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)
- F4135S.** 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
- F4136S.** 732(2A) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 56(1)
- F4137S.** 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
- F4138** 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
- F4139S.** 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)
- F4140S.** 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
- F4141S.** 732(5A) inserted (retrospectively) by Finance Act 1990 (c. 29), s.53(1)
- F4142S.** 732(7) added by Finance Act 1991 (c. 31, SIF 63:1), s. 56(2)

**Marginal Citations**

**M593** Source—1970 s.472; 1982 s.57; 1986 Sch.18 1, 3

**733 Persons entitled to exemptions.**

<sup>M594</sup>(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) <sup>F4143</sup> .....

**Textual Amendments**

**F4143S.** 733(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 168, Sch. 3 Pt. 1 (with Sch. 2)

**Marginal Citations**

**M594** Source—1970 s.473

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### 734 Persons other than dealers in securities.

- <sup>M595</sup>(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 [<sup>F4144</sup>section 64 or 72 of ITA 2007] 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 [<sup>F4145</sup>122(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

**F4144** Words in s. 734(1) 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. 169** (with Sch. 2)

**F4145** 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

**M595** 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.

- <sup>M596</sup>(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 [<sup>F4146</sup>, 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 [<sup>F4147</sup>, in accordance with announcements made by The Stock Exchange, first to be



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- dealt in without carrying rights to] the interest payment last payable before 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 <sup>F4148</sup>, 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 <sup>F4149</sup>to 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 <sup>F4150</sup>Official List of The Stock Exchange], subsection (3) above shall have effect <sup>F4151</sup>as 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

- F4146** 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)**
- F4147** 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)**
- F4148** 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)**
- F4149** 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)**
- F4150** 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)**
- F4151** 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

- M596** 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.**

- <sup>M597</sup>(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 [<sup>F4152</sup>, for the purposes of paragraph (b) above, whether persons are connected is determined in accordance with section 839, but] 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 ”.

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- (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 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.

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**Textual Amendments**

**F4152** Words in s. 736(4) 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. 170](#) (with [Sch. 2](#))

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**Modifications etc. (not altering text)**

**C480** See s.237—*disallowance of reliefs in respect of bonus issues etc.*

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**Marginal Citations**

**M597** Source—1970 s.476

[<sup>F4153</sup>**736** **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.]

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**Textual Amendments**

**F4153** 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\(1\)](#))

[<sup>F4154</sup>**736** **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 [<sup>F4155</sup>, and section 97 of the Finance Act 1996 (loan relationships: manufactured interest),] shall apply [<sup>F4156</sup>for corporation tax purposes][<sup>F4157</sup>, 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;

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- (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.

[ The borrower is not entitled, by virtue of anything in Schedule 23A or any provision<sup>F4158</sup>(2A) of regulations under that Schedule, or otherwise—

- (a) to any deduction in computing profits or gains for the purposes of<sup>F4159</sup> . . . corporation tax, or
- (b) to any deduction against<sup>F4160</sup> . . . 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.

[ See section 736D for provision treating certain arrangements as stock lending<sup>F4161</sup>(4) arrangements for the purposes of this section.]]

#### Textual Amendments

- F4154S.** 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
- F4155** Words in s. 736B(2) 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. 171(2)(a) (with Sch. 2)
- F4156** Words in s. 736B(2) 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. 171(2)(b) (with Sch. 2)
- F4157** 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)
- F4158S.** 736B(2A) inserted (with application in accordance with s. 84(4) of the amending Act) by Finance Act 2001 (c. 9), s. 84(3)
- F4159** Words in s. 736B(2A)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(3)(a), Sch. 3 Pt. 1 (with Sch. 2)
- F4160** Words in s. 736B(2A)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 171(3)(b), Sch. 3 Pt. 1 (with Sch. 2)
- F4161S.** 736B(4) 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(1)

#### Modifications etc. (not altering text)

- C481 S.** 736B modified (19.7.2006) by Finance Act 2006 (c. 25), s. 139(1)(3)

[<sup>F4162</sup>**736D** 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”),

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- (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 [F4163Corporation 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 [F4163Corporation 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 [F4163Corporation Tax Acts] as if it were payable in respect of the period (“the interest period”)—
- (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) <sup>F4164</sup> .....
- (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.

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(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 <sup>F4165</sup>section 840ZA].

(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,
- (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—

- <sup>F4166</sup>(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

**F4162S.** 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)

**F4163** Words in s. 736C(2)(a)(3)(4) 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. 172(2) (with Sch. 2)

**F4164S.** 736C(8) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 172(3), Sch. 3 Pt. 1 (with Sch. 2)

**F4165S.** 736C(11): words in definition of “tax advantage” 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. 172(4) (with Sch. 2)

**F4166S.** 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)

#### <sup>F4167</sup>736D 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.

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- (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,—
  - (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,



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“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**

**F4167S.** 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.**

F4168  
.....

**Textual Amendments**

**F4168S.** 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**

[<sup>F4169</sup>**737A Sale and repurchase of securities: deemed manufactured payments.**

F4170  
.....

**Textual Amendments**

**F4169Ss.** 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**  
**F4170Ss.** 737A-737C repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, **Sch. 27 Pt. 2(14)**, Note

**737B Interpretation of section 737A.**

F4171  
.....

**Textual Amendments**

**F4169Ss.** 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**  
**F4171Ss.** 737A-737C repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, **Sch. 27 Pt. 2(14)**, Note

**737C Deemed manufactured payments: further provisions.**

F4172  
.....]

**Textual Amendments**

**F4169Ss.** 737A-737C inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 122**  
**F4172Ss.** 737A-737C repealed (with effect in accordance with S.I. 2007/2483, **art. 3**) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 7, **Sch. 27 Pt. 2(14)**, Note

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### Supplemental

#### [<sup>F4173</sup>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 [<sup>F4174</sup>corporation] tax by virtue of section 438 <sup>F4175</sup> . . . .
- (2) In this section “manufactured payment” means any <sup>F4176</sup> . . . manufactured interest or manufactured overseas dividend, within the meaning of Schedule 23A.]

#### Textual Amendments

- F4173** Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 83(1)
- F4174** Word in s. 737D(1) 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. 175(a) (with Sch. 2)
- F4175** Words in s. 737D(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 175(b), Sch. 3 Pt. 1 (with Sch. 2)
- F4176** 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

#### Modifications etc. (not altering text)

- C482** S. 737D(2) modified (19.7.2006) by Finance Act 2006 (c. 25), s. 139(1)(6)

#### [<sup>F4173</sup>737E<sup>F4177</sup> Power to modify sections <sup>F4178</sup> . . . 730A, 730BB and 737A to 737C]

<sup>F4179</sup> . . . . . ]

#### Textual Amendments

- F4173** Ss. 737D, 737E inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 83(1)
- F4177** 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)
- F4178** Words in s. 737E sidenote repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 176(4), Sch. 3 Pt. 1 (with Sch. 2)
- F4179** S. 737E repealed (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 8, Sch. 27 Pt. 2(14), Note

#### 738 Power to amend sections 732, 735 and 737.

- (1) <sup>M598</sup>The Board may by regulations provide for all or any of the following—
  - (a) <sup>F4180</sup> . . . . .
  - (b) <sup>F4180</sup> . . . . .
  - (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.

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- F4181(2) .....
- (3) F4182 .....
- (4) F4182 .....
- (5) M599 In this section “recognised investment exchange”<sup>F4183</sup> has the meaning given by section 285(1)(a) of the Financial Services and Markets Act 2000].

**Textual Amendments**

**F4180** 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

**F4181** 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](#)

**F4182** 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](#)

**F4183** 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](#)

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**Marginal Citations**

**M598** Source—1986 Sch.18 4

**M599** Source—1986 Sch.18 10(2)

## CHAPTER III

### TRANSFER OF ASSETS ABROAD

**739 Prevention of avoidance of income tax.**

F4184 .....

**Textual Amendments**

**F4184** Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 177](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**740 Liability of non-transferors.**

F4185 .....

**Textual Amendments**

**F4185** Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 177](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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**741** [<sup>F4186</sup>**Exemption from sections 739 and 740 (transactions before 5th December 2005)**]

F4187  
..... ]

**Textual Amendments**

**F4186S.** 741 sidenote substituted (5.12.2005) by virtue of [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 2\(4\)\(5\)](#)  
**F4187Ss.** 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 177](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[<sup>F4188</sup>**741A Exemption from sections 739 and 740 (transactions on or after 5th December 2005)**

F4189  
..... ]

**Textual Amendments**

**F4188S.** 741A inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 3](#)  
**F4189Ss.** 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 177](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[<sup>F4190</sup>**741B Application of sections 741 and 741A**

F4191  
..... ]

**Textual Amendments**

**F4190Ss.** 741B, 741C inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 4](#)  
**F4191Ss.** 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 177](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**741C Cases where there are both old transactions and new transactions**

F4192  
..... ]

**Textual Amendments**

**F4190Ss.** 741B, 741C inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 4](#)  
**F4192Ss.** 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 177](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[<sup>F4193</sup>**741D Section 739: just and reasonable apportionment in certain cases**

F4194  
..... ]

**Textual Amendments**

**F4193S.** 741D inserted (5.12.2005) by [Finance Act 2006 \(c. 25\)](#), [Sch. 7 para. 5](#)

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**F4194**Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

**742** [<sup>F4195</sup>**Interpretation of this Chapter**]

**F4196** .....

**Textual Amendments**  
**F4195**S. 742 sidenote substituted (5.12.2005) by virtue of Finance Act 2006 (c. 25), **Sch. 7 para. 6(5)(6)**  
**F4196**Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

**743** **Supplemental provisions.**

**F4197** .....

**Textual Amendments**  
**F4197**Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

**744** **No duplication of charge.**

**F4198** .....

**Textual Amendments**  
**F4198**Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

**745** **Power to obtain information.**

**F4199** .....

**Textual Amendments**  
**F4199**Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

**746** **Persons resident in the Republic of Ireland.**

**F4200** .....

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### Textual Amendments

**F4200** Ss. 739-746 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 177, **Sch. 3 Pt. 1** (with Sch. 2)

## CHAPTER IV

### CONTROLLED FOREIGN COMPANIES

#### Modifications etc. (not altering text)

**C483** Pt. XVII Ch. IV (ss. 747-756) modified (27.7.1993) by 1993 c. 34, s. 119(3)

**C484** 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

**C485** 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

<sup>M600</sup>(1) If <sup>F4201</sup> . . . 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,

<sup>F4202</sup> . . . the provisions of this Chapter shall apply in relation to that accounting period.

[<sup>F4203</sup>(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.]

[<sup>F4204</sup>(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) [<sup>F4205</sup>Subject 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.

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[<sup>F4206</sup>(3A) In the case of an apportionment to a company resident in the United Kingdom which has made an application under section 751A which has been granted, subsection (3) above has effect subject to that section.]

(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 [<sup>F4207</sup>chargeable on] the resident company as if it were an amount of corporation tax chargeable on that company; <sup>F4208</sup> . . .

(b) <sup>F4208</sup> . . . . .

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 [<sup>F4209</sup>which 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.

[<sup>F4210</sup>(4A) <sup>F4211</sup> . . . . .

(4B) <sup>F4211</sup> . . . . . ]

(5) Tax shall not, by virtue of subsection (4) above, be [<sup>F4212</sup>chargeable on] a company resident in the United Kingdom unless, on the apportionment in question, the aggregate of—

(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 [<sup>F4213</sup>25 per cent.] of the total of those chargeable profits.

[<sup>F4214</sup>(5A) Where the resident company has made an application under section 751A which has been granted, it shall be assumed for the purposes of subsection (5) above that—

(a) each of the persons who are connected or associated with the resident company has made an application under that section to the same effect, and

(b) all the applications have been granted.]

(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.



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### Textual Amendments

- F4201** 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**
- F4202** 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**
- F4203** S. 747(1A) inserted (21.3.2000) by Finance Act 2000 (c. 17), Sch. 31 paras. 3, **9(1)**
- F4204** S. 747(1B) inserted (1.4.2002) by Finance Act 2002 (c. 23), **s. 90(1)(2)(a)** (with s. 90(2)(b))
- F4205** 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**
- F4206** S. 747(3A) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), **Sch. 15 para. 1(2)**
- F4207** 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**
- F4208** S. 747(4)(b) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 178, **Sch. 3 Pt. 1** (with Sch. 2)
- F4209** 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**
- F4210** S. 747(4A)(4B) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 3**
- F4211** 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
- F4212** 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**
- F4213** 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**
- F4214** S. 747(5A) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), **Sch. 15 para. 1(3)**

### Modifications etc. (not altering text)

- C486** S. 747 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 54(1)**
- C487** 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**
- C488** 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**
- C489** S. 747(6) 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

**M600** Source—1984 s.82

## [<sup>F4215</sup>747A] **Special rule for computing chargeable profits.**

F4216 ..... ]

### Textual Amendments

- F4215** S. 747A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 2**
- F4216** 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

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**748** [<sup>F4217</sup>Cases where section 747(3) does not apply.]

[<sup>F4218M601</sup>(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) <sup>F4219</sup> .....
- (d) the chargeable profits of the accounting period do not exceed [<sup>F4220</sup>£50,000] or, if the accounting period is less than 12 months, a proportionately reduced amount; [<sup>F4221</sup> 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.]

[<sup>F4222</sup>(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) <sup>F4223</sup> .....

(3) Notwithstanding that none of paragraphs (a) to [<sup>F4224</sup>(e)] of subsection (1) above applies to an accounting period of a controlled foreign company, [<sup>F4225</sup>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, [<sup>F4226</sup>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 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.

[<sup>F4227</sup>(4) <sup>F4228</sup> .....

(5) <sup>F4228</sup> .....]

[<sup>F4229</sup>(6) This section is subject to section 748A.]

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### Textual Amendments

- F4217S.** 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](#)
- F4218**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](#)
- F4219S.** 748(1)(c) and word repealed (with effect in accordance with [Sch. 15 para. 10](#) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 15 para. 8\(1\)](#), [Sch. 27 Pt. 2\(15\)](#), Note
- F4220**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](#)
- F4221S.** 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](#)
- F4222S.** 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](#)
- F4223S.** 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](#)
- F4224**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](#)
- F4225**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](#)
- F4226**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](#)
- F4227S.** 748(4)(5) inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), [Sch. 25 para. 4](#)
- F4228S.** 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
- F4229S.** 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

**M601** Source—1984 s.83

VALID FROM 19/07/2011

### <sup>F4230</sup>~~748E~~ **Exclusion 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.
- (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—

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- (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) [<sup>F4231</sup>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

**F4230S.** 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](#)

**F4231S.** 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\(2\)\(a\)](#)

#### [<sup>F4232</sup>748A] 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 [<sup>F4233</sup>permanent establishment] in such a territory.

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- (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 [<sup>F4233</sup>permanent 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

**F4232S.** 748A inserted (with effect in accordance with s. 89(3) of the amending Act) by Finance Act 2002 (c. 23), s. 89(2)

**F4233** 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)

#### [<sup>F4234</sup>749]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,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;

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- (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.
- (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.

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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).

[<sup>F4235</sup>(10) For the purposes of subsection (8) and (9) above, the effect of any application under section 751A shall be disregarded.]]

#### Textual Amendments

**F4234**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](#)

**F4235**S. 749(10) inserted (with effect in accordance with [Sch. 15 para. 10](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 15 para. 2](#)

#### [<sup>F4236</sup>**749** 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—
- the accounting period in relation to which it is made (“the original accounting period”), and
  - 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—
- 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
  - some other territory also falls within that subsection.
- (3) Any election under section 749(3)(d)—
- must be made by notice given to an officer of the Board;
  - 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;
  - 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 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;
  - must be signed by the persons making it; and
  - is irrevocable.
- (4) Nothing in—



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- (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.

[ For the purposes of this section the effect of any application under section 751A shall <sup>F4237</sup>(9) be disregarded. ]]

#### **Textual Amendments**

**F4236** 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](#)

**F4237** S. 749A(9) inserted (with effect in accordance with [Sch. 15 para. 10](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 15 para. 3](#)

#### **[<sup>F4236</sup>749] 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

**F4236**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.

<sup>M602</sup>(1) Without prejudice to [<sup>F4238</sup>subsection (5)] of section 749, a company which, by virtue of [<sup>F4239</sup>any 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 [<sup>F4240</sup>, 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 [<sup>F4241</sup>three-quarters] of the corresponding United Kingdom tax on those profits.

[<sup>F4242</sup>(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—

- [<sup>F4243</sup>(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]
- [<sup>F4244</sup>(ab) there shall be disregarded the effect of any application under section 751A; 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 <sup>F4245</sup> . . . ; 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.

- [<sup>F4246</sup>(5) <sup>F4247</sup> . . . . .
- (6) <sup>F4247</sup> . . . . .
- (7) <sup>F4247</sup> . . . . .
- (8) <sup>F4247</sup> . . . . .]

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### Textual Amendments

- F4238** 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**
- F4239** 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**
- F4240** 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)**
- F4241** 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)**
- F4242** 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)**
- F4243** 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**
- F4244** S. 750(3)(ab) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), **Sch. 15 para. 4**
- F4245** 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
- F4246** S. 750(5)-(8) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 5**
- F4247** 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

**M602** Source—1984 s.85

## [<sup>F4248</sup>750] **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.

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- (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.]

#### Textual Amendments

**F4248S. 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

<sup>M603</sup>(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 [<sup>F4249</sup>persons] resident in the United Kingdom;
- (b) whenever the company <sup>F4250</sup> . . . commences to carry on business [<sup>F4251</sup>unless 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
- [<sup>F4252</sup>(b) <sup>F4253</sup> . . . . .]
- (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, [<sup>F4254</sup>the 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 [<sup>F4255</sup>the notice] is subsequently amended under subsection (5) below.

(5) If, on further facts coming to the knowledge of the Board after the [<sup>F4256</sup>giving of a notice under subsection (4) above], it appears to the Board that any accounting period specified in the [<sup>F4257</sup>notice] is not the true accounting period, the Board shall amend the [<sup>F4257</sup>notice] so as to specify the true period.

[<sup>F4258</sup>(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

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interest (as defined in section 749(9)) in the company in the accounting period in question.]

- (6) In this Chapter, in relation to an accounting period of a controlled foreign company [<sup>F4259</sup>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

**F4249** 1990 s.89 and Sch. 14 para.9 (correction of errors)—deemed always to have had effect. Previously “the persons”.

**F4250** 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**

**F4251** 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**

**F4252** 1990 s.67(2), (4) on and after 20 March 1990.

**F4253** 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

**F4254** 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**

**F4255** 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**

**F4256** 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**

**F4257** 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**

**F4258** 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**

**F4259** 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)

**C490** 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

**M603** Source—1984 s.86

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### **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.
- (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



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- (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

<sup>F4260</sup>**751 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).
- (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

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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

**F4260S. 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

### **F4261S. 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 subparagraph (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
  - (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,

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- 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.
- (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

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(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

**F4261S. 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

#### **<sup>F4262</sup>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).

(3) 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).
- (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)).]

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#### Textual Amendments

**F4262S.** 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](#)

### 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
  - (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.

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- (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.

#### **[<sup>F4263</sup>752A] 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—
  - (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

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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

**F4263** 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

#### [<sup>F4264</sup>752] **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
  - (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—



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- (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

**F4264**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](#)

#### **[<sup>F4264</sup>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—

$$P \times S$$

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;

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“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

A is the number of days in the relevant accounting period.]

#### Textual Amendments

**F4264**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](#)

#### [<sup>F4264</sup>752C Interpretation of apportionment provisions.

(1) In this section “the relevant provisions” means sections 752 to 752B and this section.

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- (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.
- (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;

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“the relevant accounting period” means the accounting period mentioned in section 752(1);

“share” includes a reference to a fraction of a share.]

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**Textual Amendments**

**F4264Ss. 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.**

F4265  
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**Textual Amendments**

**F4265S. 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.**

<sup>M604</sup>(1) Subject to the following provisions of this section, the provisions of section 747(4) (a) relating to [<sup>F4266</sup>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 [<sup>F4267</sup>those 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.

[<sup>F4268</sup>(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).]

[<sup>F4269</sup>(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 ends that one of the controlled foreign company’s accounting periods the chargeable profits of which give rise to that sum.]

[<sup>F4270</sup>(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.

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- (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.]
- [<sup>F4271</sup>(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 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) <sup>F4272</sup> . . . . .

(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

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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 [<sup>F4273</sup>chargeable] on a company (“the [<sup>F4273</sup>chargeable] company”) by virtue of section [<sup>F4274</sup>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) [<sup>F4275</sup>the whole or any part of] the same interest in the controlled foreign company as is or was held by the [<sup>F4273</sup>chargeable] company,

[<sup>F4276</sup>the whole or, as the case may be, the corresponding part of] the tax [<sup>F4273</sup>chargeable] on the [<sup>F4273</sup>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) [<sup>F4277</sup>the whole, or (as the case may be) the corresponding part, of] any interest due on the tax [<sup>F4278</sup>chargeable] on the [<sup>F4278</sup>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 [<sup>F4279</sup>(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 [<sup>F4280</sup>chargeable] company.

(9) In this section “the Taxes Acts” has the same meaning as in the Management Act.

#### Textual Amendments

**F4266** 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

**F4267** 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

**F4268** 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

**F4269** 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

**F4270** 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

**F4271** 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

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- F4272**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**
- F4273**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**
- F4274**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**
- F4275**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**
- F4276**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**
- F4277**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**
- F4278**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**
- F4279**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**
- F4280**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)**

**C491** See 1970(M) s.55(1)(g) and (6A).

**Marginal Citations**

**M604** Source—1984 s.89(1)-(4), (7)-(11)

**[<sup>F4281</sup>754] 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.
- (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



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- (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.
- (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.]

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### Textual Amendments

**F4281S. 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](#)

### <sup>F4282</sup>**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).
- (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—

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- (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

**F4282S. 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](#)

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## 755 Information relating to controlled foreign companies

F4283

### Textual Amendments

**F4283S. 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](#)

## <sup>F4284</sup>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 <sup>F4285</sup>long-term insurance fund].
- (2) Subsections (3) and (4) below apply if, in the case of the relevant accounting period, the UK company is <sup>F4286</sup>charged to tax under the I minus E basis in respect of ] 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 <sup>F4287</sup>88(1) of the <sup>M605</sup>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 <sup>F4288</sup>gross roll-up business carried on by the UK company.]

[ In any case where—

- <sup>F4289</sup>(4A) (a) paragraph 4 of Schedule 26 to this Act applies to a dividend received by the UK company, and
- (b) but for this subsection, subsection (4) of section 804B of this Act would apply to that dividend,

the amount of credit for foreign tax in respect of that dividend shall be treated, for the purposes of that section, as wholly attributable to basic life assurance and general annuity business.]

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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 [<sup>F4285</sup>long-term insurance fund].
- (6) If, in the case of the relevant accounting period,—
- (a) the UK company is [<sup>F4286</sup>charged to tax under the I minus E basis in respect of ] 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 [<sup>F4290</sup>gross roll-up business],
- 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 [<sup>F4285</sup>long-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 <sup>F4291</sup> . . . 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) <sup>F4292</sup> . . . . .
- (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.
- <sup>F4293</sup>(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.
- (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.

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- (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;
- F4294 .....
- (13) For the purposes of this section, the part of the apportioned profit which is referable to—
- [<sup>F4295</sup>(a) basic life assurance and general annuity business, or
  - (ba) gross roll-up 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

- F4284S.** 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
- F4285** 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)
- F4286** Words in s. 755A(2)(6)(a) substituted (with effect in accordance with s. 39(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 8 para. 10 (with Sch. 8 Pt. 2)
- F4287** 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)
- F4288** Words in s. 755A(4) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 47(2) (with Sch. 7 Pt. 2)
- F4289S.** 755A(4A) inserted (31.12.2006 with effect in accordance with art. 1(2) of the amending S.I.) by The Insurance Companies (Corporation Tax Acts) (Miscellaneous Amendments) Order 2006 (S.I. 2006/3270), arts. 1(1), 8(a)
- F4290** Words in s. 755A(6)(c) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 47(3) (with Sch. 7 Pt. 2)

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- F4291** Words in s. 755A(8) omitted (31.12.2006 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), **arts. 1(1), 8(b)**
- F4292** S. 755A(9) omitted (31.12.2006 with effect in accordance with art. 1(2) of the repealing S.I.) by virtue of [The Insurance Companies \(Corporation Tax Acts\) \(Miscellaneous Amendments\) Order 2006 \(S.I. 2006/3270\)](#), **arts. 1(1), 8(c)**
- F4293** 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)**
- F4294** S. 755A(12): definition of "long-term insurance fund" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 14\(2\)\(d\)](#), **Sch. 27 Pt. 2(10)**, Note
- F4295** S. 755A(13)(a)(ba) substituted for s. 755A(13)(a)-(d) (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 47(4)** (with [Sch. 7 Pt. 2](#))

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**Modifications etc. (not altering text)**

- C492** S. 755A modified (6.4.1999) by [The Individual Savings Account \(Insurance Companies\) Regulations 1998 \(S.I. 1998/1871\)](#), **regs. 1, 5, 18**
- C493** 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**)
- C494** 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)**
- C495** 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**)

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**Marginal Citations**

**M605** 1989 c. 26.

[<sup>F4296</sup>**755A** **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 <sup>M606</sup>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



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- (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
- (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 <sup>M607</sup>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.
- <sup>F4297</sup>(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

**F4296S.** 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](#)

**F4297S.** 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

**M606** 1985 c. 6.

**M607** 1985 c. 6.

#### <sup>F4298</sup>**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

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- (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.
- (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

**F4298S.** 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](#)

#### [<sup>F4299</sup>755BControl" 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—

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- (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;
  - (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.]

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### Textual Amendments

**F4299S. 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.

<sup>M608</sup>(1) In this Chapter—

[<sup>F4300</sup>“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.

[<sup>F4301</sup>(1A) In this Chapter “EEA territory”, in relation to any time, means a territory which is an EEA state at that time other than the United Kingdom.

(1B) But a territory is not to be regarded for the purposes of subsection (1A) above as an EEA state at any time if—

- (a) it is not a member State at that time, and
- (b) there are no arrangements made in relation to the territory having effect by virtue of section 173 of the Finance Act 2006 (international tax enforcement arrangements) at that time.]

(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) <sup>F4302</sup> .....
- (b) section 417(7) to (9);

<sup>F4303</sup> .....

### Textual Amendments

**F4300S. 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](#)

**F4301S. 756(1A)(1B)** inserted (with effect in accordance with [Sch. 15 para. 10](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 15 para. 6](#)

**F4302S. 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

**F4303** 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

**M608** Source—1984 s.91

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## CHAPTER V

### OFFSHORE FUNDS

#### *[<sup>F4304</sup>Meaning of offshore fund*

#### Textual Amendments

**F4304** 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 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).
- <sup>F4305</sup>(3) In this section “collective investment scheme” means any arrangements which are a collective investment scheme for the purposes of Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act and orders made under subsection (5) of that section) or would be if the words “, within a period appearing to him to be reasonable,” were omitted from section 236(3)(a) of that Act.
- (4) But the reference to offshore funds in section 760(3)(a) does not include any arrangements which are not a collective investment scheme for the purposes of that Part of that Act.]

#### Textual Amendments

**F4305** S. 756A(3)(4) substituted for s. 756A(3) (19.7.2007) by Finance Act 2007 (c. 11), s. 57(2)

#### Modifications etc. (not altering text)

**C496** 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 umbrella funds*

#### 756B Treatment of umbrella funds

- (1) In this Chapter, an “umbrella fund” means an offshore fund—

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- (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)**

**C497** *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”)—
  - (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;

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- (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)**

**C498** 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**

- <sup>M609</sup>(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 [<sup>F4306</sup>the 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 [<sup>F4307</sup>127 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) <sup>M610</sup>Subject 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 [<sup>F4307</sup>1992] Act.
- (3) Notwithstanding anything in paragraph (b) of subsection (1) of section [<sup>F4307</sup>62 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—
- (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 [<sup>F4307</sup>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.



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[<sup>F4308</sup>(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 [<sup>F4309</sup>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 [<sup>F4310</sup>(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 [<sup>F4311</sup>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 [<sup>F4312</sup>(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 [<sup>F4313</sup>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 [<sup>F4307</sup>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 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

**F4306** 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)**

**F4307** 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))

**F4308** 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)**

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**F4309** 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)**

**F4310** 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)**

**F4311** 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)**

**F4312** 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)**

**F4313** 1990 s.89 and Sch.14 para.10 (*correction of errors*)—*deemed always to have had effect.*

#### Modifications etc. (not altering text)

**C499** 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

**M609** Source—1984 s.92(1), (7)

**M610** Source—1984 s.92(2)-(6), (8)

## 758 Offshore funds operating equalisation arrangements

<sup>M611</sup>(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.

(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—

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- (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 [F4314]127 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 [F4314]127 of the 1992] Act includes a reference to that section as applied by [F4315]any provision of Chapter 2 of Part 4 of that Act].
- [F4316](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

**F4314** 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))

**F4315** 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)**

**F4316** 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)

**C500** 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**

#### Marginal Citations

**M611** Source—1984 s.93

## 759 Material interests in offshore funds

M612(1) F4317 .....

[F4318(1A) F4317 .....

- (2) Subject to the following provisions of this section, a person's interest in [F4319]an offshore fund] is a material interest if, at the time when he acquired the interest, it could

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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 <sup>F4320</sup>the 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 <sup>F4321</sup>an 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 <sup>F4322</sup>that is not resident in the United Kingdom](an “overseas company”) do not constitute a material interest <sup>F4323</sup>in 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—
    - (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.

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- (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 [<sup>F4322</sup>that is not resident in the United Kingdom] is not a material interest [<sup>F4323</sup>in 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 [<sup>F4324</sup>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 [<sup>F4324</sup>272(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

- F4317S.** 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)
- F4318S.** 759(1A) inserted (with application in accordance with s. 134(8) of the amending Act) by [Finance Act 1995 \(c. 4\), s. 134\(3\)](#)
- F4319** 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)
- F4320** 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)
- F4321** 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)
- F4322** 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)
- F4323** 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)
- F4324** 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))

#### Marginal Citations

**M612** Source—1984 s.94

## 760 Non-qualifying offshore funds

- <sup>M613</sup>(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.

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- (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;<sup>F4325</sup> . . .
  - (b) <sup>F4325</sup> . . . . .
  - (c) <sup>F4325</sup> . . . . .
  - (d) <sup>F4325</sup> . . . . .
- (4) <sup>F4326</sup> . . . . .
- (5) <sup>F4326</sup> . . . . .
- (6) <sup>F4326</sup> . . . . .
- (7) <sup>F4326</sup> . . . . .
- (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 [<sup>F4327</sup>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 [<sup>F4328</sup>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.

- <sup>F4329</sup>(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
  - (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.

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### Textual Amendments

- F4325**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)
- F4326**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)
- F4327**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)
- F4328**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)
- F4329**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)

- C501** S. 760 modified (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 26 para. 17**

### Marginal Citations

- M613** Source—1984 s.95

## *Charge to tax of offshore income gains*

### **761 Charge to income tax or corporation tax of offshore income gain.**

- <sup>M614</sup>(1) If a disposal to which this Chapter applies gives rise in accordance with section 758 [<sup>F4330</sup>or Schedule] 28 to an offshore income gain, then, subject to the provisions of this section, the amount [<sup>F4331</sup>of 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.]
- [<sup>F4332</sup>(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, [<sup>F4333</sup>sections 2(1), 10 and 10B][<sup>F4334</sup>of the 1992 Act] (persons chargeable to tax in respect of chargeable gains) and [<sup>F4335</sup>section 11(2A)(c)] shall have effect in relation to income tax or corporation tax in respect of offshore 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 [<sup>F4336</sup>sections 10 and 10B][<sup>F4334</sup>of the 1992 Act] in accordance with subsection (2) above, paragraphs (a) and (b) of [<sup>F4337</sup>subsection (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” [<sup>F4338</sup>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”].



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F4339(4) . . . . .

(5) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, section [F4334]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 [F4340]charitable company] shall be exempt from [F4341]corporation tax] in respect of an offshore income gain if the gain is applicable and applied for charitable purposes  
F4342 . . . . .

[F4343](6A) See section 535 of ITA 2007 for an exemption for income tax purposes for offshore income gains accruing to a charitable trust.

(6B) 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.

(6C) In this section “charity” and “charitable company” have the same meaning as in section 506 and “market value” has the same meaning as in the 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 [F4334]1992] Act, and

[F4344](b) at the time of the disposal referred to in paragraph (a) above the trustees of the settlement are neither resident nor ordinarily resident in the United Kingdom for the purposes of the 1992 Act,]

subsection (1) above shall not apply in relation to any offshore income gain to which the disposal gives rise.

#### Textual Amendments

**F4330** 1990 s.89 and Sch.14 para.11 (*correction of errors*)—*deemed always to have had effect. Previously “and Schedule.”*

**F4331** 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)

**F4332** 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)

**F4333** Words in s. 761(2) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22), s. 23(1)(a)(i)*

**F4334** 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))

**F4335** Words in s. 761(2) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22), s. 23(1)(a)(ii)*

**F4336** Words in s. 761(3) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22), s. 23(1)(b)(i)*

**F4337** Words in s. 761(3) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22), s. 23(1)(b)(ii)*

**F4338** Words in s. 761(3) substituted (20.7.2005) by *Finance (No. 2) Act 2005 (c. 22), s. 23(1)(b)(iii)*

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- F4339S.** 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)
- F4340** Words in s. 761(6) 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. 179(2)(a)** (with Sch. 2)
- F4341** Words in s. 761(6) 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. 179(2)(b)** (with Sch. 2)
- F4342** Words in s. 761(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 179(2)(c)**, **Sch. 3 Pt. 1** (with Sch. 2)
- F4343S.** 761(6A)-(6C) 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. 179(3)** (with Sch. 2)
- F4344S.** 761(7)(b) substituted (with effect in accordance with Sch. 12 para. 47(2) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 12 para. 47(1)**

#### Marginal Citations

**M614** Source—1984 s.96; 1987 Sch.15 16(1)

## 762 Offshore income gains accruing to persons resident or domiciled abroad.

- <sup>M615</sup>(1) Section [<sup>F4345</sup>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 [<sup>F4345</sup>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 [<sup>F4345</sup>87(6)], there shall be substituted a reference to offshore income gains;
  - (b) [<sup>F4345</sup>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 [<sup>F4345</sup>87(7)] the reference to tax shall be construed as a reference to income tax or corporation tax; and
  - (d) sections [<sup>F4345</sup>87(10) and 97(6)] shall be omitted.
- (3) In section [<sup>F4345</sup>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 [<sup>F4345</sup>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,

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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—
- (a) [<sup>F4346</sup>Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad)] 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 [<sup>F4347</sup>that Chapter] 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 [<sup>F4348</sup>Chapter 2 of Part 13 of ITA 2007] or any provision of [<sup>F4349</sup>Chapter 5 of Part 5 of ITTOIA 2005].

#### Textual Amendments

**F4345** 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))

**F4346** Words in s. 762(5)(a) 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. 180(a)(i)** (with Sch. 2)

**F4347** Words in s. 762(5)(b) 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. 180(a)(ii)** (with Sch. 2)

**F4348** Words in s. 762(6) 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. 180(b)** (with Sch. 2)

**F4349** 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

**M615** Source—1984 s.97

VALID FROM 21/07/2008

#### [<sup>F4350</sup>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.

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- (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), 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

**F4350** 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

#### **F4350** ~~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).]

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### Textual Amendments

**F4350** 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](#)

## [<sup>F4351</sup>762] 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
    - (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

**F4351** 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.

- <sup>M616</sup>(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 [<sup>F4352</sup>1992] Act, then that disposal is in the following provisions of this section referred to as [<sup>F4352</sup>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 [<sup>F4352</sup>the 1992 Act disposal] in substitution for section [<sup>F4352</sup>37(1)] of that Act (deduction of consideration chargeable to tax on income).

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- (3) Subject to the following provisions of this section, in the [F4352 computation of the gain] accruing on [F4352 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 [F4352 the 1992 Act disposal] is of such a nature that, by virtue of section [F4352 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 [F4352 the 1992 Act disposal] forms part of a transfer to which section [F4352 162] of that Act applies (roll-over relief on transfer of business in exchange wholly or partly 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 [F4353 section 757(5) or (6)] or 758(5), the [F4352 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 [F4352 128] of that Act (consideration given or received for new holding on a reorganisation).
- [F4354 (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.
- [F4355 (8) For the purposes of subsection (7)(b) above, whether the person who made the disposal is connected with another person is determined in accordance with section 839.]

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#### Textual Amendments

- F4352** 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))
- F4353** 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)
- F4354** 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)
- F4355** S. 763(8) 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. 181** (with Sch. 2)

#### Marginal Citations

**M616** Source—1984 s.98

### 764 Offshore income gains of trustees.

F4356 .....

#### Textual Amendments

- F4356** S. 764 repealed (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 23, 27(1), **Sch. 26 Pt. 3(15)**, Note

## CHAPTER VI

### MISCELLANEOUS

#### *Migration etc. of company*

### 765 Migration etc. of companies.

<sup>M617</sup>(1) Subject to the provisions of this section [<sup>F4357</sup>and 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*
- <sup>F4358</sup>(c) for a body corporate [<sup>F4359</sup>resident 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.



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- (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—
- (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

**F4357** 1990 s.68(1), (4) *in relation to transactions carried out on or after 1 July 1990.*

**F4358** *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.*

**F4359** 1988(F) s.105(6) *from 15 March 1988. Previously*  
“so resident”.

#### Modifications etc. (not altering text)

**C502** *Provisions of this section employed in 1988(F) ss.105, 130 and Sch.7.*

#### Marginal Citations

**M617** Source—1970 s.482(1)-(4)

### <sup>F4360</sup>765 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 <sup>M618</sup> 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

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relating to the transaction, to related transactions, or to persons connected with the transaction or related transactions, as the Board may require.]

#### Textual Amendments

**F4360**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

**M618** O.J. No. L178/5

### 766 Offences under section 765.

- (1) <sup>M619</sup>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—
- 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
  - 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) <sup>M620</sup>Any person who is guilty of an offence under this section shall be liable on conviction on indictment—
- to imprisonment for not more than two years or to a fine, or to both; or
  - 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) <sup>M621</sup>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

**M619** Source—1970 s.482(5)

**M620** Source—1970 s.482(6)

**M621** Source—1970 s.482(11)

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## 767 Interpretation and commencement of sections 765 and 766.

- (1) <sup>M622</sup> 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 beginning of that year of assessment or other period and that it continued to be so resident at all times thereafter.
- (3) <sup>M623</sup> 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<sup>F4361</sup>.
- (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 <sup>M624</sup>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<sup>F4362</sup>.
- (6) <sup>M625</sup> 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

**F4361** Repealed by 1988(F) s.148 and Sch. 14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

**F4362** Repealed by 1988(F) s.148 and Sch. 14 Part IV from 15 March 1988 subject to 1988(F) s.105(6).

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### Marginal Citations

**M622** Source—1970 s.482(7)

**M623** Source—1970 s.482(8)-(10)

**M624** 1985 c. 6.

**M625** Source—1970 s.482(12)

## *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

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- 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.
- (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)**

**C503** 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.

<sup>F4363</sup>**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—

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- (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,
- 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 company (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.

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- (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.
- (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

**F4363** 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)

**C504** 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.

[<sup>F4364</sup>(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 [<sup>F4365</sup>or 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 [<sup>F4366</sup>or 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 [<sup>F4367</sup>sections 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—



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- (”) 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 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 [F4368 sections 767A and 767AA] as it applies for the purposes of section 768.

#### Textual Amendments

**F4364** 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)

**F4365** 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)

**F4366** 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)

**F4367** 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)

**F4368** 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)

**C505** 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.

#### [F4369] 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—

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- (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 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 <sup>M626</sup>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.]

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#### Textual Amendments

**F4369S. 767C** inserted (with effect in accordance with s. 115(3) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 115\(1\)](#)

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#### Modifications etc. (not altering text)

**C506 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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### Marginal Citations

M626 1970 c. 9.

## 768 Change in ownership of company: disallowance of trading losses.

<sup>M627</sup>(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 [<sup>F4370</sup>section 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

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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 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

**F4370** 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)

**C507** 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](#)

**C508** 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.

**C509** Ss. 768-768E modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\), Sch. 13 para. 30](#)

**C510** See s.245—*calculation etc. of ACT on change of ownership.*

#### Marginal Citations

**M627** Source—1970 s.483(1)-(7)

### [768A <sup>F4371</sup> 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

**F4371** S. 768A inserted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 73\(3\)\(4\)\(5\), Sch. 15 para. 20\(1\)](#)

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#### Modifications etc. (not altering text)

**C511** 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.

### [<sup>F4373</sup>**768B**<sup>F4372</sup> **Change in ownership of company with investment business: deductions generally**]

- (1) This section applies where there is a change in the ownership of [<sup>F4374</sup>a 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) [<sup>F4375</sup>are, 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 [<sup>F4376</sup>expenses 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.

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- (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 [F4377 section 253 of the Capital Allowances Act] and section [F4378 75(7)] as falling to be made in that part.
- (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) [F4379 expenses 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.
- [F4380] (10) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits [F4381 and 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 [F4382 (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 [F4383, 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 [F4384 (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 [F4385 “company with investment business”] has the same meaning as in Part IV.]

#### Textual Amendments

- F4372** 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)**
- F4373** 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**
- F4374** 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)**
- F4375** 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)**
- F4376** 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)**
- F4377** 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**
- F4378** 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)**
- F4379** 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)**
- F4380** 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)



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**F4381** 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)**

**F4382** 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)

**F4383** 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)

**F4384** 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)

**F4385** 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)**

**C512** Ss. 768B, 768C modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 43(7)**

**C513** 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.

**C514** Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

**[<sup>F4373</sup>768D] Deductions: asset transferred within group.**

- (1) This section applies where—
  - (a) there is a change in the ownership of [<sup>F4386</sup>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



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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 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) [<sup>F4387</sup>expenses 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.
- <sup>F4388</sup>(9) Part IV of Schedule 28A shall have effect for the purpose of restricting, in a case where this section applies, the debits [<sup>F4389</sup>and 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 [<sup>F4390</sup>(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
- [<sup>F4391</sup>“company with investment business” has the same meaning as in Part 4.]
- [ This section applies in relation to an asset to which Schedule 29 to the Finance Act <sup>F4392</sup>(13) 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.]]

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### Textual Amendments

**F4373** 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](#)

**F4386** 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\(2\)](#)

**F4387** 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\(3\)](#)

**F4388** 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](#))

**F4389** 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\(2\)](#)

**F4390** 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](#))

**F4391** 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\(4\)](#)

**F4392** S. 768C(13) inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 4\(2\)](#)

### Modifications etc. (not altering text)

**C515** Ss. 768B, 768C modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 43\(7\)](#)

**C516** 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.

**C517** Ss. 768-768E modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 13 para. 30](#)

### <sup>F4393</sup>**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 [<sup>F4394</sup>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 [<sup>F4395</sup>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 [<sup>F4396</sup>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 [<sup>F4397</sup>a company with investment business], according to the length of the periods,

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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.

- (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) [<sup>F4398</sup>a company with investment business] where paragraph (a), (b) or (c) of section 768B(1) applies, or
    - (ii) a company which is not [<sup>F4398</sup>a company with investment business], profits of an accounting period ending after the change of ownership;
  - (b) in the case of [<sup>F4398</sup>a 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;
  - [<sup>F4399</sup>(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

- F4393S.** 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)
- F4394** 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)**
- F4395** 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)**
- F4396** 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)**
- F4397** 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)**
- F4398** 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)**
- F4399S.** 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)

- C518** 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**

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**C519** 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.

**C520** Ss. 768-768E modified (22.7.2008) by Crossrail Act 2008 (c. 18), **Sch. 13 para. 30**

### [<sup>F4400</sup>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 [<sup>F4401</sup>a 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 [<sup>F4402</sup>“company with investment business”] has the same meaning as in Part 4.]

#### Textual Amendments

**F4400**S. 768E inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(3)**

**F4401** 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)**

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**F4402** 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)**

**C521** 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.

**C522** 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.

<sup>M628</sup>(1) For the purposes of [<sup>F4403</sup>sections 767A, [<sup>F4404</sup>767AA, 767C,] 768, 768A, 768B [<sup>F4405</sup>, 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 [<sup>F4406</sup>, and any gift of shares which] is unsolicited and made without regard to the provisions of [<sup>F4407</sup>sections 767A, [<sup>F4408</sup>767AA,] 768, 768A, 768B [<sup>F4405</sup>, 768C and 768D]], <sup>F4409</sup> . . . shall be left out of account.

[<sup>F4410</sup>(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,

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then, in considering whether there has been a change in the ownership of the company for the purposes of section 767A [<sup>F4411</sup>, 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.]

- (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 [<sup>F4412</sup>, 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.

[<sup>F4413</sup>(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 [<sup>F4414</sup>section 768, 768A, 768B [<sup>F4415</sup>, 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 [<sup>F4416</sup>sections 767A, [<sup>F4404</sup>767AA, 767C,] 768, 768A, 768B [<sup>F4405</sup>, 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.

[<sup>F4417</sup>(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

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- “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.
- (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*<sup>F4418</sup>;
  - (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*
  - <sup>F4419</sup>(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.
- <sup>F4420</sup>(9) Subsection (8) above shall not apply in relation to section 767A [<sup>F4411</sup>, 767AA or 767C].]

#### Textual Amendments

**F4403** 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)

**F4404** 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)

**F4405** 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)



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- F4406** 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)**
- F4407** 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)**
- F4408** 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)**
- F4409** 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
- F4410** 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)**
- F4411** 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)**
- F4412** 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)
- F4413** 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)**
- F4414** 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)**
- F4415** 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)
- F4416** 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)**
- F4417** 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)**.
- F4418** 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.
- F4419** 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.
- F4420** 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)

**C523** See s.245—*calculation etc. of ACT on change of ownership.*

#### Marginal Citations

**M628** Source—1970 s.484

### *Transactions between associated persons*

[<sup>F4421</sup>**770** ~~R~~ **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

**F4421** 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**

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#### F4421 **770 Sales etc. at an undervalue or overvalue.**

.....

##### **Textual Amendments**

**F4421 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

#### F4421 **771 Transactions by petroleum companies.**

.....

##### **Textual Amendments**

**F4421 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

#### F4421 **772 Information for purposes of section 770, and appeals.**

.....

##### **Textual Amendments**

**F4421 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

#### F4421 **773 Interpretation of sections 770 and 771.**

.....

##### **Textual Amendments**

**F4421 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.**

<sup>M629</sup>(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

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on the last day of the period income of an amount equal to the amount of the deduction and shall be chargeable [<sup>F4422</sup>to tax] in respect thereof [<sup>F4423</sup>(in the case of corporation tax, under Case VI of Schedule D)].

- (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

**F4422** 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](#))

**F4423** 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](#))

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### Marginal Citations

M629 Source—1970 s.486

## <sup>F4424</sup> Factoring of income receipts etc

### Textual Amendments

**F4424** 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**

- <sup>F4425</sup>(1) This section applies if an arrangement is a structured finance arrangement in relation to a person (“the borrower”).
- (1A) If the arrangement would (disregarding this section) have had the relevant effect (see subsections (2) and (3)), the arrangement is not to have that effect.
  - (1B) If the arrangement would (disregarding this section) not have had that effect, the payments mentioned in section 774A(2)(d) are to be treated for tax purposes as income of the borrower payable in respect of the security (whether or not those payments are also the income of anyone else for tax purposes).]

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- (2) If the borrower is a person other than a partnership, the relevant effect is that—
- (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) [<sup>F4426</sup>a person in relation to whom this section applies is] 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) [<sup>F4427</sup>If a person in relation to whom this section applies is] 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,
- and the deemed interest in respect of the advance is treated as paid at the times when the interest elements are treated as paid.

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(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.

#### Textual Amendments

**F4425S.** 774B(1)-(1B) substituted for s. 774B(1) (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 3(2)

**F4426** Words in s. 774B(4)(a) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 3(3)

**F4427** Words in s. 774B(5) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 3(4)

### 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,

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- (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
  - (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.

[<sup>F4428</sup>(2A) In determining whether the condition in subsection (1)(b) is met it is to be assumed that amounts of income equal to the payments mentioned in section 774C(2)(f) or (4) (e) were payable to the borrower partnership before the time at which the relevant change in relation to its membership involving the lender or a person connected with the lender occurs.]

- (3) In this section “relevant member of the borrower partnership” means—



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- (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 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.

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- (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
  - (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.

#### Textual Amendments

**F4428S.** 774D(2A) inserted (with effect in accordance with [Sch. 5 para. 7\(1\)-\(5\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 5 para. 4](#)

#### 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—

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- (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.

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,
  - [<sup>F4429</sup>(b) Schedule 13 to the Finance Act 2007 (sale and repurchase of securities) 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 [<sup>F4430</sup>sections 228B and 228C] 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, [<sup>F4431</sup>the borrower under the structured finance arrangement, a person connected with that borrower or (if that borrower is a partnership) a member of the partnership], and
  - (b) if section 774D applies, a relevant member of the borrower partnership (within the meaning of that section).

#### Textual Amendments

**F4429S.** 774E(4)(b) substituted (with effect in accordance with S.I. 2007/2483, art. 3) by Finance Act 2007 (c. 11), s. 47(4), Sch. 14 para. 9

**F4430** Words in s. 774E(5)(b) substituted (with effect in accordance with Sch. 5 para. 17(5)-(9) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 17(4)

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**F4431** Words in s. 774E(7)(a) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 5

#### **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.

#### **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 [<sup>F4432</sup>include—
      - (i) the person's] obtaining directly or indirectly the value of any asset or otherwise deriving directly or indirectly any benefit from it, [<sup>F4433</sup>and
      - (ii) the discharge (in whole or in part) of any liability of the person,]
    - (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 [<sup>F4434</sup>include—
      - (i) payments in respect of any other asset substituted for it under the arrangement, and
      - (ii) 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.]
- [<sup>F4435</sup>(5A) In determining for the purposes of sections 774A to 774D whether an amount is recorded as a financial liability in respect of the advance it is to be assumed that the period of account in which the advance is received ended immediately after the receipt of the advance.]

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- (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).

#### Textual Amendments

- F4432** Words in s. 774G(3)(a) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 6(2)(a)
- F4433** S. 774G(3)(a)(ii) and preceding word inserted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 6(2)(b)
- F4434** Words in s. 774G(3)(c) substituted (with effect in accordance with Sch. 5 para. 7(1)-(5) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 6(3)
- F4435** S. 774G(5A) inserted (19.7.2007) by Finance Act 2007 (c. 11), Sch. 5 paras. 6(4), 7(6)

#### Other provisions

### 775 Sale by individual of income derived from his personal activities.

F4436

#### Textual Amendments

- F4436** S. 775 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 182, Sch. 3 Pt. 1 (with Sch. 2)

### <sup>F4437</sup>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—

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- (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 [<sup>F4438</sup>(certain annual payments not to form part of the income of a company for corporation tax purposes)];
  - (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;
  - “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

**F4437S.** 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)

**F4438** Words in s. 775A(4)(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. 183 (with Sch. 2)

#### 776 Transactions in land: taxation of capital gains.

- <sup>M630</sup>(1) This section is enacted to prevent the avoidance of tax by [<sup>F4439</sup>companies] 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.

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- (3) Where this section applies, the whole of any such gain shall for all the purposes of the [F4440 Corporation Tax Acts] be treated—
- (a) as being income which arises when the gain is realised F4441 . . . ; and
  - (b) subject to the following provisions of this section, as being income of the [F4442 company by which] the gain is realised.
- [F4443 (3A) The gain treated as income shall be charged—
- (a) F4444 . . . . .
  - (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) F4445 . . . . . ]
- (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
  - (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 [F4446 profits] under F4447 . . . Case I of Schedule D of a [F4448 company] dealing in land are computed in such a case; or
  - (b) account may be taken of the adjustments to be made in computing such [F4446 profits] under [F4449F4450 . . . subsections (2) and (3) of section 99 above].
- In the application of this subsection to Scotland, “freehold” means the [F4451 interest] 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 F4452 . . . Case I of Schedule D of a [F4453 company which] 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 [F4454 another person which is a company], whether or not put at the disposal of the first-mentioned person,



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subsection (3)(b) above shall apply to the gain, or that part of it, with the substitution of [F<sup>4455</sup>that company] for the person by whom the gain was realised.

(9) F<sup>4456</sup> .....

(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
  - (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 [F<sup>4457</sup>company][F<sup>4458</sup>which] considers that paragraph (a) or (c) of subsection (2) above may apply as respects a gain of a capital nature which that [F<sup>4457</sup>company] has obtained from the disposal of land, or which [F<sup>4459</sup>it] would obtain from a proposed disposal of land, supplies to the inspector to whom [F<sup>4459</sup>it] makes [F<sup>4460</sup>its] 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 [F<sup>4457</sup>company] 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 [F<sup>4457</sup>company] under this section; and
- (b) if the inspector notifies that [F<sup>4457</sup>company] that he is so satisfied, the gain shall not be chargeable on that [F<sup>4457</sup>company] 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.

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### Textual Amendments

- F4439** Word in s. 776(1) 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. 184\(2\)](#) (with [Sch. 2](#))
- F4440** Words in s. 776(3) 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. 184\(3\)\(a\)](#) (with [Sch. 2](#))
- F4441** 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](#))
- F4442** Words in s. 776(3)(b) 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. 184\(3\)\(b\)](#) (with [Sch. 2](#))
- F4443** 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](#))
- F4444** S. 776(3A)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 184\(4\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4445** S. 776(3B) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 184\(5\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4446** 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](#)
- F4447** Words in s. 776(6)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 184\(6\)\(a\)\(i\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4448** Word in s. 776(6)(a) 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. 184\(6\)\(a\)\(ii\)](#) (with [Sch. 2](#))
- F4449** 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](#))
- F4450** Words in s. 776(6)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 184\(6\)\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4451** 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](#)
- F4452** Words in s. 776(7) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 184\(7\)\(a\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4453** Words in s. 776(7) 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. 184\(7\)\(b\)](#) (with [Sch. 2](#))
- F4454** Words in s. 776(8) 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. 184\(8\)\(a\)](#) (with [Sch. 2](#))
- F4455** Words in s. 776(8) 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. 184\(8\)\(b\)](#) (with [Sch. 2](#))
- F4456** S. 776(9) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 184\(9\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4457** Words in s. 776(11) 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. 184\(10\)\(a\)](#) (with [Sch. 2](#))
- F4458** Word in s. 776(11) 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. 184\(10\)\(b\)](#) (with [Sch. 2](#))
- F4459** Words in s. 776(11) 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. 184\(10\)\(c\)](#) (with [Sch. 2](#))
- F4460** Word in s. 776(11) 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. 184\(10\)\(d\)](#) (with [Sch. 2](#))

### Marginal Citations

**M630** Source—1970 s.488; 1979(C) Sch.7

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## 777 Provisions supplementary to [F4461]section 776].

- <sup>M631</sup>(1) This section has effect to supplement [F4462]section 776].
- (2) In applying [F4463]section 776 and this section] 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 [F4464]section 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 [F4465]section 776 and this section] 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 [F4466]section 776 and this section]—
- (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 [F4467]section 776].
- (7) For the purposes of [F4468]section 776 and this section] partners, or the trustees of settled property, or personal 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 [F4469]a company] is assessed to [F4470]corporation tax under section 776] in respect of consideration receivable by another person—
- (a) [F4471]it] shall be entitled to recover from that other person any part of that tax which [F4471]it] 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 [F4472]the company] assessed, but without prejudice to the right to recover it from [F4472]the company] actually assessed;

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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.

F4473 .....

(9) F4474 .....

(10) [F4475Section 776 has] effect subject to [F4476Chapter 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 [F4477company] 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 [F4478161 of the 1992] Act (property becoming or ceasing to be stock in trade).

[F4479(12) Where under section 776(8) the company charged to corporation tax is not the person (“P”) by whom the gain was realised and the tax has been paid, then for the purposes of sections 37 and 39 of the 1992 Act (profits taxable as income excluded from tax on chargeable gains) P shall be regarded as having been charged to that tax.]

(13) For the purposes of [F4480section 776 [F4481of this Act and Chapter 3 of Part 13 of ITA 2007] and this section]—

[F4482“capital”, in relation to a gain, means that, apart from section 776, the gain does not fall to be included in any calculation of income for [F4483purposes of the Tax Acts];]

“company” includes any body corporate; and

“share” includes stock;

F4484 .....

### Textual Amendments

**F4461** Words in s. 777 sidenote 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. 185\(13\)](#) (with [Sch. 2](#))

**F4462** Words in s. 777(1) 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. 185\(2\)](#) (with [Sch. 2](#))

**F4463** Words in s. 777(2) 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. 185\(3\)\(a\)](#) (with [Sch. 2](#))

**F4464** Words in s. 777(2) 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. 185\(3\)\(b\)](#) (with [Sch. 2](#))

**F4465** Words in s. 777(4) 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. 185\(4\)](#) (with [Sch. 2](#))

**F4466** Words in s. 777(6) 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. 185\(5\)\(a\)](#) (with [Sch. 2](#))

**F4467** Words in s. 777(6)(b) 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. 185\(5\)\(b\)](#) (with [Sch. 2](#))

**F4468** Words in s. 777(7) 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. 185\(6\)](#) (with [Sch. 2](#))

**F4469** Words in s. 777(8) 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. 185\(7\)\(a\)](#) (with [Sch. 2](#))

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- F4470** Words in s. 777(8) 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. 185(7)(b)** (with Sch. 2)
- F4471** Words in s. 777(8)(a) 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. 185(7)(c)** (with Sch. 2)
- F4472** Words in s. 777(8)(b) 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. 185(7)(d)** (with Sch. 2)
- F4473** Words in s. 777(8) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(7)(e), Sch. 3 Pt. 1** (with Sch. 2)
- F4474** S. 777(9) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(8), Sch. 3 Pt. 1** (with Sch. 2)
- F4475** Words in s. 777(10) 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. 185(9)** (with Sch. 2)
- F4476** 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)
- F4477** Word in s. 777(11) 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. 185(10)** (with Sch. 2)
- F4478** 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))
- F4479** S. 777(12) 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. 185(11)** (with Sch. 2)
- F4480** Words in s. 777(13) 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. 185(12)(a)** (with Sch. 2)
- F4481** Words in s. 777(13) 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), arts. 1, 2(3)(a)**
- F4482** S. 777(13): definition of "capital" substituted for definition of "capital amount" (6.4.2007 with effect in accordance with s. 1034(1) of the amending Act) by virtue of **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(12)(b)** (with Sch. 2)
- F4483** S. 777(13): words in definition of "capital" substituted (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), arts. 1, 2(3)(b)**
- F4484** Words in s. 777(13) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 185(12)(c), Sch. 3 Pt. 1** (with Sch. 2)

#### Marginal Citations

**M631** Source—1970 s.489; 1979(C) Sch.7

### 778 Power to obtain information.

<sup>M632</sup>(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 [<sup>F4485</sup>section 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 [<sup>F4486</sup>section 776]

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notwithstanding that, in the opinion of the person to whom the notice is given, no liability to tax arises under [<sup>F4487</sup>that section]; 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.

#### Textual Amendments

**F4485** Words in s. 778(1) 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. 186\(a\)](#) (with [Sch. 2](#))

**F4486** Words in s. 778(2)(b) 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. 186\(b\)\(i\)](#) (with [Sch. 2](#))

**F4487** Words in s. 778(2)(b) 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. 186\(b\)\(ii\)](#) (with [Sch. 2](#))

#### Modifications etc. (not altering text)

**C524** 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.

#### Marginal Citations

**M632** Source—1970 s.490

### 779 Sale and leaseback: limitation on tax reliefs.

<sup>M633</sup>(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

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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 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.



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- (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.
- (10) In this section references to rent under a lease include references to
- [<sup>F4488</sup>(a)] rent which the person entitled to the lease is under subsection (4), (5) or (6) of section 37 [<sup>F4489</sup>or under section 37A] or under section 87 [<sup>F4490</sup>or 87A] treated, for any purpose, as paying in respect of land comprised in the lease, [<sup>F4491</sup>and
  - (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 [<sup>F4492</sup>and 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;

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- (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 <sup>F4493</sup> . . . ;
- <sup>F4494</sup>(aa) a deduction in calculating the profits of a UK property business;
- (b) a deduction in computing [<sup>F4495</sup>profits] 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 <sup>F4496</sup> . . . 396;
- <sup>F4497</sup>(ca) a deduction in computing profits or other income or gains chargeable to income tax under or by virtue of any provision to which [<sup>F4498</sup>section 1016 of ITA 2007] applies, or in computing any loss for which relief is allowable under [<sup>F4499</sup>section 152 of ITA 2007];
- (d) [<sup>F4500</sup>a deduction] under section 75 or 76;
- (e) [<sup>F4501</sup>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

**F4488** 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](#))

**F4489** 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](#))

**F4490** 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](#))

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- F4491** 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)
- F4492** 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)
- F4493** 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
- F4494** 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)
- F4495** Words in s. 779(13)(b) substituted (31.7.1998) by [Finance Act 1998 \(c. 36\), s. 46\(3\)\(a\), Sch. 7 para. 1](#)
- F4496** 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)
- F4497** 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)
- F4498** Words in s. 779(13)(ca) 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. 187\(a\)](#) (with Sch. 2)
- F4499** Words in s. 779(13)(ca) 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. 187\(b\)](#) (with Sch. 2)
- F4500** 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\(2\)](#)
- F4501** 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)

- C525** S. 779 restricted (11.1.1994) by [Finance Act 1994 \(c. 9\), s. 252\(3\), Sch. 24 para. 23](#)
- C526** S. 779 excluded (24.7.1996) by [Broadcasting Act 1996 \(c. 55\), s. 149\(1\)\(f\), Sch. 7 para. 22](#) (with s. 43(6))
- C527** 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](#)
- C528** 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.](#)
- C529** S. 779(1)(2) excluded (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\), Sch. 3 para. 10](#)

#### Marginal Citations

**M633** Source—1970 s.491

## 780 Sale and leaseback: taxation of consideration received.

<sup>M634</sup>(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;

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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—

$$\frac{16 - N}{15}$$

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 [<sup>F4502</sup>profits] 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 [<sup>F4503</sup>an amount chargeable to tax in accordance with subsection (3A)].

[<sup>F4504</sup>(3A) The amount shall be charged—

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- (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.]
- [<sup>F4505</sup>(3C) An amount charged to income tax by virtue of subsection (3A)(a) above is treated for income tax purposes as an amount of income.]
- (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 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

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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

**F4502** Words in s. 780(3)(a) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

**F4503** 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)

**F4504** 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)

**F4505** S. 780(3C) 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. 188** (with Sch. 2)

#### Modifications etc. (not altering text)

**C530** 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

**M634** Source—1972 s.80

### 781 Assets leased to traders and others.

<sup>M635</sup>(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 [<sup>F4506</sup>to 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.

[<sup>F4507</sup>(1A) An amount charged to income tax under subsection (1) above is treated for income tax purposes as an amount of income.]

- (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.
- (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 [<sup>F4508</sup>profits] or losses of a trade, profession or vocation for the purposes of tax;

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- [<sup>F4509</sup>(ab) a deduction in computing profits or other income or gains chargeable to income tax under or by virtue of any provision to which [<sup>F4510</sup>section 1016 of ITA 2007] applies, or in computing any loss for which relief is allowable under [<sup>F4511</sup>section 152 of ITA 2007];]
- (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 <sup>F4512</sup> . . . 396;
- (c) [<sup>F4513</sup>a deduction] under section 75 or 76;
- (d) [<sup>F4514</sup>a 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 [<sup>F4508</sup>profits] 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 [<sup>F4515</sup>within the period specified in subsection (8A) below].

[<sup>F4516</sup>(8A) The period mentioned in subsection (8) above is—

- (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.]



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- (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 [<sup>F4517</sup>section 68 of the Capital Allowances Act].

### Textual Amendments

- F4506** 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)
- F4507** S. 781(1A) 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. 189\(2\)](#) (with Sch. 2)
- F4508** 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](#)
- F4509** 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)
- F4510** Words in s. 781(4)(ab) 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. 189\(3\)\(a\)](#) (with Sch. 2)
- F4511** Words in s. 781(4)(ab) 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. 189\(3\)\(b\)](#) (with Sch. 2)
- F4512** 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)
- F4513** 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)
- F4514** 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)
- F4515** 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\(2\)](#)
- F4516** 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\(3\)](#)
- F4517** 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)

- C531** S. 781 modified (11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 19\(1\)-\(4\)](#)
- C532** S. 781 excluded (11.1.1994) by [Finance Act 1994 \(c. 9\)](#), s. 252(3), [Sch. 24 para. 19\(6\)](#)
- C533** 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.](#)
- C534** S. 781 modified (8.11.1995) by [Atomic Energy Authority Act 1995 \(c. 37\)](#), [Sch. 3 para. 11\(1\)](#)
- C535** S. 781 modified (24.7.1996) by [Broadcasting Act 1996 \(c. 55\)](#), s. 149(1)(f), [Sch. 7 para. 24\(1\)](#) (with s. 43)
- C536** 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](#)
- C537** 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](#)
- C538** S. 781 modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), Sch. 13 paras. 16, [25](#)
- C539** See 1979(C) s.106 and Sch.3 para.9—amounts charged under s.781 to be excluded in computing capital gains.

### Marginal Citations

- M635** Source—1970 s.492 (1)-(5), (7)-(9); 1971 Sch.8 16(7)

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## 782 Leased assets: special cases.

- <sup>M636</sup>(1) This section shall apply, and section 781 shall not apply, to payments—
- (a) which are allowable by way of deductions in computing the [<sup>F4518</sup>profits] 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.

[<sup>F4519</sup>(1A) This section does not apply to a payment if or to the extent that, in the case of the lessee, it falls to be regarded in accordance with Chapter 6A of Part 2 of the Capital Allowances Act as a payment under a lease which is a long funding finance lease for the purposes of that Part.]

- (2) Subject to the following provisions of this section, the deduction allowable in computing the [<sup>F4518</sup>profits] 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 [<sup>F4518</sup>profits] 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

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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—

“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 [F4520 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

**F4518** 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**

**F4519** S. 782(1A) inserted (with effect in accordance with Sch. 9 para. 3(3) of the amending Act) by Finance Act 2006 (c. 25), **Sch. 9 para. 3(2)**

**F4520** 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)

**C540** S. 782 excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(5)**

**C541** 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.**

**C542** S. 782 excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 11(2)**

**C543** S. 782 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1)(f), **Sch. 7 para. 24(2)** (with s. 43)

**C544** 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

**M636** Source—1970 s.493; 1971 Sch.8 16(8)

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### 783 Leased assets: supplemental.

- <sup>M637</sup>(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
  - (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—

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- (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;
- 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 [<sup>F4521</sup>spouse or civil partner], and any relative, or [<sup>F4521</sup>spouse or civil partner] of a relative, of that individual or that individual’s [<sup>F4521</sup>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 [<sup>F4522</sup>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

**F4521** 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**

**F4522** 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)

**C545** S. 783(2) restricted (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(2)**

**C546** S. 783(4) excluded (11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 19(1)(a)(3)**

**C547** 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**

**C548** S. 783(4) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), Sch. 13 paras. 16(2), **25(2)**

**C549** 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).

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### Marginal Citations

M637 Source—1970 s.494

## 784 Leased assets subject to hire-purchase agreements.

- (1) <sup>M638</sup>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 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) <sup>M639</sup>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;

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(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.

#### Marginal Citations

**M638** Source—1970 s.495

**M639** 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 [<sup>F4523</sup>profits] or losses of a trade, profession or vocation, or profits or gains or losses arising from woodlands, or is, apart from section 781, chargeable [<sup>F4524</sup>to income tax under or by virtue of any provision to which [<sup>F4525</sup>section 1016 of ITA 2007] 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

**F4523** Words in s. 785 substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 1**

**F4524** 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)

**F4525** S. 785: words in definition of “capital sum” 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. 190** (with Sch. 2)

### <sup>F4526</sup>785 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,



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- (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)).
- (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

**F4526** 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)

#### **F4526** ~~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

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- (b) which is treated under that provision as carried on alone by the company for those purposes.
- (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

**F4526**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)

#### **[<sup>F4527</sup>785] 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.
- [ This section does not apply in so far as section 774B or 774D (structured finance  
<sup>F4528</sup>(5A) arrangements) applies in relation to the arrangements mentioned in paragraph (c) of subsection (1) above as a result of the transfer mentioned in that paragraph.]
- (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

**F4527S. 785A** inserted (with effect in accordance with s. 135(2) of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [s. 135\(1\)](#)

**F4528S. 785A(5A)** inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 6 para. 7\(2\)](#)

VALID FROM 21/07/2008

#### <sup>F4529</sup>**785B** Plant and machinery leases: capital receipts to be treated as income

- (1) This section applies if—
- 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
  - 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—
- 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
  - if subsection (1)(b) applies, as income for the period of account in which the payment is made.]

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### Textual Amendments

**F4529**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

### **[<sup>F4529</sup>785B] 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—

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- (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
  - (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

**F4529**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

#### **[<sup>F4529</sup>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

**F4529**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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**[<sup>F4529</sup>785] 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).
- (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**

**F4529** 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.**

- <sup>M640</sup>(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 [<sup>F4530</sup>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.
- <sup>F4531</sup>(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) <sup>F4532</sup> .....
- (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, [<sup>F4533</sup> he shall be chargeable—
  - (a) to income tax, or



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(b) to corporation tax under Case VI of Schedule D,  
on a sum] equal to the amount of income assigned, surrendered, waived or foregone.

[<sup>F4534</sup>(5ZA) But subsection (5) above does not apply if the person mentioned in that subsection is, as a result of section 774B or 774D (structured finance arrangements), chargeable to tax on the amount of income assigned, surrendered, waived or forgone.]

[<sup>F4535</sup>(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 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

**F4530** 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)

**F4531** 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)

**F4532** 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

**F4533** 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)

**F4534** S. 786(5ZA) inserted (19.7.2006) by *Finance Act 2006 (c. 25), Sch. 6 para. 8(2)*

**F4535** 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

**M640** Source—1970 s.496

## 787 Restriction of relief for payments of interest.

<sup>M641</sup>(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.

[<sup>F4536</sup>(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



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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.

[<sup>F4537</sup>(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,

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

**F4536** 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\(2\)](#)

**F4537** 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)

**C550** 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

**M641** Source—1976 s.38

## PART XVIII

### DOUBLE TAXATION RELIEF

#### Modifications etc. (not altering text)

**C551** 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\(2\)\(a\)](#))

**C552** 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](#)

**C553** Pt. 18 modified (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 107\(5\)](#)

**C554** 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](#))

**C555** 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](#))

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- C556** 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**)
- C557** 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**)
- C558** 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**)
- C559** 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**)
- C560** 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**)
- C561** 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**)
- C562** 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**)
- C563** 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)
- C564** Pt. 18 modified (with effect in accordance with s. 56(3) of the modifying Act) by Finance Act 2009 (c. 10), **s. 56(1)**)

## F4538 CHAPTER I

### THE PRINCIPAL RELIEFS

#### Textual Amendments

**F4538** 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 [F4539 territories].

<sup>M642</sup>(1) If Her Majesty by Order in Council declares that arrangements specified in the Order have been [F4540 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,

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and that it is expedient that those arrangements should have effect, then those arrangements shall have effect in accordance with subsection (3) below.

- (2) <sup>F4541</sup> . . . . .
- (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—
- (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 [<sup>F4542</sup>section 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; <sup>F4543</sup> . . . . .
- (b) <sup>F4543</sup> . . . . .

[<sup>F4544</sup>Relief 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 [<sup>F4545</sup>in relation to] which the arrangements are made, in respect of any income or chargeable gains, and

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- (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 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 [<sup>F4546</sup>to 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.
- [<sup>F4547</sup>(10) An Order under this section is not to 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

- F4539** 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)**
- F4540** 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)**
- F4541** S. 788(2) repealed (19.7.2006) by Finance Act 2006 (c. 25), **Sch. 26 Pt. 8(2)**
- F4542** 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)
- F4543** 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
- F4544** 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)**
- F4545** 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)**
- F4546** 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)
- F4547** S. 788(10) substituted (19.7.2006) by Finance Act 2006 (c. 25), **s. 176**

#### Modifications etc. (not altering text)

- C565** 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)**
- C566** S. 788 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 57**

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### Marginal Citations

**M642** 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.

- <sup>M643</sup>(1) Notwithstanding section 793(2), any arrangements made in relation to the profits tax under section 347 of the <sup>M644</sup>Income Tax Act 1952 or any earlier enactment corresponding to that section shall, except in so far as arrangements made after the passing of the <sup>M645</sup>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 [<sup>F4548</sup>—
- [<sup>F4549</sup>(a) to bear income tax at—
- (i) the savings rate, where that income is savings income;
- (ii) the dividend ordinary rate, where that income is dividend income; or
- (iii) the basic rate, in any other case; and]
- (b)] to be disregarded for the purpose of computing total income, [<sup>F4550</sup> except—
- (i) for the purpose of section 274 (limits on relief under sections 266 and 273); and
- (ii) for the purpose of calculating “adjusted net income” for the purposes of Chapter 1 of Part 7 of this Act (see section 256A) or Chapters 2 and 3 of Part 3 of ITA 2007 (see section 58 of that Act).]
- (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

**F4548** 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](#)

**F4549** S. 789(2)(a) 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. 191\(2\)](#) (with [Sch. 2](#))

**F4550** Words in s. 789(2)(b) 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. 191\(3\)](#) (with [Sch. 2](#))

### Marginal Citations

**M643** Source—1970 s.497(9), (10); 1971 sch.6 74; 1972 s.100(1)

**M644** 1952 c.10.

**M645** 1965 c. 25.

## 790 Unilateral relief.

- (1) <sup>M646</sup>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

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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) <sup>M647</sup>Unilateral relief shall be such relief as would fall to be given under Chapter II of this Part if arrangements [<sup>F4551</sup>in relation to] the territory in question containing the provisions specified in subsections (4) to [<sup>F4552</sup>(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) <sup>M648</sup>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).
- (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 [<sup>F4551</sup>in 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) <sup>M649</sup>Where a dividend paid by a company resident in the territory is paid to a [<sup>F4553</sup>company 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;

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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).

[<sup>F4554</sup>(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 [<sup>F4555</sup>permanent 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 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).

[<sup>F4556</sup>(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



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- (d) the circumstances are such that, had company B been resident in the United Kingdom, it would have been entitled, under arrangements made [<sup>F4551</sup>in 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,
  - (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 [<sup>F4551</sup>in 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) <sup>M650</sup>Where—
- (a) unilateral relief may be 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 [<sup>F4557</sup>to 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.

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### Textual Amendments

- F4551** 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)**
- F4552** 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)**
- F4553** 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)**
- F4554** 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)**
- F4555** 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)**
- F4556** 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)**
- F4557** 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)

- C567** S. 790 restricted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 57**

### Marginal Citations

- M646** Source—1970 s.498(1); 1972 s.100(1)
- M647** Source—1970 s.498(2)
- M648** Source—1970 s.498(3); 1972 s.100(1)
- M649** Source—1970 s.498(4); 1971 s.26(3); 1972 s.83(1)-(5)
- M650** Source—1970 s.498(5), (6); 1972 s.100(1)

## 791 Power to make regulations for carrying out section 788.

<sup>M651</sup>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)

- C568** For regulations see Part III Vol.5

### Marginal Citations

- M651** Source—1970 s.517

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## CHAPTER II

### RULES GOVERNING RELIEF BY WAY OF CREDIT

#### Modifications etc. (not altering text)

**C569** 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.

<sup>M652</sup>(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 [<sup>F4558</sup>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 arrangements [<sup>F4559</sup>(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 [<sup>F4558</sup>in relation to] which the arrangements were made.

#### Textual Amendments

**F4558** 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)

**F4559** 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)

**C570** 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

**M652** Source—1970 s.500

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### 793 Reduction of United Kingdom taxes by amount of credit due.

- <sup>M653</sup>(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.
- [<sup>F4560</sup>(3) Credit against income tax is given effect at Step 6 of the calculation in section 23 of ITA 2007.]

#### Textual Amendments

**F4560** S. 793(3) 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. 192](#) (with Sch. 2)

#### Modifications etc. (not altering text)

**C571** 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

**M653** Source—1970 s.501; 1972 s.100 (1).

### [<sup>F4561</sup>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 [<sup>F4562</sup>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 [<sup>F4562</sup>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

**F4561** 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\(1\)](#)

**F4562** 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\(2\)\(a\)](#)

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**Modifications etc. (not altering text)**

**C572** 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.**

<sup>M654</sup>(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 [<sup>F4563</sup>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

[<sup>F4564</sup>(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—

(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) <sup>F4565</sup> .....

**Textual Amendments**

**F4563** 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)

**F4564** 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)**

**F4565** 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)**

**C573** 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**

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**C574** 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

**M654** Source—1970 s.502; 1982 s.67; 1972 s.100(1).

### 795 Computation of income subject to foreign tax.

- <sup>M655</sup>(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 [<sup>F4566</sup>—
- (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 [<sup>F4567</sup>, 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 [<sup>F4568</sup>or 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—
    - [<sup>F4569</sup>(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 [<sup>F4570</sup>, and
    - (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).
- [<sup>F4571</sup>(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.]
- [<sup>F4572</sup>(4) Subsections (2) and (3) above have effect for the purposes of corporation tax notwithstanding anything in [<sup>F4573</sup>—
- (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) [<sup>F4574</sup>; 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).]]
- [<sup>F4575</sup>(5) In this section—

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- (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

- F4566** 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)
- F4567** S. 795(1)(b) and preceding word inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(2)
- F4568** Words in s. 795(2)(a) inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(3)
- F4569** 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)
- F4570** 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)
- F4571** 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)
- F4572** 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)
- F4573** 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)
- F4574** S. 795(4)(b) and preceding word inserted (24.7.2002) by Finance Act 2002 (c. 23), Sch. 30 para. 5(2)
- F4575** S. 795(5) inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 112(4)

#### Modifications etc. (not altering text)

- C575** 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
- C576** 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))

#### Marginal Citations

- M655** Source—1970 s.503; 1972 s.100(1); 1987 Sch.15 2(18)

#### [<sup>F4576</sup>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 [<sup>F4577</sup> 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



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person might reasonably be expected to have done in the absence of relief under this Part against tax in the United Kingdom.]

#### Textual Amendments

**F4576S.** 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)**

**F4577** 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)

**C577** 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.

<sup>M656</sup>(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 [<sup>F4578</sup>but allowing for the making of any other income tax reduction under the Income Tax Acts][<sup>F4579</sup>, except a reduction under section 26 of FA 2005])—

- (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.

[<sup>F4580</sup>(2A) See section 29(2) and (3) of ITA 2007 (tax reductions limited by reference to tax liability) for further limits on the total amount of credit for foreign tax to be allowed to a person against income tax.]

(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, [<sup>F4581</sup>less the total amount of the tax treated under section 414 of ITA 2007 (gift aid) as deducted from gifts made by him in that year].

#### Textual Amendments

**F4578** 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**

**F4579** Words in s. 796(1) 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. 193(2)** (with Sch. 1 para. 193(5) (as inserted by S.I. 2007/3506, **arts. 1, 3(5)** and as amended by S.I. 2009/2859, **arts. 1, 4(6)(b)**), Sch. 2)

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- F4580**S. 796(2A) 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. 193(3)** (with Sch. 1 para. 193(5) (as inserted by S.I. 2007/3506, **arts. 1, 3(5)**) and as amended by S.I. 2009/2859, **arts. 1, 4(6)(b)**), Sch. 2)
- F4581** Words in s. 796(3) substituted (6.4.2007 with effect in accordance with S.I. 2009/2859, **art. 1(2)**) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 193(4)** (as substituted by S.I. 2009/2859, **art. 4(6)(a)**) (with Sch. 2)

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**Marginal Citations**

**M656** Source—1970 s.504

**797 Limits on credit: corporation tax.**

- <sup>M657</sup>(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 [<sup>F4582</sup>the following provisions of this section] below.
- (2) <sup>M658</sup>Subject to [<sup>F4583</sup>subsections (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”).
- [<sup>F4584</sup>(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 [<sup>F4585</sup>expenses 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.
- [<sup>F4586</sup>(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
  - (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.

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- (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 [<sup>F4587</sup>subsection (3A) of] section 83 of the Finance Act 1996 <sup>F4588</sup> . . . . ,
- 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) <sup>F4589</sup> . . . . .
- (5) <sup>F4589</sup> . . . . .
- [<sup>F4590</sup>(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

- F4582** 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)
- F4583** 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)
- F4584** 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)
- F4585** 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)
- F4586** 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)
- F4587** 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
- F4588** 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
- F4589** 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
- F4590** 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)

- C578** 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

- M657** Source—1970 s.505; 1972 s.100(1), (3); 1984 s.53(1)
- M658** Source—1972 s.100(4)-(6A); 1984 s.53(1); 1986 s.49; 1987 (No.2) s.77

[<sup>F4593</sup>797A ~~Foreign tax on~~ [<sup>F4591</sup>items giving rise to] a non-trading credit [<sup>F4592</sup>: loan relationships].

- (1) This section applies for the purposes of any arrangements where, in the case of any company—

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- (a) any non-trading credit relating to an <sup>F4594</sup>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 <sup>F4595</sup>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 <sup>F4596</sup>(2)(c)] of section 83 of the Finance Act 1996 or paragraph 4(3) of Schedule 11 to that Act <sup>F4597</sup>(deficit carried back and set against profits)] relates; <sup>F4598</sup>and]
  - <sup>F4599</sup>(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 <sup>F4600</sup>(3A)] of that section or paragraph 4(4) of that Schedule; <sup>F4601</sup> . . .
  - (c) <sup>F4601</sup> . . . . .  
<sup>F4602F4603</sup> [ . . . . . ]
- (6) Section 797(3) shall have effect as if any amount <sup>F4604</sup>carried forward to the applicable accounting period <sup>F4605</sup>under 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—
    - (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,

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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.

[<sup>F4606F4607</sup> . . . . .]

- (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

- F4591** 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)**
- F4592** Words in s. 797A sidenote added (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 5(3)**
- F4593** 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)
- F4594** 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)**
- F4595** 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)**
- F4596** 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)**
- F4597** 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)**
- F4598** Word at the end of s. 797A(5)(a) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(b)(4)**
- F4599** 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)**
- F4600** 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)**
- F4601** 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
- F4602** Words at the end of s. 797A(5) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(c)(4)**
- F4603** 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
- F4604** Words in s. 797A(6) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(d)(4)**
- F4605** 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)**
- F4606** Words at the end of s. 797A(7) inserted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(2)(e)(4)**
- F4607** 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)

- C579** 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**

#### [<sup>F4608</sup>797] 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—

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- (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:

## TotalDebits – 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

**F4608S.** 797B inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(4\)](#)

### Modifications etc. (not altering text)

**C580** [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](#)

### [<sup>F4609</sup>798Section 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.
- (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.



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- (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

**F4609** 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)

**C581** 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

### <sup>F4610</sup>~~Section 797~~ **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
  - (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,



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- (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

**F4610** S. 798A inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by Finance Act 1998 (c. 36), s. 104

**F4611** 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)

**C582** 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

### [<sup>F4612</sup>][<sup>F4613</sup> Section 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
  - (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

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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

**F4612** S. 798B inserted (with effect in accordance with s. 103(2)(3) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), s. 105

**F4613** 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)

**C583** 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

#### [<sup>F4614</sup>798] 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.

[<sup>F4615</sup>(2) The taxpayer's income shall be treated as reduced by the amount of disallowed credit.

(3) Subsection (2) applies only in so far as the amount of disallowed credit does not exceed the amount of any loss attributable to the income or gain in respect of which the foreign tax was paid.

(4) For the purpose of subsection (3), payment of the foreign tax is to be taken into account despite section 795(2).]]

#### Textual Amendments

**F4614** 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)

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**F4615S.** 798C(2)-(4) substituted for s. 798C(2) (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. 194](#) (with Sch. 2)

**Modifications etc. (not altering text)**

**C584** [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.**

<sup>M659</sup>(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—

- <sup>F4616</sup>(a) is properly attributable to the proportion of the relevant profits represented by the dividend<sup>F4617</sup>, and
- (b) does not exceed the amount calculated by applying the formula set out in subsection (1A) below.]

<sup>F4618</sup><sup>F4619</sup>(1A) The formula is—

$$(D + U) \times M\%$$

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.]]

<sup>F4620</sup>(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 the underlying tax to be taken into account under subsection (1) above there is to be subtracted the amount of that increase.

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- [<sup>F4621</sup>(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;  
[<sup>F4622</sup>and]
  - (b) <sup>F4623</sup>.....
  - (c) if the dividend is [<sup>F4624</sup>not 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.
- [<sup>F4625</sup>(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 [<sup>F4626</sup>, 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

**F4616** 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)**

**F4617** 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)**

**F4618** 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)**

**F4619** 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)**

**F4620** 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)**

**F4621** 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)**

**F4622** 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)**

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- F4623**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
- F4624**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)**
- F4625**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)**
- F4626**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**

**M659** Source—1970 s.506; 1976 s.50(3)

**800 Dividends paid between related companies but not covered by arrangements.**

**F4627**  
.....

**Textual Amendments**

**F4627**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.**

<sup>M660</sup>(1) Where a company resident outside the United Kingdom (“the overseas company”) pays a dividend to a [<sup>F4628</sup>company falling within subsection (1A) below (“the relevant company”)] and the overseas company is related [<sup>F4629</sup>to 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.

[<sup>F4630</sup>(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 [<sup>F4631</sup>permanent 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, [<sup>F4632</sup>subject 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.

[<sup>F4633</sup>(2A) Section 799(1)(b) applies for the purposes of subsection (2) above only—

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- (a) if the overseas company and the third company are not resident in the same territory; or
  - [ if the overseas company is an ADP controlled foreign company as respects any
  - <sup>F4634</sup>(aa) 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.]
- [<sup>F4635</sup>(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.
- [<sup>F4636</sup>(4A) <sup>F4637</sup> .....
- (4B) <sup>F4637</sup> .....
- (4C) <sup>F4637</sup> .....
- (4D) <sup>F4637</sup> .....]
- (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, not less than 10 per cent. of the voting power in the first-mentioned company.



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[<sup>F4638</sup>(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.]

[<sup>F4639</sup>(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

**F4628** 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)

**F4629** 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)

**F4630** 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)

**F4631** 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)

**F4632** 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)

**F4633** 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)

**F4634** 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)

**F4635** 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)

**F4636** 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)

**F4637** 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

**F4638** 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)

**F4639** 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

M660 Source—1970 s.508; 1971 s.26(2)

## [<sup>F4640</sup>801] Restriction of relief for underlying tax.

- (1) This section applies where—
  - (a) [<sup>F4641</sup> 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 [<sup>F4642</sup>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) [<sup>F4642</sup>the claimant company], a company related to that company or a person connected with [<sup>F4642</sup>the claimant company]; and
  - (b) a person who was not under the control of [<sup>F4642</sup>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.

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[<sup>F4643</sup>(9) For the purposes of this section, whether a person is connected with another is determined in accordance with section 839.]

(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 [<sup>F4642</sup>the 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

**F4640**S. 801A inserted (with effect in accordance with s. 90(2) of the amending Act) by Finance Act 1997 (c. 16), s. 90(1)

**F4641** 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)

**F4642** 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)

**F4643**S. 801A(9) 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. 195 (with Sch. 2)

#### [<sup>F4644</sup>801] 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.

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- (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.]

#### Textual Amendments

**F4644S. 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\(1\)](#)

#### [<sup>F4645</sup>**801** 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.

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- (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.
- (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

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(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;

“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

**F4645S.** 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.

F4646

#### Textual Amendments

**F4646S.** 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.

<sup>M661</sup>(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

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- (b) the claim relates to underlying tax on a dividend [<sup>F4647</sup> (“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 [<sup>F4648</sup> interest or dividends 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
  - [<sup>F4649</sup>(d) if the company which received the interest or dividends (“the company”) had been resident in the United Kingdom, [<sup>F4650</sup>section 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, [<sup>F4651</sup> on 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) <sup>F4652</sup> .....
  - (5) <sup>F4652</sup> .....
  - (6) <sup>F4652</sup> .....
  - (7) <sup>F4652</sup> .....
  - (8) <sup>F4652</sup> .....
  - (9) <sup>F4652</sup> .....
- [<sup>F4653</sup>(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 [<sup>F4654</sup>, for the purposes of that subsection, whether a company is connected with a bank is determined in accordance with section 839.]]

#### Textual Amendments

- F4647** 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)
- F4648** 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)
- F4649** 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)
- F4650** 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)
- F4651** 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)
- F4652** 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
- F4653** 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)

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**F4654** Words in s. 803(10) 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. 196](#) (with [Sch. 2](#))

#### Marginal Citations

**M661** Source—1982 s.66; 1987 (No.2) s.68

### [<sup>F4655</sup> **803** 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.

[ Where—

- <sup>F4656</sup>(1A) (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

**F4655** 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\(1\)](#)

**F4656** 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)



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### Miscellaneous rules

#### 804 Relief against income tax in respect of income arising in years of commencement.

- <sup>M662</sup>(1) Subject to the provisions of this section, credit for overseas tax paid in respect of [<sup>F4657</sup>any income which is an overlap profit] shall be allowed under this Part against 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—
- 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
  - 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.
- <sup>F4658</sup>(5) Subsections (5A) and (5B) below apply where—
- 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
  - the original income or any part of it contributes to an amount which, by virtue of [<sup>F4659</sup>section 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—
- the difference between—
    - 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
    - the amount of the credit which, apart from this section, would have been so allowed; and
  - the amount of credit which, on the assumption that no amount were deducted by virtue of [<sup>F4659</sup>section 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.

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- (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, [<sup>F4660</sup>be chargeable for that year to an amount of income tax equal to the excess][<sup>F4661</sup>and 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 [<sup>F4662</sup>section 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) <sup>F4663</sup> .....
- (7) Any claim for relief by way of credit under subsection (1) above against income tax for any year of assessment shall be made [<sup>F4664</sup>on 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, [<sup>F4664</sup>on or before the fifth anniversary of the 31st January next following] the later of them.
- (8) In this section—
- <sup>F4665</sup>“overlap profit” means an amount of profits or gains which, by virtue of [<sup>F4666</sup>Chapter 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;
- <sup>F4667</sup> .....
- “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;
- <sup>F4667</sup> .....
- <sup>F4668</sup> .....
- ; 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

**F4657** 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))

**F4658** 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))

**F4659** 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)

**F4660** Words in s. 804(5B)(a) 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. 197(2) (with Sch. 2)

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- F4661** 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)
- F4662** 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)
- F4663** S. 804(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 197(3), Sch. 3 Pt. 1** (with Sch. 2)
- F4664** 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**
- F4665** 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))
- F4666** 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)
- F4667** 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))
- F4668** 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

**M662** Source—1970 s.510; 1971 Sch.6 75

#### <sup>F4669</sup> **804ZB 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—

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- (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,
  - (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<sup>F4670</sup> . . . 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.

[ In this section “foreign tax” includes any tax which for the purpose of allowing credit<sup>F4671</sup>(11A) under any arrangements against corporation tax is treated by section 801 as if it were tax payable under the law of any territory outside the United Kingdom.]

- (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

**F4669**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)

**F4670**Words in s. 804ZA(8)(c) repealed (with effect in accordance with s. 35(4)-(7) of the repealing Act) by Finance Act 2007 (c. 11), s. 35(2), Sch. 27 Pt. 2(6), Note

**F4671**S. 804ZA(11A) inserted (with effect in accordance with s. 35(4)-(7) of the amending Act) by Finance Act 2007 (c. 11), s. 35(3)

#### [<sup>F4669</sup>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

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of the scheme or arrangement in that period that are referable to the purpose referred to in condition B of section 804ZA.]

#### Textual Amendments

**F4669**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)

#### **[<sup>F4669</sup>804ZG] 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.

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- (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—
- (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

**F4669**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)

#### [<sup>F4672</sup>**804A**<sup>F4673</sup> **Life assurance companies with overseas branches etc: restriction of credit.**]

- [<sup>F4674</sup>(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 [<sup>F4675</sup>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



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with the provisions applicable to Case I of Schedule D, of life assurance business or [<sup>F4676</sup>gross roll-up 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 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—

- [<sup>F4677</sup>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 <sup>F4678</sup> . . . 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 [<sup>F4679</sup>the relevant profits].]

#### Textual Amendments

**F4672S. 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](#)



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- F4673**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)**
- F4674**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)**
- F4675**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)**
- F4676**Words in s. 804A(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 48** (with Sch. 7 Pt. 2)
- F4677**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)**
- F4678**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
- F4679**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)**

**[<sup>F4680</sup>804] 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 [<sup>F4681</sup>long-term] 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 <sup>F4682</sup> . . . ) 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.

<sup>F4683</sup>(3) Where the relevant income arises from an asset which is linked solely to a category of business, the whole of the foreign tax is attributable to that category of business, unless the case is one where subsection (7) below applies.

(3A) Where the relevant income arises from foreign currency assets, the whole of the foreign tax is attributable to gross roll-up business, unless the case is one where subsection (7) below applies.]

(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) [<sup>F4684</sup>PHI] 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 <sup>F4685</sup> . . . 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 [<sup>F4686</sup>gross roll-up business.]

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- (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 <sup>M663</sup>Finance Act 1989 in an account in relation to which the provisions of section 432C <sup>F4687</sup> . . . apply,
- the fraction of the foreign tax that is attributable to [<sup>F4688</sup>gross roll-up business] is the fraction whose numerator is the part of the relevant income which is referable to [<sup>F4688</sup>gross roll-up business] by virtue of any provision of section 432C <sup>F4687</sup> . . . 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 [<sup>F4689</sup>gross roll-up business] is the fraction—
- (a) whose numerator is the part of [<sup>F4690</sup>the investment income taken into account in that determination which would be referable to [<sup>F4691</sup>gross roll-up business] 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 [<sup>F4692</sup>investment income].
- [<sup>F4693</sup>(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.
- [<sup>F4694</sup>(9) Where for the purposes of this section an amount of foreign tax is attributable to gross roll-up business, credit in respect of the foreign tax so attributable shall be allowed only against corporation tax in respect of profits chargeable under section 436A.]]

#### Textual Amendments

- F4680**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)
- F4681**Words in s. 804B(1)(a) inserted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(2) (with Sch. 7 Pt. 2)
- F4682**Words in s. 804B(2) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(3), Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)
- F4683**S. 804B(3)(3A) substituted for s. 804B(3) (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(4) (with Sch. 7 Pt. 2)
- F4684**Words in s. 804B(4)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(5)(a) (with Sch. 7 Pt. 2)
- F4685**Words in s. 804B(4) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(5)(b), Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)
- F4686**Words in s. 804B(5) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(6) (with Sch. 7 Pt. 2)
- F4687**Words in s. 804B(6) repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(7)(a), Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)
- F4688**Words in s. 804B(6) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 49(7)(b) (with Sch. 7 Pt. 2)

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- F4689** Words in s. 804B(7) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(8)(a)** (with Sch. 7 Pt. 2)
- F4690** 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)**
- F4691** Words in s. 804B(7)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(8)(b)** (with Sch. 7 Pt. 2)
- F4692** 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)**
- F4693** S. 804B(7A) inserted (22.7.2004) by Finance Act 2004 (c. 12), **Sch. 7 para. 7**
- F4694** S. 804B(9) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 49(9)** (with Sch. 7 Pt. 2)

#### Modifications etc. (not altering text)

- C585** 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**)
- C586** 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

- M663** 1989 c. 26.

### [<sup>F4695</sup> **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

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(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 [<sup>F4696</sup>relevant 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 [<sup>F4696</sup>relevant 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.

(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,

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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.

[<sup>F4697</sup>(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 [<sup>F4698</sup>gross roll-up business]; and
- (b) in accordance with section 804E, where the category of business concerned is not life assurance business or [<sup>F4699</sup>gross roll-up business].]

#### Textual Amendments

**F4695**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)**

**F4696**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)**

**F4697**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)**

**F4698**Words in s. 804C(14)(a) substituted (with effect in accordance with [s. 38\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 50(a)** (with [Sch. 7 Pt. 2](#))

**F4699**Words in s. 804C(14)(b) substituted (with effect in accordance with [s. 38\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), **Sch. 7 para. 50(b)** (with [Sch. 7 Pt. 2](#))

#### Modifications etc. (not altering text)

**C587** S. 804C modified by [The Authorised Investment Funds \(Tax\) Regulations 2006 \(S.I. 2006/964\)](#), **reg. 52A(6)-(9)** (as substituted (1.1.2009 with effect in accordance with [reg. 1\(2\)](#) of the amending S.I.) by [The Authorised Investment Funds \(Tax\) \(Amendment No. 3\) Regulations 2008 \(S.I. 2008/3159\)](#), **regs. 1(1), 16)**

#### [<sup>F4695</sup>**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 [<sup>F4700</sup>gross roll-up 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

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- (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 <sup>M664</sup>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 [<sup>F4701</sup>432G].
- (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

- F4695** 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)**
- F4700** Words in s. 804D(1) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 51(2)** (with Sch. 7 Pt. 2)
- F4701** Words in s. 804D(3) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), **Sch. 7 para. 51(3)** (with Sch. 7 Pt. 2)

#### Modifications etc. (not altering text)

- C588** 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**)
- C589** 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

- M664** 1989 c. 26.

### [<sup>F4695</sup>**804**] 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 [<sup>F4702</sup>gross roll-up 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;



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- (b) investment income and gains;
  - (c) other technical income, net of reinsurance;
  - (d) <sup>F4703</sup> .....
- (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 <sup>M665</sup>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**

**F4695**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\(1\)](#)

**F4702**Words in s. 804E(1) substituted (with effect in accordance with [s. 38\(2\)](#) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 7 para. 52](#) (with [Sch. 7 Pt. 2](#))

**F4703**S. 804E(3)(d) repealed (with effect in accordance with [Sch. 11](#) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 27 Pt. 2\(11\)](#), Note

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**Marginal Citations**

**M665** 1985 c. 6.

<sup>F4704</sup>**804 Interpretation of sections 804A to 804E.**

<sup>F4705</sup> .....

**Textual Amendments**

**F4704**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\(1\)](#)



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**F4705S. 804F** repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 10 para. 14\(2\)\(e\)](#), [Sch. 27 Pt. 2\(10\)](#), Note

VALID FROM 21/07/2009

**[<sup>F4706</sup>804C] 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**

**F4706S. 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.**

<sup>M666</sup>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)**

**C590** See [s.732\(4\)](#)—dealers in securities.

**C591** [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**

**M666** Source—1970 s.511; 1972 s.100(1)

**806 Time limit for claims etc.**

- <sup>F4707</sup>(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

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- (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.
- [<sup>F4708</sup>(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 <sup>M667</sup>Finance Act 1993 (regulations relating to individual members of Lloyd's); or
  - (b) section 229 of the <sup>M668</sup>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.]

#### Textual Amendments

**F4707S.** 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\(2\)](#)

**F4708S.** 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)

**C592** See s.448—*overseas life assurance companies.*

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**C593** 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

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**Marginal Citations**

**M667** 1993 c. 34.

**M668** 1994 c. 9.

*<sup>F4709</sup> Foreign dividends: onshore pooling and utilisation of eligible unrelieved foreign tax*

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**Textual Amendments**

**F4709** 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—
  - (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

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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.

[<sup>F4710</sup>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

**F4710** 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.

- [<sup>F4711</sup>(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 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

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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), [F<sup>4712</sup>(4)(b) or (5)(c)] above, sections 806C and 806D shall be disregarded.
- (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—

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- (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

**F4711** 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)

**F4712** 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;
  - (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);

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- (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
  - (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,



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- (b) relievably 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 relievably 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) relievably 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 relievably underlying tax or relievably 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 relievably tax under section 806D.**

- (1) Where any relievably 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 relievably 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 relievably tax arises.
- (3) Rule 2 is that the relievably tax must be so treated that—
  - (a) credit for, or for any remaining balance of, the relievably 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 relievably tax is allowed against corporation tax in respect of the single dividend arising in any earlier such accounting period.

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- (4) Rule 3 is that the relievably tax must be so treated that, before allowing credit for any of the relievably 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 relievably tax arising in another accounting period; and
  - (b) then for relievably tax arising in any accounting period before that in which the relievably 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;
  - “relievably tax” means relievably underlying tax or relievably withholding tax;
  - “the single dividend” means—
    - (a) in relation to relievably underlying tax, the single related dividend; and
    - (b) in relation to relievably 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 relievably underlying tax or relievably 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—
  - (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—

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- (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 relivable 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 relivable 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 relivable 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,
 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,

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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.]

*<sup>F4713</sup> Application of foreign dividend provisions to branches or agencies in the UK of persons resident elsewhere*

#### Textual Amendments

**F4713S. 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\(1\)](#)

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## **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;
- [<sup>F4714</sup>(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**

**F4714** 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)**

**C594** 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)**

[<sup>F4715</sup> *Unrelieved foreign tax: profits of overseas branch or agency*

### **Textual Amendments**

**F4715** 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)**

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### **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 [<sup>F4716</sup>permanent 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 [<sup>F4716</sup>permanent 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 [<sup>F4716</sup>permanent 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,  
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.

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- (5) For the purposes of this section, a company's qualifying income from an overseas [<sup>F4716</sup>permanent establishment] is the profits of the overseas [<sup>F4716</sup>permanent establishment] which are—
- (a) chargeable under Case I of Schedule D; or
  - <sup>F4717</sup>(b) included in the profits of gross roll-up business chargeable under Case VI of Schedule D by virtue of section 436A.]
- (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.
- <sup>F4718</sup>(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

**F4716** 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)

**F4717** S. 806L(5)(b) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 53 (with Sch. 7 Pt. 2)

**F4718** 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 [<sup>F4719</sup>permanent establishment], the amount of any unrelieved foreign tax which arises in that accounting period in respect of the company's income from that overseas [<sup>F4719</sup>permanent 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)).
- (3) If a company—
  - (a) at any time ceases to have a particular overseas [<sup>F4719</sup>permanent establishment] in a particular territory (“the old [<sup>F4719</sup>permanent establishment]”), but
  - (b) subsequently again has an overseas [<sup>F4719</sup>permanent establishment] in that territory (“the new [<sup>F4719</sup>permanent establishment]”),



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the old [<sup>F4719</sup>permanent establishment] and the new [<sup>F4719</sup>permanent establishment] shall be regarded as different overseas [<sup>F4719</sup>permanent 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 [<sup>F4719</sup>permanent establishments] in that territory, taken together, then, for the purposes of—
- (a) section 806L, and
  - (b) subsection (3) above,
- those overseas [<sup>F4719</sup>permanent establishments] shall be treated as if they together constituted a single overseas [<sup>F4719</sup>permanent establishment] of the company.
- (5) Unrelieved foreign tax arising in respect of qualifying income from a particular overseas [<sup>F4719</sup>permanent 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

**F4719** 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.

- <sup>M669</sup>(1) In any case where—
- (a) a person is treated under [<sup>F4720</sup>section 628(5) of ITA 2007 as making accrued income profits in an interest period]; and
  - (b) assuming that, in the [<sup>F4721</sup>tax year in which the accrued income profits are treated as made by virtue of section 617(2) of that Act], he were to become entitled to any interest on the securities concerned, he would be liable in respect of the interest to tax chargeable under [<sup>F4722</sup>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,

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credit of an amount equal to the relevant proportion of the [<sup>F4723</sup>accrued income profits] shall be allowed against any United Kingdom income tax <sup>F4724</sup> . . . computed by reference to the [<sup>F4723</sup>accrued income profits], 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 [<sup>F4725</sup>as respects which the person is entitled to an exemption from liability to income tax under section 679 of ITA 2007];

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—

I is the amount of the interest; and  
<sup>F4726</sup>R is the amount of the exemption].

- (3) <sup>M670</sup>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.

<sup>F4727</sup>(5) Expressions used in this section and in Chapter 2 of Part 12 of ITA 2007 (accrued income profits) have the same meaning as in that Chapter.]

<sup>F4728</sup>(6) <sup>F4729</sup> . . . . . ]

**Textual Amendments**

- F4720**Words in s. 807(1)(a) 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. 198\(2\)](#) (with [Sch. 2](#))
- F4721**Words in s. 807(1)(b) 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. 198\(3\)](#) (with [Sch. 2](#))
- F4722**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](#))
- F4723**Words in s. 807(1) 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. 198\(4\)\(a\)](#) (with [Sch. 2](#))
- F4724**Words in s. 807(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 198\(4\)\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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- F4725** Words in s. 807(2)(b) 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. 198(5)** (with Sch. 2)
- F4726** Words in s. 807(2) 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. 198(6)** (with Sch. 2)
- F4727** S. 807(5) 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. 198(7)** (with Sch. 2)
- F4728** 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)
- F4729** S. 807(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 198(8), Sch. 3 Pt. 1** (with Sch. 2)

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#### Marginal Citations

- M669** Source—1985 Sch.23 37  
**M670** Source—1988 Sch.23 38(1)-(3)

### <sup>F4730</sup> **807 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) <sup>F4731</sup> [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,
      - <sup>F4732</sup> [ to interest accruing under a loan relationship at a time when the (i) company is not a party to the relationship <sup>F4733</sup>; or
      - (ii) to so much of a <sup>F4734</sup> relevant payment] as, on such an apportionment, is attributable to a time when the company is not a party to <sup>F4735</sup> the derivative contract concerned]].
- <sup>F4736</sup> [ Tax attributable to interest accruing to a company under a loan relationship does not (2A) 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.]
- <sup>F4737</sup> [ Where, in the case of any share, section 91A or 91B of the Finance Act 1996 (shares (2B) 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—

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- (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 [<sup>F4738</sup> 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,

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) <sup>F4739</sup> .....
- (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) <sup>F4739</sup> .....
- (6) Regulations under subsection (5) above may—
  - (a) provide for subsection (3) above to apply in the case of a trading credit <sup>F4740</sup> . . . 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.

[ In this section “repo or stock-lending arrangements” means—

- <sup>F4741</sup> [<sup>F4742</sup> (6A) (a) a debtor repo within the meaning of paragraph 2 of Schedule 13 to the Finance Act 2007, or
- (b) a stock lending arrangement within the meaning of section 263B of the 1992 Act.

(6B) In any case where a debtor repo within the meaning of that paragraph constitutes the repo or stock-lending arrangements—

- (a) a reference in this section, in relation to those arrangements, to the initial transfer is to the sale mentioned in condition C of that paragraph; and
- (b) a reference in this section, in relation to those arrangements, to the period for which they have effect is to the period from the making of the initial transfer until the earlier of the time when the subsequent purchase mentioned in condition D of that paragraph takes place and the time when it becomes apparent that that subsequent purchase will not take place.

(6C) In any case where a stock lending arrangement within the meaning of section 263B of the 1992 Act constitutes the repo or stock-lending arrangements—

- (a) a reference in this section, in relation to those arrangements, to the initial transfer is to the transfer mentioned in subsection (1)(a) of that section; and

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- (b) a reference in this section, in relation to those arrangements, to the period for which they have effect is to the period from the making of the initial transfer until the earlier of the time when the transfer mentioned in subsection (1)(b) of that section takes place and the time when it becomes apparent that that transfer will not take place.]]

(7) In this section—

“related transaction” has the same meaning as in section 84 of the Finance Act 1996;

[<sup>F4743</sup>“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;]

[<sup>F4744F4745</sup>..... ] 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.]

#### Textual Amendments

- F4730S.** 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)
- F4731** 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)**
- F4732** 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)**
- F4733S.** 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)**
- F4734** 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)
- F4735** 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)
- F4736S.** 807A(2A) inserted (with effect in accordance with s. 91(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 91(3)**
- F4737S.** 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)**
- F4738** 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)**
- F4739S.** 807A(4)(5)(b) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(g), **Sch. 27 Pt. 2(10)**, Note
- F4740** Words in s. 807A(6)(a) repealed (19.7.2007) by Finance Act 2007 (c. 11), Sch. 10 para. 16(3)(g), **Sch. 27 Pt. 2(10)**, Note
- F4741S.** 807A(6A) inserted (19.3.1997) by Finance Act 1997 (c. 16), **s. 91(5)**
- F4742S.** 807A(6A)-(6C) substituted for s. 807A(6A) (with effect in accordance with S.I. 2007/2483, **art. 4**) by Finance Act 2007 (c. 11), **Sch. 14 para. 10**
- F4743S.** 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)
- F4744S.** 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)**

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**F4745S. 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)

## **808 Restriction on deduction of interest or dividends from trading income.**

<sup>M671</sup>In the case of a person not resident in the United Kingdom who carries on in the United Kingdom [<sup>F4746</sup>a business], receipts of interest [<sup>F4747</sup>, 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 [<sup>F4748</sup>393A(1)] or [<sup>F4749</sup>436A]) against income or profits.

F4750

.....

### **Textual Amendments**

**F4746**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\(1\)\(a\)](#)

**F4747**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\(1\)\(b\)](#)

**F4748**Words in s. 808 inserted by [Finance Act 1991 \(c. 31, SIF 63:1\), s. 73\(3\)\(4\)\(5\), Sch. 15 para.21](#)

**F4749**Words in s. 808 substituted (with effect in accordance with s. 38(2) of the amending Act) by [Finance Act 2007 \(c. 11\), Sch. 7 para. 54](#) (with [Sch. 7 Pt. 2](#))

**F4750**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**

**M671** Source—1976 s.50(1)

## **[<sup>F4751</sup>808] 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.



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- (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

**F4751 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)

**C595 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)

**C596 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)

#### [<sup>F4752</sup>**808** 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,



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- (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.
- (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.]

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**Textual Amendments**

**F4752** 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)**

**C597** 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)

**C598** 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.**

<sup>M672</sup>(1) In any case where—

- (a) [<sup>F4753</sup>income tax is treated under section 494 of ITA 2007 as having been paid in relation to a payment made by the trustees of a settlement] and the income arising under the [<sup>F4754</sup>settlement] 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
  - (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 [<sup>F4754</sup>settlement], means income in respect of which the trustees are entitled to credit for overseas tax under this Part.

**Textual Amendments**

**F4753** Words in s. 809(1)(a) 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. 199 (with Sch. 2)

**F4754** Words in s. 809(1)(a)(2) substituted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 24(b), 27(1)

**Marginal Citations**

**M672** Source—1973 s.18

**810 Postponement of capital allowances to secure double taxation relief.**

<sup>F4755</sup> .....

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### Textual Amendments

**F4755S. 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.

<sup>M673</sup>(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; <sup>F4756</sup> . . . [<sup>F4757</sup> and]

(b) <sup>F4758</sup> . . . . .

<sup>F4759</sup>(c) . . . . .

<sup>F4760</sup>(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) [<sup>F4761</sup> and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)].

<sup>F4762</sup>(3) This section has effect for the purposes of corporation tax notwithstanding anything in [<sup>F4763</sup>—

(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) [<sup>F4764</sup>; 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).]

<sup>F4765</sup>(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,

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- 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 <sup>M674</sup>Finance Act 1993 (regulations relating to individual members of Lloyd's); or
  - (b) section 229 of the <sup>M675</sup>Finance 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

- F4756** 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
- F4757** Word at the end of s. 811(2)(a) 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. 200\(a\)](#) (with [Sch. 2](#))
- F4758** S. 811(2)(b) and word repealed (6.4.2007 with effect in accordance with [s. 1034\(1\)](#) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 200\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4759** 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\(9\)](#)
- F4760** 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\(2\)\(c\)](#)
- F4761** Words in s. 811(2) inserted (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 284\(1\)](#), [s. 115\(2\)](#)
- F4762** 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](#))
- F4763** 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\(5\)](#)
- F4764** S. 811(3)(b) and preceding word inserted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 5\(5\)](#)
- F4765** 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

- M673** Source—1970 s.516; 1973 s.40(1); 1987 Sch.15 2(19)
- M674** 1993 c. 34.

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M675 1994 c. 9.

## 812 **Withdrawal of right to tax credit of certain non-resident companies connected with unitary states.**

<sup>M676</sup>(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 [<sup>F4766</sup>section 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 [<sup>F4767</sup>section 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 [<sup>F4768</sup>nor, 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) <sup>M677</sup>In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [<sup>F4769</sup>in 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) <sup>M678</sup>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) [<sup>F4770</sup>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) <sup>M679</sup>Except where the context otherwise requires, in this section and sections 813 to 815—

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- (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;
  - [<sup>F4771</sup>(c) whether a person is connected with another is determined in accordance with [<sup>F4772</sup>section 1122 of CTA 2010];]
  - [<sup>F4773</sup>(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) <sup>M680</sup>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 [<sup>F4774</sup>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) <sup>M681</sup>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) <sup>M682</sup>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

- F4766** 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](#))
- F4767** 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](#))
- F4768** 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](#))
- F4769** 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\(2\)\(a\)](#)
- F4770** 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
- F4771** 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](#))
- F4772** 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](#))
- F4773** 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](#))
- F4774** 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

- M676** Source—1985 s.54(1),(3)
- M677** Source—1985 s.54(6) Sch.13 5
- M678** Source—1985 s.54(4),(5)
- M679** Source—1985 s.54(6) Sch.13 5.
- M680** Source—1985 s.54(7)(b), Sch.13 5(1)
- M681** Source—1985 s.54(7)(a)
- M682** Source—1985 s.54(8)

## 812 Withdrawal of right to tax credit of certain non-resident companies connected with unitary states. **U.K.**

<sup>M676</sup>(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 [<sup>F4767</sup>section 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 [<sup>F4768</sup>nor, 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) <sup>M677</sup>In this section and sections 813 and 814, “unitary state” means a province, state or other part of a territory outside the United Kingdom [<sup>F4769</sup>in relation to] which the



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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) <sup>M678</sup>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) [<sup>F4770</sup>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) <sup>M679</sup>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;
  - [<sup>F4771</sup>(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) <sup>M680</sup>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

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- (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 <sup>F4774</sup>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) <sup>M681</sup>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) <sup>M682</sup>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

- F4767** 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)
- F4768** 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)
- F4769** 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)*
- F4770** 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
- F4771** 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)
- F4774** 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

- M676** Source—1985 s.54(1),(3)
- M677** Source—1985 s.54(6) Sch.13 5
- M678** Source—1985 s.54(4),(5)
- M679** Source—1985 s.54(6) Sch.13 5.
- M680** Source—1985 s.54(7)(b), Sch.13 5(1)
- M681** Source—1985 s.54(7)(a)
- M682** Source—1985 s.54(8)

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### 813 Recovery of tax credits incorrectly paid.

<sup>M683</sup>(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
- (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 <sup>M684</sup>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) .....

<sup>F4775</sup>(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

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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.
- (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

**F4775S. 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)

**C599** *Reproduced in Part III Vol.5.*

#### Marginal Citations

**M683** Source—1985 Sch.13 1

**M684** [S.I. 1973/317](#).

## 814 Arrangements to avoid section 812.

- <sup>M685</sup>(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 [<sup>F4776</sup>section 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

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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.

#### Textual Amendments

**F4776** 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)

**C600** [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

**M685** Source-1985 Sch. 13 3

## 814 Arrangements to avoid section 812. **U.K.**

- <sup>M685</sup>(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

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- (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)**

**C600** 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**

**M685** Source-1985 Sch. 13 3

**815 Power to inspect documents.**

<sup>M686</sup>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**

**M686** Source—1985 Sch.13 4(1)

<sup>F4777</sup>**815A Transfer of a non-UK trade.**

(1) This section applies where section 269C of the 1970 Act or section 140C [<sup>F4778</sup>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.

<sup>F4779</sup>(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

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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 [<sup>F4780</sup> permanent establishment].]

#### Textual Amendments

- F4777S. 815A** inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 50  
**F4778** Words in s. 815A(1) inserted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 59(1)  
**F4779S. 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  
**F4780** 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)

- C601 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)  
**C602 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

#### [<sup>F4781</sup> ~~815A~~ 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.]



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#### Textual Amendments

**F4781S. 815AZA** inserted (with effect in accordance with s. 59(2) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 59\(1\)](#)

#### [<sup>F4782</sup>**815AA** Mutual agreement procedure and presentation of cases under arrangements.

- (1) Where, under and for the purposes of arrangements made [<sup>F4783</sup>in relation to] a territory outside the United Kingdom and having effect under section 788—
  - (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

**F4782S. 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\(1\)](#)

**F4783** 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\(2\)\(a\)](#)

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[<sup>F4784</sup>**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 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**

**F4784S. 815B** inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), [s. 51\(1\)](#)

[<sup>F4785</sup>**815C** **Exchange of information with other** [<sup>F4786</sup>**territories**].

<sup>F4787</sup> .....

**Textual Amendments**

**F4785S. 815C** inserted (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [s. 146\(1\)](#)

**F4786** 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\(2\)\(b\)](#)

**F4787S. 815C** repealed (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 26 Pt. 8\(2\)](#)

**816 Disclosure of information.**

- <sup>M687</sup>(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 [<sup>F4788</sup>Revenue and Customs officials] shall not prevent the disclosure to the authorised officer of the [<sup>F4789</sup>authorities] 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.

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- (2) <sup>F4790</sup> .....
- [<sup>F4791</sup>(2ZA) <sup>F4790</sup> .....
- [<sup>F4792</sup>(2A) The obligation as to secrecy imposed by any enactment shall not prevent the Board, or any authorised [<sup>F4793</sup>Revenue 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 [<sup>F4794</sup>(within the meaning of that subsection)] from the duty of disclosing to the Board particulars relating to the income of that person.
- [<sup>F4795</sup>(3A) <sup>F4796</sup> .....
- (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.
- [<sup>F4797</sup>(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

- F4788** 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\(2\)\(h\)](#)
- F4789** 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\(2\)\(c\)](#)
- F4790** S. 816(2)(2ZA) repealed (19.7.2006) by [Finance Act 2006](#) (c. 25), [Sch. 26 Pt. 8\(2\)](#)
- F4791** S. 816(2ZA) inserted (28.7.2000) by [Finance Act 2000](#) (c. 17), [s. 146\(2\)](#)
- F4792** S. 816(2A) inserted (16.7.1992) by [Finance \(No. 2\) Act 1992](#) (c. 48), [s. 51\(2\)](#)
- F4793** 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\(2\)\(h\)](#)
- F4794** Words in s. 816(3) 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. 202\(a\)](#) (with [Sch. 2](#))
- F4795** 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\(1\)\(2\)\(d\)](#)
- F4796** S. 816(3A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007](#) (c. 3), [Sch. 1 para. 202\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F4797** 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)

- C603** 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\(5\)](#)

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### Marginal Citations

M687 Source—1970 s.518; 1972 s.100(1)

## PART XIX

### SUPPLEMENTAL

#### Miscellaneous

### 817 Deductions not to be allowed in computing profits or gains.

- <sup>M688</sup>(1) In arriving at the amount of profits or gains for [<sup>F4798</sup>corporation] tax purposes—
- (a) no other deductions shall be made than such as are expressly enumerated in [<sup>F4799</sup>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 [<sup>F4800</sup>for corporation tax purposes] from any property described in [<sup>F4801</sup>the Corporation Tax Acts], or from any office <sup>F4802</sup> . . . , no deduction shall be made on account of diminution of capital employed, or of loss sustained, in any trade [<sup>F4803</sup>or profession].

### Textual Amendments

- F4798** 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)
- F4799** 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)
- F4800** 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)
- F4801** 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)
- F4802** 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)
- F4803** 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)

- C604** See s.125—*annual payments for non-taxable consideration.*
- C605** 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

M688 Source—1970 s.519.

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## 818 Arrangements for payments of interest less tax or of fixed net amount.

F4804

### Textual Amendments

**F4804**S. 818 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 203, [Sch. 3 Pt. 1](#) (with Sch. 2)

## 819 Old references to standard rate tax.

F4805

### Textual Amendments

**F4805**S. 819 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 204, [Sch. 3 Pt. 1](#) (with Sch. 2)

## 820 Application of Income Tax Acts from year to year.

<sup>M689</sup> 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.

### Modifications etc. (not altering text)

**C606** 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

**M689** Source—1970 s.520

## 821 Under-deductions from payments made before passing of annual Act.

<sup>M690</sup>(1) Where, in any year of assessment [<sup>F4806</sup>or accounting period], any half-yearly or quarterly payments [<sup>F4807</sup>(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 [<sup>F4808</sup>or corporation] tax for that year [<sup>F4809</sup>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 [<sup>F4809</sup>or period]—

- (a) the amount not so charged or deducted shall be charged [<sup>F4810</sup>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][<sup>F4811</sup>under Case III of Schedule D <sup>F4812</sup>. . . ; 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

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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—

[<sup>F4813</sup>(a) any payment to which section 906 of ITA 2007 applies (certain royalties etc where usual place of abode of owner is abroad), and]

[<sup>F4814</sup>(aa) <sup>F4815</sup> . . . . .]

(b) any royalty or other sum paid in respect of the user of a patent; <sup>F4816</sup> . . .

<sup>F4816</sup>(c) . . . . .

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

**F4806** 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)

**F4807** 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)

**F4808** 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)

**F4809** 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)

**F4810** 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)

**F4811** 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](#)

**F4812** 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)

**F4813** S. 821(3)(a) 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. 205\(a\)](#) (with Sch. 2)

**F4814** 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](#)



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**F4815S.** 821(3)(aa) and word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 205\(b\), Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**F4816S.** 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

**M690** 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.

- <sup>M691</sup>(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 [<sup>F4817</sup>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—
- (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

**F4817** 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

**M691** Source—1970 s.522; 1971 Sch.6 76; 1972 Sch.24 30



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## 823 Adjustments of reliefs where given at different times.

F4818  
.....

### Textual Amendments

**F4818S. 823** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 206, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

## 824 Repayment supplements: individuals and others.

[<sup>F4819</sup>(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
- (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.]

[<sup>F4820F4821</sup>(1A) .....]

(2) [<sup>F4822M692</sup>Subsections (1) <sup>F4823</sup> . . . ] above shall with the necessary modifications apply to a payment of the whole or part of a tax credit as [<sup>F4824</sup>they apply to a repayment falling within subsection (1)] of income tax paid in the year of assessment to which the tax credit relates.

[<sup>F4825F4826</sup>(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.]

[<sup>F4827</sup>(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.]

[<sup>F4825</sup>(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.]

[<sup>F4828</sup>(3) For the purposes of subsection (1) above—

[<sup>F4829</sup>(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;

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- (ii) if the interest payment was made in an earlier year of assessment, the 5th April next following that year;]
- [<sup>F4830</sup>(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;]
- [<sup>F4831</sup>(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, [<sup>F4832</sup>the relevant time is the date on which the penalty or surcharge was paid].]
- [<sup>F4833</sup>(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 [<sup>F4834</sup>section 397(1) of ITTOIA 2005] applies,
- but does not include a reference to amounts which, in that year, are deducted at source under [<sup>F4835</sup>PAYE regulations] in respect of previous years.]
- (5) <sup>F4836</sup> .....
- (6) [<sup>F4837</sup><sup>F4838</sup> . . . ] The Treasury may by order from time to time increase or decrease the rate of interest by 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

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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) <sup>F4839</sup> . . . . .
- (9) <sup>M693</sup> Subsections (1) [<sup>F4840</sup> to (7)] above shall apply in relation to <sup>F4841</sup> . . . [<sup>F4842</sup> the trustees of a settlement]<sup>F4843</sup>, scheme administrators of registered pension schemes sub-scheme administrators of sub-schemes which form part of a split scheme pursuant to the Registered Pensions (Splitting of Schemes) Regulations 2006]<sup>F4844</sup> or personal representatives <sup>F4841</sup> . . . ] as they apply in relation to an individual.
- (10) <sup>F4845</sup> . . . . .

### Textual Amendments

- F4819S.** 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**
- F4820S.** 824(1A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(b)**
- F4821S.** 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
- F4822** Words in s. 824(2) substituted (retrospectively) by Finance Act 1988 (c. 39) s. 146, Sch. 13 para. 7(c)
- F4823** 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
- F4824** Words in s. 824(2) substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, **Sch. 13 para. 7(c)**
- F4825S.** 824(2C) inserted (with effect in accordance with s. 90(4) of the amending Act) by Finance Act 2001 (c. 9), **s. 90(2)**
- F4826S.** 824(2A) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(d)**
- F4827S.** 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)**
- F4828S.** 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**
- F4829S.** 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)**
- F4830S.** 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)**
- F4831S.** 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)**
- F4832** 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)**
- F4833S.** 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)**
- F4834** 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)
- F4835** 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)
- F4836S.** 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**
- F4837** Words in s. 824(6) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, **7(f)**
- F4838** 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
- F4839S.** 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)

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- F4840** 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)
- F4841** 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**
- F4842** Words in s. 824(9) substituted (1989-90 and subsequent years) by Finance Act 1989 (c. 26), **s. 110(5)(6)-(9)**
- F4843** Words in s. 824(9) inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 33** (as amended by The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 (S.I. 2006/569), **regs. 1(1), 5(6)(7)**) (with Sch. 36)
- F4844** Words in s. 824(9) substituted (1989-90 and subsequent years) by Finance Act 1989 (c. 26), **s. 111(4)(5)-(8)**
- F4845** 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)

- C607** 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)**
- C608** 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)
- C609** 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)**
- C610** S. 824(3) modified (22.7.2004) by Finance Act 2004 (c. 12), **s. 108**

#### Marginal Citations

- M692** Source—1975 (No.2) s.47(3)(a)
- M693** Source—1975 (No.2) s.47(11), (12).

## 825 Repayment supplements: companies.

- (1) <sup>M694</sup>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)* <sup>F4846</sup>; 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 <sup>F4847</sup>. . . 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 [<sup>F4848</sup>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.

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[<sup>F4849</sup>(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).* <sup>F4850</sup>]

(3) <sup>M695</sup>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 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. [<sup>F4851</sup>and
- (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

<sup>F4852</sup>(d) . . . . .]

(5) [<sup>F4853</sup>*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—

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“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

**F4846** 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

**F4847** 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

**F4848** 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

**F4849** S. 825(2A) inserted (retrospectively) by [Finance Act 1988 \(c. 39\)](#), s. 146, [Sch. 13 paras. 1, 8\(a\)](#)

**F4850** Repealed by 1989 s.178(7) and 187 and Sch.17 Part X from 18 August 1989 (see S.I. 1989 No.1298).

**F4851** Words in s. 825(4) added by [Finance Act 1991 \(c. 31\)](#), SIF 63:1, s. 73(3)(4)(5), [Sch. 15 para.22](#)

**F4852** 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

**F4853** 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)

**C611** 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\(5\)](#)

**C612** See Table I in Vol.1 and see 1989 s.178 for further regulation making powers and Part III Vol.5 for regulations.

**C613** And see [Sch.30 para.1\(9\)](#).

#### Marginal Citations

**M694** Source—1975 (No.2) s.48(1), (2)

**M695** Source—1975 (No.2) s.48(4)-(9)

## 826 Interest on tax overpaid.

<sup>M696</sup>(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
- [<sup>F4854</sup>(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

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- (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 [F4855]; 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 [F4856]; or
- [F4857] (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 [F4858]; or
- (f) a payment of film tax credit falls to be made to a company.]

then, from the material date until [F4859] the 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) [F4860] Subject 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 [F4861] section 59D of the Management Act (payment of corporation tax)].

[F4862] (2A) [F4863] .....

- (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, [F4864] the 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.

[F4865] (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 M697 Finance Act 1998.]

[F4866] (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.]



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[<sup>F4867</sup>(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.]

[<sup>F4868</sup>(3C) In relation to a payment of film tax credit 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 payable, and
- (b) the date on which the company tax return or amended company tax return containing the claim for payment is delivered to an officer of Revenue and Customs.

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 [<sup>F4869</sup>the 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—

- [<sup>F4870</sup>(a) the date when the entitlement to relief in respect of the repayment accrued, that is to say—
  - (i) where the repayment [<sup>F4871</sup>, or the release or writing off,] of the loan or advance (or part thereof) occurred on or after the day mentioned in 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—

- [<sup>F4872</sup>(a)] shall be paid without any deduction of income tax and
- [<sup>F4873</sup>(b)] [<sup>F4874</sup>subject to subsection (5A) below,] shall not be brought into account in computing any profits or income.

[<sup>F4875</sup>(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) <sup>F4876</sup> .....

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[<sup>F4877F4878</sup>(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 [<sup>F4879</sup>so 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, [<sup>F4880</sup>as mentioned in subsection (7D) below].

[<sup>F4877</sup>(7AA) <sup>F4881</sup> .....

<sup>F4882</sup>(7B) .....

[<sup>F4883</sup>(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
- (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

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to the claim under section 393A(1), would be the later period for the purposes of subsection (7A) above.]

[<sup>F4884</sup>(7C) In a case where—

- (a) there is for an accounting period of a company (“the later period”) [<sup>F4885</sup>a non-trading deficit on the company’s loan relationships,]
- (b) as a result of a claim under [<sup>F4886</sup>section 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 [<sup>F4887</sup>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 [<sup>F4888</sup>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 [<sup>F4889</sup>section 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, [<sup>F4880</sup>as mentioned in subsection (7D) below].]

.....)]

[<sup>F4892</sup>(7D) In subsections (7), (7A), (7B) [<sup>F4893</sup>, (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.]

[<sup>F4894</sup>(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), [<sup>F4895</sup>(7BB)], (7C) or (7D) above the effect of which would be to change the meaning of references in subsection (7), (7A), (7B) [<sup>F4895</sup>, (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.

[<sup>F4896</sup>(8A) Where—

- (a) interest has been paid to a company under subsection (1)(a) [<sup>F4897</sup>[<sup>F4898</sup>, (d), (da)] [<sup>F4899</sup>[<sup>F4900</sup>, (e) or (f)]] above,

[<sup>F4901</sup>(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 [<sup>F4902</sup>, tax credit under Schedule 13 to the Finance Act 2002] [<sup>F4903</sup>, land remediation tax credit or life assurance company tax credit] [<sup>F4904</sup>or film tax credit] payable to the company (which does not result in a change falling within sub-paragraph (i)),

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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.

[ For the purposes of subsection (8A)(b) above, the cases where there is a change <sup>F4905</sup>(8BA) in the amount of the R&D tax credit [<sup>F4906</sup>, tax credit under Schedule 13 to the Finance Act 2002][<sup>F4907</sup>, the land remediation tax credit or the life assurance company tax credit][<sup>F4908</sup> or film 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 [<sup>F4906</sup>, tax credit under Schedule 13 to the Finance Act 2002][<sup>F4909</sup>, land remediation tax credit or life assurance company tax credit][<sup>F4908</sup> or film 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.

#### Subordinate Legislation Made

P5 S. 826(1)(8)(9) power exercised: 30.9.1993 appointed by S.I. 1992/3066, **art. 2(2)(b)**

#### Textual Amendments

F4854 S. 826(1)(aa) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 20(2)**

F4855 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)**

F4856 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)**

F4857 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)**

F4858 S. 826(1)(f) and preceding word inserted (1.1.2007) by Finance Act 2006 (c. 25), s. 53(1), **Sch. 5 para. 26(2)**; S.I. 2006/3399, **art. 2**

F4859 Words in s. 826(1) substituted (retrospectively) by Finance Act 1989 (c. 26), **s. 180(6)(7)**

F4860 Words in s. 826(2) inserted (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 4 para. 1(1)**

F4861 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**

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- F4862S.** 826(2A) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 16 para. 20(3)**
- F4863S.** 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
- F4864**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)**
- F4865S.** 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)**
- F4866S.** 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)**
- F4867S.** 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)**
- F4868S.** 826(3C) inserted (1.1.2007) by Finance Act 2006 (c. 25), s. 53(1), **Sch. 5 para. 26(3)**; S.I. 2006/3399, **art. 2**
- F4869**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)**
- F4870S.** 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)**
- F4871**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)**
- F4872**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)**
- F4873**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)**
- F4874**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)**
- F4875S.** 826(5A) inserted (with effect in accordance with s. 34(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 34(4)**
- F4876S.** 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
- F4877S.** 826(7AA) inserted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(3)(5)**
- F4878S.** 826(7A)(7B) inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 73(3)(4)(5), **Sch. 15 para. 23**
- F4879**Words in s. 826(7A) substituted (27.7.1993) by 1993 c. 34, s. 120, **Sch. 14 para. 10(2)**
- F4880**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)**
- F4881S.** 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
- F4882S.** 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
- F4883S.** 826(7BB)(7BC) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 30 para. 29(2)**
- F4884S.** 826(7C) inserted (27.7.1993) by 1993 c. 34, s. 170, **Sch. 18 para.5**
- F4885**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)
- F4886**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)
- F4887**Words in s. 826(7C)(c) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 24 para. 11(a)**
- F4888**Words in s. 826(7C) substituted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 24 para. 11(b)**
- F4889**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)
- F4890S.** 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)**
- F4891S.** 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

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- F4892**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)**
- F4893**Words in s. 826(7D) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 30 para. 29(3)**
- F4894**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)**
- F4895**Words in s. 826(7E) inserted (28.7.2000) by virtue of Finance Act 2000 (c. 17), **Sch. 30 para. 29(4)**
- F4896**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)**
- F4897**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)**
- F4898**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)**
- F4899**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)**
- F4900**Words in s. 826(8A)(a) substituted (1.1.2007) by Finance Act 2006 (c. 25), s. 53(1), **Sch. 5 para. 26(4)(a)**; S.I. 2006/3399, **art. 2**
- F4901**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)**
- F4902**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)**
- F4903**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)**
- F4904**Words in s. 826(8A)(b)(ii) inserted (1.1.2007) by Finance Act 2006 (c. 25), s. 53(1), **Sch. 5 para. 26(4)(b)**; S.I. 2006/3399, **art. 2**
- F4905**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)**
- F4906**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)**
- F4907**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)**
- F4908**Words in s. 826(8BA) inserted (1.1.2007) by virtue of Finance Act 2006 (c. 25), s. 53(1), **Sch. 5 para. 26(5)**; S.I. 2006/3399, **art. 2**
- F4909**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)**

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**Modifications etc. (not altering text)**

- C614** 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)
- C615** 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)
- C616** 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**

- M696** Source—1987 (No.2) s.87
- M697** 1998 c. 36.

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**[<sup>F4910</sup>826] 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 <sup>M698</sup>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 <sup>M699</sup>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**

**F4910S.** 826A inserted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), [Sch. 4 para. 1\(2\)](#)

**Marginal Citations**

**M698** 1989 c. 26.

**M699** 1994 c. 9.

**827 VAT penalties etc.**

- <sup>M700</sup>(1) Where, under [<sup>F4911</sup>Part 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 [<sup>F4912</sup>60 to 70]; or



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- (b) interest under section [F491374]; or
- (c) surcharge under section [F491359];

the payment shall not be allowed as a deduction in computing any income, profits or losses [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].

[F4915(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 [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].]

[F4916(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 [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].]

[F4917(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 [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].]

[F4918(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 [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].]

[F4919(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 [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].]

[F4920(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 [F4914f for any corporation tax purposes (but see also subsection (3)(a) below)].]

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- [<sup>F4921</sup>(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 [<sup>F4914</sup>for any corporation tax purposes (but see also subsection (3)(a) below)].
- (2) A sum paid to any person by way of supplement under section [<sup>F4922</sup>79 of that Act] shall be disregarded for all purposes of corporation tax [<sup>F4923</sup>(but see also subsection (3) (b) below)].
- [<sup>F4924</sup>(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

- F4911** 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)**
- F4912** 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)**
- F4913** 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)**
- F4914** 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)
- F4915** 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))
- F4916** S. 827(1B) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 7 para. 31**
- F4917** S. 827(1C) inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 5 para. 40**
- F4918** S. 827(1D) inserted (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 7 para. 4**
- F4919** S. 827(1E) inserted (11.5.2001) by Finance Act 2001 (c. 9), **s. 49(3)**
- F4920** S. 827(1F) inserted (27.11.2003) by Finance Act 2003 (c. 14), **ss. 24(7), 40**; S.I. 2003/2985, **art. 2**
- F4921** 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)**
- F4922** 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)**
- F4923** 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)
- F4924** 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

- M700** Source—1986 s.53.

[<sup>F4925</sup>**827A Territorial scope of charges under certain provisions to which section 836B applies**

<sup>F4926</sup> .....

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#### Textual Amendments

- F4925S. 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)
- F4926S. 827A** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 207, Sch. 3 Pt. 1** (with Sch. 2)

### 828 Orders and regulations made by the Treasury or the Board.

- (1) <sup>M701</sup>Subject to [<sup>F4927</sup>subsections (2) and (5)] below, any power of the Treasury or the Board to make any order or regulations under this Act or under any [<sup>F4928</sup>provision of the Corporation Tax Acts not contained in this Act] (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 [<sup>F4929</sup>section [<sup>F4930</sup>587B(9ZA) or] [<sup>F4931</sup> . . . 841A]] [<sup>F4932</sup>or section 178(5) of the Finance Act 1989.]
- (3) <sup>M702</sup>Subject to [<sup>F4933</sup>subsections (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 [<sup>F4934</sup>provision of the Corporation Tax Acts not contained in this Act] (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 <sup>F4935</sup> . . . [<sup>F4936</sup>79B(5),] <sup>F4937</sup> . . . <sup>F4938</sup> . . . <sup>F4939</sup> . . . <sup>F4940</sup> . . . [<sup>F4941</sup>F4937 . . . ] [<sup>F4942</sup>590C(6)]. . . [<sup>F4943</sup>791 or 840A(1)(d)] or paragraph 7 of Schedule 14 [<sup>F4944</sup>F4945 . . . ] 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.
- <sup>F4946</sup>(5) Nothing in this section applies in relation to any of the following (in relation to which [<sup>F4947</sup>section 570B of the Capital Allowances Act or] section 717 of ITEPA 2003 [<sup>F4948</sup>F4949 . . . ] applies)—
- (a) any power of the Treasury or the Board to make any order or regulations under [<sup>F4950</sup>the Capital Allowances Act or] ITEPA 2003 [<sup>F4951</sup>F4952 . . . ];
- (b) any statutory instrument containing any order or regulations made by the Treasury or the Board under [<sup>F4953</sup>either of those Acts].]
- <sup>F4954</sup>(6) Nothing in this section applies in relation to any of the following (in relation to which section 282 of the Finance Act 2004 applies)—
- (a) any power of the Treasury or the Board to make any order or regulations under Part 4 of that Act;
- (b) any statutory instrument containing any order or regulations made by the Treasury or the Board under that Part of that Act.]

#### Textual Amendments

- F4927**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)

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- F4928** Words in s. 828(1) 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. 208(2)** (with Sch. 2)
- F4929** 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**
- F4930** Words in s. 828(2) inserted (19.7.2007) by **Finance Act 2007 (c. 11), Sch. 26 para. 7(8)**
- F4931** Words in s. 828(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 208(3), Sch. 3 Pt. 1** (with Sch. 2)
- F4932** 1989 s.178(6).
- F4933** 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)
- F4934** Words in s. 828(3) 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. 208(4)** (with Sch. 2)
- F4935** Words in s. 828(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 208(5)(a), Sch. 3 Pt. 1** (with Sch. 2)
- F4936** Words in s. 828(4) inserted (10.7.2003) by **Finance Act 2003 (c. 14), s. 180(2)**
- F4937** Words in s. 828(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 208(5)(b), Sch. 3 Pt. 1** (with Sch. 2)
- F4938** 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)
- F4939** Words in s. 828(4) repealed (3.5.1994) by **Finance Act 1994 (c. 9), Sch. 26 Pt. 5(19)**
- F4940** 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)**
- F4941** Words in s. 828(4) inserted by **Finance Act 1991 (c. 31, SIF 63:1), s. 118(2)**
- F4942** Words in s. 828(4) inserted by **Finance Act 1989 (c. 26), Sch. 6 para. 16**
- F4943** Words in s. 828(4) substituted (29.4.1996) by **Finance Act 1996 (c. 8), Sch. 37 para. 1(2)**
- F4944** Words in s. 828(4) inserted by **Capital Allowances Act 1990 (c. 1), Sch. 1 para. 8(34)**
- F4945** Words in s. 828(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 208(5)(c), Sch. 3 Pt. 1** (with Sch. 2)
- F4946** 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)
- F4947** Words in s. 828(5) 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. 208(6)(a)** (with Sch. 2)
- F4948** 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)
- F4949** Words in s. 828(5) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 208(6)(b), Sch. 3 Pt. 1** (with Sch. 2)
- F4950** Words in s. 828(5)(a) 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. 208(6)(c)** (with Sch. 2)
- F4951** 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)
- F4952** Words in s. 828(5)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 208(6)(d), Sch. 3 Pt. 1** (with Sch. 2)
- F4953** 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)
- F4954** S. 828(6) inserted (6.4.2006) by **Finance Act 2004 (c. 12), s. 284(1), Sch. 35 para. 34** (with Sch. 36)

**Modifications etc. (not altering text)**

- C617** 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**))
- C618** S. 828(4) modified (20.3.2007) by **Income Tax Act 2007 (c. 3), ss. 1030(4), 1034(4)(b)**

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### Marginal Citations

- M701** 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).
- M702** 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)

## 829 Application of Income Tax Acts to public departments and avoidance of exempting provisions.

**F4955** .....

### Textual Amendments

- F4955S. 829** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 209, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

## 830 Territorial sea and designated areas.

- <sup>M703</sup>(1) The territorial sea of the United Kingdom shall for all purposes of <sup>F4956</sup> . . . corporation tax (including the following provisions of this section) be deemed to be part of the United Kingdom.
- (2) In this section—
- (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 <sup>M704</sup>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 <sup>F4957</sup> . . . 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 [<sup>F4958</sup>profits] of a trade carried on by that person in the United Kingdom through a branch or agency.
- (5) <sup>F4959</sup> .....

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### Textual Amendments

- F4956** Words in s. 830(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 210, Sch. 3 Pt. 1** (with Sch. 2)
- F4957** 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)
- F4958** Word in s. 830(4) substituted (31.7.1998) by **Finance Act 1998 (c. 36), s. 46(3)(a), Sch. 7 para. 1**
- F4959** 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)

- C619** 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

- M703** Source—1973 s.38(1), (2)-(4), (6)
- M704** 1964 c. 29.

## *Interpretation*

### 831 Interpretation of this Act.

- (1) <sup>M705</sup>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.
- (3) In this Act—
- [<sup>F4960</sup>“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;]
  - [<sup>F4961</sup>“ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005;]
  - [<sup>F4962</sup>“ITA 2007” means the Income Tax Act 2007;]
  - “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.
  - [<sup>F4963</sup>“the 1990 Act” means the Capital Allowances Act 1990.]
  - [<sup>F4964</sup>“the 1992 Act” means the Taxation of Chargeable Gains Act 1992.]
- (4) Section 1 of the <sup>M706</sup>Family Law Reform Act 1987, the paragraph inserted in Schedule 1 to the <sup>M707</sup>Interpretation Act 1978 by paragraph 73 of Schedule 2 to that Act and section 1(3) of the <sup>M708</sup>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).



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- (5) <sup>M709</sup>This Act, so far as it relates to capital gains tax, shall be construed as one with the [<sup>F4965</sup>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

- F4960**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)
- F4961**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)
- F4962**S. 831(3): definition of "ITA 2007" 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. 211** (with Sch. 2)
- F4963**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**
- F4964**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))
- F4965**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)

- C620** S. 831(4) applied (28.7.2000) by **Finance Act 2000 (c. 17), Sch. 22 para. 144(2)**

#### Marginal Citations

- M705** Source—1970 s.526(1), (2); 1987 Sch.15 12
- M706** 1987 c. 42.
- M707** 1978 c. 30.
- M708** 1986 c. 9.
- M709** Source—1970 s.540(2)

### 832 Interpretation of the [<sup>F4966</sup>Corporation Tax Acts etc].

- (1) [<sup>F4967M710</sup>In the Corporation 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;  
<sup>F4968</sup> .....
- “authorised unit trust” has the meaning given by section 468(6);  
<sup>F4969</sup> .....
- “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 <sup>M711</sup>Building Societies Act 1986;



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“capital allowance” means any allowance under [<sup>F4970</sup>the Capital Allowances Act (including enactments which under this Act are to be treated as contained in that Act)];

[<sup>F4971</sup>“the Capital Allowances Act” means the Capital Allowances Act 2001;

“chargeable gain” has the same meaning as in the [<sup>F4972</sup>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;

[<sup>F4973</sup>“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;

[<sup>F4974</sup>“for accounting purposes” means for the purposes of accounts drawn up in accordance with generally accepted accounting practice;]

[<sup>F4975</sup>“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);

<sup>F4976</sup> . . . . .

[<sup>F4977</sup>“generally accepted accounting practice” [<sup>F4978</sup>has the meaning given by section 50(1) of the Finance Act 2004];]

<sup>F4979</sup> . . . . .

<sup>F4980</sup> . . . . .

<sup>F4981</sup> . . . . .

“inspector” means any inspector of taxes;

<sup>F4982</sup> . . . . .

[<sup>F4983</sup>“international accounting standards” has the meaning given by section 50(2) of the Finance Act 2004;]

[<sup>F4984</sup><sup>F4985</sup> . . . . .]

[<sup>F4986</sup>“local authority association” has the meaning given by section 519;]

[<sup>F4987</sup><sup>F4988</sup> . . . . .]

“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 [<sup>F4989</sup><sup>F4990</sup> . . . . .];

[<sup>F4991</sup>“offshore installation” has the meaning given by section 837C;]

[<sup>F4992</sup>“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

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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;

[<sup>F4993</sup>“overseas property business”—

- (a) <sup>F4994</sup> . . . . .
- (b) <sup>F4995</sup> . . . has the meaning given by section 70A(4);]

[<sup>F4996</sup>“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;]

[<sup>F4997</sup>“permanent establishment”, in relation to a company, has the meaning given by section 148 of the Finance Act 2003;]

<sup>F4998</sup> . . . . .

[<sup>F4999</sup>“property investment LLP” has the meaning given by section 842B;]

“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;

[<sup>F5000</sup><sup>F5001</sup> . . . . .]

<sup>F5002</sup> . . . . .

<sup>F5003</sup> . . . . .

[<sup>F5004</sup>“registered pension scheme” has the meaning given by section 150(2) of the Finance Act 2004;]

[<sup>F5005</sup><sup>F5006</sup> . . . . .]

[<sup>F5007</sup>“Schedule A business” means any business the profits or gains of which are chargeable to [<sup>F5008</sup>“corporation 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;

[<sup>F5009</sup>“scheme administrator”, in relation to a pension scheme, has the meaning given by section 270 of the Finance Act 2004 (but see also sections 271 to 274 of that Act);]

[<sup>F5010</sup><sup>F5011</sup> . . . . .]

[<sup>F5012</sup><sup>F5013</sup> . . . . .]

[<sup>F5012</sup><sup>F5013</sup> . . . . .]

[<sup>F5012</sup><sup>F5013</sup> . . . . .]

[<sup>F5014</sup><sup>F5015</sup> . . . . .]

<sup>F5016</sup> . . . . .

[<sup>F5017</sup>“tax credit” means—

- (a) a tax credit under section 231 <sup>F5018</sup> . . . ; and
- (b) <sup>F5019</sup> . . . . .]

“trade” includes every trade, manufacture, adventure or concern in the nature of trade;

[<sup>F5020</sup>“UK generally accepted accounting practice” has the meaning given by section 50(4) of the Finance Act 2004;]

[<sup>F5021</sup><sup>F5022</sup> . . . . .]

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F5023 .....

“unit holder” has the meaning given by section 468(6);

[<sup>F5024</sup>“unit trust scheme” has the same meaning as in the Income Tax Acts (see section 1007 of ITA 2007);]

“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;

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) <sup>M712</sup> 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).

<sup>F5025</sup> [ Chapter 2 of Part 9 of ITA 2007 (which relates to settlements and trustees) applies for (2A) the purposes of the Corporation Tax Acts as it applies for the purposes of the Income Tax Acts.]

(3) <sup>M713</sup> 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.

<sup>F5026</sup> [ Any reference in the [<sup>F5027</sup>Corporation Tax Acts] to franked investment income (4A) 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) <sup>F5028</sup> .....]]]]

**Textual Amendments**

**F4966** Words in s. 832 sidenote 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. 212\(6\)](#) (with Sch. 2)

**F4967** Words in s. 832(1) 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. 212\(2\)\(a\)](#) (with Sch. 2)

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- F4968S.** 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)**
- F4969S.** 832(1): definition of "basic rate" and "basic rate limit" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(b\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F4970S.** 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)**
- F4971S.** 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)**
- F4972** 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)).
- F4973S.** 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**
- F4974S.** 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)**
- F4975S.** 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)**
- F4976S.** 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
- F4977S.** 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)**
- F4978S.** 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)**
- F4979S.** 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
- F4980S.** 832(1): definition of "higher rate" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(c\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F4981S.** 832(1): definition of "industrial assurance business" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(d\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F4982S.** 832(1): definition of "interest" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(e\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F4983S.** 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)**
- F4984S.** 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)**
- F4985S.** 832(1): definition of "investment LLP" and "property investment LLP" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(f\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F4986** 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;”.
- F4987S.** 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)**
- F4988S.** 832(1): definition of "lower rate" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(g\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))
- F4989S.** 832(1): words in definition of "notice" inserted (31.7.1998) by [Finance Act 1998 \(c. 36\)](#), **s. 118(10)**
- F4990S.** 832(1): words in definition of "notice" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(h\)](#), **Sch. 3 Pt. 1** (with [Sch. 2](#))

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- F4991S.** 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**
- F4992S.** 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**
- F4993S.** 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)
- F4994S.** 832(1): in definition of "overseas property business", para. (a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 212(2)(i), Sch. 3 Pt. 1** (with Sch. 2)
- F4995S.** 832(1): in definition of "overseas property business", words in para. (b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 212(2)(i), Sch. 3 Pt. 1** (with Sch. 2)
- F4996S.** 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)**
- F4997S.** 832(1): definition of "permanent establishment" inserted (10.7.2003) by Finance Act 2003 (c. 14), **s. 148(6)**
- F4998S.** 832(1): definition of "preference dividend" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 212(2)(j), Sch. 3 Pt. 1** (with Sch. 2)
- F4999S.** 832(1): definition of "property investment LLP" 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. 212(2)(k)** (with Sch. 2)
- F5000S.** 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)**
- F5001S.** 832(1): definition of "the rate applicable to trusts" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 212(2)(l), Sch. 3 Pt. 1** (with Sch. 2)
- F5002S.** 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
- F5003S.** 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)
- F5004S.** 832(1): definition of "registered pension scheme" inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 35(2)** (with Sch. 36)
- F5005S.** 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)
- F5006S.** 832(1): definition of "relevant foreign income" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 212(2)(m), Sch. 3 Pt. 1** (with Sch. 2)
- F5007S.** 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**
- F5008S.** 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)
- F5009S.** 832(1): definition of "scheme administrator" inserted (6.4.2006) by Finance Act 2004 (c. 12), s. 284(1), **Sch. 35 para. 35(3)** (with Sch. 36)
- F5010S.** 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)**

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- F5011** S. 832(1): definition of "starting rate" and "starting rate limit" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(n\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5012** 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\(1\)](#)
- F5013** S. 832(1): definitions of "the dividend ordinary rate", "the dividend trust rate" and "the dividend upper rate" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(q\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5014** 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
- F5015** S. 832(1): definition of "step-child" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(o\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5016** 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
- F5017** 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](#))
- F5018** S. 832(1): in definition of "tax credit", words in para. (a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(p\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5019** S. 832(1): in definition of "tax credit", para. (b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(p\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5020** 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\(5\)\(b\)](#)
- F5021** 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](#))
- F5022** S. 832(1): definition of "UK property business" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(2\)\(r\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F5023** 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](#))
- F5024** S. 832(1): definition of "unit trust scheme" 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. 212\(2\)\(s\)](#) (with [Sch. 2](#))
- F5025** S. 832(2A) 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. 212\(3\)](#) (with [Sch. 2](#))
- F5026** 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\(7\)](#)
- F5027** Words in s. 832(4A) 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. 212\(4\)](#) (with [Sch. 2](#))
- F5028** S. 832(5) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 212\(5\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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#### Marginal Citations

- M710** 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\(20\)](#)
- M711** 1986 c. 53.
- M712** Source—1970 s.526(6)



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**M713** Source—1970 s.526(3), (4)

### 833 Interpretation of Income Tax Acts.

F5029

#### Textual Amendments

**F5029**S. 833 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 213, Sch. 3 Pt. 1](#) (with Sch. 2)

### 834 Interpretation of the Corporation Tax Acts.

<sup>M714</sup>(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 <sup>F5030</sup> . . . ;

“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 [<sup>F5031</sup> [<sup>F5032</sup> does not include 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;

[<sup>F5033</sup> “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 [<sup>F5034</sup> 338A];

[<sup>F5035</sup> “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;

[<sup>F5036</sup> “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;]

[<sup>F5037</sup> “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,



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- (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;]  
[<sup>F5038</sup>“venture capital trust” has the same meaning as in Part 6 of ITA 2007.]
- (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;
- <sup>F5039</sup>  
.....
- (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, [<sup>F5040</sup>except 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

- F5030S.** 834(1): words in definition of "accounting date" repealed (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 40 Pt. 3\(16\)](#)
- F5031S.** 834(1): words in definition of "allowable loss" inserted (with effect in accordance with s. 69(5) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [s. 69\(4\)](#)
- F5032S.** 834(1): words in definition of "allowable loss" substituted (with effect in accordance with s. 27(6) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [s. 27\(5\)](#)
- F5033S.** 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\(5\)](#)
- F5034S.** 834(1): words in definition of "charges on income" substituted (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [Sch. 30 para. 1\(4\)](#)
- F5035S.** 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](#)
- F5036S.** 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](#))
- F5037S.** 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](#)
- F5038S.** 834(1): definition of "venture capital trust" 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. 214](#) (with [Sch. 2](#))
- F5039** 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](#)
- F5040** 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](#)

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#### Modifications etc. (not altering text)

**C621 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

**M714** Source—1970 s.527.

VALID FROM 01/04/2009

### <sup>F5041</sup> **834 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

<i>Provisions of this Act</i>	<i>Description</i>
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

<i>Provisions of CTA 2009</i>	<i>Description</i>
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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
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
<b>PART 3</b>	
<b><i>Other provisions</i></b>	<b><i>Description</i></b>
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

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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

- (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

**F5041**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

#### **[<sup>F5042</sup>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

**F5042**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

#### **[<sup>F5043</sup>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

**F5043**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)

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**835 “Total income” in the Income Tax Acts.**

F5044  
.....

**Textual Amendments**

**F5044S. 835** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 215](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**836 Returns of total income.**

F5045  
.....

**Textual Amendments**

**F5045S. 836** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 216](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

[<sup>F5046</sup>**836A Generally accepted accounting practice**

F5047  
..... ]

**Textual Amendments**

**F5046S. 836A** inserted (with effect in accordance with s. 103(6) of the amending Act) by [Finance Act 2002 \(c. 23\)](#), [s. 103\(2\)](#)

**F5047S. 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

[<sup>F5048</sup>**836B Table of provisions to which this section applies**

F5049  
..... ]

**Textual Amendments**

**F5048S. 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](#))

**F5049S. 836B** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 217](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**837 “Annual value” of land.**

F5050  
.....

**Textual Amendments**

**F5050S. 837** repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), [Sch. 1 para. 218](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

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**[<sup>F5051</sup>837 Meaning of “research and development”.**

(1) The following provisions have effect for the purposes of, and subject to, the provisions of the [<sup>F5052</sup>Corporation Tax Acts] which apply this section.

(2) “Research and development” means activities that fall to be treated as research and development in accordance with [<sup>F5053</sup>generally accepted accounting practice].

This is subject to [<sup>F5054</sup>subsections (2A) and (2B)] below.

[<sup>F5055</sup>(2A) Activities that, as a result of regulations made under section 1006 of ITA 2007, are “research and development” for the purposes of that section are also “research and development” for the purposes of this section.]

(2B) And activities that, as a result of any such regulations, are not “research and development” for the purposes of that section are also not “research and development” for the purposes of this section.]

(5) <sup>F5056</sup> .....

(6) Unless otherwise expressly provided, “research and development” does not include oil and gas exploration and appraisal.]

**Textual Amendments**

**F5051**S. 837A inserted (28.7.2000) by Finance Act 2000 (c. 17), Sch. 19 para. 1

**F5052**Words in s. 837A(1) 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. 219(2) (with Sch. 2)

**F5053**Words in s. 837A(2) substituted (24.7.2002) by Finance Act 2002 (c. 23), s. 103(4)(a)

**F5054**Words in s. 837A(2) 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. 219(3) (with Sch. 2)

**F5055**S. 837A(2A)(2B) substituted for s. 837A(3)(4) (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. 219(4) (with Sch. 2)

**F5056**S. 837A(5) repealed (24.7.2002) by Finance Act 2002 (c. 23), Sch. 40 Pt. 3(16)

**[<sup>F5057</sup>837 Meaning of “oil and gas exploration and appraisal”.**

(1) References in the [<sup>F5058</sup>Corporation 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 <sup>M715</sup>Petroleum Act 1998.]

**Textual Amendments**

**F5057**S. 837B inserted (28.7.2000) by Finance Act 2000 (c. 17), Sch. 19 para. 2

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**F5058** Words in s. 837B(1) 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. 220 (with Sch. 2)

**Marginal Citations**

M715 1998 c. 17.

[<sup>F5059</sup>**837** **Meaning of “offshore installation”**

- (1) For the purposes of the [<sup>F5060</sup>Corporation 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 [<sup>F5060</sup>Corporation 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.]



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### Textual Amendments

**F5059**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

**F5060**Words in s. 837C(1)(5) 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. 221 (with Sch. 2)

## 838 Subsidiaries.

<sup>M716</sup>(1) For the purposes of the [<sup>F5061</sup>Corporation 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”;

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- (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.
- (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.

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### Textual Amendments

**F5061** Words in s. 838(1) 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. 222** (with Sch. 2)

### Modifications etc. (not altering text)

**C622** 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)**

**C623** S. 838 modified (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), **Sch. 29 para. 50(7)**

**C624** S. 838 applied (1.1.2008 with effect in accordance with reg. 1(2) of the affecting S.I.) by [The Scientific Research Organisations Regulations 2007 \(S.I. 2007/3426\)](#), **regs. 1(1), 2(3)**

**C625** S. 838 applied (with effect in accordance with s. 93(2) of the affecting Act) by [Finance Act 2009 \(c. 10\)](#), **Sch. 46 para. 18(3)(4)**

**C626** 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))

**C627** 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)**

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)**

**C628** S. 838(2)-(10) applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by [Corporation Tax Act 2009 \(c. 4\)](#), **s. 768(9)** (with Sch. 2 Pts. 1, 2)

**C629** S. 838(4)-(10) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2, Pt. I para. 31(11)**

### Marginal Citations

**M716** Source—1970 s.532.

## 839 Connected persons.

<sup>M717</sup>(1) For the purposes of, and subject to, the provisions of the [<sup>F5062</sup>Corporation 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 [<sup>F5063</sup>spouse or civil partner], or is a relative, or the [<sup>F5063</sup>spouse or civil partner] of a relative, of the individual or of the individual's [<sup>F5063</sup>spouse or civil partner].

[<sup>F5064</sup>(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, [<sup>F5065</sup> . . .

(c) any body corporate which is connected with that settlement,

[<sup>F5066</sup>(d) if the settlement is the principal settlement in relation to one or more sub-fund settlements, the trustees of the sub-fund settlements, and

(e) if the settlement is a sub-fund settlement in relation to a principal settlement, the trustees of any other sub-fund settlements in relation to the principal settlement.]

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(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.]

[<sup>F5067</sup>(3B) For the purpose of subsection (3) above—

- (a) “settlement” has the same meaning as in section 620 of ITTOIA 2005,
- (b) “trustee”, in relation to a settlement in relation to which there would be no trustees apart from this paragraph, means any person—

[ in whom the property comprised in the settlement is for the time being  
<sup>F5068</sup>(i) vested, or

(ii) in whom the management of that property is for the time being vested,]

and

- (c) “principal settlement” and “sub-fund settlement” have the meaning given by paragraph 1 of Schedule 4ZA to the 1992 Act.]

(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 [<sup>F5063</sup>spouse 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.

(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 [<sup>F5069</sup>(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.

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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 <sup>M718</sup>Prevention of Fraud (Investments) Act 1958 or the <sup>M719</sup>Prevention of Fraud (Investments) Act (Northern Ireland) 1940.

### Textual Amendments

- F5062** Words in s. 839(1) 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. 223\(2\)](#) (with Sch. 2)
- F5063** 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
- F5064** 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](#)
- F5065** Word at the end of s. 839(3)(b) repealed (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 paras. 25\(a\)](#), 27(1), [Sch. 26 Pt. 3\(15\)](#), Note
- F5066** S. 839(3)(d)(e) substituted for words in s. 839(3) (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 paras. 25\(b\)](#), [27\(1\)](#)
- F5067** S. 839(3B) inserted (6.4.2006) by [Finance Act 2006 \(c. 25\)](#), [Sch. 13 paras. 25\(c\)](#), [27\(1\)](#)
- F5068** S. 839(3B)(b)(i)(ii) substituted for words in s. 839(3B)(b) (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. 223\(3\)](#) (with Sch. 2)
- F5069** 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)

- C630** 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\(6\)](#)
- C631** S. 839 applied (with effect in accordance with s. 127(19) of the affecting Act) by [Finance Act 1995 \(c. 4\)](#), [s. 127\(17\)](#)
- C632** 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](#))
- C633** 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](#))
- C634** 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](#))
- C635** 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\(3\)-\(6\)](#))
- C636** S. 839 applied (19.3.1997) by [Finance Act 1997 \(c. 16\)](#), [Sch. 12 para. 25\(2\)](#)
- C637** 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\(10\)](#)
- C638** 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\(4\)](#)
- C639** S. 839 applied (27.7.1999) by [Finance Act 1999 \(c. 16\)](#), [s. 97\(2\)\(a\)](#)
- C640** S. 839 applied (28.3.2000) by [Finance Act 2000 \(c. 17\)](#), [s. 119\(9\)\(13\)](#)

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- 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](#))
- C641** 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\(2\)](#))
- C642** 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](#))
- C643** S. 839 applied (1.4.2002) by [The Aggregates Levy \(General\) Regulations 2002 \(S.I. 2002/761\)](#), [reg. 12\(2\)](#)
- C644** 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\(5\)\(b\)](#))
- C645** 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\(4\)\(b\)](#)
- C646** 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](#))
- C647** 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](#)
- C648** 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](#))
- C649** 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](#)
- C650** S. 839 applied (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 26 para. 7\(3\)](#)
- C651** 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](#))
- C652** 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](#))
- C653** S. 839 applied (22.7.2004) by [Finance Act 2004 \(c. 12\)](#), [s. 278\(4\)](#) (with [Sch. 36](#))
- C654** 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](#)
- C655** 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\(5\)](#))
- C656** 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\(4\)](#))
- C657** 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\(2\)](#))



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- C658** 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**)
- C659** 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)**
- C660** 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)**
- C661** S. 839 applied (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 878(5), 883(3)(b)**
- C662** S. 839 applied (with modifications) (7.4.2005) by Finance Act 2005 (c. 7), **s. 83(9)**
- C663** S. 839 applied (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), **ss. 17(4)(n), 31(3), Sch. 3 para. 12**
- C664** 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)**)
- C665** 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**)
- C666** S. 839 applied (6.4.2006) by Finance Act 2004 (c. 12), **ss. 161(8), 273(11), 284(1)** (with Sch. 36)
- C667** S. 839 applied by Finance Act 2004 (c. 12), **s. 266A(7)** (as inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 4, **64(1)**)
- C668** S. 839 applied by Finance Act 2004 (c. 12), **s. 162(6)** (as inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 6(4), **64(1)**)
- C669** S. 839 applied by Finance Act 2004 (c. 12), **ss. 172A(11), 172B(9), 172C(7), 172D(6)** (as inserted (6.4.2006) by Finance Act 2005 (c. 7), Sch. 10 paras. 38, **64(1)**)
- C670** S. 839 applied by Finance Act 2004 (c. 12), **Sch. 36 para. 11D(5)** (as inserted (6.4.2006) by Finance Act 2006 (c. 25), s. 161(2), **Sch. 23 para. 38**)
- C671** S. 839 applied (6.4.2006) by The Pension Schemes (Reduction in Pension Rates) Regulations 2006 (S.I. 2006/138), **regs. 1(1), 2(3)**
- C672** S. 839 applied (6.4.2006) by The Registered Pension Schemes (Provision of Information) Regulations 2006 (S.I. 2006/567), **regs. 1, 2(2)**
- C673** S. 839 applied by The Authorised Investment Funds Regulations 2006 (S.I. 2006/964), **reg. 52A(7)** (as inserted (7.12.2006) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2006 (S.I. 2006/3239), **regs. 1, 2**)
- C674** S. 839 applied (14.12.2006 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Oil Taxation (Market Value of Oil) Regulations 2006 (S.I. 2006/3313), **regs. 1(1), 8(4)**
- C675** S. 839 applied (1.1.2007) by Finance Act 2006 (c. 25), **ss. 34(4), 53(1)**; S.I. 2006/3399, **art. 2**
- C676** S. 839 applied (with modifications) (28.12.2007 with effect in accordance with reg. 1 of the affecting S.I.) by The Taxation of Insurance Securitisation Companies Regulations 2007 (S.I. 2007/3402), **reg. 2(2)**
- C677** S. 839 applied (1.1.2008 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Scientific Research Organisations Regulations 2007 (S.I. 2007/3426), **regs. 1(1), 14(4)**
- C678** S. 839 applied by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69J(10)(b)** (as inserted (6.4.2008) by The Authorised Investment Funds (Tax) (Amendment) Regulations 2008 (S.I. 2008/705), **regs. 1, 5**)
- C679** S. 839 applied by Oil Taxation Act 1975 (c. 22), **Sch. 5 para. 2B(2)** (as substituted (with effect in accordance with **s. 103(2)** of the amending Act) by Finance Act 2008 (c. 9), s. 103(1))
- C680** S. 839 applied by Finance Act 1996 (c. 8), **Sch. 9 para. 12(2E)** (as inserted (with effect in accordance with Sch. 22 para. 5(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 22 para. 5(1)**)
- C681** S. 839 applied by Finance Act 2002 (c. 23), **Sch. 26 para. 28(3ZC)** (as inserted (with effect in accordance with Sch. 22 para. 5(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 22 para. 5(2)**)
- C682** S. 839 applied by Finance Act 1996 (c. 8), **ss. 91H(5), 91I(6)** (as inserted (with effect in accordance with Sch. 22 para. 17(3) of the amending Act) by Finance Act 2008 (c. 9), **Sch. 22 para. 17(1)**)



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- C683** S. 839 applied by Finance Act 1996 (c. 8), s. 94B(10) (as inserted (with effect in accordance with Sch. 22 para. 18(3) of the amending Act) by Finance Act 2008 (c. 9), Sch. 22 para. 18(1))
- C684** S. 839 applied (22.7.2008) by Crossrail Act 2008 (c. 18), Sch. 13 para. 34(7)
- C685** S. 839 applied by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), reg. 14C(10)(b) (as inserted (1.1.2009 with effect in accordance with reg. 1(2) of the amending S.I.) by The Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008 (S.I. 2008/3159), regs. 1(1), 11)
- C686** S. 839 applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), s. 1316(1) (with Sch. 2 Pts. 1, 2)
- C687** S. 839 applied by Betting and Gaming Duties Act 1981 (c. 63), s. 21(7) (as inserted (1.6.2009) by Finance Act 2009 (c. 10), s. 22(6)(12))
- C688** S. 839 applied by Finance Act 2003 (c. 14), Sch. 9 paras. 5(2B), 7(9) (as inserted (with effect in accordance with s. 81(8) of the amending Act) by Finance Act 2009 (c. 10), s. 81(6)(b)(7)(b))
- C689** S. 839 applied (with effect in accordance with Sch. 3 para. 11 of the affecting Act) by Finance Act 2009 (c. 10), Sch. 3 para. 8
- C690** S. 839 applied (1.12.2009 with effect in accordance with reg. 1(2) of the affecting S.I.) by The Offshore Funds (Tax) Regulations 2009 (S.I. 2009/3001), regs. 1(1), 76(3)(b), 82(3)(b) (with regs. 119, 122, Sch. 1)
- C691** S. 839(2)-(8) applied (E.W.S.) (16.1.1992) by S.I. 1992/58, art. 8(9)(b), Sch. 1 para. 3
- C692** S. 839(2) applied (6.4.2006) by The Registered Pension Schemes (Authorised Surplus Payments) Regulations 2006 (S.I. 2006/574), regs. 1, 2(5)

#### Marginal Citations

- M717** Source—1970 s.533.  
**M718** 1958 c. 45.  
**M719** 1940 c. 9 (N.I.)

## 840 Meaning of “control” in certain contexts.

<sup>M720</sup>For the purposes of, and subject to, the provisions of the [<sup>F5070</sup>Corporation 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.

#### Textual Amendments

**F5070** Words in s. 840 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. 224 (with Sch. 2)

#### Modifications etc. (not altering text)

- C693** 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)

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- 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**
- 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**)
- C694** 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**
- C695** 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)
- C696** S. 840 applied (with effect in accordance with s. 77 of the affecting Act) by Finance Act 2004 (c. 12), **s. 65(3)**
- C697** S. 840 applied (24.3.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), **ss. 878(6)**, 883(3)(b)
- C698** S. 840 applied by Finance Act 2003 (c. 14), **s. 73AB(4)** (as inserted (with effect in accordance with **s. 155(4)** of the amending Act) by Finance Act 2008 (c. 9), s. 155(3))
- C699** S. 840 applied (1.4.2009 with effect in accordance with s. 1329(1) of the affecting Act) by Corporation Tax Act 2009 (c. 4), **s. 1316(2)** (with Sch. 2 Pts. 1, 2)

#### Marginal Citations

**M720** Source—1970 s.534

#### [<sup>F5071</sup>~~S. 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

**F5071** ~~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)

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[<sup>F5072</sup>**840**~~B~~**anks.**

- (1) In any provision [<sup>F5073</sup>of the Corporation Tax Acts] in relation to which it is provided that “bank” has the meaning given by this section “bank” means—
- (a) the Bank of England;
  - [<sup>F5074</sup>(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,
    - [<sup>F5075</sup>(ii) a society registered within the meaning of the Friendly Societies Act 1974 <sup>M721</sup> or incorporated under the Friendly Societies Act 1992 <sup>M722</sup>],
    - (iii) a society registered as a credit union under the Industrial and Provident Societies Act 1965 <sup>M723</sup> or the Credit Unions (Northern Ireland) Order 1985 <sup>M724</sup>, or
    - (iv) an insurance company within the meaning of section [<sup>F5076</sup> 275 of the Finance Act 2004;]
  - (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
  - [<sup>F5077</sup>(ca) the European Investment Bank; 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) <sup>F5078</sup> .....
- (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**

- F5072**S. 840A inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), **Sch. 37 para. 1(1)**
- F5073**Words in s. 840A(1) 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. 226(a)** (with [Sch. 2](#))
- F5074**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)**
- F5075**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)**
- F5076**Words in s. 840A(1)(b)(iv) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), **Sch. 35 para. 36** (with [Sch. 36](#))
- F5077**S. 840A(1)(ca) 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. 226(b)** (with [Sch. 2](#))
- F5078**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**

- M721** 1974 c. 46.  
**M722** 1992 c. 40.  
**M723** 1965 c. 12.

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M724 S.I. 1985/1205 (N.I. 12).

### <sup>F5079</sup>841 Meaning of “recognised stock exchange” etc

- (1) In the Corporation Tax Acts “recognised stock exchange” has the same meaning as in the Income Tax Acts (see subsections (1) and (2) of section 1005 of ITA 2007).
- (2) References in the Corporation Tax Acts to securities which are listed on a recognised stock exchange are to be read in accordance with subsections (3) and (4) of that section.
- (3) References in the Corporation Tax Acts to securities which are included in the official UK list are to be read in accordance with subsection (5) of that section.
- (4) In this section “securities” includes shares and stock.]

#### Textual Amendments

**F5079**S. 841 substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 2](#)

### <sup>F5080</sup>841 ~~Recognised clearing systems.~~

<sup>F5081</sup> . . . . . ]

#### Textual Amendments

**F5080**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](#))

**F5081**S. 841A repealed (28.7.2000) by [Finance Act 2000 \(c. 17\)](#), [Sch. 40 Pt. 2\(17\)](#)

### 842 Investment trusts.

<sup>M725</sup>(1) In the <sup>F5082</sup>Corporation 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—

- <sup>F5083</sup>(aa) that the company is resident in the United Kingdom; and]
  - (a) that the company’s income <sup>F5084</sup>(as determined in accordance with subsection (1AB) below)] <sup>F5085</sup>is derived wholly or mainly from shares or securities] <sup>F5086</sup>(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
- <sup>F5087</sup>(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 <sup>F5088</sup>included in the official UK list]; and]
- (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

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- (e) that the company does not retain in respect of any accounting period [<sup>F5089</sup>an amount which is greater than] 15 per cent. of [<sup>F5090</sup>the income it derives from shares or securities][<sup>F5091</sup>(determined in accordance with subsection (1AB) below)].

[<sup>F5092</sup>(1AA) <sup>F5093</sup>.....]

[<sup>F5094</sup>(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.]

[<sup>F5095</sup>(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.]

[<sup>F5096</sup>(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.

[<sup>F5097</sup>(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—

- (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

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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 <sup>F5098</sup> . . . , 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.

[<sup>F5099</sup>(3A) References in this section to income do not include income treated as arising under section 761(1)(a).]

(4) In this section “company” and “shares” shall be construed in accordance with sections [<sup>F5100</sup>99 and 288 of [<sup>F5101</sup>the 1992 Act]] [<sup>F5102</sup>and “scheme of reconstruction” has the same meaning as in section 136 of that Act].

#### Textual Amendments

**F5082** Words in s. 842(1) 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. 228](#) (with [Sch. 2](#))

**F5083** 1988(F) s.117(1)(a) *for accounting periods ending after 5th April 1988.*

**F5084** 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\(2\)\(a\)](#)

**F5085** Words in s. 842(1)(a) restored (as a result of the repeal of amending provision FA 1996 (c. 8), Sch. 30 para. 2(2) with effect in accordance with s. 145(2) of the repealing Act) by virtue of [Finance Act 2006 \(c. 25\)](#), s. 143, [Sch. 26 Pt. 4](#)

**F5086** 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\(2\)\(b\)](#)

**F5087** 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”.

**F5088** Words in s. 842(1)(c) substituted (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 7\(9\)](#)

**F5089** 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\(3\)\(a\)](#)

**F5090** Words in s. 842(1)(e) restored (as a result of the repeal of amending provision FA 1996 (c. 8), Sch. 30 para. 2(2) with effect in accordance with s. 145(2) of the repealing Act) by virtue of [Finance Act 2006 \(c. 25\)](#), s. 143, [Sch. 26 Pt. 4](#)

**F5091** 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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- F5092**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)**
- F5093**S. 842(1AA) repealed (with effect in accordance with s. 145(2) of the repealing Act) by Finance Act 2006 (c. 25), s. 143(c), **Sch. 26 Pt. 4**
- F5094**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)**
- F5095**S. 842(1AC) inserted (22.7.2004) by Finance Act 2004 (c. 12), **s. 45(4)**
- F5096**1988(F) s.117(1)(c)for accounting periods ending after 5th April 1988.
- F5097**1990 s.55in relation to accounting periods ending on or after 26July 1990.
- F5098**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
- F5099**S. 842(3A) inserted (with effect in accordance with s. 57(7) of the amending Act) by Finance Act 2007 (c. 11), **s. 57(3)**
- F5100**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))
- F5101**Words in s. 842(4) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**
- F5102**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)**

- C700** S. 842(1A)(a) excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), **Sch. 2 para. 12(2)**

**Marginal Citations**

- M725** Source—1970 s.359; 1973 s.54; 1979(C) Sch.7.

[<sup>F5103</sup>**842AA** Venture capital trusts.

<sup>F5104</sup> . . . . . ]

**Textual Amendments**

- F5103**S. 842AA inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 70(1)**
- F5104**S. 842AA repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 229, **Sch. 3 Pt. 1** (with Sch. 2)

[<sup>F5105</sup>**842A** Local authorities.

- (1) Except so far as the context otherwise requires, in the [<sup>F5106</sup>Corporation Tax Acts]“local authority” means—
  - (a) in relation to England and Wales, an authority of a description specified for the purposes of this paragraph [<sup>F5107</sup><sup>F5108</sup> . . . ].
  - (b) in relation to Scotland, an authority of a description specified for the purposes of this paragraph [<sup>F5109</sup><sup>F5108</sup> . . . ], and
  - (c) in relation to Northern Ireland, an authority of a description specified for the purposes of this paragraph [<sup>F5110</sup><sup>F5108</sup> . . . ].
- (2) The following are the descriptions of authority specified for the purposes of paragraph (a) of subsection (1) above—



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- [<sup>F5111</sup>(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 <sup>M726</sup>Local 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;
- <sup>F5112</sup>(e) .....
- [<sup>F5113</sup>(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;
- <sup>F5114</sup>(h) [ a residuary body established by order under section 22(1) of the <sup>M727</sup>Local Government Act 1992.]
- (3) The following are the descriptions of authority specified for the purposes of paragraph (b) of subsection (1) above—
- [<sup>F5115</sup>(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 <sup>M728</sup>Local Government (Scotland) Act 1973;
- (e) an authority having power to requisition any sum from an authority [<sup>F5116</sup>such 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.
- (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

**F5105**S. 842A inserted (1.4.1990) by [Finance Act 1990 \(c. 29\)](#), [s.127\(1\)\(4\)](#)

**F5106**Words in s. 842A(1) 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. 230](#) (with Sch. 2)

**F5107**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\(1\)\(2\)\(bb\)](#)

**F5108**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\(k\)\(m\)](#)

**F5109**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\(1\)\(2\)\(bb\)](#)

**F5110**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\(1\)\(2\)\(bb\)](#)

**F5111**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\(1\)\(a\)](#)

**F5112**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.](#)

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- F5113** 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**
- F5114** S. 842A(2)(h) inserted (retrospective to 29.11.1994) by **Finance Act 1995 (c. 4), s. 144**
- F5115** 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)**
- F5116** 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

- M726** 1988 c. 41.  
**M727** 1992 c. 19.  
**M728** 1973 c. 65.

### [<sup>F5118</sup>**842B** Meaning of <sup>F5117</sup> . . . “property investment LLP”

- (1) In [<sup>F5119</sup>the Corporation Tax Acts]—
- (a) <sup>F5120</sup> . . . . .
- (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 <sup>F5121</sup> . . . a property investment LLP is determined for each period of account of the partnership.  
<sup>F5122</sup> . . . . .]

#### Textual Amendments

- F5117** Words in s. 842B sidenote repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 231(4), Sch. 3 Pt. 1** (with Sch. 2)
- F5118** 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)**
- F5119** Words in s. 842B(1) 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. 231(2)(a)** (with Sch. 2)
- F5120** S. 842B(1)(a) and word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 231(2)(b), Sch. 3 Pt. 1** (with Sch. 2)
- F5121** Words in s. 842B(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by **Income Tax Act 2007 (c. 3), Sch. 1 para. 231(3), Sch. 3 Pt. 1** (with Sch. 2)
- F5122** Words in s. 842B(2) repealed (24.7.2002) by **Finance Act 2002 (c. 23), Sch. 40 Pt. 3(16)**

*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 [<sup>F5123</sup>277 of [<sup>F5124</sup>the 1992 Act]]) shall

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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, <sup>F5125</sup> . . . , 400, 703 and 812.

#### Textual Amendments

**F5123** 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))

**F5124** Words in s. 843(2) substituted (retrospectively) by Finance Act 1994 (c. 9), **Sch. 17 para. 8**

**F5125** 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 <sup>M729</sup> Interpretation Act 1978 as respects the effect of repeals.
- (3) Schedule 30 which contains savings and transitional provisions shall have effect.
- (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.

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**Marginal Citations**

M729 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.

F5126F5126[F5127] SCHEDULE A2

**Textual Amendments**

**F5126**Sch. A2 repealed (with effect in accordance with s. 26(8)-(11) of the repealing Act) by [Finance Act 2006](#) (c. 25), s. 26(2), **Sch. 26 Pt. 3(1)**, Note

**F5127**Sch. A2 inserted (with effect in accordance with s. 28(4)(5) of the amending Act) by [Finance Act 2004](#) (c. 12), s. 28(2)(6), **Sch. 3**

F5128F5128 SCHEDULE 1

**Textual Amendments**

**F5128**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

F5129F5129 SCHEDULE 2

**Textual Amendments**

**F5129**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

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F5130F5130 SCHEDULE 3

Textual Amendments

F5130 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)

F5153F5153 SCHEDULE 4

Textual Amendments

F5153 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

1 F5154

Textual Amendments

F5154 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

2 F5155

Textual Amendments

F5155 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)

3 F5156

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**Textual Amendments**

**F5156**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 on disposal of securities*

4 **F5157** .....

**Textual Amendments**

**F5157**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*

5 **F5158** .....

**Textual Amendments**

**F5158**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)**

**C706** Sch. 4 para. 5 modified (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), [Sch. 15 para. 19\(2\)](#)

6 **F5159** .....

**Textual Amendments**

**F5159**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*

7 **F5160** .....

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**Textual Amendments**

**F5160**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\(3\)](#)

.....  
8            **F5161** .....

**Textual Amendments**

**F5161**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*

.....  
9            **F5162** .....

**Textual Amendments**

**F5162**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*

.....  
10           **F5163** .....

**Textual Amendments**

**F5163**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*

.....  
11           **F5164** .....

**Textual Amendments**

**F5164**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      F5165 .....

**Textual Amendments**

**F5165**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)**

**C707** 1989 s. 93and Sch. 10 para. 5.

*[<sup>F5166</sup>Issue price]*

**Textual Amendments**

**F5166**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

.....  
F516711B      F5168 .....

**Textual Amendments**

**F5167**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

**F5168**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*

.....  
12      F5169 .....

**Textual Amendments**

**F5169**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*

.....  
13      F5170 .....

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**Textual Amendments**

**F5170**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*

14

**F5171**

**Textual Amendments**

**F5171**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\(3\)](#)

*[<sup>F5172</sup> Retirement benefit schemes]*

**Textual Amendments**

**F5172**1989 s.93 and Sch.10 para.7.

15

**F5173**

**Textual Amendments**

**F5173**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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**F5174**

**Textual Amendments**

**F5174**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

.....  
17 F5175 .....

#### Textual Amendments

**F5175**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

.....  
18 F5176 .....

#### Textual Amendments

**F5176**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

.....  
19 F5177 .....

#### Textual Amendments

**F5177**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

.....  
20 F5178 .....

#### Textual Amendments

**F5178**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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*[<sup>F5179</sup> Convertible securities: special rules]*

**Textual Amendments**

**F5179** 1990 s.56 and Sch. 10 paras. 26(3), 29(4) on and after 9 June 1989.

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**F5180**

**Textual Amendments**

**F5180** 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 [<sup>F5181</sup> companies with investment business] etc.).

**Textual Amendments**

**F5181** 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 [<sup>F5182</sup>deductible 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**

**F5182** 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.

*[<sup>F5183</sup>Application of provisions to expenses of management of companies with investment business etc]*

#### Textual Amendments

**F5183** 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<sup>F5184</sup> (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

**F5184**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)

## F5185F5185 F5186 SCHEDULE 4A

#### Textual Amendments

**F5185**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)

**F5186**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) <sup>M739</sup>Subject to the provisions of this Schedule, in computing [<sup>F5187</sup>profits][<sup>F5188</sup>chargeable to corporation tax] under Case I of Schedule D, animals kept by a farmer for the purposes of [<sup>F5189</sup>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**

**F5187** 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

**F5188** 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)

**F5189** 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)

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**Marginal Citations**

**M739** 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 [<sup>F5190</sup>the 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 [<sup>F5191</sup>—
  - (a) <sup>F5192</sup> .....
  - (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—
  - [<sup>F5193</sup>(a) <sup>F5192</sup> .....
  - (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.]
- [<sup>F5194</sup>(5) <sup>F5192</sup> .....
- (6) In this paragraph—
  - <sup>F5195</sup> .....

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**F5196** .....  
“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;  
**F5195** .....]

### Textual Amendments

- F5190** 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)
- F5191** 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\(1\)](#)
- F5192** 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)
- F5193** 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\(2\)](#)
- F5194** 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\(3\)](#)
- F5195** 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)
- F5196** 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 [<sup>F5197</sup>profits][<sup>F5198</sup>chargeable 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 [<sup>F5199</sup>the 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 [<sup>F5197</sup>profits] 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 [<sup>F5200</sup>the 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 [<sup>F5201</sup>the 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

- F5197** 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
- F5198** 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)
- F5199** 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)
- F5200** 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)
- F5201** 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 [<sup>F5202</sup>the farmer] after the end of that period, be treated as if [<sup>F5202</sup>the farmer] had never kept any production herds of that class before the end of that period.

#### Textual Amendments

- F5202** 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 [<sup>F5203</sup>profits][<sup>F5204</sup>chargeable 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

**F5203** 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

**F5204** 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 [<sup>F5205</sup>its] 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 [<sup>F5206</sup>the 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.

[<sup>F5207</sup>(2) An election for the herd basis made by virtue of sub-paragraph (1) above shall only be valid if made—

- (a) <sup>F5208</sup> .....
- (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) <sup>F5208</sup> .....
- (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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F5209

.....  
“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;

F5210

.....]

- (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 [<sup>F5211</sup>profits] or losses of that or an earlier period.

#### Textual Amendments

- F5205** 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)
- F5206** 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)
- F5207** 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)
- F5208** 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)
- F5209** 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)
- F5210** 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)
- F5211** 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 [<sup>F5212</sup>the farmer] wholly or mainly for the sake of the products which they produce for [<sup>F5212</sup>the 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 [<sup>F5212</sup>the farmer] to sell for the sake of which (either wholly or mainly) the herds are kept by [<sup>F5212</sup>the 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 [<sup>F5213</sup>profits] chargeable to [<sup>F5214</sup>corporation] tax under Schedule D includes a reference to [<sup>F5213</sup>profits] which would be so chargeable if there were any such [<sup>F5213</sup>profits] for the [<sup>F5215</sup>accounting period] in question.

#### Textual Amendments

**F5212** 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)

**F5213** 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

**F5214** 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)

**F5215** 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 [<sup>F5216</sup>—
  - (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.

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**Textual Amendments**

**F5216** 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 [<sup>F5217</sup>accounting 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.

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**Textual Amendments**

**F5217** 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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F5218F5218 [F5219] SCHEDULE  
5AA]

**Textual Amendments**

**F5218**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)

**F5219**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**

F5236F5236 [F5237] SCHEDULE 5A

**Textual Amendments**

**F5236**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**

**F5237**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**

F5238F5238] SCHEDULE 6

**Textual Amendments**

**F5238**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)

F5251F5251 [F5252] SCHEDULE 6A]

**Textual Amendments**

**F5251**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)

**F5252**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

## SCHEDULE 7

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## F5280F5280 SCHEDULE 7

**Textual Amendments****F5280**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)

## F5305F5305 F5306 SCHEDULE 7A

**Textual Amendments****F5305**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)**F5306**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)**

## F5307F5307 SCHEDULE 8

**Textual Amendments****F5307**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)****C712** 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))**C713** Sch. 9 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 115****C714** Sch. 9 modified (29.4.1996) by Finance Act 1996 (c. 8), **s. 116(3)****C715** Sch. 9 modified (28.7.2000) by Finance Act 2000 (c. 17), **s. 49(1)(2)****C716** 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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## [<sup>F5335</sup>PART I

### GENERAL

#### Textual Amendments

**F5335**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) <sup>M754</sup>Subject 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) <sup>M755</sup>An 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) <sup>M756</sup>Where 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) <sup>M757</sup>In 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

**M754** Source—1978 Sch.9 1(1)(a); 1980 Sch.10 1(1)(a); 1984 Sch.10 1(1)

**M755** Source—1978 Sch.9 1(5); 1980 Sch.10 1(2); 1984 Sch.10 1(2)

**M756** Source—1978 Sch.9 1(2); 1980 Sch.10 1(3); 1984 Sch.10 1(3)

**M757** Source—1978 Sch.9 1(2); 1980 Sch.10 1(3); 1984 Sch.10 1(4)

- 2 (1) <sup>M758</sup>The 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) <sup>M759</sup>A 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—

- <sup>F5336</sup>(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) <sup>M760</sup>The 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

<sup>F5336</sup>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)

<sup>C717</sup> 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

<sup>M758</sup> Source—1978 Sch.9 1(1)(b); 1980 Sch.10 1(1), (b); 1984 Sch.10 1(1); 1987 Sch.15 13

<sup>M759</sup> Source—1978 s.54(1); 1986 s.24(3)(a)

<sup>M760</sup> 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—

- <sup>F5337</sup>(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 [<sup>F5338</sup>; 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) <sup>M761</sup>It 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 <sup>F5339</sup>(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

**F5337** Sch. 9 para. 3(2)(ca) inserted (21.3.2000) by [Finance Act 2000 \(c. 17\), s. 53\(2\)\(3\)](#)

**F5338** Sch. 9 para. 3(2)(f) and preceding word inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 51\(1\)](#)

**F5339** Sch. 9 para. 3(4)-(6) inserted (28.7.2000) by [Finance Act 2000 \(c. 17\), s. 51\(2\)](#)

#### Marginal Citations

**M761** Source—1978 Sch.9 3(3)

- 4 <sup>M762</sup>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)

**C718** 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

**M762** Source—1978 Sch.9 3(2); 1980 Sch.10 3(2); 1984 Sch.10 2(2)

- 5 <sup>M763</sup>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)**

**C719** 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**

**M763** Source—1978 Sch.9 4; 1980 Sch.10 4; 1984 Sch.10 3

- 6 <sup>M764</sup>The 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**

**M764** Source—1978 s.53(7); 1980 Sch.10 25; 1984 Sch.10 14

<sup>F5340</sup>**PART II**

REQUIREMENTS GENERALLY APPLICABLE

**Textual Amendments**

**F5340** 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 <sup>M765</sup>The 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**

**M765** Source—1978 Sch.9 11(1), (2); 1980 Sch.10 23; 1984 Sch.10 4(1)(b), (3)

<sup>F5341</sup>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**

**F5341** Sch. 9 Pt. II para. 8A inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 38(5)(6)

9 (1) <sup>M766</sup>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 [<sup>F5342</sup>(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**

**F5342** Words in Sch. 9 para. 9(1) inserted (21.3.2000) by Finance Act 2000 (c. 17), s. 52(2)(5)

**Marginal Citations**

**M766** Source—1978 Sch.9 1(1), (3); 1980 Sch.10 5(a); 1984 Sch.10

10 <sup>M767</sup>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; <sup>F5343</sup> . . .
  - <sup>F5343</sup>(ii) . . . . .

**Textual Amendments**

**F5343** Sch. 9 para. 10(c)(ii) and preceding word repealed by Finance Act 1989 (c. 26), s. 64, Sch. 17 Pt. 4

**Marginal Citations**

**M767** Source—1978 Sch.9 5; 1980 Sch.10 15; 1984 Sch.10 7

11 <sup>M768</sup>Scheme shares must be—

- (a) shares of a class [<sup>F5344</sup>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 [<sup>F5344</sup>listed] on a recognised stock exchange.

#### Textual Amendments

**F5344** 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

**M768** Source—1978 Sch.9 6; 1980, s.46(10), Sch.10 16; 1984 Sch.10 8

- [<sup>F5345</sup>11(A) 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

**F5345** Sch. 9 para. 11A inserted (21.3.2000) by Finance Act 2000 (c. 17), s. 52(3)(5) (with s. 52(6))

- 12 (1) <sup>M769</sup> Scheme shares must be—
- (a) fully paid up;
  - (b) not redeemable; and
  - (c) not subject to any restrictions [<sup>F5346</sup>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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- [<sup>F5347</sup>(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

**F5346** 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))

**F5347** 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

**M769** Source—1978 Sch.9 7; 1980 Sch.10 17; 1984 Sch.10 9; 1986 s.22, 24(2)

- 13 (1) <sup>M770</sup>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 any of the provisions of the Model Rules set out in the Model Code for Securities

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Transactions by Directors of Listed Companies issued by the Stock Exchange in November 1984.

[<sup>F5348</sup>(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

**F5348**Sch. 9 para. 13(3) added (retrospectively) by Finance Act 1988 (c. 39), s. 69(1)

#### Marginal Citations

**M770** Source—1980 Sch.10 18; 1982 s.41; 1984 Sch.10 10; 1986 s.23(4)

- 14 (1) <sup>M771</sup>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

**M771** Source—1978 Sch.9 8; 1980 s.46(11), Sch.10 19; 1984 Sch.10 11; 1986 s.23(3)

- 15 (1) <sup>M772</sup>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 <sup>M773</sup>Companies Act 1985 or Article 418 of the <sup>M774</sup>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) <sup>M775</sup>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 sub-



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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

**M772** Source—1980 Sch.10, 10A; 1984 Sch.10 4A; 1987 Sch.4 1, 2; 1987 (No.2) s.59

**M773** 1985 c. 6.

**M774** S.I. 1986/1032 (N.I. 6).

**M775** Source—1987 Sch.4 3

### F5349F5349 **PART III**

#### REQUIREMENTS APPLICABLE TO SAVINGS-RELATED SHARE OPTION SCHEMES

#### Textual Amendments

**F5349** 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.

F5360F5360 **PART IV**

**REQUIREMENTS APPLICABLE TO OTHER SHARE OPTION SCHEMES**

**Textual Amendments**

**F5360**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) .....

.....  
<sup>F5364</sup>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) <sup>F5366</sup> .....

## PART V

### REQUIREMENTS APPLICABLE TO PROFIT SHARING SCHEMES

30 (1) <sup>M796</sup>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) <sup>M797</sup>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) <sup>M798</sup>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) <sup>M799</sup>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

- M796** Source—1978 Sch.9 1(3)  
**M797** Source—1978 Sch.9 3(2)  
**M798** Source—1978 Sch.9 1 (4); 1983 s.25(1)  
**M799** Source—1978 s.53(4)

31 <sup>M800</sup>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

- M800** Source—1978 Sch.9 12

32 (1) <sup>M801</sup>The trust instrument must contain a provision prohibiting the trustees from disposing of any shares, except as mentioned in paragraph 1(1)(a), (b) [<sup>F5367</sup>, (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

**F5367** 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

- M801** Source—1978 Sch.9 13; 1980 s.46(13)

33 <sup>M802</sup>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)**

**C721** 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**

**M802** Source—1978 Sch.9 14

- 34 <sup>M803</sup>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**

**M803** Source—1978 Sch.9 15

- 35 (1) <sup>M804</sup>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) <sup>M805</sup>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**

**M804** Source—1978 Sch.9 9

**M805** Source—1978 Sch.9 10

- 36 (1) <sup>M806</sup>Subject to paragraphs 8 and 35 above, every person who at any time—
- (a) is [<sup>F5368</sup>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

**F5368** 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

**M806** Source—1978 Sch.9 2; 1983 s.25(4)

## <sup>F5369</sup> PART VI

### MATERIAL INTEREST TEST

#### Textual Amendments

**F5369** 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 <sup>M807</sup> 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

M807 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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*f<sup>F5370</sup> Shares subject to an employee benefit trust*

**Textual Amendments**

**F5370** 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)**

**C722** 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))

**C723** Sch. 10 modified (29.4.1996) by Finance Act 1996 (c. 8), s. 116(3)

**C724** 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) <sup>M808</sup>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
  - [<sup>F5371</sup>(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) <sup>M809</sup>No 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) <sup>M810</sup>If, 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.
- [<sup>F5372</sup>(4) In sub-paragraph (1)(cc) above “qualifying corporate bond” shall be construed in accordance with section 117 of the 1992 Act.]

#### Textual Amendments

**F5371** 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)

**F5372** 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

**M808** Source—1978 s.54(2); 1979 Sch.7

**M809** Source—1978 s.54(1A); 1980 s.46(2)

**M810** Source—1978 s.54(3)

#### *The period of retention*

- 2 <sup>M811</sup>For 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 [<sup>F5373</sup>the Employment Rights Act 1996] or the [<sup>F5374</sup>Employment Rights (Northern Ireland) Order 1996]; or
- (b) the date on which the participant reaches [<sup>F5375</sup>the relevant age]; or
- (c) the date of the participant's death; [<sup>F5376</sup>or]
- (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.

[<sup>F5377</sup>In 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, [<sup>F5378</sup>in 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

**F5373** 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)

**F5374** 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)

**F5375** Words in Sch. 10 para. 2(b) substituted by Finance Act 1991 (c. 31, SIF 63:1), s. 38(3)

**F5376** 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

**F5377** Words in Sch. 10 para. 2 inserted by Finance Act 1991 (c. 31, SIF 63:1), s. 38(3)

**F5378** 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

**M811** Source—1978 s.54(4), (5); 1980 s.46(3); 1986 s.24(3)

#### *The appropriate percentage*

<sup>3</sup> [<sup>F5379</sup>(1) For the purposes of any of the relevant provisions [<sup>F5380</sup>under 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

**F5379** 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)

**F5380** 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)

[<sup>F5381</sup>3(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

- [<sup>F5382</sup>(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 [<sup>F5383</sup>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

**F5381** Sch. 10 para. 3A inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 100(3)

**F5382** 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)

**F5383** 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) <sup>M812</sup>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

M812 Source—1978 s.56(2)-(5)

#### *Company reconstructions*

- 5 (1) <sup>M813</sup>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 [<sup>F5384</sup>1992] Act.

#### Textual Amendments

**F5384** 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

**M813** Source—1978 s.57; 1979(C) Sch.7

[<sup>F5385</sup>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

**F5385**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) <sup>M814</sup>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 [<sup>F5386</sup>under 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

**F5386** 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

**M814** Source—1978 s.58; 1983 s.25(1)

#### *P.A.Y.E. deduction of tax*

- 7 (1) <sup>M815</sup> 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 <sup>F5387</sup> 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 [F5388 section 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 [F5389 . . . which, as a result of the transfer, [F5390 is 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

**F5387** 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)

**F5388** 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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**F5389** 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)

**F5390** 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**

**M815** Source—1978 s.59; 1980 s.46(8); 1987 Sch.15 11(3)

[<sup>F5391F5392</sup>SCHEDULE 11]

**Textual Amendments**

**F5391** 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**

**F5392** 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)

<sup>F5394F5394</sup>[<sup>F5395</sup>SCHEDULE 11A]

**Textual Amendments**

**F5394** 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)

**F5395** Sch. 11A inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 76, **Sch. 5 para. 2**

<sup>F5454F5454</sup>SCHEDULE 12

**Textual Amendments**

**F5454** 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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F5472F5472 | F5473 SCHEDULE  
12AA

**Textual Amendments**

**F5472**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)

**F5473**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**

F5474F5474 | F5475 SCHEDULE 12A

**Textual Amendments**

**F5474**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)

**F5475**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**

F5476F5476 SCHEDULE 13

**Textual Amendments**

**F5476**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

F5515F5515 | F5516 SCHEDULE 13A

**Textual Amendments**

**F5515**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

**F5516**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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F5522F5522 F5523 SCHEDULE 13B

**Textual Amendments**  
F5522 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)  
F5523 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

*[F5532 Spouses and civil partners]*

**Textual Amendments**  
F5532 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) <sup>F5533M823</sup>In 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;
  - <sup>F5534</sup>(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.]

<sup>F5535</sup>(2) .....

<sup>F5535</sup>(3) .....

**Textual Amendments**  
F5533 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)  
F5534 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)  
F5535 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

M823 Source—1976 Sch.4 8, 9, 10

#### *Premiums payable to friendly societies and industrial assurance companies*

- 2 (1) <sup>M824</sup> This paragraph applies to—
- (a) a policy issued in the course of an industrial assurance business; and
  - (b) a policy issued by a [<sup>F5536</sup>friendly society] in the course of tax exempt life or endowment business (as defined in section 466).
- [<sup>F5537</sup>(1A) In sub-paragraph (1)(a) “industrial assurance business” means any industrial assurance business within the meaning given by—
- (a) section 1(2) of the Industrial Assurance Act 1923, or
  - (b) Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979, which was carried on before 1 December 2001.]
- (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

**F5536** 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

**F5537** Sch. 14 para. 2(1A) 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. 232(2) (with Sch. 2)

### Marginal Citations

M824 Source—1976 Sch.4 11; 1979/1576; 1982 s.35(2), (4); 1970 s.10

- 3 (1) <sup>M825</sup> Where a policy is issued or a contract is made by a [<sup>F5538</sup>friendly society] or a policy to which paragraph 2 above applies is issued by an industrial assurance

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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.
- (3) The appropriate authority may make regulations authorising—
  - (a) the adoption by [<sup>F5538</sup>friendly 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 [<sup>F5539</sup>12.5 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 [<sup>F5539</sup>12.5 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 <sup>F5540</sup> . . . .
- (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 <sup>M826</sup>Decimal Currency Act 1969 shall, with the necessary modifications, apply in relation to regulations made under this paragraph.

#### Textual Amendments

**F5538** 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

**F5539** Words in Sch. 14 para. 3(3)(a) substituted (6.4.1989) by Finance Act 1988 (c. 39), s. 29

**F5540** 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

**M825** Source—1976 Sch.4 13; 1978 Sch.3 7; 1980 s.29(2)(c); 1987 Sch.15 9

**M826** 1969 c.19.

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## PART II

### SUPPLEMENTARY PROVISIONS AS TO RELIEF UNDER SECTION 266

- 4 (1) <sup>M827</sup>Where 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 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

M827 Source—1976 Sch.4 14; 1978 Sch.3 2, 8

- 5 <sup>M828</sup>Where a person is entitled to relief under section 266 in respect of a payment to which [<sup>F5541</sup>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

F5541 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

M828 Source—1976 Sch.4 14A; 1978 Sch.3 9

- 6 (1) <sup>M829</sup>Where in any year of assessment the relief to which a person is entitled under section 266, otherwise than in accordance with [<sup>F5542</sup>subsection (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 <sup>F5543</sup> . . . .

#### Textual Amendments

F5542 Words in Sch. 14 para. 6(1) 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. 232(3) (with Sch. 2)

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**F5543** 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

**M829** Source—1976 Sch.4 15

- 7 (1) <sup>M830</sup>The Board may make regulations for carrying into effect section 266(4), (5), (8) and (9) and the preceding provisions of this Schedule [<sup>F5544</sup>and paragraphs 9 and 10 of Schedule 15] (“the relevant provisions”).
- (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—
- <sup>F5545</sup>(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.) [<sup>F5546</sup>apart from subsection (1B)];
  - (c) [<sup>F5547</sup>section 86] (interest); and
  - (d) section 95 (incorrect return or accounts);
- <sup>F5548</sup>shall 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.]
- <sup>F5549</sup>(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



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- (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;
- “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

- F5544** 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
- F5545** 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)
- F5546** 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)
- F5547** 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)
- F5548** 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)
- F5549** 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

- M830** Source—1976 Sch.4 16; 1978 Sch.3 10

- 8 (1) <sup>M831</sup> 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) <sup>M832</sup> 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—



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- (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 the policy was made in any book or by any other means kept or instituted by the company or society for the purpose.

[<sup>F5550</sup>(3A) In sub-paragraph (3) “industrial assurance business” means any industrial assurance business within the meaning given by—

- (a) section 1(2) of the Industrial Assurance Act 1923, or
  - (b) Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979,
- which was carried on before 1 December 2001.]

(4) [<sup>F5551</sup>Subject 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.

[<sup>F5552</sup>(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

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- (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

**P6** Sch. 14 para. 8(8)(a) power exercised: 1.12.2001 appointed by S.I. 2001/3643, **art. 2(b)**

#### Textual Amendments

**F5550** Sch. 14 para. 8(3A) 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. 232(4)** (with Sch. 2)

**F5551** Words in Sch. 14 para. 8(4) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(5)**

**F5552** Sch. 14 para. 8(8) inserted (29.4.1996) by Finance Act 1996 (c. 8), **s. 167(6)**

#### Marginal Citations

**M831** Source—1970 s.19(5)

**M832** Source—1984 s.72(2)-(4), (6), (7)

## SCHEDULE 15

Section 267.

### QUALIFYING POLICIES

#### Modifications etc. (not altering text)

**C747** Sch. 15 modified by Finance Act 1991 (c. 31, SIF 63:1), s. 50, **Sch. 9 para. 5 (2)**

**C748** Sch. 15 modified (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 10 para. 4(2)(3)**

VALID FROM 17/07/2013

### [<sup>F5553</sup>PART A1

#### PREMIUM LIMIT FOR QUALIFYING POLICIES

#### Textual Amendments

**F5553** 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—
- an event falling within sub-paragraph (3) occurs,
  - apart from sub-paragraph (2), the policy to which the event relates would be a qualifying policy after the event, and
  - an individual who is a beneficiary under that policy is in breach of the premium limit for qualifying policies.

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- (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;
  - (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.

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- (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.
- (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

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- (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,
  - (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.

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- (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.
- (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

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(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),
 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—

$$£3,600 \times N$$

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



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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 a 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.

#### *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).

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- (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—
    - (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.]

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## PART I

### QUALIFYING CONDITIONS

VALID FROM 17/07/2013

#### [<sup>F5554</sup>RULES FOR QUALIFYING POLICIES

##### Textual Amendments

**F5554**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
  - (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,

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- (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.
- (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

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- (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.
- (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—

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- (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.]

#### GENERAL RULES APPLICABLE TO WHOLE LIFE AND TERM ASSURANCES

- 1 (1) <sup>M833</sup> 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

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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 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)<sup>M834</sup> 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, [<sup>F5555</sup>and 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)<sup>M835</sup> 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



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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 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) <sup>M836</sup> 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

**F5555** 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

**M833** Source—1970 Sch.1 1(1)-(4A); 1975 Sch.2 4(2), (3)

**M834** Source—1975 Sch.2 4(4)

**M835** Source—1970 Sch.1 1(5)-(7); 1975 Sch.2 4(5), (6)

**M836** Source—1975 Sch.2 4(1)

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#### GENERAL RULES APPLICABLE TO ENDOWMENT ASSURANCES

- 2 (1) <sup>M837</sup> 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;
  - (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 [<sup>F5556</sup> 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.

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- (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) <sup>M838</sup> 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**

**F5556** 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**

**M837** Source—1970 Sch.1 2; 1975 Sch.2 4(7), (8)

**M838** Source—1975 Sch.2 4(1)

SPECIAL TYPES OF POLICY

*(i) Friendly Society policies*

- 3 (1) <sup>M839</sup> Paragraphs 1 and 2 above do not apply to a policy issued by a [<sup>F5557</sup>friendly 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; <sup>F5558</sup> . . .
  - <sup>F5558</sup>(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

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age which he will attain at a time not less than ten years after the beginning of the term of the policy of assurance;

<sup>F5559</sup>(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.

(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 [<sup>F5560</sup>(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.

[<sup>F5561</sup>(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.

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- (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
  - (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 [<sup>F5562</sup>or, where those premiums are payable otherwise than annually, an amount equal to 10 per cent. of those premiums if that is greater]; <sup>F5563</sup> . . .
    - (iii) <sup>F5563</sup> . . . . .
  - (c) <sup>F5563</sup> . . . . .
- (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

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- 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

**F5557** 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**

**F5558** 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

**F5559** 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)**

**F5560** 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**

**F5561** 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**

**F5562** Words in Sch. 15 para. 3(8)(b)(ii) inserted by Finance Act 1990 (c. 29), **s. 49(5)**

**F5563** 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

**M839** 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—
- [<sup>F5564</sup>(i) it was effected in the course of [<sup>F5565</sup>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

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(iii) the rights conferred by it are surrendered in whole or in part.

#### Textual Amendments

**F5564** 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

**F5565** 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 <sup>M840</sup> 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

**M840** Source—1970 s.337(1)(b); 1985 s.41(7)(a)

6 (1) <sup>M841</sup> A policy which was issued by [<sup>F5566</sup>any registered friendly society (as defined in section 466)], or branch of [<sup>F5566</sup>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) <sup>M842</sup> 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

**F5566** 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

**M841** Source—1970 Sch.1, 3; 1985 s.41(4)

**M842** Source—FSA 1974 s.64(2B); 1985 s.41(1); 1987 s.30(6)



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VALID FROM 17/07/2012

[<sup>F5567</sup>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

**F5567**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) <sup>M843</sup> 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 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

**M843** Source—1970 Sch.1 4; 1976 Sch.4 12

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- 8 <sup>M844</sup> 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

**M844** Source—1975 Sch.2 7; 1976 Sch.4 19(4)

- [<sup>F5568</sup>8(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
  - (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

**P7** Sch. 15 para. 8A power exercised: 1.12.2001 appointed by S.I. 2001/3643, art. 2(c)

#### Textual Amendments

**F5568**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) <sup>M845</sup> 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.

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- (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**

M845 Source—1970 Sch.1 5

OTHER SPECIAL PROVISIONS

*(i) Short-term assurances*

- 10 <sup>M846</sup> 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 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**

M846 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 [<sup>F5569</sup>—
- (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 <sup>M847</sup>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

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or an accident of a specified class, not being contracts falling within section 83(2) (b) of the Insurance Companies Act 1974.

#### Textual Amendments

**F5569** 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

**M847** 1974 c. 49.

(iii) *Exceptional [<sup>F5570</sup> risk of death or disability]*

#### Textual Amendments

**F5570** 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\(2\)](#)

- 12 <sup>M848</sup> 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 [<sup>F5571</sup> or 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 [<sup>F5571</sup> or disability].

#### Textual Amendments

**F5571** 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

**M848** Source—1970 Sch.1 6, 7

(iv) *Connected policies*

- 13 <sup>M849</sup> 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

**M849** Source—1980 s.30; 1984 s.74; 1982 s.35(3)

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- 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 [<sup>F5572</sup>evidencing a contract of long-term insurance], and includes any such policy issued outside the United Kingdom.
- [<sup>F5573</sup>(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.
- (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

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- (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

**F5572** 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\(4\)](#)

**F5573** [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)

**C749** 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) <sup>M850</sup> 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,

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or which would have been a qualifying policy had it been issued in respect of an insurance made after 19th March 1968.

**Marginal Citations**

**M850** Source—1970 Sch.1 8

*(vi) Additional premiums under section 72(9) of the Finance Act 1984*

- 16 **M851** 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**

**M851** Source—1984 s.72(9)(a)

*(viii) Substitutions and variations*

- 17 (1) **M852** 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 [F5574 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);



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- (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) <sup>M853</sup> 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;
  - (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 [<sup>F5575</sup>permanent 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) <sup>M854</sup> 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

**F5574** Word in Sch. 15 para. 17(2)(a) inserted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, 10

**F5575** 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

**M852** Source—1970 Sch.1 9(1), (2)

**M853** Source—1970 Sch.1 9(3); 1984 s.76(3), (6)

**M854** Source—1975 Sch.2 5

- 18 (1) <sup>M855</sup> 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

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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 [<sup>F5576</sup>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, [<sup>F5577</sup> 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
    - (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] [<sup>F5578</sup>, or
    - (d) any variation which alters the method for calculating the benefits secured by the policy.]
- [<sup>F5579</sup>(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

**P8** Sch. 15 para. 18(3)(c)(i) power exercised: 1.12.2001 appointed by S.I. 2001/3643, art. 2(c)

#### Textual Amendments

**F5576** Word in Sch. 15 para. 18(2) substituted (retrospectively) by Finance Act 1988 (c. 39), s. 146, Sch. 13 paras. 1, 11

**F5577** Sch. 15 para. 18(3)(c) and preceding word inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 167(9)

**F5578** 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)

**F5579** 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

**M855** Source—1970 Sch.1 10

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- 19 (1) <sup>M856</sup> 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;
- and it shall not be treated as being varied by reason only of any change made in pursuance of such an option.

#### Marginal Citations

**M856** Source—1975 Sch.2 3

- 20 (1) <sup>M857</sup> 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—

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- (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

M857 Source—1982 s.34

VALID FROM 01/04/2011

#### *[<sup>F5580</sup>(viii) Policy reinstated after non-payment of premium*

#### Textual Amendments

**F5580**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.

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(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.]

<sup>F5581</sup>Meaning of “industrial assurance business”

**Textual Amendments**

**F5581**Sch. 15 para. 20A 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. 233** (with Sch. 2)

20A In this Part of this Schedule “industrial assurance business” means any industrial assurance business within the meaning given by—

- (a) section 1(2) of the Industrial Assurance Act 1923, or
- (b) Article 3(1) of the Industrial Assurance (Northern Ireland) Order 1979, which was carried on before 1 December 2001.]

**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<sup>F5582</sup>(1) <sup>M858</sup>A 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—
- (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.

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- (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

**F5582** 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)

**C750** 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

**M858** Source—1975 Sch.2 1; 1987 Sch.15 7

- 22<sup>F5583</sup>(1) <sup>M859</sup> 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.
- (2) <sup>M860</sup> 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) <sup>M861</sup> 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 [<sup>F5584</sup>]; or
  - (c) any variation which alters the method for calculating the benefits secured by the policy.]]

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#### Textual Amendments

**F5583** 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

**F5584** 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

**M859** Source—1970 Sch.1 11(1); 1975 Sch.2 2(1); 1976 s.33(1); 1978 Sch.3 13(1)(a), (b)

**M860** Source—1970 Sch.1 11(2); 1975 Sch.2 2(2); 1976 s.33(2); 1978 Sch.3 13(1)(b)

**M861** Source—1970 Sch.1 11(3)

### PART III

#### POLICIES ISSUED BY NON-RESIDENT COMPANIES

- 23 <sup>M862</sup> 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

**M862** Source—1984 Sch.15 Pt.II 1

- 24 (1) <sup>M863</sup> 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”.
- <sup>F5585</sup>(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 <sup>F5586</sup>the 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 <sup>F5587</sup>[first] 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



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- (b) that the premiums under the policy are payable to a [<sup>F5588</sup>permanent establishment] in the United Kingdom of the issuing company, being a [<sup>F5588</sup>permanent 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 [<sup>F5588</sup>permanent establishment].
- (4) [<sup>F5589</sup>The 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

**F5585**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

**F5586**Words in Sch. 15 para. 24(2A) substituted (29.4.1996) by Finance Act 1996 (c. 8), s. 162(2)

**F5587**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

**F5588**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)

**F5589**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

#### Marginal Citations

**M863** Source—1975 Sch.2 1A; 1984 Sch.5 Pt.I

- 25 (1) <sup>M864</sup> 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.
- <sup>F5590</sup>(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

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(c) in paragraph 17(3)(c) the words “either by a [<sup>F5591</sup>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 [<sup>F5592</sup>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

**F5590** 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

**F5591** 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)

**F5592** Words in Sch. 15 para. 25(2) substituted (29.4.1996) by Finance Act 1996 (c. 8), s. 162(2)

#### Marginal Citations

**M864** 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 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 [<sup>F5593</sup>paragraph] 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.

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### Textual Amendments

**F5593** 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](#)

## <sup>F5594F5594</sup><sub>F5595</sub> SCHEDULE 15A

### Textual Amendments

**F5594** [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](#))

**F5595** [Sch. 15A](#) inserted (1.5.1995) by [Finance Act 1995 \(c. 4\), Sch. 12 para. 6\(2\)](#)

## <sup>F5599</sup> SCHEDULE 15B

### VENTURE CAPITAL TRUSTS: RELIEF FROM INCOME TAX

### Textual Amendments

**F5599** [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](#)

## <sup>F5600F5600</sup> PART I

### RELIEF ON INVESTMENT

### Textual Amendments

**F5600** [Sch. 15B Pt. 1](#) (paras. 1-6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\), Sch. 1 para. 234, Sch. 3 Pt. 1](#) (with [Sch. 2](#))

### *Entitlement to claim relief*

- (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.

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- (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 £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 30 per cent of 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 Finance Act 1989,
  - (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) .....
- (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.
- (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—

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- (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.

#### *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—
- (a) to the giving by that person of any credit to that individual or any associate of his; and
  - (b) to the assignment or assignment 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 ending immediately before the fifth anniversary of the date on which the shares were issued.

#### *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 five 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.

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- (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 person 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 or civil partner (“the 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

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immediately before that time and otherwise than by way of a bargain made at arm's length.

#### *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 . . . 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 . . . 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.

#### *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 five 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 . . . right to be redeemed.
- (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.



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**PART II**

RELIEF ON DISTRIBUTIONS

**Modifications etc. (not altering text)**

**C755** 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 F5615 .....

**Textual Amendments**

**F5615**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 F5616 .....

**Textual Amendments**

**F5616**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 F5617 .....]

**Textual Amendments**

**F5617**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)

F5618F5618 SCHEDULE 16

**Textual Amendments**

**F5618**Sch. 16 repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 235, Sch. 3 Pt. 1 (with Sch. 2)

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## SCHEDULE 17

Section 404.

### M866 DUAL RESIDENT INVESTING COMPANIES

#### Marginal Citations

M866 Source—1987 (No.2) Sch.4

### 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.

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## 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;
  - (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—

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- (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—
- (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—

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- (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.

### 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.

#### F5628F5628 [F5629] SCHEDULE 17A]

##### Textual Amendments

**F5628** 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)

**F5629** 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).

#### M867 GROUP RELIEF: EQUITY HOLDERS AND PROFITS OR ASSETS AVAILABLE FOR DISTRIBUTION F5630

##### Textual Amendments

**F5630** 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)

**C760** Sch. 18 applied (E.W.S) (16.1.1992) by S.I. 1992/58, art. 35(5)

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- 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))
- C761** 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)**)
- C762** 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)**
- C763** 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**)
- C764** 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**
- C765** 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)**
- C766** 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)**
- C767** 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)
- C768** 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)

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#### Marginal Citations

**M867** Source—1973 Sch. 12 Pt. I; 1973 s. 32(6); 1987 Sch. 15 5

- 1 (1) For the purposes of [<sup>F5631</sup>sections 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
  - [<sup>F5632</sup>(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

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- (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 [<sup>F5633</sup> on a recognised stock exchange].
- (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—
- [<sup>F5634</sup>(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 [<sup>F5633</sup> on a recognised stock exchange].
- [<sup>F5635</sup>(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 [<sup>F5636</sup> listed] on a recognised stock exchange or dealt in on the Unlisted Securities Market;



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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 purposes of sub-paragraphs (3) and (5) to (5B) above the other company’s quoted parent company.]

[<sup>F5637</sup>(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 [<sup>F5638</sup>, 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 [<sup>F5639</sup>, 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.]

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(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—
  - (i) a first-year allowance within the meaning of [F5640Part 2 of the Capital Allowances Act] in respect of expenditure incurred by the company on the provision of [F5640plant or machinery];
  - (ii) a writing-down allowance within the meaning of [F5640Part 2 of the Capital Allowances Act] in respect of expenditure incurred by the company on the provision of [F5640plant or machinery]; or
  - (iii) an allowance under section [F5641Chapter 3 of Part 6 of the Capital Allowances Act] in respect of expenditure incurred by the company on [F5642research 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

**F5631** 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)*

**F5632** 1989 s.101(2) from 27 July 1989; from 14 March 1989 for purposes of subs. (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;”.

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- F5633** 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))
- F5634** 1989 s.101(3) from 27 July 1989; from 14 March 1989 for purposes of subs. (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;”
- F5635** 1989 s.101(4) from 27 July 1989; from 14 March 1989 for purposes of subs. (1D) and (1E) of 1970 s.272.
- F5636** 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)
- F5637** Sch. 18 para. 1(5E)-(5I) inserted (1.4.1991) by Finance Act 1991 (c. 31, SIF 63:1), s. 77(1)-(3)
- F5638** 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)
- F5639** 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)
- F5640** 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)
- F5641** 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)
- F5642** 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)**

- C769** 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.
- C770** 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))
- C771** 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

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- (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—
  - (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 [F5643 sections 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”.

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- [<sup>F5644</sup>(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 treated as a distribution, it shall nevertheless be treated as an amount to which he is entitled on the profit distribution.

#### Textual Amendments

**F5643** 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)

**F5644** 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)

**C772** 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 [<sup>F5645</sup>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

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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.

(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**

**F5645** 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)**

**C773** 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.

**C774** 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 [F5646 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.



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- (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 [<sup>F5646</sup>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.
- [<sup>F5647</sup>(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

**F5646** 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)

**F5647** 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)

**C775** 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.

**C776** 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.

- <sup>F5648</sup>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,



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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 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

**F5648** 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

<sup>F5649</sup> 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 <sup>F5650</sup>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.

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- (4) The lowest of the four percentages of assets so determined shall be taken for the purposes of [F5650 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.]

#### Textual Amendments

**F5649**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

**F5650**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)

[F5651 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 [F5652 which was approved] at the time it was obtained.

[ In sub-paragraph (4)(d) above—

F5653 (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—

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- (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—
- (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

**F5651** 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

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**F5652** 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)

**F5653** 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)

**Modifications etc. (not altering text)**

**C777** Sch. 18 para. 5B excluded (retrospective to 5.11.1993) by Finance Act 1994 (c. 9), s. 252(2), Sch. 24 para. 17(2)

**C778** 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.

**C779** Sch. 18 para. 5B excluded (19.7.1995) by Crown Agents Act 1995 (c. 24), s. 7(2)

**C780** Sch. 18 para. 5B excluded (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 8(2)

**C781** 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)

<sup>F5654</sup>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 [<sup>F5655</sup>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 [<sup>F5655</sup>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**

**F5654** 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

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**F5655** 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)

<sup>F5656</sup>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 [<sup>F5657</sup>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 [<sup>F5657</sup>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

**F5656** 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

**F5657** 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)

<sup>F5658</sup>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.

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- (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 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 [F5659 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 [F5659 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

**F5658** 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

**F5659** 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 [F5660] by the consortium; but this paragraph does not have effect



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in relation to any determination in the case of amounts falling within section 402(1)(b).]

- (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, 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—



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- (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—
    - (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.

#### Textual Amendments

**F5660** Words in [Sch. 18 para. 5F\(1\)\(b\)](#) substituted (with effect in accordance with [Sch. 1 para. 9](#) of the amending Act) by [Finance Act 2006 \(c. 25\)](#), [Sch. 1 para. 6\(2\)](#)

6 For the purposes of [<sup>F5661</sup>sections 403C and 413(7)] and paragraphs 2 to [<sup>F5662</sup>5F] above—

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- (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.

#### Textual Amendments

**F5661** 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)

**F5662** 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)

**C782** 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 [<sup>F5663</sup>(subject to sub-paragraphs (1A) to (1C) below)]—
- (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 [<sup>F5664</sup>section 403C], the accounting period in relation to which the share in the consortium falls to be determined.
- [<sup>F5665</sup>(1A) In this Schedule “the relevant accounting period” means, in the case of a non-resident company which is not within the charge to corporation tax, the accounting period which the company would have on the following assumption.
- (1B) The assumption is that the company became resident in the United Kingdom (and, accordingly, within the charge to corporation tax) at the time when it became a 75 per cent. subsidiary as mentioned in section 402(2A).
- (1C) For the purposes of sub-paragraph (1B) above the reference to the company's being a 75 per cent. subsidiary is to its being such a subsidiary disregarding section 413(7).]
- (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

**F5663** Words in Sch. 18 para. 7(1) inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), Sch. 1 para. 6(3)

**F5664** Words in Sch. 18 para. 7(1)(b) substituted (retrospectively) by Finance Act 2000 (c. 17), s. 100(4)(b)

**F5665** Sch. 18 para. 7(1A)-(1C) inserted (with effect in accordance with Sch. 1 para. 9 of the amending Act) by Finance Act 2006 (c. 25), Sch. 1 para. 6(4)

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**Modifications etc. (not altering text)**

**C783** 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.

**C784** See 1990 s.32(12)(d). Para 7(1)(b) omitted where Sch.18 applies to disposals of shares to employee share ownership trusts.

SCHEDULE 18A

Section 403F

GROUP RELIEF: OVERSEAS LOSSES OF NON-RESIDENT COMPANIES

**PART 1**

MEANING OF CONDITIONS FOR THE PURPOSES OF SECTION 403F

*Introduction*

- 1 This Part of this Schedule applies, in the case of any non-resident company, for the purposes of section 403F (relief in respect of overseas losses of non-resident companies).

*The equivalence condition*

- 2 An amount meets the equivalence condition if it corresponds (in all material respects) to an amount of a kind that, for the purposes of section 403, could be available for surrender by way of group relief by a company resident in the United Kingdom.

*The EEA tax loss condition: companies resident in EEA territory*

- 3 (1) In the case of a non-resident company which is resident in an EEA territory (“the relevant territory”), an amount meets the EEA tax loss condition in relation to the relevant territory in so far as conditions A and B are met.  
(2) Condition A is that the amount is calculated in accordance with the applicable rules under the law of the relevant territory for determining, in the case of the company, the amount of any loss or other amount eligible for relief from any tax under the relevant territory.  
(3) Condition B is that, for the purposes of corporation tax, the amount is not attributable to a UK permanent establishment of the company.  
(4) “UK permanent establishment”, in relation to the company, means any permanent establishment through which it carries on a trade in the United Kingdom.

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- (5) For the meaning of tax under any territory outside the United Kingdom, see paragraph 17.

*The EEA tax loss condition: companies not resident in EEA territory*

- 4 (1) In the case of a non-resident company which is not resident in any EEA territory but which carries on a trade in an EEA territory (“the relevant territory”) through a permanent establishment, an amount meets the EEA tax loss condition for any period in relation to the relevant territory in so far as conditions A and B are met.
- (2) Condition A is that the amount is calculated in accordance with the applicable rules under the law of the relevant territory for determining, in the case of the company, the amount of any loss or other amount eligible for relief from any tax under the relevant territory.
- (3) Condition B is that the amount is not attributable to activities of the company which are made exempt from tax under the relevant territory for the period by any double taxation arrangements.
- (4) For this purpose, activities of the company are made exempt from tax under the relevant territory for the period by any double taxation arrangements if those arrangements—
- (a) have the following effect, or
  - (b) would have the following effect if a claim were made.
- (5) The effect is that the income and gains (if any) arising for the period from those activities are ignored in calculating the company's profits, income or gains chargeable to tax under the relevant territory for the period.
- (6) For the purposes of this paragraph, arrangements are double taxation arrangements if they are made with a view to affording relief from double taxation in relation to—
- (a) any tax under the relevant territory and any other territory outside the United Kingdom, or
  - (b) any tax under the relevant territory and United Kingdom income or corporation tax.

*The qualifying loss condition*

- 5 (1) This paragraph applies in the case of 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,
- and for the purposes of this paragraph “the EEA territory concerned” means the EEA territory in which the company is resident or (as the case may be) in which it carries on a trade through a permanent establishment.
- (2) An amount meets the qualifying loss condition in so far as the amount—
- (a) cannot be given qualifying relief for any period (“the current period”) or any other period, and

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- (b) has not been given any other qualifying relief under the law of any territory outside the United Kingdom (other than the EEA territory concerned).
- (3) Paragraph 6 determines whether the amount cannot be given qualifying relief for the current period or any previous period.
- (4) Paragraph 7 determines whether the amount cannot be given qualifying relief for any period after the current period.
- (5) Paragraph 8 determines whether the amount has not been given qualifying relief under the law of any territory outside the United Kingdom (other than the EEA territory concerned).

*Qualifying relief for current period and previous periods*

- 6 (1) For the purposes of paragraph 5, an amount cannot be given qualifying relief for the current period or any previous period if conditions A and B are met.
- (2) Condition A is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be taken into account in calculating any profits, income or gains which—
  - (a) arise to the company or any other person in the current period or any previous period, and
  - (b) are chargeable to that tax for the current period or any previous period.
- (3) Condition B is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be relieved in the current period or any previous period—
  - (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) by any other means of any kind.
- (4) An amount is to be regarded for the purposes of this paragraph as meeting conditions A and B if (but only if) every step to secure that the amount is so taken into account or relieved is taken (whether by the company or any other person).
- (5) In this paragraph “relevant territory” means—
  - (a) if the company is resident in any EEA territory and is also resident in any other territory outside the United Kingdom, that other territory,
  - (b) if the company is not resident in any EEA territory but carries on a trade in an EEA territory through a permanent establishment, the territory (or territories) in which it is resident.

*Qualifying relief for future periods*

- 7 (1) For the purposes of paragraph 5, an amount cannot be given qualifying relief for any period after the current period if conditions A and B are met.
- (2) Condition A is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be taken into account in calculating any profits, income or gains which—

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- (a) might arise to the company or any other person in any period after the current period, and
  - (b) (if there were any) would be chargeable to that tax for any period after the current period.
- (3) Condition B is that, for the purposes of any tax under the EEA territory concerned or under any relevant territory, the amount cannot be relieved in any period after the current period—
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) by any other means of any kind.
- (4) In determining for the purposes of conditions A and B whether an amount can be so taken into account or relieved, the time at which the determination is to be made is the time immediately after the end of the current period.
- (5) In this paragraph “relevant territory” means—
- (a) if the company is resident in any EEA territory and is also resident in any other territory outside the United Kingdom, that other territory,
  - (b) if the company is not resident in any EEA territory but carries on a trade in an EEA territory through a permanent establishment, the territory (or territories) in which it is resident.

*Amount not given other qualifying relief under law of territory outside UK*

- 8
- (1) For the purposes of paragraph 5, an amount has not been given qualifying relief under the law of any territory outside the United Kingdom (other than the EEA territory concerned) if conditions A and B are met.
- (2) Condition A is that, for the purposes of any tax under any territory outside the United Kingdom (other than the EEA territory concerned), the amount has not been taken into account in calculating any profits, income or gains which—
- (a) have arisen to the company or any other person in any period, and
  - (b) were chargeable to that tax for the period (or, but for so taking the amount into account, would have been so chargeable).
- (3) Condition B is that, for the purposes of any tax under any territory outside the United Kingdom (other than the EEA territory concerned), the amount has not been relieved in any period—
- (a) by the payment of a credit,
  - (b) by the elimination or reduction of a tax liability, or
  - (c) by any other means of any kind.

*Precedence condition*

- 9
- (1) This paragraph applies in the case of a non-resident company (“the relevant company”)—
- (a) which is resident in any EEA territory, or

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- (b) which is not so resident but which carries on a trade in an EEA territory through a permanent establishment.
- (2) An amount meets the precedence condition in relation to the EEA territory concerned in so far as relief for the amount cannot be given in any other territory outside the United Kingdom which is a qualifying territory in relation to the relevant company.
- (3) For this purpose a territory is a qualifying territory in relation to the relevant company if—
  - (a) another company is resident in that territory (which need not be an EEA territory),
  - (b) that other company owns directly or indirectly any ordinary share capital in the relevant company,
  - (c) a third company which is resident in the United Kingdom owns directly or indirectly any ordinary share capital of that other company,
  - (d) the relevant company is a 75 per cent. subsidiary of that third company, and
  - (e) the relevant company is not a 75 per cent. subsidiary of that third company as a result of its being a 75 per cent. subsidiary of a fourth company which is resident in the United Kingdom.
- (4) In this paragraph references, in relation to any amount and any territory, to relief being given for the amount in the territory are to relief being given—
  - (a) by taking the amount into account in calculating any profits, income or gains of any person chargeable to tax under the law of that territory,
  - (b) by the payment of a credit to any person under the law of that territory,
  - (c) by the elimination or reduction of a tax liability of any person under the law of that territory, or
  - (d) by any other means of any kind.
- (5) “The EEA territory concerned” means the EEA territory in which the relevant company is resident or (as the case may be) in which it carries on a trade through a permanent establishment.

## PART 2

### APPLICATION OF UK RULES TO NON-RESIDENT COMPANY

#### **Modifications etc. (not altering text)**

**C785** Sch. 18A Pt. 2 modified (28.10.2008 with effect in accordance with reg. 1(2) of the modifying S.I.) by [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(1), 2**

#### *Introduction*

- 10 (1) This Part of this Schedule applies in the case of any loss or other amount (“the EEA amount”) arising to a non-resident company (“the EEA company”) in any period (“the loss period”) in so far as the EEA amount meets the conditions mentioned in subsection (2)(a) to (d) of section 403F.



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- (2) In this Part of this Schedule “the EEA territory concerned” means the EEA territory in which the EEA company is resident or (as the case may be) in which it carries on a trade through a permanent establishment.
- (3) In this Part of this Schedule any reference to the appropriate part of the EEA amount is to that amount in so far as it meets the conditions mentioned in subsection (2)(a) to (d) of section 403F.

#### *Basic rules*

- 11 (1) The EEA amount must, on the relevant assumptions (see sub-paragraph (5)), be recalculated in accordance with the applicable UK tax rules (see paragraph 16).
- (2) The amount of the EEA amount that is available for surrender by the EEA company by way of group relief is so much of the appropriate part of it as does not exceed the relevant proportion (see sub-paragraph (5)) of the amount given by that recalculation.
- (3) But if the amount given by that recalculation is an amount of income or other profits, no part of the EEA amount is available for surrender by way of group relief.
- (4) So far as any part of the EEA amount is available for surrender by the EEA company by way of group relief, the provisions of this Chapter have effect in that case on the basis that the relevant assumptions are made.
- (5) In this paragraph—
  - “the relevant assumptions” are the assumptions set out in paragraphs 12 to 15, and
  - “the relevant proportion” means the proportion that the appropriate part of the EEA amount bears to the EEA amount.

#### *Assumptions as to UK residence*

- 12 (1) It is to be assumed that the EEA company is resident in the United Kingdom throughout the loss period.
- (2) But this does not require it to be assumed—
  - (a) that there is any change in the place or places at which the EEA company carries on its activities (although see paragraph 13), or
  - (b) that the EEA company ceases to be resident in the United Kingdom at the end of the loss period.
- (3) It is to be assumed that the EEA company becomes resident in the United Kingdom (and, accordingly, within the charge to corporation tax) at the beginning of the loss period.

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### *Assumptions as to places in which activities carried out*

- 13 (1) In the case of any trade carried on by the EEA company in the loss period wholly or partly in the EEA territory concerned, it is to be assumed that the trade is carried on wholly or partly in the United Kingdom.
- (2) In the case of any estate, interest or rights in or over land in the EEA territory concerned which are held by the EEA company, it is to be assumed that the land is in the United Kingdom.
- (3) For this purpose, the reference to domestic concepts of law in relation to the land in the EEA territory concerned is to be read so as to produce the result that most closely corresponds with that produced for Schedule A purposes in relation to land in the United Kingdom.

### *Deemed accounting period*

- 14 (1) It is to be assumed that an accounting period of the EEA company begins at the beginning of the loss period.
- (2) It is to be assumed that the accounting period ends on the earlier of—
- (a) the end of 12 months from the beginning of the loss period, or
  - (b) the end of the loss period.
- (3) If an accounting period ends in accordance with sub-paragraph (2)(a), it is to be assumed that a further accounting period begins when the previous one ends.
- (4) It is to be assumed that the further accounting period ends on the earlier of—
- (a) the end of 12 months from the beginning of the further accounting period, or
  - (b) the end of the loss period.

### *Capital allowances*

- 15 (1) This paragraph applies if, before the beginning of the loss period, the EEA company incurs any capital expenditure on the provision of plant or machinery for the purposes of any activity.
- (2) It is to be assumed for the purposes of Part 2 of the Capital Allowances Act that the plant or machinery—
- (a) was provided for purposes wholly other than those of the activity, and
  - (b) was not brought into use for the purposes of the activity until the beginning of the loss period,
- and section 13 of the Capital Allowances Act (use for qualifying activity of plant or machinery provided for other purposes) is to apply accordingly.
- (3) This paragraph is to be read as one with Part 2 of the Capital Allowances Act.

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### *Applicable UK tax rules*

- 16 (1) For the purposes of this Part of this Schedule references to recalculating the EEA amount in accordance with the applicable UK tax rules are to recalculating it in accordance with any provision made by or under the Corporation Tax Acts—
- (a) which applies for the purpose of calculating for corporation tax purposes the amount of the loss or other amount to which the EEA amount corresponds, or
  - (b) which otherwise affects in any way the amount of that loss or other amount for which relief from corporation tax is available.
- (2) For the purposes of sub-paragraph (1), the Treasury may by regulations provide for the modification of any provision made by or under the Corporation Tax Acts—
- (a) which applies as mentioned in sub-paragraph (1)(a), or
  - (b) which otherwise affects an amount as mentioned in sub-paragraph (1)(b).
- (3) Regulations under this paragraph may make provision in relation to—
- (a) all classes of trade or business, or
  - (b) any particular class or classes of trade or business.
- (4) Regulations under this paragraph may make—
- (a) different provision for different cases or different purposes, and
  - (b) incidental, supplemental, consequential or transitional provision and savings.
- (5) Regulations under this paragraph may make provision having effect before the date on which the regulations are made.

## PART 3

### DEFINITIONS FOR THE PURPOSES OF THIS SCHEDULE

#### *Charge to tax under the law of any territory outside the United Kingdom*

- 17 (1) This paragraph applies for the purposes of this Schedule.
- (2) Any reference to a tax under a territory outside the United Kingdom is a reference to a tax chargeable under the law of that territory 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.
- (3) A tax chargeable under the law of a territory outside the United Kingdom is not to be regarded as failing to correspond to income or corporation tax just because—
- (a) it is chargeable under the law of a province, state or other part of a country, or
  - (b) it is levied by or on behalf of a municipality or other local body.

SCHEDULE 19

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F5666F5666 SCHEDULE 19

**Textual Amendments**

F5666 Sch. 19 repealed by Finance Act 1989 (c. 26), ss. 103, 187, Sch. 17 Pt. V, Notes 1, 3

F5671F5671 [F5672 SCHEDULE 19AA]

**Textual Amendments**

F5671 Sch. 19AA repealed (with effect in accordance with s. 38(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 7 para. 55, Sch. 27 Pt. 2(7), Note (with Sch. 7 Pt. 2)

F5672 Sch. 19AA inserted (for accounting periods beginning on or after 1 January 1990) by Finance Act 1990 (c. 29), Sch. 7 paras. 6, 10

F5702F5702 [F5703 SCHEDULE 19AB]

**Textual Amendments**

F5702 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)

F5703 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

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F5766F5766 [F5767] SCHEDULE  
19AC]

**Textual Amendments**

F5766 Sch. 19AC repealed (31.12.2006 with effect in accordance with reg. 1 of the repealing S.I.) by The Overseas Life Insurance Companies Regulations 2006 (S.I. 2006/3271), reg. 43(1), Sch. Pt. 1

F5767 Sch. 19AC inserted (27.7.1993) by 1993 c. 34, s. 97, Sch. 9 para.1

[F5844F5845] SCHEDULE 19A

Section 450.]

**Textual Amendments**

F5844 Sch. 19A inserted (1988-89 and subsequent years) by Finance Act 1988 (c. 39), s. 58(4)(a)(5), Sch. 5

F5845 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

[F5861] SCHEDULE 19B

Section 496A

PETROLEUM EXTRACTION ACTIVITIES: EXPLORATION EXPENDITURE SUPPLEMENT

**Textual Amendments**

F5861 Sch. 19B inserted (22.7.2004) by Finance Act 2004 (c. 12), s. 286(3), Sch. 38

**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 [F5862] but before 1st January 2006], 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

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- (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 [<sup>F5863</sup>but before 1st January 2006] 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.

#### Textual Amendments

**F5862** Words in Sch. 19B para. 1(1) inserted (19.7.2006) by Finance Act 2006 (c. 25), s. 154(4)(a)

**F5863** Words in Sch. 19B para. 1(2) inserted (19.7.2006) by Finance Act 2006 (c. 25), s. 154(4)(b)

## 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
  - (b) is engaged in oil and gas exploration and appraisal (see section 837B [<sup>F5864</sup>of this Act and section 1003 of ITA 2007]) with a view to carrying on a ring fence trade,
- and in this Schedule any such company is referred to as a “qualifying company”.

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#### Textual Amendments

**F5864** Words in [Sch. 19B para. 2\(b\)](#) 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. 236](#) (with [Sch. 2](#))

#### *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 [<sup>F5865</sup>but before 1st January 2006]—
- (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 [<sup>F5866</sup>but before 1st January 2006], 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.
- [ In the case of an accounting period (a “straddling period”) of any qualifying company
- <sup>F5867</sup>(3) beginning before 1st January 2006 and ending on or after that date—
- (a) so much of the straddling period as falls before 1st January 2006, and
- (b) so much of the straddling period as falls on or after that date,
- are treated as separate accounting periods for the purposes of this Schedule.
- (4) Special provision is made elsewhere in this Schedule in relation to straddling periods (see paragraphs 16, 18A and 22).]

#### Textual Amendments

**F5865** Words in [Sch. 19B para. 3\(1\)](#) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 154\(5\)\(a\)](#)

**F5866** Words in [Sch. 19B para. 3\(1\)](#) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 154\(5\)\(b\)](#)

**F5867** [Sch. 19B para. 3\(3\)\(4\)](#) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\)](#), [s. 154\(5\)\(c\)](#)

#### *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 subparagraph (1) for such accounting periods as may be specified in the order.



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### *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 [<sup>F5868</sup>but before 1st January 2006].
- (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.
- (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.

#### **Textual Amendments**

**F5868** Words in [Sch. 19B para. 6\(2\)](#) inserted (19.7.2006) by [Finance Act 2006 \(c. 25\), s. 154\(6\)](#)

### *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,

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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.

### 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.

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*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,
  - (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).

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*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.

*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 [F5869 this Schedule or Part 4 of Schedule 19C]) 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.

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- (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.

#### Textual Amendments

**F5869** Words in Sch. 19B para. 15(2) substituted (19.7.2006) by Finance Act 2006 (c. 25), s. 154(7)

#### *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.
- [ But, if the post-commencement period is the deemed accounting period under <sup>F5870</sup>(2A) paragraph 3(3) ending before 1st January 2006, sub-paragraph (2) has no effect in relation to the amount of the supplement for that period.]
- (3) Paragraphs 19 to 24 have effect for the purpose of determining the reference amount for a post-commencement period.

#### Textual Amendments

**F5870** Sch. 19B para. 16(2A) inserted (19.7.2006) by Finance Act 2006 (c. 25), s. 154(8)

#### *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.
- (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.

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- (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.

*Special rule for straddling periods*

- [<sup>F5871</sup>18A] 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.
  - (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**

**F5871** Sch. 19B para. 18A inserted (19.7.2006) by Finance Act 2006 (c. 25), s. 154(9)

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### *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.

### *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.



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- (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.
- [ If the post-commencement period is the deemed accounting period under paragraph <sup>F5872</sup>(4) (3) ending before 1st January 2006 (“the deemed accounting period”), the amount of the profits of the deemed accounting period is determined as follows.
- (5) The amount of the profits of the straddling period is apportioned to the deemed accounting period in proportion to the number of days in the deemed accounting period that fall in the straddling period.
- (6) The apportioned amount is taken for the purposes of this paragraph to be the amount of the profits of the deemed accounting period.
- (7) In this paragraph “the straddling period”, in relation to a qualifying company, means an accounting period of the company beginning before 1st January 2006 and ending on or after that date (disregarding paragraph 3(3)).]

**Textual Amendments**

**F5872** Sch. 19B para. 22(4)-(7) inserted (19.7.2006) by Finance Act 2006 (c. 25), s. 154(10)

*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.]

SCHEDULE 19C

Section 496B

PETROLEUM EXTRACTION ACTIVITIES: RING FENCE EXPENDITURE SUPPLEMENT

**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 beginning on or after 1st January 2006, to a supplement (initially of 6%, but variable by Treasury order) in respect of—
- (a) qualifying pre-commencement expenditure incurred before the trade is set up and commenced,
  - (b) losses incurred in the trade, and
  - (c) some or all of the supplement allowed in respect of earlier periods.
- (2) Part 2 makes provision about the application and interpretation of this Schedule.
- (3) 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.
- (4) Part 4 makes provision about supplement in relation to losses incurred in carrying on the ring fence trade.
- (5) There is a limit on the number of accounting periods (6) in respect of which a company may claim supplement.
- (6) In determining the amount of supplement allowable, reductions fall to be made in respect of—
- (a) disposal receipts in respect of any asset representing qualifying pre-commencement expenditure,
  - (b) ring fence losses that could be set off under section 393A against ring fence profits of earlier periods,

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- (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
  - (b) is engaged in any activities 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 beginning on or after 1st January 2006—
    - (a) which is the commencement period, or
    - (b) which ends after the commencement period;
  - “pre-commencement period” means any accounting period—
    - (a) beginning on or after 1st January 2006, and
    - (b) ending before the commencement period.
- (2) For the purposes of this Schedule a company not within the charge to corporation tax which incurs any 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 activities in the course of which the expenditure is incurred.
- (3) In the case of an accounting period (a “straddling period”) of any qualifying company beginning before 1st January 2006 and ending on or after that date—
- (a) so much of the straddling period as falls before 1st January 2006, and
  - (b) so much of the straddling period as falls on or after that date,
- are treated as separate accounting periods for the purposes of this Schedule.
- (4) But special provision is made elsewhere in this Schedule in relation to straddling periods (see paragraphs 5, 18 and 21(4) to (6)).

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### *The relevant percentage*

- 4 (1) For the purposes of this Schedule, the relevant percentage for any accounting period beginning on or after 1st January 2006 is 6%.
- (2) The Treasury may by order vary the percentage for the time being specified in subparagraph (1) above 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.
- (3) A claim for supplement by the company under Schedule 19B (exploration expenditure supplement) in respect of an accounting period is to count for the purposes of this paragraph as a claim for supplement under this Schedule in respect of that accounting period.
- (4) But, if the company makes a claim for supplement under this Schedule in respect of the deemed accounting period, any claim for supplement by the company under Schedule 19B in respect of the Schedule 19B deemed accounting period is to be ignored for the purposes of this paragraph.
- (5) For this purpose—
- “the deemed accounting period” means the deemed accounting period under paragraph 3(3) beginning on 1st January 2006, and
- “the Schedule 19B deemed accounting period” means the deemed accounting period under paragraph 3(3) of Schedule 19B ending before 1st January 2006.

### *Qualifying pre-commencement expenditure*

- 6 (1) For the purposes of this Schedule, expenditure is “qualifying pre-commencement expenditure” if it meets conditions A to D.
- (2) Condition A is that the expenditure is incurred on or after 1st January 2006.
- (3) Condition B is that the expenditure is incurred in the course of oil extraction activities.
- (4) Condition C is that the expenditure is incurred by a person with a view to carrying on a ring fence trade but before the person sets up and commences the ring fence trade.
- (5) Condition D is that the expenditure—
- (a) is subsequently allowable as a deduction in calculating the profits of the ring fence trade for the commencement period (whether or not any part of it is so allowable for any post-commencement period), or
- (b) is relevant R&D expenditure incurred by an SME.

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- (6) For the purposes of this paragraph, expenditure incurred by a company is “relevant R&D expenditure incurred by an SME” if—
- (a) the company makes an election under paragraph 14 of Schedule 20 to the Finance Act 2000 (R&D tax relief for SMEs: alternative treatment of pre-trading expenditure) in respect of that expenditure, but
  - (b) the company does not make a claim for an R&D tax credit under that Schedule in respect of that expenditure.
- (7) In the case of any qualifying pre-commencement expenditure which is relevant R&D expenditure incurred by an SME, the amount of that expenditure is treated for the purposes of this Schedule as being equal to 150% of its actual amount.
- (8) In the case of any qualifying pre-commencement expenditure which is relevant R&D expenditure incurred by a large company, the amount of that expenditure is treated for the purposes of this Schedule as being equal to 125% of its actual amount.
- (9) For this purpose “relevant R&D expenditure incurred by a large company” means qualifying expenditure within the meaning given by paragraph 11(3) of Schedule 12 to the Finance Act 2002 (R&D tax relief for large companies).

*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”) if—
- (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) If 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) If 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.

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- (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.

**PART 3**

PRE-COMMENCEMENT SUPPLEMENT

*Supplement in respect of a pre-commencement accounting period*

- 9 (1) If—
- (a) a qualifying company incurs qualifying pre-commencement expenditure in respect of a ring fence trade, and
  - (b) the expenditure is incurred before the commencement period,
- the company may 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 is to be treated as expenditure—
- (a) which is incurred by the company in the commencement period, and
  - (b) which is allowable as a deduction in calculating the profits of the ring fence trade for that period.
- (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) is to 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 pre-commencement expenditure and supplement previously allowed*

- 10 (1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company is to be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of—
- (a) the relevant amount (if any) which the company carries forward under Schedule 19B,

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- (b) qualifying pre-commencement expenditure, and
  - (c) pre-commencement supplement.
- (2) The pool is to be taken to have consisted of—
- (a) the relevant amount (if any) which the company carries forward under Schedule 19B,
  - (b) the company's qualifying pre-commencement expenditure, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (3), and
  - (c) 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 pre-commencement 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 pre-commencement expenditure mentioned in paragraph 9(1) 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,
  - (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 is to 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 is to be taken to have been added to the pool in that period.
- (5) In this paragraph references to the relevant amount (if any) which the company carries forward under Schedule 19B are to the amount in its mixed pool for the purposes of Part 3 of Schedule 19B immediately before 1st January 2006.

*Reduction in respect of disposal receipts under the Capital Allowances Act*

- 11 (1) This paragraph applies in the case of the qualifying company if—
- (a) it incurs qualifying pre-commencement expenditure in respect of a ring fence trade in any pre-commencement period,
  - (b) it would, on the relevant assumption, be entitled to an allowance under any provision of the Capital Allowances Act in respect of that expenditure,
  - (c) an event occurs in relation to any asset representing the expenditure in any pre-commencement period, and
  - (d) the event would, on the relevant assumption, require a disposal value (the “deductible amount”) to be brought into account under any provision of the Capital Allowances Act for any pre-commencement period.
- (2) The relevant assumption is that the company was carrying on the ring fence trade—
- (a) when the expenditure was incurred, and
  - (b) when the event giving rise to the disposal value occurred.



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- (3) For the purpose of allocating qualifying pre-commencement expenditure to the pool for each pre-commencement period—
- (a) find the total amount of the disposal values in the case of all such events (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.

*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 pre-commencement 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 pre-commencement 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.

*Claims for pre-commencement supplement*

- 14 (1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made as a claim for the commencement period.
- (2) Paragraph 74 of Schedule 18 to the Finance Act 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for pre-commencement supplement as it applies in relation to a claim for group relief.

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## PART 4

### POST-COMMENCEMENT SUPPLEMENT

#### *Supplement in respect of a post-commencement period*

- 15 (1) A qualifying company which incurs a ring fence 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 is to be treated for the purposes of the Corporation Tax Acts (other than this Part of this Schedule or Part 4 of Schedule 19B) as if it were a loss—
- (a) which is incurred in carrying on the ring fence trade in that period, and
  - (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) applies 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) is to be reduced proportionally.
- (3) Paragraphs 19 to 23 have effect for the purpose of determining the reference amount for a post-commencement period.

#### *Ring fence losses*

- 17 (1) If—
- (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.
- (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), the following assumption is to be made.

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- (3) The assumption is 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.
- (4) This paragraph is subject to paragraph 18 (special rule for straddling periods).
- (5) This paragraph has effect for the purposes of this Part of this Schedule.

#### *Special rule for straddling periods*

- 18 (1) This paragraph applies if the period of the loss in which a ring fence loss is incurred is the deemed accounting period under paragraph 3(3) beginning on 1st January 2006 (“the deemed accounting period”).
- (2) The amount of the ring fence loss in the deemed accounting period is determined as follows.

##### *Step 1*

Calculate so much of the ring fence loss in the straddling period as, for the purposes of Part 4 of Schedule 19B, is attributable to qualifying E&A allowances for the straddling period.

The amount given by this step is “the qualifying Schedule 19B amount”.

##### *Step 2*

Calculate so much of the ring fence loss in the straddling period as is attributable to allowances for the straddling period under Part 6 of the Capital Allowances Act in respect of relevant expenditure.

For the purposes of this step “relevant expenditure” means expenditure incurred by the company on or after 1st January 2006 which, but for that fact, would be qualifying E&A expenditure for the purposes of Schedule 19B.

For the purposes of this step a ring fence loss is attributable to those allowances to the extent that the amount of the loss (less the qualifying Schedule 19B amount) does not exceed the amount of those allowances for that period.

The amount given by this step is “the amount of the post-1st January 2006 E&A allowances”.

##### *Step 3*

Deduct the qualifying Schedule 19B amount and the amount of the post-1st January 2006 E&A allowances from the amount of the ring fence loss in the straddling period.

##### *Step 4*

Apportion the remaining amount of that loss (if any) to the deemed accounting period in proportion to the number of days in the deemed accounting period that fall in the straddling period.

The amount given by this step is “the amount of the apportioned loss”.

##### *Step 5*

The amount of the ring fence loss in the deemed accounting period is the amount of the apportioned loss plus the amount of the post-1st January 2006 E&A allowances.

- (3) In this paragraph “the straddling period”, in relation to a qualifying company, means an accounting period of the company—

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- (a) beginning before 1st January 2006, and
  - (b) ending on or after that date,
- disregarding paragraph 3(3).
- (4) In this paragraph references to the ring fence loss in the straddling period are to that loss determined on the assumption that the straddling period is the period of the loss for the purposes of paragraph 17.
- (5) This paragraph has effect for the purposes of this Part of this Schedule.

*The pool of ring fence losses and the pool of non-qualifying Schedule 19B losses*

- 19 (1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company is to be taken at all times in its post-commencement periods to have a continuing mixed pool (the “ring fence pool”) of—
- (a) the carried forward qualifying Schedule 19B amount,
  - (b) the company's ring fence losses, and
  - (c) post-commencement supplement.
- (2) The ring fence pool continues even if the amount in it is nil.
- (3) For the purpose of determining the amount of any post-commencement supplement, a qualifying company is also to be taken in its post-commencement periods to have a non-qualifying pool consisting of the carried forward non-qualifying Schedule 19B amount.
- (4) But the non-qualifying pool ceases to exist when the amount in it is reduced to nil.
- (5) In this paragraph—
- “the carried forward qualifying Schedule 19B amount”, in relation to a qualifying company, means the amount in its qualifying pool for the purposes of Part 4 of Schedule 19B immediately before 1st January 2006, and
  - “the carried forward non-qualifying Schedule 19B amount”, in relation to a qualifying company, means the amount in its non-qualifying pool for the purposes of Part 4 of Schedule 19B immediately before 1st January 2006.

*The ring fence pool*

- 20 (1) The ring fence pool consists of—
- (a) the carried forward qualifying Schedule 19B amount,
  - (b) the company's ring fence losses, allocated to the pool in accordance with sub-paragraph (2)(a), and
  - (c) the company's post-commencement supplement, allocated to the pool in accordance with sub-paragraph (2)(b).
- (2) The allocation of ring fence losses and post-commencement supplement to the pool is as follows—
- (a) the amount of a ring fence loss is added to the pool in the period of the loss, and

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- (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 ring fence pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (4) If a reduction in the amount in the ring fence 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 ring fence 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 are to be read accordingly.
- (5) In this paragraph “the carried forward qualifying Schedule 19B amount”, in relation to a qualifying company, means the amount in its qualifying pool for the purposes of Part 4 of Schedule 19B immediately before 1st January 2006.

*Reductions in respect of utilised ring fence losses*

- 21
- (1) If one or more ring fence losses are set off under section 393 against any profits of a post-commencement period, reductions are to be made in that period in accordance with this paragraph.
  - (2) If the company has a non-qualifying pool, the amount in the non-qualifying pool is to be reduced (but not below nil) by setting against it a sum equal to the total amount so set off.
  - (3) If—
    - (a) any of that sum remains after being so set against the amount in the non-qualifying pool, or
    - (b) the company does not have a non-qualifying pool,the amount in the ring fence pool is to be reduced (but not below nil) by setting against it so much of that sum as so remains or (as the case may be) a sum equal to the total amount set off as mentioned in sub-paragraph (1).
  - (4) If the post-commencement period is the deemed accounting period under paragraph 3(3) beginning on 1st January 2006 (“the deemed accounting period”), the amount of the profits of the deemed accounting period is determined as follows.
  - (5) The amount of the profits of the straddling period is apportioned to the deemed accounting period in proportion to the number of days in the deemed accounting period that fall in the straddling period.
  - (6) The apportioned amount is taken for the purposes of this paragraph to be the amount of the profits of the deemed accounting period.
  - (7) In this paragraph “the straddling period”, in relation to a qualifying company, means an accounting period of the company—
    - (a) beginning before 1st January 2006, and
    - (b) ending on or after that date,

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disregarding paragraph 3(3).

*Reductions in respect of unrelieved group ring fence profits*

- 22 (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions are to be made in that period in accordance with this paragraph.
- (2) If, after making any reductions that fall to be made in accordance with paragraph 21, the company does not have a non-qualifying pool, the remaining amount in the ring fence pool is to 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.
- (3) If, after making any reductions that fall to be made in accordance with paragraph 21, the company has an amount in a non-qualifying pool, the amount in that pool is to 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.
- (4) If any of that sum remains after being so set against the amount in the non-qualifying pool, the remaining amount in the ring fence pool is to be reduced (but not below nil) by setting against it so much of that sum as so remains.
- (5) For the purposes of this paragraph references to the remaining amount in the ring fence pool are references to so much (if any) of the amount in the ring fence pool as remains after making any reductions that fall to be made in accordance with paragraph 21.

*The reference amount for a post-commencement period*

- 23 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 ring fence pool as remains after making any reductions required by paragraph 21 or 22.

SCHEDULE 20

Section 506.

[<sup>F5873</sup>CHARITABLE COMPANIES]: QUALIFYING INVESTMENTS AND LOANS <sup>M913</sup>

**Textual Amendments**

**F5873** Words in [Sch. 20](#) heading 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. 237\(5\)](#) (with [Sch. 2](#))

**Marginal Citations**

**M913** Source—[1986 c. 60](#) Sch. 7 Pts. II—IV.

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## 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 <sup>M914</sup>Trustee Investments Act 1961.

#### Marginal Citations

**M914** 1961 c. 62.

- 3 Any investment in a common investment fund established under section 22 of the <sup>M915</sup>Charities Act 1960 [<sup>F5874</sup>, section 24 of the Charities Act 1993] or section 25 of the <sup>M916</sup>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

**F5874** 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

**M915** 1960 c. 58.

**M916** 1964 c. 33 (N.I.).

- <sup>F5875</sup>3A Any investment in a common deposit fund established under section 22A of the Charities Act 1960 [<sup>F5876</sup> 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

**F5875** 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

**F5876** 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.



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- 5 Shares in, or securities of, a company which are [<sup>F5877</sup>listed] on a recognised stock exchange <sup>F5878</sup> . . . .

**Textual Amendments**

**F5877**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\(1\)\(2\)\(1\)](#)

**F5878**Words in [Sch. 20 para. 5](#) repealed (19.7.2007) by [Finance Act 2007 \(c. 11\)](#), [Sch. 26 para. 7\(10\)](#), [Sch. 27 Pt. 6\(5\)](#)

- 6 Units, or other shares of the investments subject to the trusts, of a unit trust scheme within the meaning [<sup>F5879</sup>given by section 237(1) of the Financial Services and Markets Act 2000].

**Textual Amendments**

**F5879**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 [<sup>F5880</sup>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.
- <sup>F5881</sup>(3) In this paragraph “bank” has the meaning given by section 840A.]

**Textual Amendments**

**F5880**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](#))

**F5881**[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 in [<sup>F5882</sup>section 56(5)].

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#### Textual Amendments

**F5882** Words in [Sch. 20 para. 8](#) 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. 237\(2\)](#) (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 [<sup>F5883</sup>charitable company] and not for the avoidance of tax (whether by the [<sup>F5883</sup>charitable company] 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.

#### Textual Amendments

**F5883** Words in [Sch. 20 para. 9\(1\)](#) 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. 237\(3\)](#) (with [Sch. 2](#))

## PART II

### QUALIFYING LOANS

- 1<sup>F5884</sup>(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 [<sup>F5885</sup>charitable company] which is made in the course of carrying out the purposes of the [<sup>F5885</sup>charitable company]; or
  - (c) money placed on current account with [<sup>F5886</sup>a 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 [<sup>F5887</sup>charitable company] and not for the avoidance of tax (whether by the [<sup>F5887</sup>charitable company] or by some other person).
- <sup>F5888</sup>(2) In this paragraph “bank” has the meaning given by section 840A.]

#### Textual Amendments

**F5884** [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\(4\)](#)

**F5885** Words in [Sch. 20 para. 10\(1\)\(b\)](#) 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. 237\(4\)\(a\)](#) (with [Sch. 2](#))

**F5886** 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](#)

**F5887** Words in [Sch. 20 para. 10\(1\)\(d\)](#) 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. 237\(4\)\(b\)](#) (with [Sch. 2](#))

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**F5888** 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)

**F5889F5889 PART III**

ATTRIBUTION OF EXCESS NON-QUALIFYING  
EXPENDITURE TO EARLIER CHARGEABLE PERIODS

**Textual Amendments**

**F5889** Sch. 20 Pt. 3 (paras. 11-14) repealed (with effect in accordance with s. 55(5) of the repealing Act) by Finance Act 2006 (c. 25), s. 55(3), Sch. 26 Pt. 3(5)

- 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.
- (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 256 of the 1992 Act, are not within the charge to tax.

- 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.

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- (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 <sup>M917</sup>

#### Marginal Citations

M917 Source—1970 c.10, Sch.11

## PART I

### PRELIMINARY

- 1 (1) In this Schedule—
- “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

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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       **F5891** .....

**Textual Amendments**  
**F5891** 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
- (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 <sup>F5892</sup>Part 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 <sup>F5893</sup>profits] of the trade for the purposes of the Tax Acts.

(2) <sup>F5894</sup> .....

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- (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 [<sup>F5893</sup>profits] of, a trade but for any of the following matters, that is to say—
- (a) that there are no [<sup>F5893</sup>profits] 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

- F5892** 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
- F5893** 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
- F5894** 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

### 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.

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- 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.

F5895F5895 SCHEDULE 22

**Textual Amendments**

F5895 Sch. 22 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

F5898F5898 SCHEDULE 23

**Textual Amendments**

F5898 Sch. 23 repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

F5901F5901 [F5902 SCHEDULE 23ZA]

**Textual Amendments**

F5901 Sch. 23ZA repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)  
 F5902 Sch. 23ZA inserted (28.7.2000) by Finance Act 2000 (c. 17), s. 61, Sch. 13 para. 27 (with Sch. 13 paras. 28, 29)



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[<sup>F5903</sup>SCHEDULE 23A

Section 736A.]

MANUFACTURED DIVIDENDS AND INTEREST

**Textual Amendments**

**F5903** 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)**

**C816** Sch. 23A modified (19.3.1997) by Finance Act 1997 (c. 16), Sch. 7 para. 7(3)

*Interpretation*

<sup>F5904</sup> 1 (1) In this Schedule—

<sup>F5905</sup>

“dividend manufacturer” has the meaning given by paragraph 2(1) below;  
“dividend manufacturing regulations” means regulations made by the Treasury under this Schedule;

<sup>F5906</sup>

<sup>F5907</sup>

“manufactured dividend” <sup>F5908</sup> . . . and “manufactured overseas dividend” shall be construed respectively in accordance with paragraphs 2 <sup>F5908</sup> . . . and 4 below, as shall references to the gross amount thereof;

[<sup>F5909</sup>“manufactured interest” means an amount—

- (a) which is representative of a periodical payment of interest on United Kingdom securities, and
- (b) which, under a contract or other arrangements for the transfer of the securities, one of the parties is required to pay to the other;]

<sup>F5905</sup>

“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; <sup>F5910</sup> . . .
- (b) <sup>F5910</sup> . . .

“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;

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F5905  
.....  
F5905  
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“securities” includes any loan stock or similar security;  
“transfer” includes any sale or other disposal;  
F5905  
.....  
F5905  
.....  
“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  
F5911  
... United Kingdom equities.

(2) F5912  
.....

#### Textual Amendments

- F5904**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**)
- F5905**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**
- F5906**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
- F5907**Sch. 23A para. 1(1): definition of "interest manufacturer" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(2)(a), **Sch. 3 Pt. 1** (with Sch. 2)
- F5908**Sch. 23A para. 1(1): words in definition of "manufactured dividend", "manufactured interest" and "manufactured overseas dividend" repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(2)(b), **Sch. 3 Pt. 1** (with Sch. 2)
- F5909**Sch. 23A para. 1(1): definition of "manufactured interest" 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. 238(2)(c)** (with Sch. 2)
- F5910**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)**
- F5911**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)**
- F5912**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**

*[<sup>F5913</sup> Manufactured dividends on UK equities: general]*

#### Textual Amendments

- F5913**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)**

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[<sup>F5914</sup><sup>F5915</sup>(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.

[<sup>F5916</sup>(2) Where a manufactured dividend is paid by a dividend manufacturer who is a company resident in the United Kingdom, the [<sup>F5917</sup>Corporation] 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.]

(3) Where a manufactured dividend to which sub-paragraph (2) above does not apply is paid by any person—

- (a) <sup>F5918</sup> .....
- (b) the [<sup>F5919</sup>Corporation] 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;  
<sup>F5920</sup> .....
- (c) <sup>F5920</sup> .....

(4) .....

<sup>F5921</sup>(5) .....

<sup>F5921</sup>(6) <sup>F5922</sup> ... Where—

- (a) a dividend manufacturer pays a manufactured dividend <sup>F5923</sup> . . . . , <sup>F5924</sup> . . . .  
[<sup>F5925</sup>, and
- (aa) the dividend manufacturer is a non-UK resident company within the charge to corporation tax,]

<sup>F5924</sup>(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 [<sup>F5926</sup>or section 573(2) of ITA 2007], 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.]

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### Textual Amendments

- F5914** 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)**
- F5915** 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**)
- F5916** 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)**
- F5917** Word in Sch. 23A para. 2(2) 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. 238(3)(a)** (with Sch. 2)
- F5918** 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
- F5919** Word in Sch. 23A para. 2(3)(b) 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. 238(3)(b)** (with Sch. 2)
- F5920** Sch. 23A para. 2(3)(c) and preceding word repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(3)(c), **Sch. 3 Pt. 1** (with Sch. 2)
- F5921** 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
- F5922** 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
- F5923** Words in Sch. 23A para. 2(6)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(3)(d), **Sch. 3 Pt. 1** (with Sch. 2)
- F5924** 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
- F5925** Sch. 23A para. 2(6)(aa) and preceding word 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. 238(3)(e)** (with Sch. 2)
- F5926** Words in Sch. 23A para. 2(7)(c) 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. 238(3)(f)** (with Sch. 2)

### Modifications etc. (not altering text)

- C817** 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**)
- C818** Sch. 23A para. 2(2)(b) applied by The Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964), **reg. 69Z24C(3)** (as inserted (1.1.2009 with effect in accordance with reg. 1(2)(3) of the amending S.I.) by The Authorised Investment Funds (Tax) (Amendment No. 3) Regulations 2008 (S.I. 2008/3159), **regs. 1(1), 27**)

### *Deductibility of manufactured payment in the case of the manufacturer*

2A

F5927

### Textual Amendments

- F5927** Sch. 23A paras. 2A-3A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(4), **Sch. 3 Pt. 1** (with Sch. 2)

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*Manufactured dividends representative of foreign income dividends*

.....  
2B

F5928  
.....

**Textual Amendments**

**F5928**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

F5929  
.....

**Textual Amendments**

**F5929**Sch. 23A paras. 2A-3A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(4), **Sch. 3 Pt. 1** (with Sch. 2)

*Manufactured interest on gilt-edged securities etc.*

.....  
3A

F5930  
.....

**Textual Amendments**

**F5930**Sch. 23A paras. 2A-3A repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(4), **Sch. 3 Pt. 1** (with Sch. 2)

<sup>F5931</sup>*Manufactured overseas dividends*

**Textual Amendments**

**F5931**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**)

<sup>F5932</sup>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 representative of an overseas dividend on the overseas securities; and in this Schedule

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the “manufactured overseas dividend” means any payment which the overseas dividend manufacturer makes in discharge of that requirement.

[<sup>F5933</sup>(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) <sup>F5934</sup> .....

[<sup>F5935</sup>(2A) <sup>F5934</sup> .....

(3) <sup>F5934</sup> .....

[<sup>F5936</sup>(3A) <sup>F5934</sup> .....

(3B) <sup>F5934</sup> .....

(4) Where a manufactured overseas dividend is paid after deduction of the amount required by [<sup>F5937</sup>section 922(2) of ITA 2007 (amount of income tax to be deducted at source)], or where the amount of tax required under [<sup>F5938</sup>section 923 of that Act (income tax to be accounted for and paid)] in respect of such a dividend has been accounted for and paid, then for all purposes of the [<sup>F5939</sup>Corporation Tax Acts]<sup>F5940</sup> . . . —

- (a) the manufactured overseas dividend shall be treated in relation to the recipient, and all [<sup>F5941</sup>companies] claiming title through or under [<sup>F5941</sup>the recipient], 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 [<sup>F5941</sup>under section 922(2) of ITA 2007]; and
- (b) the amount so deducted shall accordingly be treated in relation to the recipient, and all [<sup>F5942</sup>companies] claiming title through or under [<sup>F5942</sup>the recipient], as an amount so withheld instead of as an amount on account of income tax.

(5) For the purposes of this paragraph—

- (a) <sup>F5943</sup> .....
- (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

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(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) <sup>F5944</sup> .....

(7) <sup>F5945</sup> .....

[<sup>F5946</sup>(7AA) <sup>F5945</sup> .....

[<sup>F5947</sup>(7A) <sup>F5948</sup> .....

(8) <sup>F5949</sup> .....

[<sup>F5950</sup>(9) Without prejudice to section 97 of the Finance Act 1996 (manufactured interest), the references in this paragraph to all the purposes of the [<sup>F5951</sup>Corporation] Tax Acts do not include the purposes of Chapter II of Part IV of that Act (loan relationships).]

#### Textual Amendments

**F5932**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**)

**F5933**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)

**F5934**Sch. 23A para. 4(2)-(3B) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 238(5)(a)**, **Sch. 3 Pt. 1** (with Sch. 2)

**F5935**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)

**F5936**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)**

**F5937**Words in Sch. 23A para. 4(4) 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. 238(5)(b)(i)** (with Sch. 2)

**F5938**Words in Sch. 23A para. 4(4) 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. 238(5)(b)(ii)** (with Sch. 2)

**F5939**Words in Sch. 23A para. 4(4) 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. 238(5)(b)(iii)** (with Sch. 2)

**F5940**Words in Sch. 23A para. 4(4) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 238(5)(b)(iv)**, **Sch. 3 Pt. 1** (with Sch. 2)

**F5941**Words in Sch. 23A para. 4(4)(a) 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. 238(5)(b)(v)** (with Sch. 2)

**F5942**Words in Sch. 23A para. 4(4)(b) 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. 238(5)(b)(vi)** (with Sch. 2)

**F5943**Sch. 23A para. 4(5)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), **Sch. 1 para. 238(5)(c)**, **Sch. 3 Pt. 1** (with Sch. 2)



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- F5944** Sch. 23A para. 4(6) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(5)(d), **Sch. 3 Pt. 1** (with Sch. 2)
- F5945** Sch. 23A para. 4(7)(7AA) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(5)(e), **Sch. 3 Pt. 1** (with Sch. 2)
- F5946** Sch. 23A para. 4(7AA) inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 159(6)
- F5947** Sch. 23A para. 4(7A) inserted (3.5.1994) by Finance Act 1994 (c. 9), s. 124
- F5948** Sch. 23A para. 4(7A) repealed (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 41 Pt. 5(21)**, Note 2
- F5949** Sch. 23A para. 4(8) repealed (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 40 Pt. 2(17)**
- F5950** 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)
- F5951** Word in Sch. 23A para. 4(9) 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. 238(5)(f)** (with Sch. 2)

**Modifications etc. (not altering text)**

- C819** 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)
- C820** Sch. 23A para. 4(1) applied (1.10.1993) by S.I. 1993/2004, reg.2

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- 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
  - (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.

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- (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.

*F5952 Dividends and interest passing through the market*

**Textual Amendments**

**F5952**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)

F5953 5

F5954

**Textual Amendments**

**F5953**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)

**F5954**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

*F5955 Unapproved manufactured payments*

**Textual Amendments**

**F5955**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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### Textual Amendments

**F5956** 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**)

**F5957** 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**

### <sup>F5958</sup>Irregular manufactured payments

### Textual Amendments

**F5958** 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**)

- <sup>F5959</sup>7 (1) <sup>F5960</sup> . . . 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 <sup>F5961</sup> . . . 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 <sup>F5962</sup> . . . 4 above) of the <sup>F5963</sup> . . . overseas dividend of which it is representative <sup>F5964</sup> . . . ,
- 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) <sup>F5965</sup> . . . or 4(1) above, as the case may be, but shall instead to that extent be taken for all purposes of the [<sup>F5966</sup>Corporation Tax Acts] to constitute a separate fee for entering into the contract or other arrangements under which it was made, [<sup>F5967</sup>notwithstanding anything in [<sup>F5968</sup>paragraph 2] above or anything in paragraph 4 other than in sub-paragraph (1A).]
- [<sup>F5969</sup>(1A) Sub-paragraph (1) above does not apply in the case of the amount of any <sup>F5970</sup> . . . 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) <sup>F5971</sup> . . . . .
  - (3) For the purpose of giving relief under any provision of the [<sup>F5972</sup>Corporation Tax Acts] in a case falling within paragraph <sup>F5973</sup> . . . 4(1) above where (apart from this

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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 <sup>F5974</sup> . . . manufactured overseas dividend shall be taken to be an amount equal to the aggregate referred to in sub-paragraph (1) (b) above, <sup>F5975</sup> . . .
- (b) <sup>F5976</sup> . . . . .

notwithstanding anything in paragraph [<sup>F5977F5978</sup> . . . 4] above.

(4) In this paragraph “relief” means relief by way of—

- (a) deduction in computing profits or gains; or
- (b) deduction <sup>F5979</sup> . . . against <sup>F5979</sup> . . . total profits.

### Textual Amendments

**F5959**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**)

**F5960**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**

**F5961**Words in Sch. 23A para. 7(1)(b)(i) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(a)(i), **Sch. 3 Pt. 1** (with Sch. 2)

**F5962**Words in Sch. 23A para. 7(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(a)(ii), **Sch. 3 Pt. 1** (with Sch. 2)

**F5963**Words in Sch. 23A para. 7(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(a)(iii), **Sch. 3 Pt. 1** (with Sch. 2)

**F5964**Words in Sch. 23A para. 7(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(a)(iv), **Sch. 3 Pt. 1** (with Sch. 2)

**F5965**Words in Sch. 23A para. 7(1) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(a)(v), **Sch. 3 Pt. 1** (with Sch. 2)

**F5966**Words in Sch. 23A para. 7(1) 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. 238(6)(a)(vi)** (with Sch. 2)

**F5967**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)

**F5968**Words in Sch. 23A para. 7(1) 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. 238(6)(a)(vii)** (with Sch. 2)

**F5969**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)

**F5970**Words in Sch. 23A para. 7(1A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(b), **Sch. 3 Pt. 1** (with Sch. 2)

**F5971**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**

**F5972**Words in Sch. 23A para. 7(3) 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. 238(6)(c)(i)** (with Sch. 2)

**F5973**Words in Sch. 23A para. 7(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(c)(ii), **Sch. 3 Pt. 1** (with Sch. 2)

**F5974**Words in Sch. 23A para. 7(3)(a) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(c)(iii), **Sch. 3 Pt. 1** (with Sch. 2)

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- F5975** 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**
- F5976** 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**
- F5977** 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**
- F5978** Words in Sch. 23A para. 7(3) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(c)(iv), **Sch. 3 Pt. 1** (with Sch. 2)
- F5979** Words in Sch. 23A para. 7(4)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(6)(d), **Sch. 3 Pt. 1** (with Sch. 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).

- (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.

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- (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.

- (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;
- (d) [<sup>F5980</sup>any payment which by virtue of paragraph 7(1) constitutes a fee;]

“related transaction” shall be construed in accordance with subparagraphs (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;

[<sup>F5981</sup>“tax advantage” has the meaning given by section 840ZA;]



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“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.

#### Textual Amendments

**F5980**Sch. 23A para. 7A(10): in definition of "manufactured payment", para. (d) inserted (with effect in accordance with Sch. 5 para. 9(2)-(4) of the amending Act) by Finance Act 2007 (c. 11), Sch. 5 para. 9(1)

**F5981**Sch. 23A para. 7A(10): definition of "tax advantage" 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. 238(7) (with Sch. 2)

#### *F5982* Dividend manufacturing regulations: general

#### Textual Amendments

**F5982**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)

- <sup>F5983</sup>g (1) Dividend manufacturing regulations may make provision for—
- (a) such manufactured dividends <sup>F5984</sup> . . . or manufactured overseas dividends as may be prescribed,
  - <sup>F5985</sup>(aa) such persons who receive, or become entitled to receive, manufactured dividends <sup>F5984</sup> . . . or manufactured overseas dividends as may be prescribed,] or
  - (b) such dividend manufacturers <sup>F5986</sup> . . . or overseas dividend manufacturers as may be prescribed,
- to be treated in prescribed circumstances otherwise than as mentioned in [<sup>F5987</sup>paragraphs [<sup>F5988</sup>2 and 4] above] for the purposes of such provisions of the [<sup>F5989</sup>Corporation] Tax Acts as may be prescribed.
- <sup>F5990</sup>(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 [<sup>F5991</sup>Corporation] Tax Acts <sup>F5992</sup> . . . , 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—



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- (a) the accounts and other records which are to be kept,
- (b) the vouchers which are to be issued or produced,
- (c) <sup>F5993</sup> .....
- (d) <sup>F5993</sup> .....

[<sup>F5994</sup> by persons by <sup>F5995</sup> ... whom manufactured dividends <sup>F5996</sup> ... are paid.]

[<sup>F5997</sup>(2A) <sup>F5998</sup> .....

(3) Dividend manufacturing regulations may—

- (a) make provision for prescribed provisions of the Management Act to apply [<sup>F5999</sup> for corporation tax purposes] in relation to manufactured dividends, manufactured interest or manufactured overseas dividends with such modifications, specified in the regulations, as the Treasury think fit;
- (b) <sup>F6000</sup> .....

(4) Dividend manufacturing regulations may make different provision for different cases.

#### Textual Amendments

- F5983**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**)
- F5984**Words in Sch. 23A para. 8(1)(a)(aa) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(a)(i), **Sch. 3 Pt. 1** (with Sch. 2)
- F5985**Sch. 23A para. 8(1)(aa) inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 159(7)(a)
- F5986**Words in Sch. 23A para. 8(1)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(a)(ii), **Sch. 3 Pt. 1** (with Sch. 2)
- F5987**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**
- F5988**Words in Sch. 23A para. 8(1) 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. 238(8)(a)(iii)** (with Sch. 2)
- F5989**Word in Sch. 23A para. 8(1) 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. 238(8)(a)(iv)** (with Sch. 2)
- F5990**Sch. 23A para. 8(1A) inserted (29.4.1996) by Finance Act 1996 (c. 8), s. 159(8)
- F5991**Word in Sch. 23A para. 8(1A)(b) 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. 238(8)(b)(i)** (with Sch. 2)
- F5992**Words in Sch. 23A para. 8(1A)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(b)(ii), **Sch. 3 Pt. 1** (with Sch. 2)
- F5993**Sch. 23A para. 8(2)(c)(d) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(c)(i), **Sch. 3 Pt. 1** (with Sch. 2)
- F5994**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**
- F5995**Words in Sch. 23A para. 8(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(c)(ii), **Sch. 3 Pt. 1** (with Sch. 2)
- F5996**Words in Sch. 23A para. 8(2) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(c)(iii), **Sch. 3 Pt. 1** (with Sch. 2)
- F5997**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**

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- F5998** Sch. 23A para. 8(2A) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(d), **Sch. 3 Pt. 1** (with Sch. 2)
- F5999** Words in Sch. 23A para. 8(3)(a) 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. 238(8)(e)(i)** (with Sch. 2)
- F6000** Sch. 23A para. 8(3)(b) repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by Income Tax Act 2007 (c. 3), Sch. 1 para. 238(8)(e)(ii), **Sch. 3 Pt. 1** (with Sch. 2)

## SCHEDULE 24

Section 747(6).

### M922 ASSUMPTIONS FOR CALCULATING CHARGEABLE PROFITS, CREDITABLE TAX AND CORRESPONDING UNITED KINGDOM TAX OF FOREIGN COMPANIES

#### Modifications etc. (not altering text)

**C821** Sch. 24 modified (28.7.2000) by Finance Act 2000 (c. 17), **Sch. 22 para. 54(2)-(5)**

#### Marginal Citations

**M922** 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 <sup>F6001</sup> 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.

<sup>F6002</sup>(3A) In any case where—

- (a) it is at any time necessary for any purpose of Chapter IV of Part XVII to determine <sup>F6003</sup> in the case of any person] the chargeable profits of the company for an accounting period, and
- (b) at that time—
- <sup>F6004</sup>(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 <sup>F6005</sup> in the case of that person] that that or any earlier accounting period of the company is an ADP exempt period,

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[<sup>F6006</sup>in 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 [<sup>F6007</sup>in the case of any person] the chargeable profits of the company for an accounting period, and

[<sup>F6008</sup>(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,]

[<sup>F6009</sup>in 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 [<sup>F6010</sup>permanent establishment] in the United Kingdom.

[<sup>F6011</sup>(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

**F6001** 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**

**F6002** 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)**

**F6003** 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**

**F6004** 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**

**F6005** 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**

**F6006** 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**

**F6007** 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**

**F6008** 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**

**F6009** 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**

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**F6010** 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)

**F6011** 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—
- [<sup>F6012</sup>(a) in respect of which [<sup>F6013</sup>an 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 [<sup>F6014</sup>an 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

**F6012** 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)

**F6013** 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

**F6014** 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.
- [<sup>F6015</sup>(1A) Sub-paragraph (2) below applies to any accounting period of the company—
- (a) in respect of which [<sup>F6016</sup>an apportionment under section 747(3) falls to be made]; or
- (b) which is an ADP exempt period.]
- (2) [<sup>F6017</sup>Where this sub-paragraph applies to an accounting period of the company, then] if, by notice [<sup>F6018</sup>given to an officer of the Board] at any time not later than the expiry

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of [<sup>F6019</sup>the 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.

[<sup>F6020</sup>(2A) <sup>F6021</sup>.....]

(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 [<sup>F6022</sup>any liability] on any such companies under subsection (4)(a) of that section,

are apportioned to the United Kingdom resident company or companies concerned.

[<sup>F6023</sup>(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 [<sup>F6024</sup>an apportionment under section 747(3) had fallen to be made], and

[<sup>F6025</sup>(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

**F6015**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)

**F6016**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

**F6017**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)

**F6018**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

**F6019**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

**F6020**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)



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- F6021** 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**)
- F6022** 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**)
- F6023** 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)**)
- F6024** 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**)
- F6025** 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)

- C822** 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)**)
- C823** 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)
- C824** 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)**)
- C825** 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**)

[<sup>F6026</sup>4A    <sup>F6027</sup> .....]

#### Textual Amendments

- F6026** 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)**)
- F6027** 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[<sup>F6028</sup>(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.

[<sup>F6029</sup>(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.]

#### Textual Amendments

- F6028** 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**)
- F6029** 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**)

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### Textual Amendments

**F6030**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 **F6031** . . . . .

### Textual Amendments

**F6031**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 [<sup>F6032</sup>permanent 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

**F6032**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) <sup>F6033</sup> . . . This paragraph applies in any case where the company incurred a loss in a trade in an accounting period—
- (a) which precedes the first accounting period in respect of which [<sup>F6034</sup>an 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 [<sup>F6035</sup>, 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 “[<sup>F6036</sup>pre-apportionment] period”.



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- (2) <sup>F6037</sup> .....
- (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 [<sup>F6036</sup>pre-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 [<sup>F6036</sup>pre-apportionment] period was the first accounting period in respect of which [<sup>F6038</sup>an apportionment under section 747(3) fell to be made].
- <sup>F6039</sup>(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) <sup>F6037</sup> .....
- (6) <sup>F6037</sup> .....
- <sup>F6040</sup>(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

- F6033** 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**
- F6034** 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**
- F6035** 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)**
- F6036** 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**
- F6037** 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**
- F6038** 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**
- F6039** 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**
- F6040** 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**

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*Capital allowances<sup>F6041</sup> and expenditure on car hire]*

**Textual Amendments**

**F6041** 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) [<sup>F6042</sup>Subject to paragraph 12 below,] if, in an accounting period falling before the beginning of the first accounting period—
- [<sup>F6043</sup>(a) in respect of which [<sup>F6044</sup>an 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 [<sup>F6045</sup>plant 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 [<sup>F6046</sup>section 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 [<sup>F6047</sup>Part 2 of the Capital Allowances Act].

**Textual Amendments**

- F6042** 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](#)
- F6043** 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\(10\)](#)
- F6044** 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](#)
- F6045** 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\(1\)\(a\)](#)
- F6046** 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\(1\)\(b\)](#)
- F6047** 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 <sup>F6048</sup> .....

**Textual Amendments**

**F6048** [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](#)

[<sup>F6049</sup>11A <sup>F6050</sup> .....

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**Textual Amendments**  
**F6049**Sch. 24 para. 11A inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 6(4)**  
**F6050**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.

*<sup>F6051</sup> Exchange gains and losses*

**Textual Amendments**  
**F6051**Sch. 24 paras. 13-19 and cross-heading inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 25 para. 6(5)**

13 **F6052** .....

**Textual Amendments**  
**F6052**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 **F6053** .....

**Textual Amendments**  
**F6053**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 **F6054** .....

**Textual Amendments**  
**F6054**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 **F6055** .....

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**Textual Amendments**

**F6055**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 **F6056** . . . . .

**Textual Amendments**

**F6056**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 **F6057** . . . . .

**Textual Amendments**

**F6057**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 **F6058** . . . . . ]

**Textual Amendments**

**F6058**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

*[<sup>F6059</sup> Transfer pricing*

**Textual Amendments**

**F6059**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 **F6060** . . . . . ]

**Textual Amendments**

**F6060**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.

[<sup>F6061</sup>CASES WHERE SECTION 747(3) DOES NOT APPLY]**Textual Amendments**

**F6061** 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 [<sup>F6062</sup>and the other provisions of Chapter IV of Part XVII which refer to a company pursuing an acceptable distribution policy].

**Textual Amendments**

**F6062** 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 [<sup>F6063</sup>paragraph 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 <sup>F6064</sup> . . . ; and
  - (b) the dividend is paid during, or not more than eighteen months after the expiry of, [<sup>F6065</sup>that 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*
  - <sup>F6066</sup>(d) the [<sup>F6067</sup>amount] 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 [<sup>F6067</sup>is not less than][<sup>F6068</sup>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;

<sup>F6064</sup> . . . . .

- [<sup>F6069</sup>(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 [<sup>F6070</sup> and—

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- (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 [F6071 436A] 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.]]

[F6072(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) F6073 .....

[F6074(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 necessary 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

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number of those issued shares by virtue of which persons resident in the United Kingdom have interests in the company at that time.

(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—

$$\frac{PyQ}{R} + \frac{(X - P)yY}{Z}$$

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 [<sup>F6075</sup>net 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



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shares in the controlled foreign company) the number of those shares shall be treated 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

- F6063** 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)
- F6064** 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
- F6065** 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)
- F6066** 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.
- F6067** 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)
- F6068** 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)
- F6069** 1990 s.67(3)(b) in relation to dividends paid on or after 20 March 1990.
- F6070** 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)
- F6071** Words in Sch. 25 para. 2(1A)(a) substituted (with effect in accordance with s. 38(2) of the amending Act) by Finance Act 2007 (c. 11), Sch. 7 para. 56 (with Sch. 7 Pt. 2)
- F6072** 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)
- F6073** 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
- F6074** 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)
- F6075** 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 <sup>F6076</sup> . . . 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”) [<sup>F6077</sup> immediately preceding] the relevant accounting period and [<sup>F6078</sup> which is not an excluded dividend] shall be treated as falling within that paragraph, and

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- (b) if the distribution condition is satisfied in relation to the preceding period, any dividend which is paid for the accounting period [<sup>F6077</sup>immediately preceding] the preceding period and [<sup>F6078</sup>which 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, [<sup>F6079</sup>no 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 [<sup>F6080</sup>net chargeable profits] is to be read as a reference to relevant profits.
- (6) <sup>F6081</sup> .....
- (7) <sup>F6081</sup> .....
- (8) For the purposes of this paragraph—
- <sup>F6082</sup>(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 [<sup>F6083</sup>an apportionment under section 747(3) falls to be made], and

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- (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.

#### Textual Amendments

- F6076** 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
- F6077** 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](#)
- F6078** 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](#)
- F6079** 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](#)
- F6080** 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\(3\)\(b\)](#)
- F6081** [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
- F6082** [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](#)
- F6083** 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) **F6084** .....
- (2) **F6084** .....

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- (3) <sup>F6084</sup> .....
- (4) <sup>F6084</sup> .....
- [<sup>F6085</sup>(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 [<sup>F6086</sup>an 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, <sup>F6087</sup> . . . [<sup>F6088</sup>the chargeable profits] of the controlled foreign company referred to in that paragraph for any accounting period.

#### Textual Amendments

- F6084**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
- F6085**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)**
- F6086**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**
- F6087**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
- F6088**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*
- <sup>F6089</sup>(d) the subsequent dividend is paid out of profits which are derived, directly or indirectly, from the whole or part of the initial dividend,

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so much of the initial dividend as is represented by the subsequent dividend shall be regarded as paid to the United Kingdom resident [<sup>F6090</sup> and shall be taken to satisfy the conditions in paragraph 2(1A) above].

[<sup>F6091</sup>(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 [<sup>F6092</sup> 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 [<sup>F6093</sup>neither 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

**F6089** 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.

**F6090** 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)

**F6091** 1990 s.67(3)(c) in relation to dividends paid on or after 20 March 1990.

**F6092** 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)

**F6093** 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.

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- (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.

## PART II

### EXEMPT ACTIVITIES

#### Modifications etc. (not altering text)

**C826** 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.

[<sup>F6094</sup>(1A) Except as provided in paragraph 8 below, the provisions of this Part of this Schedule apply in relation to a company which is resident in an EEA territory in the same way as they apply in relation to a company which is resident elsewhere.]

(2) In the case of a controlled foreign company—

- (a) which is, by virtue of section [<sup>F6095</sup>749(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.

[<sup>F6096</sup>(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



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- (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.
- (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

- F6094**Sch. 25 para. 5(1A) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), **Sch. 15 para. 7(2)**
- F6095**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**
- F6096**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 [<sup>F6097</sup>(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 [<sup>F6098</sup>financial 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 [<sup>F6099</sup>persons falling within sub-paragraph (2A) below.]
- [<sup>F6100</sup>(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; <sup>F6101</sup> . . .
- (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 [<sup>F6102</sup>;
- (d) persons not falling within paragraphs (a) to (c) above which are companies resident in the United Kingdom;



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- (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 [F6103 permanent establishment] in the United Kingdom;
- (f) persons not falling within paragraphs (a) to (c) above who are individuals habitually resident in the United Kingdom;

but where the company is a controlled foreign company falling within sub-paragraph (2B) below, paragraphs (d) to (f) above shall be disregarded.]]

[F6104(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 [F6103 permanent 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 [F6105 is 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 [F6106 or superior holding companies], but otherwise are, in terms of this Schedule, engaged in exempt activities [F6107 or 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 [F6108 falls 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) [F6109 or superior holding companies], but otherwise are, in terms of this Schedule, engaged in exempt activities [F6110 or are, in terms of sub-paragraph (5A) below, exempt trading companies].

[F6111(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.]

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[<sup>F6112</sup>(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 [<sup>F6113</sup>; and
- (c) falls within sub-paragraph (4AA) below.]

[ For the purposes of sub-paragraph (4A) above, income of the superior holding <sup>F6114</sup>(4AA) 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 [<sup>F6115</sup>; and
  - (iii) falls within sub-paragraph (4BB) below].]

[<sup>F6116</sup>(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.]

[<sup>F6117</sup>(4C) For the purposes of sub-paragraph [<sup>F6118</sup>(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 [<sup>F6119</sup>sub-paragraphs (3) to (4B)] above to a company which a holding company [<sup>F6120</sup>or superior holding company] controls includes a reference to a trading company [<sup>F6121</sup>to which sub-paragraph (5ZA) or (5ZB) below applies.

(5ZA) This sub-paragraph applies to a trading company] in which the holding company [<sup>F6120</sup>or superior holding company] holds the maximum amount of ordinary share capital which is permitted under the law of the territory—

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- (a) in which the trading company is resident; and
- (b) from whose laws the trading company derives its status as a company.

[<sup>F6122</sup>(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
- (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.]

[<sup>F6123</sup>(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.]

[<sup>F6124</sup>(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 [<sup>F6125</sup>(4BB)] above.

#### Textual Amendments

**F6097** 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)**

**F6098** 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)**

**F6099** 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)**

**F6100** 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)**

**F6101** 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)**

**F6102** 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)**

**F6103** 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)**

**F6104** 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)**

**F6105** 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)**

**F6106** 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**

**F6107** 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**

**F6108** 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)**

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- F6109** 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**
- F6110** 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**
- F6111** 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)**
- F6112** 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**
- F6113** 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)**
- F6114** 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)**
- F6115** 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)**
- F6116** 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)**
- F6117** 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**
- F6118** 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)**
- F6119** 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**
- F6120** 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**
- F6121** 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)**
- F6122** 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)**
- F6123** 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**
- F6124** 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)**
- F6125** 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.

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- 8 (1) Subject to sub-paragraph (4) below, the condition in paragraph 6(1)(b) above shall not be regarded as fulfilled [<sup>F6126</sup>in relation to a company which is not resident in an EEA territory] 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
  - (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 [<sup>F6127</sup>or 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 [<sup>F6128</sup>permanent establishment] of the controlled foreign company if the profits or gains of the business carried on through the [<sup>F6128</sup>permanent 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.
- [<sup>F6129</sup>(5) The condition in paragraph 6(1)(b) above shall not be regarded as fulfilled in relation to a company which is resident in an EEA territory unless there are sufficient individuals working for the company in the territory who have the competence and authority to undertake all, or substantially all, of the company's business.
- (6) For the purposes of sub-paragraph (5) above, 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.]

#### Textual Amendments

**F6126** Words in Sch. 25 para. 8(1) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 7(3)

**F6127** 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

**F6128** 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)

**F6129** Sch. 25 para. 8(5)(6) inserted (with effect in accordance with Sch. 15 para. 10 of the amending Act) by Finance Act 2007 (c. 11), Sch. 15 para. 7(4)

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- 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, [<sup>F6130</sup> or 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.

[<sup>F6131</sup> [<sup>F6132</sup>(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.

(3) For the purposes of paragraph 6(2) above, in the case of a company which is mainly engaged in [<sup>F6133</sup>business] 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

**F6130** 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

**F6131** 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

**F6132** 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)

**F6133** 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 [<sup>F6134</sup> financial 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);
  - [<sup>F6135</sup>(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;

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- (e) dealing in securities in the capacity of a broker, as defined in paragraph 9(2) above;
- (f) dealing in commodity or financial futures;<sup>F6136</sup> . . .
- <sup>F6137</sup>(g) the effecting or carrying out of contracts of insurance; and]
- <sup>F6138</sup>(h) the provision of services not falling within any of the preceding paragraphs.]

<sup>F6139</sup>(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 [<sup>F6140</sup>business] falling within sub-paragraph (1)(c) above—

<sup>F6141</sup>(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 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 [<sup>F6142</sup>, 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 [<sup>F6143</sup>permanent 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 [<sup>F6143</sup>permanent establishment] in the United Kingdom.]

(4) For the purposes of this paragraph, in relation to a controlled foreign company—



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- (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
  - (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

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- (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.

#### Textual Amendments

- F6134** 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\(2\)\(a\)](#)
- F6135** [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\(3\)](#)
- F6136** 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
- F6137** [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\(2\)](#)
- F6138** [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\(2\)\(c\)](#)
- F6139** [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\(3\)](#)
- F6140** 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\(4\)\(b\)](#)
- F6141** [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\(2\)](#)
- F6142** [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\(3\)](#)
- F6143** 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.

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- (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.
- (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;

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- (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
  - (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.

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- 12 (1) Subject to sub-paragraph (2) below, in paragraphs 6 and 8(3) above and [<sup>F6144</sup>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
  - (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 [<sup>F6145</sup>or superior holding company] but otherwise is, in terms of this Schedule, engaged in exempt activities [<sup>F6146</sup>or, 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.

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- (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

**F6144** 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

**F6145** 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

**F6146** 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
  - (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

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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

## <sup>F6147</sup>PART 2A

### TRADING COMPANIES WITH LIMITED UK CONNECTION

#### Textual Amendments

**F6147**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),
  - (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—



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- (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)—
- “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

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- 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—
- “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)—

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- (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).
- (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

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- (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.

VALID FROM 19/07/2011

## 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).

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*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.

*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

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(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)).

#### *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.]



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F6148F6148 **PART III**

THE PUBLIC QUOTATION CONDITION

**Textual Amendments**

**F6148**Sch. 25 Pt. 3 (paras. 13-15) repealed (with effect in accordance with Sch. 15 para. 10 of the repealing Act) by Finance Act 2007 (c. 11), Sch. 15 para. 8(2), **Sch. 27 Pt. 2(15)**, Note

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
- (c) within that period of 12 months the shares have been listed in the official list of such a recognised stock exchange.

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—



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- (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”.

VALID FROM 19/07/2011

### [<sup>F6150</sup>PART 3A

#### EXEMPT PERIODS

##### Textual Amendments

**F6150**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).

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- (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—
    - (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—

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- (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 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

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- (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 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.

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- (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.]

## 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 [<sup>F6151</sup>the results of which are] reflected in the profits arising in an accounting period of a controlled foreign company; and
  - (b) includes a reference to [<sup>F6152</sup>two or more transactions taken together, the results of at least one of which are so reflected].

#### Textual Amendments

**F6151** 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)

**F6152** 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

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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.
- (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.* <sup>M923</sup>

**Marginal Citations**  
**M923** 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, <sup>F6153</sup> . . .
  - (c) <sup>F6153</sup> . . . . .
- then, on the making of a claim, a sum equal to corporation tax at the appropriate rate on so much of the relevant allowance <sup>F6154</sup> . . . as is specified in the claim shall be

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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 [<sup>F6155</sup>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 [<sup>F6156</sup>section 392A(1) or 393A(1)] applies;
  - (b) any charge on income to which section 338(1) applies;
  - (c) any expenses of management to which section 75(1) applies;
  - [<sup>F6157</sup>(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; <sup>F6158</sup> . . .
  - (e) any amount available to the company by way of group relief; [<sup>F6159</sup>and
  - (f) any non-trading deficit on its loan relationships.]
- (4) <sup>F6160</sup> . . . . .
- (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) <sup>F6160</sup> . . . . .

### Textual Amendments

**F6153**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

**F6154**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

**F6155**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

**F6156**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)

**F6157**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)

**F6158**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)

**F6159**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)

**F6160**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



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*Advance corporation tax*

2            **F6161** .....

**Textual Amendments**  
**F6161** 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—
- [<sup>F6162</sup>(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 [<sup>F6163</sup>the 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 [<sup>F6163</sup>the apportionment period]; and
  - (d) by virtue of the apportionment referred to in paragraph (b) above, a sum is, under section 747(4)(a), [<sup>F6164</sup>chargeable 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 [<sup>F6165</sup>III 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 [<sup>F6166</sup>the apportionment period] of the shares disposed of, and

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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 [<sup>F6167</sup>chargeable 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—
- (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.
- [<sup>F6168</sup>(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

**F6162**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

**F6163**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

**F6164**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

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- F6165** 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))
- F6166** 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**
- F6167** 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**
- F6168** 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—
- <sup>F6169</sup>(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 <sup>F6170</sup>that 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 <sup>F6171</sup>chargeable 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 <sup>F6171</sup>chargeable 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

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- (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

**F6169**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**

**F6170**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**

**F6171**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  
(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

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- (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.

## SCHEDULE 27

Section 760.

### DISTRIBUTING FUNDS <sup>M924</sup>

#### Modifications etc. (not altering text)

**C827** 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

**M924** 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

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- (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
    - [<sup>F6172</sup>(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;]
- 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—
    - [<sup>F6173</sup>(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

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- (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—
- (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

**F6172** Sch. 27 para. 1(1)(d) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 23(2)

**F6173** 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.



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- (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 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.

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- (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 [F6174 section 756A(1)(b) or (c)] are of such a nature that—
- [F6175(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—
- (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 [F6176 paragraph (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**

**F6174** 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)

**F6175** 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)

**F6176** Words in Sch. 27 para. 3(1)(b) substituted (20.7.2005) by Finance (No. 2) Act 2005 (c. 22), s. 23(4)

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### *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
  - (b) in determining whether, and to what extent, any expenditure is deductible under section [75 <sup>F6177</sup>] 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**

**F6177**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.

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[<sup>F6178</sup>[<sup>F6179</sup><sup>F6180</sup>(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 [<sup>F6181</sup>; 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;]<sup>F6182</sup>and
  - (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—
- (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 [<sup>F6183</sup>and have been so received by virtue of section 154(2) of the Finance Act 1996]<sup>F6184</sup>or 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

**F6178**Sch. 27 para. 5(2A) inserted (27.7.1993) by Finance Act 1993 (c. 34), s. 170, **Sch. 18 para.6**

**F6179**Sch. 27 para. 5(2A) substituted (3.5.1994) by Finance Act 1994 (c. 9), s. 176(2)

**F6180**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)**

**F6181**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)

**F6182**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)

**F6183**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**

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**F6184** 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)**

**C828** 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)

**C829** 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
  - (b) <sup>F6185</sup> those 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) <sup>F6186</sup> . . . 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 <sup>F6187</sup>section 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) <sup>F6188</sup>section 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**

**F6185** 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)

**F6186** Words in Sch. 27 para. 6(1)(c) repealed (with effect in accordance with s. 57(8) of the repealing Act) by Finance Act 2007 (c. 11), s. 57(4), Sch. 27 Pt. 2(18), Note

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**F6187** 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)

**F6188** 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 <sup>F6189</sup>section 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 <sup>F6189</sup>section 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.

#### Textual Amendments

**F6189** 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—

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

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—

$$\frac{C}{D}$$

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

F6190

**Textual Amendments**

**F6190**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 <sup>F6191</sup> . . . Part I of this Schedule shall have effect subject to the modifications in [<sup>F6192</sup>sub-paragraph (4)] below.



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- (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 [<sup>F6193</sup>section 756A(1)(a)], directly and beneficially owned by the fund; and
  - (b) in the case of an offshore fund falling within [<sup>F6194</sup>section 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 [<sup>F6195</sup>section 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 <sup>F6191</sup> . . . 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) 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

**F6191** 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)

**F6192** 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)

**F6193** 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)

**F6194** 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)

**F6195** 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

<sup>F6196</sup>

#### Textual Amendments

**F6196** 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)

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*Disregard of certain investments forming less than 5 per cent. of a fund*

13

F6197

**Textual Amendments**

**F6197**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 <sup>M925</sup>Finance (No. 2) Act 1987 (23rd July 1987), it appears to the Board that there has been a failure to comply with [<sup>F6198</sup>the condition in section 760(3)(a)] (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**

**F6198**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**

**M925** 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

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- (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.
- (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 <sup>F6199</sup> . . . 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**

**F6199** 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)

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## 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 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

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- (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;

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

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- (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.

## SCHEDULE 28

Section 761(1).

### COMPUTATION OF OFFSHORE INCOME GAINS <sup>M926</sup>

#### Modifications etc. (not altering text)

**C830** [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

**M926** 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.

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*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 [F6200 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 [F6200 the 1992 Act].

**Textual Amendments**  
**F6200** 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 disposal to which [F6201 section 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 [F6201 162 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 [F6201 section 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 [F6201 16 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.



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### Textual Amendments

**F6201** 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)

**C831** **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—
- (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 [F620256, 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.

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### Textual Amendments

**F6202** 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.

## 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.

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- (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.
- 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 [F6203 56, 57, 131 or 145 of the 1992 Act], is treated for the purposes of the [F6203 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).

F6204 (4) . . . . .

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F6204 (5) .....

#### Textual Amendments

**F6203** 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))

**F6204** 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)

### 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

[<sup>F6205</sup>CHANGE IN OWNERSHIP OF COMPANY WITH INVESTMENT BUSINESS: DEDUCTIONS]

#### Textual Amendments

**F6205** 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)

**C832** Sch. 28A modified (22.7.2004) by Finance Act 2004 (c. 12), s. 43(7)

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## 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.

#### *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).

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- (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.
- (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 <sup>M927</sup>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**

**M927** 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) [<sup>F6206</sup>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 [<sup>F6207</sup>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 [<sup>F6208</sup>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 [<sup>F6209</sup>section 75(7)];
- [<sup>F6210</sup>(da) the amount (if any) of the adjusted Case III profits and gains or non-trading deficit of the company for that accounting period [<sup>F6211</sup>(other than one within sub-paragraph (dc) below)] ;
- (db) the amount of any non-trading debit (other than one within sub-paragraph <sup>F6212</sup> . . . (dd) below) that falls to be brought into account for that accounting

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- 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 [<sup>F6213</sup>deficit carried forward to that accounting period under] section [<sup>F6214</sup>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;]
  - [<sup>F6215</sup>(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;
  - (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

- F6206** 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)
- F6207** 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)
- F6208** 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\(1\)](#)
- F6209** 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)
- F6210** [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](#))
- F6211** Words in [Sch. 28A para. 6\(da\)](#) inserted (retrospectively) by [Finance Act 1998 \(c. 36\)](#), [s. 82\(3\)\(a\)\(4\)](#)
- F6212** 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
- F6213** Words in [Sch. 28A para. 6\(dc\)](#) substituted (retrospectively) by [Finance Act 1998 \(c. 36\)](#), [s. 82\(3\)\(c\)\(4\)](#)
- F6214** 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\(2\)](#)
- F6215** [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.



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### 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—
- [<sup>F6216</sup>(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 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, [<sup>F6217</sup>or in the case of the non-trading [<sup>F6218</sup>deficit] mentioned in paragraph 6(dc) above,] by apportioning the whole amount of the excess [<sup>F6219</sup>or, 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) [<sup>F6220</sup>, (da)] and (e) above, by reference to the respective lengths of the parts of the accounting period being divided;
  - [<sup>F6221</sup>(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 [<sup>F6222</sup>amortised cost] basis of accounting, <sup>F6223</sup> . . .
    - (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 [<sup>F6224</sup>, 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 [<sup>F6222</sup>amortised cost] basis of accounting, <sup>F6225</sup> . . . [<sup>F6226</sup>and
    - (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;

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- (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.]
  - [<sup>F6227</sup>(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.]
- (2) <sup>F6228</sup> .....

#### Textual Amendments

- F6216**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)
- F6217**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)
- F6218**Words in Sch. 28A para. 7(1)(b) substituted (retrospectively) by Finance Act 1998 (c. 36), **s. 82(3)(d)(4)**
- F6219**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)**
- F6220**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)
- F6221**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)
- F6222**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**
- F6223**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
- F6224**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)**
- F6225**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
- F6226**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)
- F6227**Sch. 28A para. 7(1)(g)(h) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(5)**
- F6228**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.

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## PART IV

### [<sup>F6229</sup>DISALLOWED DEBITS AND NON-TRADING DEFICITS]

#### Textual Amendments

**F6229** 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)

- 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.

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- (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 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 [<sup>F6230</sup>amortised cost] basis of accounting;
  - [<sup>F6231</sup>(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) [<sup>F6232</sup>apart 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) <sup>F6233</sup>.....
  - (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—

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- (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 [<sup>F6230</sup>amortised cost] basis of accounting; and
  - (d) relates to an amount that accrued before the change in the ownership of that company.
- (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

**F6230** 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](#)

**F6231** [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)

**F6232** 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\(6\)\(b\)](#)

**F6233** [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) [<sup>F6234</sup>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 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 [<sup>F6235</sup>section 75(9)] to the accounting period being divided;

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- (e) the amount of any allowances falling to be made for that accounting period by virtue of [<sup>F6236</sup>section 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 [<sup>F6237</sup>section 75(7)];
- [<sup>F6238</sup>(ea) the amount (if any) of the adjusted Case III profits and gains or non-trading deficit of the company for that accounting period [<sup>F6239</sup>(other than one within paragraph (ec) below)];
- (eb) the amount of any non-trading debit (other than one within paragraph <sup>F6240</sup> . . . (ed) 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;
- (ec) the amount of any non-trading [<sup>F6241</sup>deficit carried forward to that accounting period under] section [<sup>F6242</sup>83(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;]
- [<sup>F6243</sup>(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

- F6234**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)
- F6235**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)
- F6236**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\(2\)](#)
- F6237**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)
- F6238**[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](#))
- F6239**Words in [Sch. 28A para. 13\(1\)\(ea\)](#) inserted (retrospectively) by [Finance Act 1998 \(c. 36\)](#), [s. 82\(3\)\(f\)\(4\)](#)
- F6240**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
- F6241**Words in [Sch. 28A para. 13\(1\)\(ec\)](#) substituted (retrospectively) by [Finance Act 1998 \(c. 36\)](#), [s. 82\(3\)\(h\)\(4\)](#)

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**F6242** 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)

**F6243** 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.

## 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—
- <sup>F6244</sup>(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, <sup>F6245</sup>or in the case of the non-trading <sup>F6246</sup>deficit] mentioned in paragraph 13(1)(ec) above,] by apportioning the whole amount of the excess <sup>F6247</sup>or, 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) <sup>F6248</sup>, (ea)] and (f) above, by reference to the respective lengths of the parts of the accounting period being divided;
  - <sup>F6249</sup>(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 <sup>F6250</sup>amortised cost] basis of accounting, <sup>F6251</sup> . . .
    - (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 <sup>F6252</sup>, and



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- (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,
  - (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 [<sup>F6250</sup>amortised cost] basis of accounting, <sup>F6253</sup> . . . [<sup>F6254</sup>and
  - (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;]
- [<sup>F6255</sup>(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) <sup>F6256</sup> .....

### Textual Amendments

- F6244**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)
- F6245**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)
- F6246**Words in Sch. 28A para. 16(1)(b) substituted (retrospectively) by Finance Act 1998 (c. 36), s. 82(3)(i)(4)
- F6247**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)
- F6248**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)
- F6249**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)
- F6250**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
- F6251**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

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- F6252** 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)**
- F6253** 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
- F6254** 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)
- F6255** Sch. 28A para. 16(1)(g)(h) inserted (24.7.2002) by Finance Act 2002 (c. 23), **Sch. 30 para. 4(7)**
- F6256** 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)

- C833** 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))
- C834** 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))
- C835** 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**))
- C836** 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**))
- C837** 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)**)
- C838** 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**)
- C839** 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)**)
- C840** 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)**)
- C841** 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)**)
- C842** 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**)
- C843** 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)

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- C844** 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))
- C845** 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—
- (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 [F6257 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**

**F6257** 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”).

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- (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.
- (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—

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- (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.

*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);

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- (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).

*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 “transaction” and “series of transactions”*

- 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

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(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).

**Modifications etc. (not altering text)**

**C846** 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, [<sup>F6258</sup>and (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



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- (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.
- (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 [<sup>F6259</sup>or civil partner], a relative of his or of his spouse [<sup>F6259</sup>or civil partner], or the spouse [<sup>F6259</sup>or 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—

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“relative” means brother, sister, ancestor or lineal descendant; and  
[<sup>F6260</sup>“settlement” and “settlor” have the same meanings as in section 620 of ITTOIA 2005.]

#### Textual Amendments

**F6258** 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)**

**F6259** 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**

**F6260** Sch. 28AA para. 4(12): definition of “settlement” and “settlor” substituted (6.4.2006) by Finance Act 2006 (c. 25), Sch. 13 paras. 26, **27(1)**

#### *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

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- (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.
- (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 <sup>F6261</sup> . . . 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) <sup>F6262</sup> .....
- (3) <sup>F6263</sup> .....
- (4) <sup>F6264</sup> .....
- (5) <sup>F6265</sup> .....
- (6) <sup>F6266</sup> .....

<sup>F6267</sup>(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

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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—

- [<sup>F6268</sup>(a) disregarded income within the meaning given by section 813 of ITA 2007 (limits on liability to income tax of non-UK residents), or
- (b) disregarded company income within the meaning given by section 816 of that Act.]]

#### Textual Amendments

- F6261** 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
- F6262** 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
- F6263** 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
- F6264** 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
- F6265** 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
- F6266** 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
- F6267** 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)**
- F6268** Sch. 28AA para. 5(7)(a)(b) 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. 239** (with Sch. 2)

#### *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).

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### *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,—
- (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)**

**C847** Sch. 28AA paras. 5B, 5C excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(6), **Sch. 17 para. 12(2)(3)**

**C848** 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

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- (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.
  - (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,

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- (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;

“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)**

**C849** Sch. 28AA paras. 5B, 5C excluded (19.7.2006) by Finance Act 2006 (c. 25), s. 113(6), **Sch. 17 para. 12(2)(3)**

**C850** 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



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- (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—
  - (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

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- (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.

#### *Elimination of double counting*

- 6 <sup>F6269</sup>(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 <sup>F6270</sup>paragraphs <sup>F6271</sup>6C, 6D,] 7 <sup>F6272</sup>and 8] below, on the making of a claim by the disadvantaged person for the purposes of this paragraph—
- (a) <sup>F6273</sup>the 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.

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[<sup>F6274</sup>(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—

- (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) [<sup>F6275</sup>a 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;

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(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 [<sup>F6276</sup>partnership 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 [<sup>F6277</sup>—

(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.]]

#### Textual Amendments

**F6269** 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)

**F6270** 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)

**F6271** 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)

**F6272** 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)

**F6273** 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)

**F6274** 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)

**F6275** 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)

**F6276** 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)

**F6277** 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)

**C851** 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.

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- (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 [F6278] 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

**F6278** 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](#))

#### *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.

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*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.
- (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

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- (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).

*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.



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- (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,—
- (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.

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*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 [<sup>F6279</sup>or Chapter 2 of Part 4 of ITTOIA 2005].

**Textual Amendments**

**F6279** 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;

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- (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—
- (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)**

C852 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 <sup>F6280</sup> . . . .
- (3) In this paragraph “the available compensating adjustment” means the difference between PL1 and PL2 where—

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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

**F6280** 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

#### *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—

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- (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.
- (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—

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- (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<sup>F6281</sup> . . . .

#### Textual Amendments

**F6281** 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

#### *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) [<sup>F6282</sup>Subject to sub-paragraph (3)] [<sup>F6283</sup>and sub-paragraph (4)] below, this Schedule shall not require the amounts brought into account in any person's case under—
- [<sup>F6284</sup>(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]
  - [<sup>F6285</sup>(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.
- [<sup>F6286</sup>(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.]
- [<sup>F6287</sup>(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

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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

- F6282** 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)
- F6283** 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)
- F6284** 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)
- F6285** 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)
- F6286** 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)
- F6287** 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.



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*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).

*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) [<sup>F6288</sup>above 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) <sup>F6289</sup> . . . . .
- (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; [<sup>F6290</sup>and]
  - (d) those two persons were both controlled by the same person at the time of the making or imposition of that provision; <sup>F6291</sup> . . .
  - (e) <sup>F6292</sup> . . . . .
- (4) This Schedule shall apply in accordance with this paragraph in relation to any provision mentioned in sub-paragraph <sup>F6293</sup> . . . (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**

**F6288** 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)

**F6289** 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

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- F6290** 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)
- F6291** 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
- F6292** 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
- F6293** 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

### 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 [<sup>F6294</sup>each 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.

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### Textual Amendments

**F6294** 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)

*Saving for the provisions relating to capital allowances and capital gains*

1<sup>F6295</sup>(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 <sup>F6296</sup>the 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.

<sup>F6297</sup>(2) Nothing in sub-paragraph (1) above applies to paragraph 6 above.]

### Textual Amendments

**F6295** 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)

**F6296** 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

**F6297** 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;
- <sup>F6298</sup> .....
- “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) <sup>F6299</sup>section 75(9)] (excess of management expenses);
  - (b) section 468L(5) (allowance for interest distributions of a unit trust);

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- (c) Part X (loss relief and group relief);
  - (d) section 83 of and Schedule 8 to the <sup>M928</sup>Finance Act 1996 or paragraph 4 of Schedule 11 to that Act (deficits on loan relationships);
    - [<sup>F6300</sup>“medium-sized enterprise” shall be construed in accordance with paragraph 5D above;]
    - [<sup>F6301</sup>“non-qualifying territory” has the meaning given by paragraph 5E above;]
    - [<sup>F6302</sup>“paragraph 6C claim” has the meaning given by paragraph 6C(2) above;]
    - “profits” includes income;
    - [<sup>F6303</sup>“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;
    - [<sup>F6304</sup>“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

**F6298**Sch. 28AA para. 14(1): definition of "insurance company" repealed (with effect in accordance with Sch. 10 para. 17(2) of the repealing Act) by Finance Act 2007 (c. 11), Sch. 10 para. 14(2)(f), Sch. 27 Pt. 2(10), Note

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- F6299**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)
- F6300**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)
- F6301**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)
- F6302**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)
- F6303**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)
- F6304**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

M928 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).

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### *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”).
- (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.

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### *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.
- (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.

F6305F6305 F6306 SCHEDULE 28B

#### **Textual Amendments**

**F6305**Sch. 28B repealed (6.4.2007 with effect in accordance with s. 1034(1) of the repealing Act) by [Income Tax Act 2007 \(c. 3\)](#), Sch. 1 para. 240, **Sch. 3 Pt. 1** (with Sch. 2)

**F6306**Sch. 28B inserted (1.5.1995) by [Finance Act 1995 \(c. 4\)](#), s. 70(2), **Sch. 14**



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SCHEDULE 29

s.844

CONSEQUENTIAL AMENDMENTS

THE CAPITAL ALLOWANCES ACTS

F6373 1 and .....  
2

**Textual Amendments**  
F6373 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.

F6374 4 .....

**Textual Amendments**  
F6374 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

F6375 5 .....

**Textual Amendments**  
F6375 Sch. 29 para. 5 repealed by Copyright, Designs and Patents Act 1988 (c. 48), Sch. 8; S.I. 1989/816

6 F6376 .....

**Textual Amendments**  
F6376 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 F6377 (1) .....

(2) In subsection (2) and (3) of that section for the words “this section” there shall be substituted the words “subsection (1) above”.

F6377 (3) .....

**Textual Amendments**  
F6377 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

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- 8 (1) In subsection (1) of section 55 (recovery of tax not postponed) the following paragraph shall be [<sup>F6378</sup>substituted 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**

**F6378** 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) <sup>F6379</sup> . . . 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 ”;
  - <sup>F6380</sup>(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 ”.
- (6) In section 91(2A) for “90 of the Finance (No.2) Act 1987” there shall be substituted “ 10 of the principal Act ”.
- <sup>F6381</sup>(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**

**F6379** 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)

**F6380** 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)

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**F6381** 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.)

**F6382** 11 .....

**Textual Amendments**  
**F6382** 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

**F6383** 12 .....

**Textual Amendments**  
**F6383** 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.”

THE SOCIAL SECURITY ACTS

**F6384** 14 .....

**Textual Amendments**  
**F6384** 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

**F6385** 15 .....

**Textual Amendments**  
**F6385** 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)

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F6386 16 .....

**Textual Amendments**

**F6386**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)

F6387 17 .....

**Textual Amendments**

**F6387**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)

F6388 18 .....

**Textual Amendments**

**F6388**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)

F6389 19 .....

**Textual Amendments**

**F6389**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)

F6390 20 .....

**Textual Amendments**

**F6390**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)

F6391 21 .....

**Textual Amendments**

**F6391**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)

F6392 22 .....

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**Textual Amendments**

**F6392**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)

F6393 23 .....

**Textual Amendments**

**F6393**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)

F6394 24 .....

**Textual Amendments**

**F6394**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)

F6395 25 .....

**Textual Amendments**

**F6395**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)

F6396 26 .....

**Textual Amendments**

**F6396**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)

F6397 27 .....

**Textual Amendments**

**F6397**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)

F6398 28 .....

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### Textual Amendments

**F6398**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 paragraph 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.

<i>Enactment amended</i>	<i>Words to be omitted</i>	<i>Words to be substituted</i>
<i>In the Provisional Collection of Taxes Act 1968 c. 2</i>		
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*

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[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
<i>F6399</i>	<i>F6399</i>	<i>F6399</i>
...	...	...
29(2)	<i>Schedule 16 to the Finance Act 1972</i>	<i>sections 426 to 430 of the principal Act</i>
<i>F6400</i>	39(3)	284(4)
29(8)		<i>F6401</i>
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



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		(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 <i>of the Finance Act 1984</i>	753 <i>of the principal Act</i>
F6402	82(4)(a)	747(4)(a) F6402
55(1)(g)		
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 F6403
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
F6404	F6404	F6404

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...	...	...
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
<i>F6405</i>	<i>F6405</i>	<i>F6405</i>
...	...	...
<i>F6405</i>	<i>F6405</i>	<i>F6405</i>
...	...	...
<i>F6405</i>	<i>F6405</i>	<i>F6405</i>
...	...	...
91(3)(c)	204	203
93(1)	39(3)	284(4) <i>F6406</i>
93(3)	204	203
94(2)	240(5) or 246(3)	7(2) or 11(3)
95(1)(a)	39(3)	284(4) <i>F6406</i>
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)

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	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
<i>F6407</i>		
...		
<i>F6407</i>		
...		
<i>In the Friendly Societies Act (Northern Ireland) 1970 c. 31 (N.I.)</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
<i>In the Finance Act 1971 c. 68</i>		
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

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		F6408
44(5), (6)	VIII of the Taxes Act or Chapter II of Part III of the Finance Act 1976 (Schedule E) (twice)	Schedule E
F6409 44(6)	63 of the Finance (No. 2) Act 1987	404 of the Taxes Act
F6409 44(6)	533 of the Taxes Act	839 of that Act
F6409 44(7)	533	839 F6409
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).
F6409 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
F6409 69(2)	1970	1988
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 F6409
para. 8(4), 8A(11)	169(4)(d), 174(6) and 259(2)	383(5)(d), 388(7) and 403(3) F6409
para. 13	533 of the Taxes Act	839 of that Act
F6409 F6410	63 of the Finance (No. 2) Act 1987	404 of the Taxes Act

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*para. 13*

*F6409*

*F6410*

*In the Finance Act 1972*

*c. 41*

Section 68(10)	533	839 F6411
69(1)(c)(i)	533	839 F6411
69(4)	80	34 F6411
134(2)	1970	1988
<i>In the Finance Act 1973</i>		
<i>c. 51</i>		
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; (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

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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
<i>In the Friendly Societies Act 1974 c. 46</i>		
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
<i>F6412</i>	<i>F6412</i>	<i>F6412</i>
...	...	...
<i>F6407</i>	<i>F6407</i>	<i>F6407</i>
...	...	...
<i>In the Finance Act 1976 c. 40</i>		
Section 41(1)	<i>section 168 of the Taxes Act</i>	<i>sections 380 and 381 of the Income and Corporation Taxes Act 1988</i> <i>F6413</i>
41(2)	<i>section 168</i>	<i>sections 380 and 381</i> <i>F6413</i>
41(2)	<i>533 of the Taxes Act</i>	<i>839 of the Income and Corporation Taxes Act 1988</i> <i>F6413</i>
41(6)	<i>section 168</i>	<i>sections 380 and 381</i> <i>F6413</i>
131(2)	from beginning to “such a security”	A security issued by the Inter-American Development Bank

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*In the Finance Act 1978  
 c. 42*

Section 37(4)	<i>section 84(1), (2) and (3) of the Taxes Act</i>	<i>subsections (1) to (4) and (6) of section 38 of the Income and Corporation Taxes Act 1988</i> F6413
37(6)(a)	533	<i>839 of the Income and Corporation Taxes Act 1988</i> F6413
F6407	F6407	F6407
...	...	...

*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
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*In the Finance Act 1980  
 c. 48*

Section		
64(9)(b)	<i>154(2) or 155(1) of the Taxes Act</i>	<i>113(2) or 114(1) of the Taxes Act 1988</i> F6414
65(5), 66(5)	<i>154(2), 155(1) or 252(2) of the Taxes Act</i>	<i>113(2), 114(1) or 343(2) of the Taxes Act 1988</i> F6415
70(3)	<i>the said Act of 1971</i>	<i>the Finance Act 1971</i> F6415
73(6)	<i>533 of the Taxes Act</i>	<i>839 of the Taxes Act 1988</i> F6415
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



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Schedule		and Corporation Taxes Act 1988
F6407	F6407	F6407
...	...	...
<i>In the Finance Act 1981</i>		
c. 35		
F6407	F6407	F6407
...	...	...
139(2)	1970	1988
<i>In the Housing (Northern Ireland) Order 1981 (S.I. No.156 N.I.3)</i>		
Article 146(3)	341 (three times)	488
146(3)	1970 (three times)	1988
<i>In the Iron and Steel Act 1982 c. 25</i>		
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
<i>In the Finance Act 1982</i>		
c. 39		
Section 27	this Act (three times)	this Act or the Taxes Act 1988
70(1)	38(4) of the Finance Act 1973	830(4) of the Taxes Act 1988 F6416
70(12)	533 of the Taxes Act	839 of the Taxes Act 1988 F6416
72(5)	137(4) of the Taxes Act	100(2) of the Taxes Act 1988 F6416
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

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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 F6417
	533 of the Taxes Act	839 of the Taxes Act 1988 F6417
para.4(4)	341 of the Taxes Act	488 of the Taxes Act 1988 F6417
12, para. 3(3)(b)	Chapter III of Part XI of the Taxes Act	Part XI of the Taxes Act 1988 F6417
para. 3(3)(e)	533 of the Taxes Act	839 of the Taxes Act 1988 F6417
para. 3(3)	the Taxes Act	the Taxes Act 1970 F6417
13, para.3(3)(a) 21, para.3(2) <i>In the Finance Act 1983</i> c. 28	463 of the Taxes Act	706 of the Taxes Act 1988
Section 46(3) F6407	Commission F6407	Historic Buildings and Monuments Commission F6407
...	...	...
		(ab) deep discount securities (within the meaning of Schedule 4 to the Income and Corporation Taxes Act 1988); nor

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*In the  
Telecommunications Act  
1984 c. 12*

F6418	F6418	F6418
...	...	...
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

F6418	F6418	F6418
...	...	...

*In the Finance Act 1984  
c. 43*

F6407	F6407	F6407
...	...	...
60(1)	252 of the Taxes Act	343 of the Taxes Act 1988 F6419
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
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)	<i>enactment</i>	<i>enactment (including any contained in the Taxes Act)</i>
F6420	Chapter I of Part XIV	sections 520 to 533 F6420
56(8)		
57(7)	533	839 F6420
F6407	F6407	F6407

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...	...	...
80(5)(b)	13 of the Oil Taxation Act 1975	492 of the Taxes Act
F6421	1970	1988
98(2)		
Schedule 17, para.3(2), 5(4)(a),6(d)	533	839 F6420
F6407	F6407	F6407
...	...	...
<i>In the Companies Act 1985 c. 6</i>		
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 F6422
	1970	1988 F6422
<i>In the Trustee Savings Bank Act 1985 c. 58</i>		
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
7(2)	26 of the Finance Act 1982	369 of the Taxes Act
9(1)	1970	1988
<i>In the Bankruptcy (Scotland) Act 1985 c. 66</i>		
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
<i>In the Housing Associations Act 1985 c. 69</i>		

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Section 62(2)	341	488
62(2)	1970	1988
<i>In the Airports Act 1986</i>		
<i>c. 31</i>		
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
<i>In the Finance Act 1986</i>		
<i>c. 41</i>		
Section 24(4)	Finance Act 1978	Taxes Act 1988
F6407	F6407	F6407
...	...	...
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 F6423
para.17	(5) of the said section 134	(7) of that section
F6423	533 of the Taxes Act	839 of the Taxes Act 1988 F6423
15, para.10(1)		
para.10(4)	80 of the Taxes Act	34 of the Taxes Act 1988 F6423
16, para.8(5)	from “154(2)” to first “Act”	113(2), 114(1) or 343(2) of the Taxes Act 1988 F6423
para.8(8)	533 of the Taxes Act	839 of the Taxes Act 1988 F6423
<i>In the Gas Act 1986 c. 44</i>		
Section 63(9)	533 of the Income and Corporation Tax Act 1970	839 of the Income and Corporation Taxes Act 1988
<i>In the Insolvency Act</i>		
<i>1986 c. 45</i>		

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F6424	F6424	F6424
...	...	...
F6424	F6424	F6424
...	...	...
F6425	F6425	F6425
...	...	...
<i>In the Building Societies Act 1986 c. 53</i>		
Schedule 8, para.7	Schedule 8 to the Finance Act 1986	section 333 of the Income and Corporation Taxes Act 1988
<i>In the Financial Services Act 1986 c. 60</i>		
Schedule 15, para.14(5)	332	460(1) or 461(1)
para.14(5)	1970	1988
<i>In the Companies (Northern Ireland) Order 1986 (S.I.No.1032 N.I.6)</i>		
Article 217(3)(b)	444of the Income and Corporation Taxes Act 1970	670of the Income and Corporation Taxes Act 1988 F6426
274(4)	359 (twice)	842 F6426
274(4)	1970	1988 F6426
F6427	F6427	F6427
...	...	...
<i>In the Finance Act 1987 c. 16</i>		
Section		
72	1970	1988
<i>In the Debtors (Scotland) Act 1987 c. 18</i>		
Section 53(6)	65(1A)	351(2)
53(6)	1970	1988
63(9)	65(1A)	351(2)
63(9)	1970	1988
<i>In the Abolition of Domestic Rates</i>		

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*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
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*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
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### Textual Amendments

- F6399** 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)**
- F6400** Repealed by 1989 s.187 and Sch.17 Part V in relation to accounting periods beginning after 31 March 1989.
- F6401** Repealed by 1988(F) s.148 and Sch.14 Part VIII for 1990-91 and subsequent years.
- F6402** Repealed by 1988(F) s.148 and Sch.14 Part IV for 1988-89 and subsequent years.
- F6403** 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).
- F6404** 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
- F6405** 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
- F6406** Repealed by 1988(F) Sch.14 Part VIII for 1990-91 and subsequent years.
- F6407** 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).
- F6408** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6409** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6410** Repealed by 1988(F) s.148 and Sch.14 Part IV for 1988-89 and subsequent years.
- F6411** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6412** 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**
- F6413** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6414** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6415** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6416** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6417** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6418** **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)
- F6419** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6420** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.
- F6421** Repealed by 1988(F) s.148 and Sch.14 Part IV for 1988-89 and subsequent years.
- F6422** Repealed by 1988(F) s.148 and Sch.14 Part VI for accounting periods ending after 5 April 1988.



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**F6423** Repealed by 1990(C) s.164(4) and Sch.2. See 1989 edition for these provisions.

**F6424** 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)

**F6425** 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

**F6426** Repealed by 1988(F) s.148 and Sch.14 Part VI for disposals made on or after 6 April 1988.

**F6427** 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)

**C859** 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)

**C860** Sch. 29 para. 32 Table: entries relating to ss. 12(2), 151, 152 of the Inheritance Tax Act 1984 (c. 51) repealed (6.4.2006) by Finance Act 2004 (c. 12), Sch. 42 Pt. 3, Note (with Sch. 36)

**C861** 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).

**C862** 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
  - (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,

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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.

#### *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 [<sup>F6428</sup>or] 393 [<sup>F6429</sup>or 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,

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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

**F6428** 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.

**F6429** 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 [<sup>F6430</sup>or ]393 [<sup>F6431</sup>or 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) —
  - “(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

**F6430** 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.

**F6431** 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.

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- 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 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

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- (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; <sup>F6432</sup> . . .
  - (b) <sup>F6432</sup> . . . . .
- (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 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 <sup>F6433</sup> . . . 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.

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- (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<sup>F6434</sup> . . . 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.

[<sup>F6435</sup>(13) This paragraph does not apply for the purposes of income tax.]

#### Textual Amendments

**F6432**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)

**F6433**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)

**F6434**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)

**F6435**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 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)

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- 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 —
- (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);



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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.

#### *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 —

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- (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 the Social 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 F6436 .....

**Textual Amendments**

F6436 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 F6437 .....

**Textual Amendments**

F6437 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 F6438 .....

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### Textual Amendments

**F6438**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).

#### *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.

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### *Stock relief*

18 F6439 .....

#### **Textual Amendments**

**F6439**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)

[<sup>F6440</sup>18A <sup>F6441</sup>.....]

#### **Textual Amendments**

**F6440**Sch. 30 para. 18A inserted by Capital Allowances Act 1990 (c. 1), s. 164, **Sch. 1 para. 8(43)**

**F6441**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.

### *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.

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- (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.

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". [See 1991 edition for these repeals.]
1970 c. 10.	Income and Corporation Taxes Act 1970	Sections 11 to 14. Section 16. Sections 19 to 26. Section 29(1), (2), (3)(a), (4) and (5). * * * *
1970 c. 24.	Finance Act 1970.	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. * * * *

SCHEDULE 31 – REPEALS

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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. 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.
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.

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.]	Finance (No. 2) Act 1975	Sections 25 to 43. Section 44(1) to (3) and (6). Section 46(6).
1976 c. 40.	Finance Act 1976	Section 48. Sections 50 to 53. Sections 68 to 71. Schedule 8. Schedules 12 and 13. 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.

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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. * * * * *

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. * * * * *



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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(9)(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. * * * *

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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