

SCHEDULES :

SCHEDULE 8

Section 96.

CAPITAL GAINS: ASSETS HELD ON 31ST MARCH 1982

Previous no gain/no loss disposals

- 1 (1) Where—
 - (a) a person makes a disposal, not being a no gain/no loss disposal, of an asset which he acquired after 31st March 1982, and
 - (b) the disposal by which he acquired the asset and any previous disposal of the asset after 31st March 1982 was a no gain/no loss disposal,he shall be treated for the purposes of section 96 of this Act as having held the asset on 31st March 1982.
 - (2) For the purposes of this paragraph a no gain/no loss disposal is one on which by virtue of any of the enactments specified in sub-paragraph (3) below neither a gain nor a loss accrues to the person making the disposal.
 - (3) The enactments mentioned in sub-paragraph (2) above are—
 - (a) sections 44, 56, 123A, 146(3), 147(4), 148 and 149A of the Capital Gains Tax Act 1979;
 - (b) sections 267, 273, 340(7), 342, 342A, 342B, 343(5) and 352(7) of the Taxes Act 1970;
 - (c) section 148 of the Finance Act 1982;
 - (d) section 7 of the Finance (No.2) Act 1983;
 - (e) paragraph 2 of Schedule 2 to the Trustee Savings Banks Act 1985;
 - (f) section 486(8) of the Taxes Act 1988; and
 - (g) paragraph 4 of Schedule 12 to this Act.
- 2 (1) Sub-paragraph (2) below applies where a person makes a disposal of an asset acquired by him on or after 6th April 1988 in circumstances in which either of the relevant enactments applied.
 - (2) Where this sub-paragraph applies—
 - (a) an election under subsection (5) of section 96 of this Act by the person making the disposal shall not cover the disposal, but
 - (b) the making of such an election by the person from whom the asset was acquired shall cause the disposal to fall outside subsection (3) of that section (so that subsection (2) of that section is not excluded by it) whether or not the person making the disposal makes such an election.
 - (3) Where the person from whom the asset was acquired by the person making the disposal himself acquired it on or after 6th April 1988 in circumstances in which either of the relevant enactments applied, an election made by him shall not have the effect described in sub-paragraph (2)(b) above but an election made by—

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- (a) the last person by whom the asset was acquired after 5th April 1988 otherwise than in such circumstances, or
 - (b) if there is no such person, the person who held the asset on 5th April 1988,
- shall have that effect.

- (4) In this paragraph “the relevant enactments” means—
- (a) section 273 of the Taxes Act 1970, and
 - (b) section 44 of the Capital Gains Tax Act 1979.

Capital allowances

- 3 If under section 96 of this Act it is to be assumed that any asset was on 31st March 1982 sold by the person making the disposal and immediately re-acquired by him, sections 34 and 39 of the Capital Gains Tax Act 1979 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by him in providing the asset as if it were made in respect of expenditure which, on that assumption, was incurred by him in re-acquiring the asset on 31st March 1982.

Part disposals

- 4 Where, in relation to a disposal to which section 96(2) of this Act applies, section 35 of the Capital Gains Tax Act 1979 has effect by reason of an earlier disposal made after 31st March 1982 and before 6th April 1988, the sums to be apportioned under section 35 shall for the purposes of the later disposal be ascertained on the assumption stated in section 96(2) of this Act.

Assets derived from other assets

- 5 Section 96 of this Act shall have effect with the necessary modifications in relation to a disposal of an asset which on 31st March 1982 was not itself held by the person making the disposal, if its value is derived from another asset of which account is to be taken in relation to the disposal under section 36 of the Capital Gains Tax Act 1979.

Group transactions

- 6 In relation to disposals to which section 96(2) of this Act applies, section 280 of the Taxes Act 1970 (depreciatory transactions effected on or after 6th April 1965) shall have effect with the substitution in subsections (1) and (5) of the words “31st March 1982” for the words “6th April 1965”.

Close companies

- 7 In relation to disposals to which section 96(2) of this Act applies, section 75(1) of the Capital Gains Tax Act 1979 (close company transferring assets at an undervalue after 6th April 1965) shall have effect with the substitution of the words “31st March 1982” for the words “6th April 1965”.

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Private residence relief

- 8 In relation to disposals on or after 6th April 1988, section 102(4) of the Capital Gains Tax Act 1979 (reduced relief where house is not principal residence throughout ownership since 6th April 1965) shall have effect with the substitution of the words “31st March 1982” for the words “6th April 1965”.

Replacement of business assets

- 9 In relation to disposals on or after 6th April 1988, section 115 of the Capital Gains Tax Act 1979 (under which relief is reduced where assets are used for differing purposes during the period of ownership) shall have effect with the insertion after subsection (7) of the following subsection—
- “(7A) In this section “period of ownership” does not include any period before 31st March 1982.”

Apportionment of pre-1965 gains and losses

- 10 In a case where because of paragraph 11 of Schedule 5 to the Capital Gains Tax Act 1979 (which apportions gains and losses partly attributable to ownership before 6th April 1965) only part of a gain or loss is a chargeable gain or allowable loss, subsection (3)(a) and (b) of section 96 of this Act shall have effect as if the amount of the gain or loss that would accrue if subsection (2) did not apply were equal to that part.

Indexation allowance

- 11 In relation to disposals on or after 6th April 1988, section 68 of the Finance Act 1985 shall have effect with the substitution for subsection (5) of the following subsection—
- “(5) Except where an election under section 96(5) of the Finance Act 1988 has effect, neither subsection (4) above nor section 96(2) of the Finance Act 1988 shall apply for the purpose of computing the indexation allowance in a case where that allowance would be greater if they did not apply.”

Elections under section 96(5): excluded disposals

- 12 (1) An election under section 96(5) of this Act shall not cover disposals such as are specified in sub-paragraph (2) below.
- (2) The disposals mentioned in sub-paragraph (1) above are disposals of, or of an interest in,—
- (a) plant or machinery,
 - (b) an asset which the person making the disposal has at any time held for the purposes of or in connection with—
 - (i) a trade consisting of the working of a source of mineral deposits, or
 - (ii) where a trade involves (but does not consist of) such working, the part of the trade which involves such working, or
 - (c) a licence under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964;

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but a disposal does not fall within paragraph (a) or (b) above unless a capital allowance in respect of any expenditure attributable to the asset has been made to the person making the disposal or would have been made to him had he made a claim.

- (3) Where the person making the disposal acquired the asset on a no gain/no loss disposal, the references in sub-paragraph (2) above to that person are references to the person making the disposal, the person who last acquired the asset otherwise than on a no gain/no loss disposal or any person who subsequently acquired the asset on such a disposal.
- (4) In this paragraph—
- (a) “source of mineral deposits” shall be construed in accordance with Schedule 13 to the Finance Act 1986, and
 - (b) references to a no gain/no loss disposal shall be construed in accordance with paragraph 1 above.

Elections under section 96(5): groups of companies

- 13 (1) A company may not make an election under section 96(5) of this Act at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant time.
- (2) Subject to sub-paragraph (3) below, an election under section 96(5) of this Act by a company which is the principal company of a group shall have effect also as an election by any other company which at the relevant time is a member of the group.
- (3) Sub-paragraph (2) above shall not apply in relation to a company which, in some period after 5th April 1988 and before the relevant time, is not a member of the group if—
- (a) during that period the company makes a disposal to which section 96 of this Act applies, and
 - (b) the period during which an election under subsection (5) of that section could be made expires without such an election having been made.
- (4) Sub-paragraph (2) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant time except where—
- (a) the company is an outgoing company in relation to the group, and
 - (b) the election relating to the group is made after the company ceases to be a member of the group.
- (5) In relation to a company which is the principal company of a group the reference in subsection (5) of section 96 of this Act to the first relevant disposal is a reference to the first disposal to which that section applies by a company which is—
- (a) a member of the group but not an outgoing company in relation to the group, or
 - (b) an incoming company in relation to the group.
- 14 (1) In paragraph 13 above “the relevant time”, in relation to a group of companies, is—
- (a) the first time when any company which is then a member of the group, and is not an outgoing company in relation to the group, makes a disposal to which section 96 of this Act applies,

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- (b) the time immediately following the first occasion when a company which is an incoming company in relation to the group becomes a member of the group,
 - (c) the time when an election is made by the principal company,
- whichever is earliest.

(2) In paragraph 13 above and this paragraph—

“incoming company”, in relation to a group of companies, means a company which—

- (a) makes its first disposal to which section 96 of this Act applies at a time when it is not a member of the group, and
- (b) becomes a member of the group before the end of the period during which an election under subsection (5) of that section could be made in relation to it and at a time when no such election has been made, and

“outgoing company”, in relation to a group of companies, means a company which ceases to be a member of the group before the end of the period during which an election under section 96(5) of this Act could be made in relation to it and at a time when no such election has been made.

(3) Section 272 of the Taxes Act 1970 shall have effect for the purposes of paragraph 13 above and this paragraph as for those of sections 272 to 281 of that Act.