

SCHEDULES

SCHEDULE 6

RETIREMENT RELIEF ETC.

PART II

THE OPERATION OF THE RELIEF

Disposals on which relief may be given

- 5 (1) Relief in accordance with this Schedule shall not be given in respect of any disposal unless the qualifying period relating to that disposal ends on or after 6th April 1985.
- (2) Except in the case of a disposal which is made by an individual who has attained the age of 55, relief in accordance with this Schedule shall be given only on the making of a claim not later than 2 years after the end of the year of assessment in which the disposal occurred.
- (3) In the case of a trustees' disposal, relief in accordance with this Schedule shall be given only on a claim made jointly by the trustees and the beneficiary concerned.
- (4) Where a claim for relief in accordance with this Schedule is dependent upon an individual having retired on ill-health grounds below the age of 55, the claim shall be made to the Board.

Gains qualifying for relief

- 6 Subject to paragraphs 9 and 10 below, in the case of any qualifying disposal other than one of shares or securities of a company, the gains accruing to the individual or, in the case of a trustees' disposal, the trustees on the disposal of chargeable business assets comprised in the qualifying disposal shall be aggregated, and only so much of that aggregate as exceeds the amount available for relief shall be chargeable gains (but not so as to affect liability in respect of gains accruing on the disposal of assets other than chargeable business assets).
- 7 (1) Subject to paragraphs 9 to 11 below, in the case of a qualifying disposal of shares or securities of a trading company which is not a holding company,—
- (a) the gains which on the disposal accrue to the individual or, as the case may be, the trustees shall be aggregated, and
- (b) of the appropriate proportion of the aggregated gains, only so much as exceeds the amount available for relief shall constitute chargeable gains (but not so as to affect liability in respect of gains representing the balance of the aggregated gains).
- (2) For the purposes of sub-paragraph (1)(b) above, “the appropriate proportion” is that which that part of the value of the company’s chargeable assets immediately before

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the end of the qualifying period which is attributable to the value of the company's chargeable business assets bears to the whole of that value, but, in the case of a company which has no chargeable assets, "the appropriate proportion" is the whole.

- (3) For the purposes of this paragraph, every asset is a chargeable asset except one, on the disposal of which by the company immediately before the end of the qualifying period, no gain accruing to the company would be a chargeable gain.
- 8 (1) Subject to paragraphs 9 to 11 below, in the case of a qualifying disposal of shares or securities of a holding company—
- (a) the gains which on the disposal accrue to the individual or, as the case may be, the trustees shall be aggregated, and
 - (b) of the appropriate proportion of the aggregated gains, only so much as exceeds the amount available for relief shall constitute chargeable gains (but not so as to affect liability in respect of gains representing the balance of the aggregated gains).
- (2) For the purposes of sub-paragraph (1)(b) above, "the appropriate proportion" is that which that part of the value of the trading group's chargeable assets immediately before the end of the qualifying period which is attributable to the value of the trading group's chargeable business assets bears to the whole of that value; but, in the case of a trading group which has no chargeable assets, "the appropriate proportion" is the whole.
- (3) For the purposes of sub-paragraph (2) above—
- (a) any reference to the trading group's chargeable assets or chargeable business assets is a reference to the chargeable assets or, as the case may be, chargeable business assets of every member of the trading group; and
 - (b) subject to paragraph (c) below, every asset is a chargeable asset except one, on the disposal of which by the member of the group concerned immediately before the end of the qualifying period no gain accruing to that member would be a chargeable gain; and
 - (c) a holding by one member of the trading group of the ordinary share capital of another member of the group is not a chargeable asset.
- (4) Where the whole of the ordinary share capital of a 51 per cent. subsidiary of the holding company is not owned directly or indirectly by that company, then, for the purposes of sub-paragraph (2) above, the value of the chargeable assets and chargeable business assets of that subsidiary shall be taken to be reduced by multiplying it by a fraction of which the denominator is the whole of the ordinary share capital of the subsidiary and the numerator is the amount of that share capital owned, directly or indirectly, by the holding company.
- (5) Expressions used in sub-paragraph (4) above have the same meaning as in section 838 of the Taxes Act (subsidiaries).
- 9 (1) If, in the case of a trustees' disposal, there is, in addition to the qualifying beneficiary, at least one other beneficiary who, at the end of the qualifying period, has an interest in possession in the whole of the settled property or, as the case may be, in a part of it which consists of or includes the shares, securities or asset which is the subject matter of the disposal, only the relevant proportion of the gain which accrues to the trustees on the disposal shall be brought into account under paragraph 6, paragraph 7 or paragraph 8 above (as the case may require) and the balance of the gain shall, accordingly, be a chargeable gain.

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- (2) For the purposes of sub-paragraph (1) above, the relevant proportion is that which, at the end of the qualifying period, the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares, securities or asset in question bears to the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part.
- (3) The reference in sub-paragraph (2) above to the qualifying beneficiary's interest is a reference to the interest by virtue of which he is the qualifying beneficiary and not to any other interest he may hold.
- 10 (1) If, in the case of an associated disposal—
- (a) the asset in question was in use for the purposes of a business as mentioned in section 164(7)(c) for only part of the period in which it was in the ownership of the individual making the disposal, or
 - (b) for any part of the period in which the asset in question was in use for the purposes of a business as mentioned in section 164(7)(c), the individual making the disposal was not concerned in the carrying on of that business (whether personally, as a member of a partnership or as a full-time working director of any such company as is referred to in section 163(3)(b)), or
 - (c) for the whole or any part of the period in which the asset in question was in use for the purposes of a business as mentioned in section 164(7)(c), its availability for that use was dependent upon the payment of rent,
- only such part of the gain which accrues on the disposal as appears to the Board to be just and reasonable shall be brought into account under paragraph 6, paragraph 7 or paragraph 8 above (as the case may require) and the balance of the gain shall, accordingly, be a chargeable gain.
- (2) In determining how much of a gain it is just and reasonable to bring into account as mentioned in sub-paragraph (1) above, the Board shall have regard to the length of the period the asset was in use as mentioned in that sub-paragraph and the extent to which any rent paid was less than the amount which would have been payable in the open market for the use of the asset.
- (3) In sub-paragraphs (1) and (2) above “rent” includes any form of consideration given for the use of the asset.
- 11 (1) This paragraph applies where—
- (a) there is a material disposal of business assets or a trustees' disposal which (in either case) consists of a disposal which the individual or trustees is or are treated as making by virtue of section 122 in consideration of a capital distribution; and
 - (b) the capital distribution consists wholly of chargeable business assets of the company or partly of such assets and partly of money or money's worth.
- (2) Where the capital distribution consists wholly of chargeable business assets, no relief shall be given under this Schedule in respect of the gains accruing on the disposal.
- (3) Where the capital distribution consists only partly of chargeable business assets, the gains accruing on the disposal (aggregated as mentioned in paragraph 7(1)(a) or paragraph 8(1)(a) above) shall be reduced for the purposes of this Schedule by multiplying them by the fraction—

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

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where—

A is the part of the capital distribution which does not consist of chargeable business assets; and

B is the entire capital distribution;

and it shall be to that reduced amount of aggregated gains that, in accordance with sub-paragraph (1)(b) of paragraph 7 or, as the case may be, paragraph 8 above, the appropriate proportion determined under sub-paragraph (2) of that paragraph shall be applied.

- (4) Any question whether or to what extent a capital distribution consists of chargeable business assets shall be determined by reference to the status of the assets immediately before the end of the qualifying period.
- 12 (1) Subject to paragraphs 9 to 11 above, in arriving at the aggregate gains under any of paragraphs 6, 7(1) and 8(1) above—
- (a) the respective amounts of the gains shall be computed in accordance with the provisions of this Act fixing the amount of chargeable gains, and
 - (b) any allowable loss which accrues on the qualifying disposal concerned shall be deducted,
- and the provisions of this Schedule shall not affect the computation of the amount of any allowable loss.
- (2) Subject to the following provisions of this paragraph, in paragraphs 6 to 11 above, “chargeable business asset” means an asset (including goodwill but not including shares or securities or other assets held as investments) which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by—
- (a) the individual concerned; or
 - (b) that individual’s family company; or
 - (c) a member of a trading group of which the holding company is that individual’s family company; or
 - (d) a partnership of which the individual concerned is a member.
- (3) An asset is not a chargeable business asset if, on the disposal of it, no gain which might accrue would be a chargeable gain.
- (4) In relation to a trustees’ disposal, references in sub-paragraph (2) above to the individual shall be construed as references to the beneficiary concerned.
- (5) Sub-paragraph (6) below applies if—
- (a) a qualifying disposal falling within paragraph 7 or paragraph 8 above is a disposal which the individual or trustees concerned is or are treated as making by virtue of section 122 in consideration of a capital distribution; and
 - (b) not later than 2 years after the end of the year of assessment in which the individual or the trustees received the capital distribution, the individual or trustees by notice to the inspector elects or elect that that sub-paragraph should apply.
- (6) If, in a case where this sub-paragraph applies in relation to a qualifying disposal, any part of the assets of the company concerned consists, as at the end of the qualifying period, of the proceeds of the sale of an asset sold not more than 6 months before

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the end of that period, then, sub-paragraph (2) above and paragraph 7 or, as the case may be, paragraph 8 above shall have effect as if, at that time—

- (a) the asset remained the property of the company and was in use for the purposes for which it was used before its sale; and
- (b) the proceeds of sale of the asset did not form part of the assets of the company.

The amount available for relief: the basic rule

- 13 (1) Subject to the following provisions of this Part of this Schedule, on a qualifying disposal by an individual the amount available for relief by virtue of sections 163 and 164 is an amount equal to the aggregate of—
- (a) so much of the gains qualifying for relief as do not exceed the appropriate percentage of £150,000; and
 - (b) one half of so much of those gains as exceed the appropriate percentage of £150,000 but do not exceed that percentage of £600,000;
- and for the purposes of this sub-paragraph “the appropriate percentage” is a percentage determined according to the length of the qualifying period which is appropriate to the disposal on a scale rising arithmetically from 10 per cent. where that period is precisely one year to 100 per cent. where it is 10 years.
- (2) In sub-paragraph (1) above “the gains qualifying for relief” means, in relation to any qualifying disposal, so much of the gains accruing on that disposal (aggregated under paragraph 6, 7(1)(a) or 8(1)(a) above) as would, by virtue of this Schedule, not be chargeable gains if—
- (a) sub-paragraph (1) above had specified as the amount available for relief a fixed sum in excess of those aggregate gains; and
 - (b) paragraphs 14 to 16 below were disregarded.
- (3) The amount available for relief by virtue of section 164 on a trustees' disposal shall be determined, subject to sub-paragraph (4) below, in accordance with sub-paragraph (1) above on the assumption that the trustees' disposal is a qualifying disposal by the qualifying beneficiary.
- (4) If, on the same day, there is both a trustees' disposal and a material disposal of business assets by the qualifying beneficiary, the amount available for relief shall be applied to the beneficiary's disposal in priority to the trustees' disposal.

Aggregation of earlier business periods

- 14 (1) If, apart from this paragraph, the qualifying period appropriate to a qualifying disposal (“the original qualifying period”) would be less than 10 years but throughout some period (“the earlier business period”) which—
- (a) ends not earlier than 2 years before the beginning of the original qualifying period, and
 - (b) falls, in whole or in part, within the period of 10 years ending at the end of the original qualifying period,
- the individual making the disposal or, as the case may be, the relevant beneficiary was concerned in the carrying on of another business (“the previous business”) then, for the purpose of determining the amount available for relief on the qualifying disposal, the length of the qualifying period appropriate to that disposal shall be redetermined on the assumptions and subject to the provisions set out below.

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- (2) For the purposes of the redetermination referred to in sub-paragraph (1) above, it shall be assumed that the previous business is the same business as the business at retirement and, in the first instance, any time between the end of the earlier business period and the beginning of the qualifying period shall be disregarded (so that those 2 periods shall be assumed to be one continuous period).
- (3) The reference in sub-paragraph (1) above to a person being concerned in the carrying on of a business is a reference to his being so concerned personally or as a member of a partnership or, if the business was owned by a company, then as a full-time working director of that company or, as the case may be, of any member of the group or commercial association of which it is a member; and the reference in sub-paragraph (2) above to the business at retirement is a reference to that business which, in relation to the qualifying disposal, is referred to—
 - (a) in subsection (3), subsection (4) or subsection (5) of section 163 where the qualifying disposal is a material disposal of business assets;
 - (b) in subsection (5) of section 164 where that disposal is a trustees' disposal; and
 - (c) in subsection (7) of section 164 where that disposal is an associated disposal.
- (4) Any extended qualifying period resulting from the operation of subparagraph (2) above shall not begin earlier than the beginning of the period of 10 years referred to in sub-paragraph (1)(b) above.
- (5) If the earlier business period ended before the beginning of the original qualifying period, any extended qualifying period which would otherwise result from the operation of the preceding provisions of this paragraph shall be reduced by deducting therefrom a period equal to that between the ending of the earlier business period and the beginning of the original qualifying period.
- (6) Where there is more than one business which qualifies as the previous business and, accordingly, more than one period which qualifies as the earlier business period, this paragraph shall apply first in relation to that one of those businesses in which the individual in question was last concerned and shall then again apply (as if any extended qualifying period resulting from the first application were the original qualifying period) in relation to the next of those businesses and so on.

Relief given on earlier disposal

- 15 (1) In any case where—
 - (a) an individual makes a qualifying disposal or is the qualifying beneficiary in relation to a trustees' disposal, and
 - (b) relief has been (or falls to be) given under this Schedule in respect of an earlier disposal which was either a qualifying disposal made by the individual or a trustees' disposal in respect of which he was the qualifying beneficiary,

the amount which, apart from this paragraph, would be the amount available for relief on the disposal mentioned in paragraph (a) above shall not exceed the limit in subparagraph (3) below.
- (2) In the following provisions of this paragraph—
 - (a) the disposal falling within subparagraph (1)(a) above is referred to as “the later disposal”; and

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- (b) the disposal falling within sub-paragraph (1)(b) above or, if there is more than one such disposal, each of them is referred to as “the earlier disposal”.
- (3) The limit referred to in sub-paragraph (1) above is the difference between—
- (a) the amount which would be available for relief on the later disposal—
 - (i) if the gains qualifying for relief on that disposal were increased by the amount of the underlying gains relieved on the earlier disposal (or the aggregate amount of the underlying gains relieved on all the earlier disposals, as the case may be); and
 - (ii) if the qualifying period appropriate to the later disposal (as redetermined where appropriate under paragraph 14 above) were extended by the addition of a period equal to so much (if any) of the qualifying period appropriate to the earlier disposal (or, as the case may be, to each of the earlier disposals) as does not already fall within the qualifying period appropriate to the later disposal; and
 - (b) the amount of relief given under this Schedule on the earlier disposal or, as the case may be, the aggregate of the relief so given on all the earlier disposals.
- (4) Where there is only one earlier disposal, or where there are 2 or more such disposals but none of them took place on or after 6th April 1988, then, for the purposes of sub-paragraph (3)(a)(i) above—
- (a) if the earlier disposal took place on or after 6th April 1988, the amount of the underlying gains relieved on that disposal is the aggregate of—
 - (i) so much of the gains qualifying for relief on that disposal as were, by virtue of paragraph 13(1)(a) above, not chargeable gains; and
 - (ii) twice the amount of so much of those gains as were, by virtue of paragraph 13(1)(b) above, not chargeable gains; and
 - (b) if the earlier disposal took place before 6th April 1988, the amount of the underlying gains relieved on that disposal (or on each such disposal) is so much of the gains qualifying for relief on that disposal as were, by virtue of paragraph 13 of Schedule 20 to the Finance Act 1985, not chargeable gains.
- (5) Where there are 2 or more earlier disposals and at least one of them took place on or after 6th April 1988, then, for the purposes of sub-paragraph (3)(a)(i) above, the aggregate amount of the underlying gains relieved on all those disposals shall be determined as follows—
- (a) it shall be assumed for the purposes of paragraph (b) below—
 - (i) that the amount which resulted from the calculation under sub-paragraph (3)(a) above on the last of those disposals (“the last disposal”) was the amount of the gains qualifying for relief on that disposal which were, by virtue of this Schedule, not chargeable gains (the “gains actually relieved”);
 - (ii) that the qualifying period appropriate to that disposal (as redetermined where appropriate under paragraph 14 above) was that period as extended in accordance with sub-paragraph (3)(a)(ii) above; and
 - (iii) that the last disposal was the only earlier disposal;
 - (b) there shall then be ascertained in accordance with paragraph 13(1) above (but on the assumptions in paragraph (a) above)—

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- (i) how much of the gains actually relieved would, by virtue of paragraph 13(1)(a) above, not have been chargeable gains; and
- (ii) how much of those gains would, by virtue of paragraph 13(1)(b) above, not have been chargeable gains; and
- (c) the aggregate amount of the underlying gains relieved on all the earlier disposals is the sum of—
 - (i) the amount ascertained under paragraph (b)(i) above; and
 - (ii) twice the amount ascertained under paragraph (b)(ii) above.
- (6) In this paragraph “the gains qualifying for relief” has the meaning given by paragraph 13(2) above.
- (7) References in this paragraph to relief given under this Schedule include references to relief given under section 34 of the Finance Act 1965 or section 124 of the 1979 Act; and—
 - (a) in relation to relief given under either of those sections, paragraph (b) of sub-paragraph (1) above shall have effect as if, for the words from “which was” onwards, there were substituted “made by the individual”; and
 - (b) for the purpose of determining the limit in sub-paragraph (3) above where the earlier disposal (or any of the earlier disposals) was a disposal in respect of which relief was given under either of those sections—
 - (i) the underlying gains relieved on that disposal shall (subject to sub-paragraph (5) above) be taken to be gains of an amount equal to the relief given under the section in question in respect of that disposal; and
 - (ii) the reference in sub-paragraph (3)(a)(ii) above to the qualifying period appropriate to the earlier disposal shall be taken to be a reference to the qualifying period within the meaning of the section in question.

Aggregation of spouse’s interest in the business

- 16 (1) In any case where—
- (a) an individual makes a material disposal of business assets, and
 - (b) the subject matter of that disposal (whether business, assets or shares or securities) was acquired, in whole or in part, from that individual’s spouse, and
 - (c) that acquisition was either under the will or intestacy of the spouse or by way of lifetime gift and in the year of assessment in which occurred the spouse’s death or, as the case may be, the lifetime gift, the individual and his spouse were living together, and
 - (d) as a result of the acquisition the individual acquired the whole of the interest in the business, assets, shares or securities concerned which, immediately before the acquisition or, as the case may be, the spouse’s death, was held by the spouse, and
 - (e) not later than 2 years after the end of the year of assessment in which the material disposal occurred, the individual elects that this paragraph should apply,

the period which, apart from this paragraph, would be the qualifying period appropriate to that disposal shall be extended by assuming that, in the conditions

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which under section 163 are the relevant conditions applicable to the disposal, any reference to the individual were a reference either to the individual or his spouse.

- (2) An election under sub-paragraph (1)(e) above shall be made by notice to the inspector.
- (3) Where the acquisition referred to in sub-paragraph (1)(c) above was by way of lifetime gift, the amount available for relief on the material disposal concerned, having regard to the extension of the qualifying period under sub-paragraph (1) above, shall not exceed the limit specified in sub-paragraph (4) below.
- (4) The limit referred to in sub-paragraph (3) above is the amount which would have been available for relief on the material disposal if—
 - (a) the lifetime gift had not occurred; and
 - (b) the material disposal had been made by the spouse; and
 - (c) anything done by the individual in relation to the business concerned after the lifetime gift was in fact made had been done by the spouse.