

## SCHEDULES

### SCHEDULE 3

Section 8.

#### TAXATION PROVISIONS

#### PART I

#### CORPORATION TAX

##### *Interpretation of Part I*

- 1 (1) In this Part of this Schedule—
- “the 1988 Act” means the Income and Corporation Taxes Act 1988;
  - “the Corporation Tax Acts” has the meaning given by section 831(1)(a) of the 1988 Act;
  - “the Gains Act” means the Taxation of Chargeable Gains Act 1992.
- (2) This Part of this Schedule shall be construed as one with the Corporation Tax Acts.

##### *General*

- 2 If a transfer scheme transfers property, rights and liabilities to a successor company, then, subject to paragraph 3 and paragraphs 15 to 19 below, the following provisions shall apply for the purposes of the Corporation Tax Acts in their application in respect of any accounting period beginning on or after the date on which the transfer scheme comes into force, namely—
- (a) any trade or part of a trade carried on by the Authority which is transferred in accordance with the transfer scheme to the successor company shall be treated as having been, at the time of its commencement and at all times since that time, a separate trade carried on by that company,
  - (b) the trade or trades carried on by the successor company on and after the date on which the transfer scheme comes into force shall be treated as the same trade or trades as that which, by virtue of paragraph (a) above, is treated as carried on before that date,
  - (c) all property, rights and liabilities of the Authority which are transferred in accordance with the transfer scheme to the successor company shall be treated as having been, at the time when they became vested in the Authority and at all times since that time, property, rights and liabilities of that company, and
  - (d) anything done by the Authority in relation to property, rights and liabilities which are transferred in accordance with the transfer scheme to the successor company shall be treated as having been done by the company.

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*Chargeable gains: general*

- 3 Paragraph 2 above shall not apply for the purposes of corporation tax on chargeable gains; and no provision included in a scheme by virtue of paragraph 5(2)(a) of Schedule 1 to this Act shall have effect for those purposes.
- 4 (1) Section 171(1) of the Gains Act (which makes provision in relation to the disposal of assets from one member of a group of companies to another member of the group) shall not apply where the disposal in question is a disposal in accordance with a transfer scheme from the Authority to a wholly-owned subsidiary of the Authority.
- (2) In sub-paragraph (1) above “disposal” shall be construed in accordance with section 21(2) of the Gains Act (which relates to part disposals).

*Chargeable gains: group transactions*

- 5 (1) For the purposes of section 179 of the Gains Act (company ceasing to be a member of a group), where any subsidiary of the Authority (“the degrouped company”) ceases, by virtue of a qualifying transaction, to be a member of a group of companies including the Authority, the degrouped company shall not, by virtue of that transaction, be treated under that section as having sold, and immediately reacquired, any asset acquired from a company which was at the time of acquisition a member of that group.
- (2) Where, disregarding any preparatory transactions, a subsidiary of the Authority would be regarded for the purposes of section 179 of the Gains Act (and, accordingly, of this paragraph) as ceasing to be a member of a group of companies including the Authority by virtue of a qualifying transaction, it shall be regarded for those purposes as so doing by virtue of the qualifying transaction and not by virtue of any preparatory transactions.
- (3) In this paragraph—  
“preparatory transaction” means anything done under or by virtue of the Atomic Energy Authority Act 1954, the Atomic Energy (Miscellaneous Provisions) Act 1981 or this Act for the purposes of initiating, advancing or facilitating the qualifying transaction in question;  
“qualifying transaction” means—  
(a) the transfer of any property, rights or liabilities of the Authority in accordance with a transfer scheme, or  
(b) the disposal by the Authority of any securities of a successor company.
- (4) Expressions used in this paragraph and in section 179 of the Gains Act have the same meaning in this paragraph as they have in that section.

*Chargeable gains: debts*

- 6 (1) Where—  
(a) any debt owed to the Authority is transferred to a successor company in accordance with a transfer scheme, and  
(b) the Authority would have been the original creditor in relation to that debt for the purposes of section 251 of the Gains Act (debts: general provisions), the successor company shall be treated as the original creditor for those purposes.

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- (2) Where, in accordance with a transfer scheme, any obligations of the Authority under a guarantee of the repayment of a loan are transferred to a successor company, the successor company shall be treated for the purposes of section 253(4) of the Gains Act (relief for guarantors) as a person who gave the guarantee.

*Securities issued in pursuance of Act*

- 7 (1) For the purposes of the Corporation Tax Acts, any securities of a company issued in pursuance of section 10 of, or paragraph 1 of Schedule 2 to, this Act shall be treated as having been issued for a new consideration equal—
- (a) in the case of a share, to its nominal value, and
  - (b) in the case of a debenture, to the principal sum payable under the debenture.
- (2) The liability of a successor company under any debentures issued as mentioned in sub-paragraph (1) above shall be treated for the purposes of the Corporation Tax Acts as having been incurred wholly and exclusively for the purposes of the trade carried on by the company.

*Group relief*

- 8 (1) None of the following, namely—
- (a) the existence of the powers of the Secretary of State or the Authority under the relevant provisions,
  - (b) any direction given by the Secretary of State under any of the relevant provisions or section 3 of the Atomic Energy Authority Act 1954 so far as that direction relates to a restructuring transfer, or
  - (c) any arrangements so far as relating to a restructuring transfer,
- shall be regarded as constituting arrangements falling within subsection (1) or (2) of section 410 of the 1988 Act (arrangements for the transfer of a company to another group or consortium).
- (2) Neither the existence of the powers of the Secretary of State or the Authority under the relevant provisions nor a direction given as mentioned in sub-paragraph (1)(b) above shall be regarded as constituting option arrangements for the purposes of paragraph 5B of Schedule 18 to the 1988 Act.
- (3) In this paragraph—
- “arrangements” has the meaning given by section 410(5) of the 1988 Act;
  - “the relevant provisions” means sections 1 to 6 and 10 of, and Schedules 1 and 2 to, this Act;
  - “a restructuring transfer” means—
- (a) the transfer in accordance with a transfer scheme of property, rights and liabilities of the Authority to a company wholly owned by the Crown, or
  - (b) the transfer by the Authority to the Secretary of State or the Treasury or his or their nominee of shares of a successor company.

*Leases*

- 9 (1) Section 35 of the 1988 Act (charge on lease granted at an undervalue) shall not apply in the case of any lease which, in accordance with a transfer scheme, is granted—

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- (a) to a successor company, or
  - (b) by a successor company to the Authority.
- (2) Section 87 of the 1988 Act (taxable premiums) shall not apply where there is an amount which would have become chargeable in relation to any land but for subparagraph (1) above; and, accordingly, references to any such amount shall not be included in references in that section to the amount chargeable.
- (3) In this paragraph “lease” has the same meaning as in Part II of the 1988 Act.

*Sale and lease back*

- 10 Subsections (1) and (2) of section 779 of the 1988 Act (sale and lease back) shall not apply where the liability of the transferor (within the meaning of that section) or of the person associated with that transferor is as a result of—
- (a) the creation in favour of a successor company or the Authority in accordance with a transfer scheme of any interest or right,
  - (b) any other transaction for which a transfer scheme transferring property, rights and liabilities to a successor company provides, or
  - (c) the grant by a successor company (“the relevant company”) to the Authority or to another successor company of any interest or right, at a time when the relevant company remains publicly owned, in a case where the ability of the relevant company to grant that interest or right derives from the vesting in the company in accordance with a transfer scheme of an estate or interest in land.

*Leased assets*

- 11 (1) For the purposes of section 781 of the 1988 Act (assets leased to traders and others), where the interest of the lessor or the lessee under a lease, or any other interest in an asset, vests in a successor company or the Authority in accordance with a transfer scheme, the vesting shall be treated as being effected without any capital sum having been obtained in respect of that interest by the Authority or the successor company.
- (2) Section 782 of the 1988 Act (deduction of payment under leases: special cases) shall not apply to any payments made by a successor company or the Authority—
- (a) under any lease granted to a successor company or the Authority for the purposes of the creation in accordance with a transfer scheme of any leasehold interest, including, where effect has been given without the grant of a lease to the creation of a leasehold interest in accordance with such a scheme, any lease to which effect is so given, or
  - (b) under any lease—
    - (i) which is granted to or by a successor company at a time when it remains publicly owned, and
    - (ii) which is a lease of an asset which at any time before the creation of the lease was used by the Authority for the purposes of a trade carried on by the Authority and which was, when so used, owned by the Authority.
- (3) In this paragraph “lease” and “asset” have the meanings given by section 785 of the 1988 Act and references to a leasehold interest are references to any such interest as may subsist under a lease.

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*Write-off of government investment*

- 12 (1) Subsection (1) of section 400 of the 1988 Act (write-off of government investment: restriction of tax losses) shall not have effect—
- (a) in relation to any extinguishment by order under section 10 of this Act of—
    - (i) any liabilities of the Authority, or
    - (ii) any liabilities of a successor company which fall within section 10(12)(b)(i) of this Act, or
  - (b) in relation to any extinguishment by order under that section of any liabilities of a successor company which fall within section 10(12)(b)(ii) of this Act, if and to the extent that those liabilities are replaced by securities issued by the company in accordance with a direction under section 10(5) of this Act.
- (2) Subsection (6) of section 400 of the 1988 Act shall apply in relation to any extinguishment of any liabilities of a successor company by an order under section 10 of this Act as if the reference to the body in question were a reference to the company whose liabilities are extinguished.

*Modifications of transfer scheme*

- 13 Where the effect of any transfer scheme is modified in pursuance of any agreement which takes effect under paragraph 8(2) of Schedule 1 to this Act, the Corporation Tax Acts and this Part of this Schedule shall have effect as if—
- (a) the scheme originally made had been the scheme as modified, and
  - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.

**PART II**

CAPITAL ALLOWANCES

*Interpretation of Part II*

- 14 (1) In this Part of this Schedule—
- “the 1988 Act” means the Income and Corporation Taxes Act 1988;
  - “the Capital Allowances Acts” has the meaning given by section 832(1) of the 1988 Act.
- (2) In any provision of this Part of this Schedule “the prescribed amount”, in relation to any successor company, means such amount as may be specified by the Secretary of State by order for the purposes of that provision in its application to that company.
- (3) This Part of this Schedule shall be construed as one with the Capital Allowances Acts.

*Industrial buildings and structures*

- 15 The Secretary of State may, for the purposes of section 3 of the Capital Allowances Act 1990 (writing-down allowances in respect of expenditure on industrial buildings and structures) by order make provision specifying—

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- (a) the amount to be taken for the purposes of subsection (3) of that section as the residue, on the date on which a transfer scheme comes into force, of any expenditure in relation to which any property vested in a successor company in accordance with that transfer scheme is a relevant interest for the purposes of that section, and
- (b) the part of the period mentioned in subsection (3) of that section which is to be treated, in relation to any such property, as unexpired on that date.

*Machinery and plant*

- 16 For the purposes of Part II of the Capital Allowances Act 1990 (capital allowances in respect of machinery and plant) property which is vested in a successor company in accordance with a transfer scheme shall be treated as if—
- (a) it had been acquired by that company, for the purposes for which it is used by that company on and after the date on which the scheme comes into force, on that date, and
  - (b) capital expenditure of the prescribed amount had been incurred on that date by that company on the acquisition of the property for the purposes mentioned in paragraph (a) above.

*Scientific research*

- 17 (1) For the purposes of Part VII of the Capital Allowances Act 1990 (scientific research), a successor company in which an asset representing allowable scientific research expenditure is vested in accordance with a transfer scheme shall be treated as having incurred, on the date on which the transfer scheme comes into force, expenditure of a capital nature of the prescribed amount on the scientific research in question; and that research shall be taken to have been directly undertaken by the successor company or on its behalf.
- (2) In sub-paragraph (1) above “allowable scientific research expenditure” means expenditure of a capital nature incurred by the Authority on scientific research directly undertaken by the Authority or on their behalf.
- (3) In this paragraph “asset” and “scientific research” have the meaning given by subsection (1) of section 139 of the Capital Allowances Act 1990; and references to expenditure incurred on scientific research shall be construed in accordance with that subsection.

*Patent rights*

- 18 (1) For the purposes of section 520 of the 1988 Act (allowances for expenditure on purchase of patent rights), a successor company in which any patent rights of the Authority are vested in accordance with a transfer scheme shall be treated as having incurred, on the date on which the transfer scheme comes into force, capital expenditure of the prescribed amount on the purchase of those patent rights for use in any trade in which they are, or are to be, used on or after that date.
- (2) In this paragraph “patent rights” has the meaning given by section 533 of the 1988 Act.

#### *Know-how*

- 19 (1) For the purposes of section 530 of the 1988 Act (disposal of know-how), a successor company in which any know-how of the Authority is vested in accordance with a transfer scheme shall be treated as having incurred, on the date on which the transfer scheme comes into force, capital expenditure of the prescribed amount on the acquisition of that know-how for use in any trade in which it is, or is to be, used on or after that date.
- (2) Subsections (2) and (7) of section 531 of the 1988 Act (provisions supplementary to section 530) shall not apply in relation to any disposal from the Authority to a successor company in accordance with a transfer scheme.
- (3) In this paragraph “know-how” has the meaning given by section 533(7) of the 1988 Act.

#### *Connected persons*

- 20 In Part II of the Capital Allowances Act 1990 (machinery and plant) and Chapter I of Part XIII of the 1988 Act (intellectual property) references to a transaction (however described) between connected persons within the meaning of section 839 of the 1988 Act shall not include references to—
- (a) a transfer to a successor company in accordance with a transfer scheme of any property, rights and liabilities, or
  - (b) the creation in favour of a successor company or the Authority in accordance with a transfer scheme of any interest or right.

#### *Orders under Part II*

- 21 (1) The Secretary of State shall not make an order under this Part of this Schedule in relation to any successor company except with the consent of the Treasury and at a time when the company is publicly owned.
- (2) In exercising any power to make an order under this Part of this Schedule in relation to any asset vested in a successor company in accordance with a transfer scheme, the matters to which the Secretary of State shall have regard include such information as he considers appropriate as to the price which the asset would fetch or have fetched if sold on the open market on the date on which the transfer scheme comes into force.
- (3) Any power of the Secretary of State to make an order under this Part of this Schedule—
- (a) shall be exercisable by statutory instrument, and
  - (b) shall include power to make different provision for different cases, including different provision in relation to different assets or descriptions of assets.

#### *Modifications of transfer scheme*

- 22 Where the effect of any transfer scheme is modified in pursuance of any agreement which takes effect under paragraph 8(2) of Schedule 1 to this Act, the Capital Allowances Acts and this Part of this Schedule shall have effect as if—
- (a) the scheme originally made had been the scheme as modified, and
  - (b) anything done by or in relation to the person who without the modification became entitled or subject in accordance with the scheme to any property, rights or liabilities had, so far as relating to the property, rights or liabilities

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to which another person becomes entitled or subject in consequence of the modification, been done by or in relation to that other person.

### PART III

#### STAMP DUTY AND STAMP DUTY RESERVE TAX

##### *Transactions attracting exemptions*

- 23 For the purposes of this Part of this Schedule a transaction is an exempt transaction if it is a transaction by virtue of which property, rights or liabilities are vested by or under this Act in any of the following persons, that is to say—
- (a) the Authority,
  - (b) a company which is wholly owned by the Crown, and
  - (c) a wholly-owned subsidiary of the Authority.

##### *Stamp duty*

- 24 (1) Subject to sub-paragraph (2) below, an exempt transaction shall not give rise to any charge to stamp duty except in so far as the charge to duty is on an instrument under this Act which is neither a transfer scheme nor an instrument that has been certified to the Commissioners of Inland Revenue by the Secretary of State to have been made—
- (a) in pursuance of a transfer scheme, or
  - (b) by virtue of any provision of this Act, for the purpose of modifying the effect of such a scheme.
- (2) No instrument which is certified as mentioned in sub-paragraph (1) above shall be taken to be duly stamped unless—
- (a) it is stamped with the duty to which it would, but for that sub-paragraph, be liable, or
  - (b) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped.

##### *Stamp duty reserve tax*

- 25 No agreement for the purposes of, or for purposes connected with giving effect to—
- (a) so much of any transfer scheme as relates to an exempt transaction, or
  - (b) any exempt transaction to which effect is given by the modification of any transfer scheme,
- shall give rise to a charge to stamp duty reserve tax.