

SCHEDULES

SCHEDULE 3

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.

Status: This is the original version (as it was originally enacted).

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.