Finance Act 1995

1995 CHAPTER 4

PART I

DUTIES OF EXCISE

Alcoholic liquor duties

1 Low-strength wine, made-wine and cider.

(1) The [M1]Alcoholic Liquor Duties Act 1979 shall be amended as follows.

(2) In section 1 (the alcoholic liquors dutiable under the Act) in subsections (4) and (5) (definitions of "wine" and "made-wine") after the words "any liquor" there shall in both cases be inserted " which is of a strength exceeding 1.2 per cent and which is ".

(3) In section 1(6) (definition of "cider") after the word "strength" there shall be inserted " exceeding 1.2 per cent but ".

(4) In section 59(1) (prohibition on rendering wine and made-wine sparkling) for paragraph (b) there shall be substituted the following paragraph—

"(b) is wine or made-wine of a strength exceeding 5.5 per cent.".

(5) Subsections (2) and (4) above—

(a) shall apply in relation to liquor imported into, or produced in, the United Kingdom on or after 1st January 1995, and

(b) as regards any provision about liquor removed to the United Kingdom from the Isle of Man, shall also apply in relation to liquor so removed on or after that date.

(6) Subsection (3) above shall apply in relation to liquor imported into, or made in, the United Kingdom on or after 1st January 1995.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

Marginal Citations
M1 1979 c. 4.

2 Wine and made-wine: rates.

(1) For the Table of rates of duty in Schedule 1 to the [M2]Alcoholic Liquor Duties Act 1979 (wine and made-wine) there shall be substituted the Table in Schedule 1 to this Act.

(2) This section shall be deemed to have come into force on 1st January 1995.

Commencement Information
I1 S. 2 in force on 1.1.1995: see s. 2(2).

Marginal Citations
M2 1979 c. 4.

3 Spirits, beer and cider: rates.

(1) In section 5 of the [M3]Alcoholic Liquor Duties Act 1979 (spirits) for "£19.81" there shall be substituted " £20.60 ".

(2) In section 36(1) of that Act (beer) for "£10.45" there shall be substituted " £10.82 ".

(3) In section 62(1) of that Act (cider) for "£22.82" there shall be substituted " £23.78 ".

(4) This section shall be deemed to have come into force on 1st January 1995.

Commencement Information
I2 S. 3 in force on 1.1.1995: see s. 3(4).

Marginal Citations
M3 1979 c. 5.

4 Alcoholic ingredients relief.

(1) Subject to the following provisions of this section, where any person proves to the satisfaction of the Commissioners that any dutiable alcoholic liquor on which duty has been paid has been—
  (a) used as an ingredient in the production or manufacture of a product falling within subsection (2) below, or
  (b) converted into vinegar,

  he shall be entitled to obtain from the Commissioners the repayment of the duty paid thereon.

(2) The products falling within this subsection are—
  (a) any beverage of an alcoholic strength not exceeding 1.2 per cent.,

(b) chocolates for human consumption which contain alcohol such that 100 kilograms of the chocolates would not contain more than 8.5 litres of alcohol, or

(c) any other food for human consumption which contains alcohol such that 100 kilograms of the food would not contain more than 5 litres of alcohol.

(3) A repayment of duty shall not be made under this section in respect of any liquor except to a person who—

(a) is the person who used the liquor as an ingredient in a product falling within subsection (2) above or, as the case may be, who converted it into vinegar;

(b) carries on a business as a wholesale supplier of products of the applicable description falling within that subsection or, as the case may be, of vinegar;

(c) produced or manufactured the product or vinegar for the purposes of that business;

(d) makes a claim for the repayment in accordance with the following provisions of this section; and

(e) satisfies the Commissioners as to the matters mentioned in paragraphs (a) to (c) above and that the repayment claimed does not relate to any duty which has been repaid or drawn back prior to the making of the claim.

(4) A claim for repayment under this section shall take such form and be made in such manner, and shall contain such particulars, as the Commissioners may direct, either generally or in a particular case.

(5) Except so far as the Commissioners otherwise allow, a person shall not make a claim for a repayment under this section unless—

(a) the claim relates to duty paid on liquor used as an ingredient or, as the case may be, converted into vinegar in the course of a period of three months ending not more than one month before the making of the claim; and

(b) the amount of the repayment which is claimed is not less than £250.

(6) The Commissioners may by order made by statutory instrument increase the amount for the time being specified in subsection (5)(b) above; and a statutory instrument containing an order under this subsection shall be subject to annulment in pursuance of a resolution of the House of Commons.

(7) There may be remitted by the Commissioners any duty charged either—

(a) on any dutiable alcoholic liquor imported into the United Kingdom at a time when it is contained as an ingredient in any chocolates or food falling within subsection (2)(b) or (c) above; or

(b) on any dutiable alcoholic liquor used as an ingredient in the manufacture or production in an excise warehouse of any such chocolates or food.

(8) This section shall be construed as one with the [M4]Alcoholic Liquor Duties Act 1979, and references in this section to chocolates or food do not include references to any beverages.

Marginal Citations

M4 1979 c. 4.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

VALID FROM 01/07/2005

5 Denatured alcohol.

(1) The liquors on which duty is charged under the [M5]Alcoholic Liquor Duties Act 1979 shall not include any denatured alcohol; and any duty so charged on liquor which has become denatured alcohol before the requirement to pay the duty takes effect shall be remitted.

(2) In this section—

"denatured alcohol" means any dutiable alcoholic liquor which has been subjected to the process of being mixed in the prescribed manner with a prescribed substance; and

"prescribed" means prescribed by the Commissioners by regulations made by statutory instrument.

(3) The power of the Commissioners to make regulations defining denatured alcohol for the purposes of this section shall include—

(a) power, in prescribing any substance or any manner of mixing a substance with a liquor, to do so by reference to such circumstances or other factors, or to the approval or opinion of such persons (including the authorities of another member State), as they may consider appropriate;

(b) power to make different provision for different cases; and

(c) power to make such supplemental, incidental, consequential and transitional provision as the Commissioners think fit;

and a statutory instrument containing any regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Sections 14 to 16 of the [M6]Finance Act 1994 (review and appeals) shall have effect in relation to any decision which—

(a) is made under or for the purposes of any regulations under this section, and

(b) is a decision given to any person as to whether a manner of mixing any substance with any liquor is to be, or to continue to be, approved in his case, or as to the conditions subject to which it is so approved,

as if that decision were a decision specified in Schedule 5 to that Act.

(5) Schedule 2 to this Act (which contains amendments for or in connection with the application to all denatured alcohol of provisions of the Alcoholic Liquor Duties Act 1979 relating to methylated spirits and also makes a consequential amendment of the [M7]Finance Act 1994) shall have effect.

(6) This section and Schedule 2 to this Act shall come into force on such day as the Commissioners may by order made by statutory instrument appoint, and different days may be appointed under this subsection for different purposes.

(7) An order under subsection (6) above may make such transitional provisions and savings as appear to the Commissioners to be appropriate in connection with the bringing into force by such an order of any provision for any purposes.

(8) This section shall be construed as one with the [M8]Alcoholic Liquor Duties Act 1979.

Marginal Citations

M5 1979 c. 4.
M6 1994 c. 9.
M7 1979 c. 4.
M8 1979 c. 4.

Hydrocarbon oil duties

6 Rates of duty.

(1) In section 6(1) of the [M9]Hydrocarbon Oil Duties Act 1979 for "£0.3314" (duty on light oil) and "£0.2770" (duty on heavy oil) there shall be substituted " £0.3526 " and " £0.3044 " respectively.

(2) In section 8 of that Act (duty on road fuel gas) the following subsection shall be substituted for subsections (3) to (5)—

"(3) The rate of the duty under this section shall be £0.3314 a kilogram."

(3) In section 11(1) of that Act (rebate on heavy oil) for "£0.0116" (fuel oil) and "£0.0164" (gas oil) there shall be substituted " £0.0166 " and " £0.0214 " respectively.

(4) In section 14(1) of that Act (rebate on light oil for use as furnace fuel) for "£0.0116" there shall be substituted " £0.0166 ".

(5) This section shall be deemed to have come into force at 6 o'clock in the evening of 29th November 1994.

Commencement Information

I3 S. 6 in force at 6 p.m. 29.11.1994: see s. 6(5).

Marginal Citations

M9 1979 c. 5.

7 Rates of duty: further provisions.

(1) In section 6(1) of the Hydrocarbon Oil Duties Act 1979, as amended by section 6 above, for "£0.3526" (duty on light oil) and "£0.3044" (duty on heavy oil) there shall be substituted " £0.3614 " and " £0.3132 " respectively.

(2) This section shall be deemed to have come into force on 1st January 1995.

Commencement Information

I4 S. 7 in force on 1.1.1995: see s. 7(2).

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

VALID FROM 01/07/1995

8 Hydrocarbon oil: "road vehicle".

(1) In the definition of "road vehicle" in section 27(1) of the Hydrocarbon Oil Duties Act 1979 (road vehicle not to include vehicle of a kind specified in Schedule 1) for the words "of a kind specified in Schedule 1 to this Act" there shall be substituted " which is an excepted vehicle within the meaning given by Schedule 1 to this Act. "

(2) The following Schedule shall be substituted for Schedule 1 to that Act—

"SCHEDULE 1

EXCEPTED VEHICLES

Unlicensed vehicles not used on public roads

1 (1) A vehicle is an excepted vehicle while—
(a) it is not used on a public road, and
(b) no licence under the [M10]Vehicle Excise and Registration Act 1994 is in force in respect of it.

(2) A vehicle in respect of which there is current a certificate or document in the form of a licence issued under regulations under section 22(2) of the Vehicle Excise and Registration Act 1994 shall be treated for the purposes of sub-paragraph (1) above as a vehicle in respect of which a licence under that Act is in force.

Tractors

2 (1) A vehicle is an excepted vehicle if it is—
(a) an agricultural tractor, or
(b) an off-road tractor.

(2) In sub-paragraph (1) above "agricultural tractor" means a tractor used on public roads solely for purposes relating to agriculture, horticulture, forestry or activities falling within sub-paragraph (3) below.

(3) The activities falling within this sub-paragraph are—
(a) cutting verges bordering public roads;
(b) cutting hedges or trees bordering public roads or bordering verges which border public roads.

(4) In sub-paragraph (1) above "off-road tractor" means a tractor which is not an agricultural tractor (within the meaning given by sub-paragraph (2) above) and which is—
(a) designed and constructed primarily for use otherwise than on roads, and
(b) incapable by reason of its construction of exceeding a speed of twenty-five miles per hour on the level under its own power.

Light agricultural vehicles

3 (1) A vehicle is an excepted vehicle if it is a light agricultural vehicle.

(2) In sub-paragraph (1) above "light agricultural vehicle" means a vehicle which—

(a) has a revenue weight not exceeding 1,000 kilograms,

(b) is designed and constructed so as to seat only the driver,

(c) is designed and constructed primarily for use otherwise than on roads, and

(d) is used solely for purposes relating to agriculture, horticulture or forestry.

(3) In sub-paragraph (2)(a) above "revenue weight" has the meaning given by section 60A of the [M11]Vehicle Excise and Registration Act 1994.

Agricultural engines

4 An agricultural engine is an excepted vehicle.

Vehicles used between different parts of land

5 A vehicle is an excepted vehicle if—

(a) it is used only for purposes relating to agriculture, horticulture or forestry,

(b) it is used on public roads only in passing between different areas of land occupied by the same person, and

(c) the distance it travels on public roads in passing between any two such areas does not exceed 1.5 kilometres.

Mowing machines

6 A mowing machine is an excepted vehicle.

Snow clearing vehicles

7 A vehicle is an excepted vehicle when it is—

(a) being used, or

(b) going to or from the place where it is to be or has been used,

for the purpose of clearing snow from public roads by means of a snow plough or similar device (whether or not forming part of the vehicle).

Gritters

8 A vehicle is an excepted vehicle if it is constructed or adapted, and used, solely for the conveyance of machinery for spreading material on roads to deal with frost, ice or snow (with or without articles or material used for the purposes of the machinery).

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Mobile cranes

9 (1) A mobile crane is an excepted vehicle.

(2) In sub-paragraph (1) above "mobile crane" means a vehicle which is designed and constructed as a mobile crane and which—

(a) is used on public roads only as a crane in connection with work carried on at a site in the immediate vicinity or for the purpose of proceeding to and from a place where it is to be or has been used as a crane, and

(b) when so proceeding does not carry any load except such as is necessary for its propulsion or equipment.

Digging machines

10 (1) A digging machine is an excepted vehicle.

(2) In sub-paragraph (1) above "digging machine" means a vehicle which is designed, constructed and used for the purpose of trench digging, or any kind of excavating or shovelling work, and which—

(a) is used on public roads only for that purpose or for the purpose of proceeding to and from the place where it is to be or has been used for that purpose, and

(b) when so proceeding does not carry any load except such as is necessary for its propulsion or equipment.

Works trucks

11 (1) A works truck is an excepted vehicle.

(2) In sub-paragraph (1) above "works truck" means a goods vehicle which is designed for use in private premises and is used on public roads only—

(a) for carrying goods between private premises and a vehicle on a road within one kilometre of those premises,

(b) in passing from one part of private premises to another,

(c) in passing between private premises and other private premises in a case where the premises are within one kilometre of each other, or

(d) in connection with road works at the site of the works or within one kilometre of the site of the works.

(3) In sub-paragraph (2) above "goods vehicle" means a vehicle constructed or adapted for use and used for the conveyance of goods or burden of any description, whether in the course of trade or not.

Road construction vehicles

12 (1) A vehicle is an excepted vehicle if it is—

(a) a road construction vehicle, and

(b) used or kept solely for the conveyance of built-in road construction machinery (with or without articles or material used for the purposes of the machinery).

(2) In sub-paragraph (1) above "road construction vehicle" means a vehicle—

(a) which is constructed or adapted for use for the conveyance of built-in road construction machinery, and

(b) which is not constructed or adapted for the conveyance of any other load except articles and material used for the purposes of such machinery.

(3) In sub-paragraphs (1) and (2) above "built-in road construction machinery", in relation to a vehicle, means road construction machinery built in as part of, or permanently attached to, the vehicle.

(4) In sub-paragraph (3) above "road construction machinery" means a machine or device suitable for use for the construction or repair of roads and used for no purpose other than the construction or repair of roads.

Road rollers

13 A road roller is an excepted vehicle.

Interpretation

14 In this Schedule "public road" means a road which is repairable at the public expense."

(3) This section shall come into force on 1st July 1995.

Commencement Information

I5 S. 8 in force on 1.7.1995: see s. 8(3).

Marginal Citations

M10 1994 c. 22.

M11 1994 c. 22.

9 Road fuel gas: old stock.

In section 8 of the [M12]Hydrocarbon Oil Duties Act 1979 (road fuel gas) subsection (7) (no charge on use of gas if delivered or stocked before 3rd July 1972) shall be omitted.

Marginal Citations

M12 1979 c. 5.

Tobacco products duty

10 Rates of duty.

(1) For the Table of rates of duty in Schedule 1 to the [M13]Tobacco Products Duty Act 1979 there shall be substituted—

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

" TABLE

1. Cigarettes	An amount equal to 20 per cent. of the retail price plus £55.58 per thousand cigarettes.
2. Cigars	£82.56 per kilogram.
3. Hand-rolling tobacco	£85.94 per kilogram.
4. Other smoking tobacco and chewing tobacco	£36.30 per kilogram."

(2) This section shall be deemed to have come into force at 6 o'clock in the evening of 29th November 1994.

Commencement Information
I6 S. 10 in force at 6 p.m. 29.11.1994: see s. 10(2).

Marginal Citations
M13 1979 c. 7.

11 Rates of duty: further provisions.

(1) For the Table of rates of duty in Schedule 1 to the [M14]Tobacco Products Duty Act 1979, as substituted by section 10 above, there shall be substituted—

" TABLE

1. Cigarettes	An amount equal to 20 per cent. of the retail price plus £57.64 per thousand cigarettes.
2. Cigars	£85.61 per kilogram.
3. Hand-rolling tobacco	£85.94 per kilogram.
4. Other smoking tobacco and chewing tobacco	£37.64 per kilogram."

(2) This section shall be deemed to have come into force on 1st January 1995.

Commencement Information
I7 S. 11 in force on 1.1.1995: see s. 11(2).

Marginal Citations
M14 1979 c. 7.

Pool betting duty

12 Pool betting duty.

(1) In section 7(1) of the [M15]Betting and Gaming Duties Act 1981 (which specifies 37.50 per cent. as the rate of pool betting duty) for "37.50 per cent." there shall be substituted " 32.50 per cent. "

(2) This section shall apply in relation to any pool betting duty the requirement to pay which takes effect on or after 6th May 1995.

Marginal Citations
M15 1981 c. 63.

Gaming machine licence duty

13 Rates of duty.

(1) In the [M16]Betting and Gaming Duties Act 1981 for the Table set out at the end of section 23 (amount of duty) there shall be substituted—

TABLE

(1) Period (in months) for which licence granted	***(2) Small prize or five-penny machines***	***(3) Other machines***
	£	**£**
1	60	150
2	105	275
3	155	400
4	205	520
5	250	645
6	295	755
7	340	880
8	390	1,005
9	435	1,115
10	480	1,235
11	510	1,305
12	535	1,375

(2) This section shall apply in relation to any gaming machine licence for which an application is made on or after 1st December 1994.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

Marginal Citations
M16 1981 c. 63.

14 Extension of duty to amusement machines.

(1) Schedule 3 to this Act (which contains amendments for or in connection with the application of the provisions of the [M17]Betting and Gaming Duties Act 1981 relating to gaming machine licence duty to amusement machines that are not gaming machines and also makes a consequential amendment of the [M18]Customs and Excise Management Act 1979) shall have effect.

(2) Schedule 3 to this Act shall have effect (subject to subsection (3) below) in relation only to the provision of a machine at a time on or after 1st November 1995 and to licences for periods beginning on or after that date and the duty on such licences.

(3) Where a gaming machine licence has been granted before 1st November 1995 for a period ending on or after that date, that licence shall have effect on and after that date, for so long as it remains in force, as an amusement machine licence authorising the provision, in accordance with the licence, of the machines the provision of which was authorised by the licence immediately before that date.

Marginal Citations
M17 1981 c. 63.
M18 1979 c. 2.

Air passenger duty

15 Rates of duty.

(1) Section 30 of the [M19]Finance Act 1994 (rate of air passenger duty) shall be deemed to have been enacted with the following modifications.

(2) The following subsection shall be substituted for subsection (2) (£5 if journey ends in member State or territory for whose external relations it is responsible)—

"(2) The rate is £5 if that place is in the area specified in subsection (3) below and in—

(a) the United Kingdom or another EEA State, or

(b) any territory for whose external relations the United Kingdom or another member State is responsible."

(3) The following subsection shall be inserted after subsection (8)—

"(9) In this section "EEA State" means a State which is a Contracting Party to the EEA Agreement but until the EEA Agreement comes into force in relation to Liechtenstein does not include the State of Liechtenstein; and "EEA Agreement" here means 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."

Marginal Citations

M19 1994 c. 9.

16 Assessment of interest on duty.

(1) In Schedule 6 to the [M20]Finance Act 1994 (air passenger duty: administration and enforcement) after paragraph 11 there shall be inserted—

Assessment of interest

"11A (1) Where by virtue of paragraph 7 above duty due from any person for an accounting period carries interest, the Commissioners may assess that person to an amount of interest in accordance with this paragraph.

(2) Notice of the assessment shall be given to the person liable for the interest or a representative of his.

(3) The amount of the interest shall be calculated by reference to a period ending on a date ("the due date") no later than the date of the notice.

(4) The notice shall specify—

(a) the amount of the duty which carries the interest assessed ("the specified duty");

(b) the amount of the interest assessed ("the specified interest");

(c) the due date; and

(d) a date by which that amount is required to be paid ("the payment date").

(5) Sub-paragraphs (6) and (7) below apply where the specified duty or any part of it is unpaid on the date of the notice.

(6) If the unpaid amount or any part of it is paid by the payment date, the payment shall be treated for the purposes of paragraph 7 above as made on the due date.

(7) To the extent that the unpaid amount is not paid by the payment date, an assessment may be made under this paragraph in respect of any interest on the unpaid amount which accrues after the due date.

(8) For the purposes of sub-paragraphs (6) and (7) above, a payment—

(a) which purports to be a payment of the unpaid amount or any part of it, but

(b) which is insufficient to discharge both the liability to pay the unpaid amount and the liability to pay the specified interest,

shall be treated as made in discharge (or partial discharge) of the liability to pay the specified interest before it is treated as discharging to any extent the liability to pay the unpaid amount.

(9) A notice of interest assessed under this paragraph may be combined in one document with notification of an assessment under section 12 of this Act which relates to the specified duty.

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(10) A notice which is so combined must comply with the requirements of this paragraph which relate to a notice which is not so combined.

(11) The specified interest shall be recoverable as if it were duty due from the person assessed to that interest.

(12) For the purposes of this paragraph a person is a representative of another if—

(a) he is that other's personal representative;

(b) he is that other's trustee in bankruptcy or is a receiver or liquidator appointed in relation to that other or in relation to any of his property; or

(c) he is a person acting in some other representative capacity in relation to that other."

(2) In Schedule 5 to the 1994 Act (decisions subject to review and appeal) in paragraph 9 (decisions under Chapter IV of Part I of that Act) the word "and" immediately preceding sub-paragraph (d) shall be omitted and after that sub-paragraph there shall be inserted—

"(e) any decision with respect to the amount of any interest specified in an assessment under paragraph 11A of Schedule 6;".

(3) In section 16 of the 1994 Act (appeals to a tribunal) at the beginning of subsection (8) (meaning of "ancillary matter" for the purposes of that section) there shall be inserted " Subject to subsection (9) below " and after that subsection there shall be inserted—

"(9) References in this section to a decision as to an ancillary matter do not include a reference to a decision of a description specified in paragraph 9(e) of Schedule 5 to this Act.

(10) Nothing in this section shall be taken to confer on an appeal tribunal any power to vary an amount of interest specified in an assessment under paragraph 11A of Schedule 6 to this Act except in so far as it is necessary to reduce it to the amount which is appropriate under paragraph 7 of that Schedule."

(4) This section shall apply in relation to accounting periods ending on or after 1st January 1995.

Marginal Citations

M20 1994 c. 9.

17 Preferential debts.

In section 386(1) of the [M21]Insolvency Act 1986 (categories of preferential debts) and in Article 346(1) of the [M22]Insolvency (Northern Ireland) Order 1989 (equivalent provision for Northern Ireland) after "lottery duty" there shall be inserted " , air passenger duty ".

Marginal Citations

M21 1986 c. 45.

M22 S.I. 1989/2405 (N.I.19).

Vehicle excise duty

18 Increased rates on 30th November 1994.

(1) Schedule 1 to the [M23]Vehicle Excise and Registration Act 1994 (annual rates of duty) shall be amended as follows.

(2) In paragraph 1(b) (rate for vehicle constructed after 1946 and for which no other rate is specified) for "£130" there shall be substituted " £135 ".

(3) In paragraph 3(1)(a) (rate for hackney carriage with seating capacity under nine) for "£130" there shall be substituted " £135 ".

(4) In paragraph 10 (trailer supplement)—

(a) in sub-paragraph (2) for "£130" there shall be substituted " £135 ";

(b) in sub-paragraph (3) for "£360" there shall be substituted " £370 ".

(5) This section shall apply in relation to licences taken out on or after 30th November 1994.

Marginal Citations

M23 1994 c. 22.

19 Vehicle excise and registration: other provisions.

Schedule 4 to this Act (which contains other provisions relating to vehicle excise and registration) shall have effect.

Recovery of overpaid duty

20 Recovery of overpaid excise duty.

(1) In Part X of the [M24]Customs and Excise Management Act 1979, after section 137 (recovery of duties, &c.) insert—

"**137A Recovery of overpaid excise duty.**

(1) Where a person pays to the Commissioners an amount by way of excise duty which is not due to them, the Commissioners are liable to repay that amount.

(2) The Commissioners shall not be required to make any such repayment unless a claim is made to them in such form, and supported by such documentary evidence, as may be prescribed by them by regulations; and regulations under this subsection may make different provision for different cases.

(3) It is a defence to a claim for repayment that the repayment would unjustly enrich the claimant.

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(4) No claim for repayment may be made after the expiry of the period of six years beginning with the date of the payment or, if later, the date on which the claimant (or, where the right to repayment has been assigned or otherwise transmitted, any predecessor in title of his) discovered, or could with reasonable diligence have discovered, that the amount was not due.

(5) Except as provided by this section the Commissioners are not liable to repay an amount paid to them by way of excise duty by reason of the fact that it was not due to them.".

(2) In section 17(5) of the [M25]Customs and Excise Management Act 1979, after paragraph (b) (restriction on repayment of sums overpaid in error) insert—

"Paragraph (b) above does not apply to a claim for repayment under section 137A below.".

(3) Section 29 of the [M26]Finance Act 1989 (recovery of overpaid excise duty and car tax) shall cease to have effect so far as it relates to excise duty.

(4) In section 14(1) of the [M27]Finance Act 1994 (decisions subject to review and appeal), after paragraph (b) insert—

"(bb) any decision of the Commissioners on a claim under section 137A of the Customs and Excise Management Act 1979 for repayment of excise duty;".

(5) The provisions of this section have effect in relation to payments made on or after such date as the Commissioners of Customs and Excise may appoint by order made by statutory instrument.

Commencement Information

I8 S. 20 in force at Royal Assent but shall have effect in relation to payments made on or after 1.12.1995 by S.I. 1995/2892, **art. 2**

Marginal Citations

M24 1979 c. 2.
M25 1979 c. 2.
M26 1989 c. 26.
M27 1994 c. 9.

PART II

VALUE ADDED TAX AND INSURANCE PREMIUM TAX

Value added tax

21 Fuel and power for domestic or charity use.

(1) The ci1994 c. 23./ci>Value Added Tax Act 1994 shall be amended as follows.

(2) In section 2 (rate of VAT) in subsection (1) the words "and paragraph 7 of Schedule 13" shall be omitted, and the following subsections shall be inserted after that subsection—

"(1A) VAT charged on—

(a) any supply for the time being falling within paragraph 1 of Schedule A1; or

(b) any equivalent acquisition or importation,

shall be charged at the rate of 8 per cent.

(1B) The reference in subsection (1A) above to an equivalent acquisition or importation, in relation to any supply for the time being falling within paragraph 1 of Schedule A1, is a reference (as the case may be) to—

(a) any acquisition from another member State of goods the supply of which would be such a supply; or

(b) any importation from a place outside the member States of any such goods.

(1C) The Treasury may by order vary Schedule A1 by adding to or deleting from it any description of supply for the time being specified in it or by varying any other provision for the time being contained in it."

(3) The following Schedule shall be inserted immediately before Schedule 1—

"SCHEDULE A1

CHARGE AT REDUCED RATE

The supplies

1 (1) The supplies falling within this paragraph are supplies for qualifying use of—

(a) coal, coke or other solid substances held out for sale solely as fuel;

(b) coal gas, water gas, producer gases or similar gases;

(c) petroleum gases, or other gaseous hydrocarbons, whether in a gaseous or liquid state;

(d) fuel oil, gas oil or kerosene; or

(e) electricity, heat or air-conditioning.

(2) In this paragraph "qualifying use" means—

(a) domestic use; or

(b) use by a charity otherwise than in the course or furtherance of a business.

(3) Where there is a supply of goods partly for qualifying use and partly not—

(a) if at least 60 per cent. of the goods are supplied for qualifying use, the whole supply shall be treated as a supply for qualifying use; and

(b) in any other case, an apportionment shall be made to determine the extent to which the supply is a supply for qualifying use.

Interpretation

2 For the purposes of this Schedule the following supplies are always for domestic use—

(a) a supply of not more than one tonne of coal or coke held out for sale as domestic fuel;

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(b) a supply of wood, peat or charcoal not intended for sale by the recipient;

(c) a supply to a person at any premises of piped gas (that is, gas within paragraph 1(1)(b) above, or petroleum gas in a gaseous state, provided through pipes) where the gas (together with any other piped gas provided to him at the premises by the same supplier) was not provided at a rate exceeding 150 therms a month or, if the supplier charges for the gas by reference to the number of kilowatt hours supplied, 4397 kilowatt hours a month;

(d) a supply of petroleum gas in a liquid state where the gas is supplied in cylinders the net weight of each of which is less than 50 kilogrammes and either the number of cylinders supplied is 20 or fewer or the gas is not intended for sale by the recipient;

(e) a supply of petroleum gas in a liquid state, otherwise than in cylinders, to a person at any premises at which he is not able to store more than two tonnes of such gas;

(f) a supply of not more than 2,300 litres of fuel oil, gas oil or kerosene;

(g) a supply of electricity to a person at any premises where the electricity (together with any other electricity provided to him at the premises by the same supplier) was not provided at a rate exceeding 1000 kilowatt hours a month.

3 (1) For the purposes of this Schedule supplies not within paragraph 2 above are for domestic use if and only if the goods supplied are for use in—

(a) a building, or part of a building, which consists of a dwelling or number of dwellings;

(b) a building, or part of a building, used for a relevant residential purpose;

(c) self-catering holiday accommodation;

(d) a caravan; or

(e) a houseboat.

(2) For the purposes of this Schedule use for a relevant residential purpose means use as—

(a) a home or other institution providing residential accommodation for children;

(b) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder;

(c) a hospice;

(d) residential accommodation for students or school pupils;

(e) residential accommodation for members of any of the armed forces;

(f) a monastery, nunnery or similar establishment; or

(g) an institution which is the sole or main residence of at least 90 per cent. of its residents,

except use as a hospital, a prison or similar institution or an hotel or inn or similar establishment.

(3) For the purposes of this Schedule self-catering holiday accommodation includes any accommodation advertised or held out as such.

(4) In this Schedule "houseboat" means a boat or other floating decked structure designed or adapted for use solely as a place of permanent habitation and not having means of, or capable of being readily adapted for, self-propulsion.

4 (1) Paragraph 1(1)(a) above shall be deemed to include combustible materials put up for sale for kindling fires but shall not include matches.

(2) Paragraph 1(1)(b) and (c) above shall not include any road fuel gas (within the meaning of the [M28]Hydrocarbon Oil Duties Act 1979) on which a duty of excise has been charged or is chargeable.

(3) Paragraph 1(1)(d) above shall not include hydrocarbon oil on which a duty of excise has been or is to be charged without relief from, or rebate of, such duty by virtue of the provisions of the Hydrocarbon Oil Duties Act 1979.

(4) In this Schedule "fuel oil" means heavy oil which contains in solution an amount of asphaltenes of not less than 0.5 per cent. or which contains less than 0.5 per cent. but not less than 0.1 per cent. of asphaltenes and has a closed flash point not exceeding 150°C.

(5) In this Schedule "gas oil" means heavy oil of which not more than 50 per cent. by volume distils at a temperature not exceeding 240°C and of which more than 50 per cent. by volume distils at a temperature not exceeding 340°C.

(6) In this Schedule "kerosene" means heavy oil of which more than 50 per cent. by volume distils at a temperature not exceeding 240°C.

(7) In this Schedule "heavy oil" shall have the same meaning as in the Hydrocarbon Oil Duties Act 1979."

(4) In section 97 (orders etc.) in subsection (4) (orders requiring approval) the following paragraph shall be inserted immediately before paragraph (a)—

"(aa) an order under section 2(1C);".

(5) In Schedule 13 (transitional provisions and savings) paragraph 7 (fuel and power) shall be omitted.

(6) This section shall apply in relation to any supply made on or after 1st April 1995 and any acquisition or importation taking place on or after that date.

Marginal Citations

M28 1979 c. 5.

22 Imported works of art, antiques, etc.

(1) In subsection (1) of section 21 of the [M29]Value Added Tax Act 1994 (value of imported goods), for "and (3)" there shall be substituted " to (4) "; and after subsection (3) there shall be inserted the following subsections—

"(4) For the purposes of this Act, the value of any goods falling within subsection (5) below which are imported from a place outside the member States shall be taken to be an amount equal to 14.29 per cent. of the amount which, apart from this subsection, would be their value for those purposes.

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(5) The goods which fall within this subsection are—

(a) any work of art which was obtained by any person before 1st April 1973 otherwise than by his producing it himself or by succession on the death of the person who produced it;

(b) any work of art which was—

(i) exported from the United Kingdom before 1st April 1973,

(ii) exported from the United Kingdom on or after that date and before 1st January 1993 by a person who, had he supplied it in the United Kingdom at the date when it was exported, would not have had to account for VAT on the full value of the supply, or

(iii) exported from the United Kingdom on or after 1st January 1993 by such a person to a place which, at the time, was outside the member States,

being, in each case, a work of art which has not been imported between the time when it was exported and the importation in question;

(c) any antique more than one hundred years old, being neither a work of art nor pearls or loose gem stones; and

(d) collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological or ethnographic interest.

(6) In this section "work of art" means goods falling within any of the following descriptions, that is to say—

(a) paintings, drawings and pastels executed by hand but not comprised in manufactured articles that have been hand-painted or hand-decorated;

(b) original engravings, lithographs and other prints;

(c) original sculptures and statuary, in any material.

(7) An order under section 2(2) may contain provision making such alteration of the percentage for the time being specified in subsection (4) above as the Treasury consider appropriate in consequence of any increase or decrease by that order of the rate of VAT."

(2) This section shall have effect in relation to goods imported at any time on or after the day on which this Act is passed.

Marginal Citations

M29 1994 c. 23.

23 Agents acting in their own names.

(1) In subsection (1) of section 47 of the [M30]Value Added Tax Act 1994 (agents etc.), for "the goods may" there shall be substituted " then, if the taxable person acts in relation to the supply in his own name, the goods shall ".

(2) After subsection (2) of that section there shall be inserted the following subsection—

"(2A) Where, in the case of any supply of goods to which subsection (1) above does not apply, goods are supplied through an agent who acts in his own name, the supply shall be treated both as a supply to the agent and as a supply by the agent."

(3) In subsection (3) of that section, the words "goods or" shall be omitted.

(4) This section shall have effect—

(a) so far as it amends section 47(1) of that Act, in relation to goods acquired or imported on or after the day on which this Act is passed; and

(b) for other purposes, in relation to any supply taking place on or after that day.

Marginal Citations

M30 1994 c. 23.

24 Margin schemes.

(1) After section 50 of the [M31]Value Added Tax Act 1994 there shall be inserted the following section—

"**50A Margin schemes.**

(1) The Treasury may by order provide, in relation to any such description of supplies to which this section applies as may be specified in the order, for a taxable person to be entitled to opt that, where he makes supplies of that description, VAT is to be charged by reference to the profit margin on the supplies, instead of by reference to their value.

(2) This section applies to the following supplies, that is to say—

(a) supplies of works of art, antiques or collectors' items;

(b) supplies of motor vehicles;

(c) supplies of second-hand goods; and

(d) any supply of goods through a person who acts as an agent, but in his own name, in relation to the supply.

(3) An option for the purposes of an order under this section shall be exercisable, and may be withdrawn, in such manner as may be required by such an order.

(4) Subject to subsection (7) below, the profit margin on a supply to which this section applies shall be taken, for the purposes of an order under this section, to be equal to the amount (if any) by which the price at which the person making the supply obtained the goods in question is exceeded by the price at which he supplies them.

(5) For the purposes of this section the price at which a person has obtained any goods and the price at which he supplies them shall each be calculated in accordance with the provisions contained in an order under this section; and such an order may, in particular, make provision stipulating the extent to which any VAT charged on a supply, acquisition or importation of any goods is to be treated as included in the price at which those goods have been obtained or are supplied.

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(6) An order under this section may provide that the consideration for any services supplied in connection with a supply of goods by a person who acts as an agent, but in his own name, in relation to the supply of the goods is to be treated for the purposes of any such order as an amount to be taken into account in computing the profit margin on the supply of the goods, instead of being separately chargeable to VAT as comprised in the value of the services supplied.

(7) An order under this section may provide for the total profit margin on all the goods of a particular description supplied by a person in any prescribed accounting period to be calculated by—

(a) aggregating all the prices at which that person obtained goods of that description in that period together with any amount carried forward to that period in pursuance of paragraph (d) below;

(b) aggregating all the prices at which he supplies goods of that description in that period;

(c) treating the total profit margin on goods supplied in that period as being equal to the amount (if any) by which, for that period, the aggregate calculated in pursuance of paragraph (a) above is exceeded by the aggregate calculated in pursuance of paragraph (b) above; and

(d) treating any amount by which, for that period, the aggregate calculated in pursuance of paragraph (b) above is exceeded by the aggregate calculated in pursuance of paragraph (a) above as an amount to be carried forward to the following prescribed accounting period so as to be included, for the period to which it is carried forward, in any aggregate falling to be calculated in pursuance of paragraph (a) above.

(8) An order under this section may—

(a) make different provision for different cases; and

(b) make provisions of the order subject to such general or special directions as may, in accordance with the order, be given by the Commissioners with respect to any matter to which the order relates.”

(2) Section 32 of that Act (relief on supply of certain second-hand goods) shall cease to have effect on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint.

Marginal Citations

M31 1994 c. 23.

25 Groups of companies.

(1) Section 43 of the [M32]Value Added Tax Act 1994 (groups of companies) shall be amended as follows.

(2) After subsection (1) there shall be inserted the following subsection—

“(1A) Paragraph (a) of subsection (1) above shall not apply in relation to any supply of goods or services by one member of a group to another unless both the

body making the supply and the body supplied continue to be members of that group until—

(a) in the case of a supply of goods which are to be removed in pursuance of the supply, a time after the removal;

(b) in the case of any other supply of goods, a time after the goods have been made available, in pursuance of the supply, to the body supplied; or

(c) in the case of a supply of services, a time after the services have been performed.";

and in subsection (1)(b), for "other supply" there shall be substituted " supply which is a supply to which paragraph (a) above does not apply and is a supply ".

(3) In subsection (5) (applications to be treated or to cease to be treated as members of a group etc.), for the words after paragraph (d) there shall be substituted—

"unless the Commissioners refuse the application under subsection (5A) below."

(4) After subsection (5) there shall be inserted the following subsection—

"(5A) If it appears to the Commissioners necessary to do so for the protection of the revenue, they may—

(a) refuse any application made to the effect mentioned in paragraph (a) or (c) of subsection (5) above; or

(b) refuse any application made to the effect mentioned in paragraph (b) or (d) of that subsection in a case that does not appear to them to fall within subsection (6) below."

(5) Subsection (2) above has effect in relation to—

(a) any supply made on or after 1st March 1995, and

(b) any supply made before that date in the case of which both the body making the supply and the body supplied continued to be members of the group in question until at least that date,

and subsections (3) and (4) above have effect in relation to applications made on or after the day on which this Act is passed.

Marginal Citations

M32 1994 c. 23.

PROSPECTIVE

[F1]26 Co-owners etc. of buildings and land.

. . . . . .

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

Textual Amendments

F1 S. 26 repealed (with effect in accordance with art. 1(2) of the amending S.I.) by The Value Added Tax (Buildings and Land) Order 2008 (S.I. 2008/1146), arts. 1(1), **5(1)** (with Sch. 2)

27 Set-off of credits.

(1) Section 81 of the [M33]Value Added Tax Act 1994 (which includes provision as to the setting off of credits) shall be amended as follows.

(2) For subsection (4) there shall be substituted the following subsections—

"(4A) Subsection (3) above shall not require any such amount as is mentioned in paragraph (a) of that subsection ("the credit") to be set against any such sum as is mentioned in paragraph (b) of that subsection ("the debit") in any case where—

(a) an insolvency procedure has been applied to the person entitled to the credit;

(b) the credit became due after that procedure was so applied; and

(c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.

(4B) Subject to subsection (4C) below, the following are the times when an insolvency procedure is to be taken, for the purposes of this section, to be applied to any person, that is to say—

(a) when a bankruptcy order, winding-up order, adminis-tration order or award of sequestration is made in relation to that person;

(b) when that person is put into administrative receivership;

(c) when that person, being a corporation, passes a resolution for voluntary winding up;

(d) when any voluntary arrangement approved in accordance with Part I or VIII of the Insolvency Act 1986, or Part II or Chapter II of Part VIII of the [M34]Insolvency (Northern Ireland) Order 1989, comes into force in relation to that person;

(e) when a deed of arrangement registered in accordance with the [M35]Deeds of Arrangement Act 1914 or Chapter I of Part VIII of that Order of 1989 takes effect in relation to that person;

(f) when that person's estate becomes vested in any other person as that person's trustee under a trust deed.

(4C) In this section references, in relation to any person, to the application of an insolvency procedure to that person shall not include—

(a) the making of a bankruptcy order, winding-up order, administration order or award of sequestration at a time when any such arrangement or deed as is mentioned in subsection (4B)(d) to (f) above is in force in relation to that person;

(b) the making of a winding-up order at any of the following times, that is to say—

(i) immediately upon the discharge of an administration order made in relation to that person;

(ii) when that person is being wound up voluntarily;

(iii) when that person is in administrative receivership;

or

(c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.

(4D) For the purposes of this section a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in subsection (4B) above to a person being put into administrative receivership shall be construed accordingly."

(3) In subsection (5) (definitions), for "subsection (4) above" there shall be substituted " this section ".

(4) This section shall have effect in relation to amounts becoming due from the Commissioners of Customs and Excise at times on or after the day on which this Act is passed.

Marginal Citations

M33 1994 c. 23.

M34 1986 c. 45.

M35 1914 c. 47.

28 Transactions treated as supplies for purposes of zero-rating etc.

(1) In section 30 of the [M36]Value Added Tax Act 1994 (zero-rated supplies) for subsection (5) (transactions described in Schedule 8 to the Act to be treated as supplies) there shall be substituted—

"(5) The export of any goods by a charity to a place outside the member States shall for the purposes of this Act be treated as a supply made by the charity—

(a) in the United Kingdom, and

(b) in the course or furtherance of a business carried on by the charity."

(2) This section shall have effect in relation to transactions occurring on or after the day on which this Act is passed.

Marginal Citations

M36 1994 c. 23.

29 Goods removed from warehousing regime.

In section 18 of the [M37]Value Added Tax Act 1994 (place and time of acquisition or supply of goods subject to warehousing regime) for subsection (5) (regulations about

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payment of VAT on supply of such goods) there shall be substituted the following subsections—

"(5) The Commissioners may by regulations make provision for enabling a taxable person to pay the VAT he is required to pay by virtue of paragraph (b) of subsection (4) above at a time later than that provided for by that paragraph.

(5A) Regulations under subsection (5) above may in particular make provision for either or both of the following—

(a) for the taxable person to pay the VAT together with the VAT chargeable on other supplies by him of goods and services;

(b) for the taxable person to pay the VAT together with any duty of excise deferment of which has been granted to him under section 127A of the [M38]Customs and Excise Management Act 1979;

and they may make different provision for different descriptions of taxable person and for different descriptions of goods."

Marginal Citations

M37 1994 c. 23.

M38 1979 c. 2.

30 Fuel supplied for private use.

(1) Section 57 of the [M39]Value Added Tax Act 1994 (determination of consideration for fuel supplied for private use) shall be amended as follows.

(2) The following subsection shall be inserted after subsection (1)—

"(1A) Where the prescribed accounting period is a period of 12 months, the consideration appropriate to any vehicle is that specified in relation to a vehicle of the appropriate description in the second column of Table A below."

(3) In subsection (2) (consideration where prescribed accounting period is period of 3 months) for "second" there shall be substituted " third ".

(4) In subsection (3) (consideration where prescribed accounting period is period of one month) for "third" there shall be substituted " fourth ".

(5) The following Table shall be substituted for Table A—

" TABLE A

Description of vehicle (Type of engine and cylinder capacity in cubic centimetres)	***12 month period***	***3 month period***	***1 month period***
	£	***£***	***£***
Diesel engine 2000 or less	605	151	50
More than 2000	780	195	65

Any other type of engine 1400 or less	670	167	55
More than 1400 but not more than 2000	850	212	70
More than 2000	1260	315	105”

(6) This section shall apply in relation to prescribed accounting periods beginning on or after 6th April 1995.

(7) Nothing in this section shall be taken to prejudice any practice by which the consideration appropriate to a vehicle is arrived at where a prescribed accounting period beginning before 6th April 1995 is a period of 12 months.

Marginal Citations
M39 1994 c. 23.

31 Appeals: payment of amounts shown in returns.

(1) In section 84(2) of the [M40]Value Added Tax Act 1994 (appeal not to be entertained unless amounts shown in returns paid, except in certain cases) the words “, except in the case of an appeal against a decision with respect to the matter mentioned in section 83(l),” shall be omitted.

(2) This section shall apply in relation to appeals brought after the day on which this Act is passed.

Marginal Citations
M40 1994 c. 23.

32 Penalties for failure to notify etc.

(1) In section 67 of the [M41]Value Added Tax Act 1994 (failure to notify and unauthorised issue of invoices) in subsection (4) (the specified percentage)—
- (a) in paragraph (a) for “10 per cent.” there shall be substituted “ 5 per cent. ”;
- (b) in paragraph (b) for “20 per cent.” there shall be substituted “ 10 per cent. ”; and
- (c) in paragraph (c) for “30 per cent.” there shall be substituted “ 15 per cent. ”

(2) Section 15(3A) of the Finance Act 1985 (provision which is repealed by the [M42]1994 Act and which corresponds to section 67(4)) shall have effect subject to the amendments made by subsection (1) above.

(3) Subject to subsection (4) below, subsections (1) and (2) above shall apply where a penalty is assessed on or after 1st January 1995.

(4) Subsections (1) and (2) above shall not apply in the case of a supplementary assessment if the original assessment was made before 1st January 1995.

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Marginal Citations
M41 1994 c. 23.
M42 1985 c. 54.

33 Correction of consolidation errors.

(1) The [M43]Value Added Tax Act 1994 shall have effect, and be deemed always to have had effect, as if it had been enacted as follows.

(2) Section 35(1) (refund of VAT to persons constructing certain buildings) shall be deemed to have been enacted with the word "building" substituted for the word " dwelling " in each place where it occurs.

(3) Paragraph 5(5) and (6)(b) of Schedule 4 and paragraph 7(b) of Schedule 6 (which contain references to paragraph 5(3) of Schedule 4 which should be references to paragraph 5(4) of that Schedule) shall be deemed to have been enacted—
(a) in the case of paragraph 5(5) and (6)(b), with "sub-paragraph (4) above" substituted for " sub-paragraph (3) above ", in each case; and
(b) in the case of paragraph 7(b), with "paragraph 5(4)" substituted for " paragraph 5(3) ".

(4) In paragraph 9 of Schedule 13 (which contains transitional provisions relating to bad debt relief), the following sub-paragraph shall be deemed to have been enacted instead of sub-paragraph (2) of that paragraph, that is to say—

"(2) Claims for refunds of VAT shall not be made in accordance with section 36 of this Act in relation to—
(a) any supply made before 1st April 1989; or
(b) any supply as respects which a claim is or has been made under section 22 of the 1983 Act."

(5) In paragraph 13 of Schedule 14 (consequential amendment of the [M44]Finance Act 1994), the following sub-paragraph shall be deemed to have been enacted instead of sub-paragraph (a) of that paragraph, that is to say—
"(a) in subsection (4) for "25 and 29 of the Finance Act 1985" and "40 of the Value Added Tax Act 1983" there shall be substituted, respectively, "85 and 87 of the Value Added Tax Act 1994" and "83 of that Act";".

Marginal Citations
M43 1994 c. 23.
M44 1994 c. 9.

Insurance premium tax

34 Insurance premium tax.

Schedule 5 to this Act (which relates to insurance premium tax) shall have effect.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
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PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

Income tax: charge, rates and reliefs

35 Charge and rates of income tax for 1995-96.

(1) Income tax shall be charged for the year 1995-96, and for that year—
- (a) the lower rate shall be 20 per cent.,
- (b) the basic rate shall be 25 per cent., and
- (c) the higher rate shall be 40 per cent.

(2) For the year 1995-96 section 1(2) of the Taxes Act 1988 shall apply as if the amount specified in paragraph (aa) were £3,200 (the lower rate limit); and accordingly section 1(4) of that Act (indexation) so far as relating to that paragraph shall not apply for the year 1995-96.

36 Personal allowance.

Section 257 of the Taxes Act 1988 (personal allowance) shall apply for the year 1995-96 as if—
- (a) the amount specified in subsection (2) (persons of 65 or upwards) were £4,630, and
- (b) the amount specified in subsection (3) (persons of 75 or upwards) were £4,800;

and accordingly section 257C(1) of that Act (indexation) so far as relating to section 257(2) and (3) shall not apply for the year 1995-96.

Corporation tax: charge and rate

37 Charge and rate of corporation tax for 1995.

Corporation tax shall be charged for the financial year 1995 at the rate of 33 per cent.

38 Small companies.

For the financial year 1995—
- (a) the small companies' rate shall be 25 per cent., and
- (b) the fraction mentioned in section 13(2) of the Taxes Act 1988 (marginal relief for small companies) shall be one fiftieth.

Taxation of income from land

39 Income chargeable under Schedule A.

(1) Section 15 of the Taxes Act 1988 (charge to Schedule A) shall have effect, except for the purpose of being applied by virtue of section 9 of that Act for the purposes of

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corporation tax, as if the following provisions were substituted for the Schedule A set out in subsection (1) of that section—

"SCHEDULE A

(1) Tax under this Schedule shall be charged on the annual profits or gains arising from any business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over any land in the United Kingdom.

(2) To the extent that any transaction entered into by any person is entered into for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over any land in the United Kingdom that transaction shall be taken for the purposes of this Schedule to have been entered into in the course of such a business as is mentioned in sub-paragraph (1) above.

(3) In this paragraph "receipts", in relation to any land, includes—
   (a) any payment in respect of any licence to occupy or otherwise to use any land or in respect of the exercise of any other right over land; and
   (b) rentcharges, ground annuals and feu duties and any other annual payments reserved in respect of, or charged on or issuing out of, that land.

   Paragraph 1 above does not apply to—
   (a) any profits or gains arising from any person's entitlement to receive any yearly interest;
   (b) any profits or gains arising from a person's occupation of any woodlands which are managed on a commercial basis and with a view to the realisation of profits; or
   (c) any profits or gains charged to tax under Schedule D by virtue of section 53 or 55 or arising from any person's entitlement to receive payments so charged under section 119 or 120;

   and that paragraph has effect subject to the provisions of section 98 with respect to tied premises.

(1) For the purposes of paragraph 1 above a right of any person to use a caravan or houseboat shall be deemed, where the use to which the caravan or houseboat may be put in pursuance of that right is confined to its use at only one location in the United Kingdom, to be a right the entitlement to confer which derives, in the case of the person conferring it, from an estate or interest in land in the United Kingdom.

(2) In sub-paragraph (1) above—

   "caravan" has the meaning given by section 29(1) of the [M45]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.

(1) In any case where—
   (a) a sum (whether rent or otherwise) is payable in respect of the use of any premises,
   (b) the tenant or other person entitled to the use of the premises is also entitled to the use, in connection therewith, of furniture, and

(c) any part of the sum payable in respect of the use of the premises would fall to be taken into account as a receipt in computing the profits or gains chargeable to tax under this Schedule,

any amount payable as part of, or in connection with, the sums payable in respect of the use of the premises, in so far as it is payable for the use of the furniture, shall also be so taken into account.

(2) Sub-paragraph (1) above does not apply to any amount which, apart from that sub-paragraph, would fall to be taken into account as a trading receipt in computing the profits or gains of any trade that consists in or involves the making available for use in any premises of any furniture.

(3) In sub-paragraph (1) above any reference to a sum shall be construed as including the value of any consideration, and references to a sum being payable shall be construed accordingly.

(4) In this paragraph "premises" includes a caravan or houseboat within the meaning of paragraph 3 above."

(2) For section 21 of that Act (persons chargeable under Schedule A) there shall be substituted the following section—

"**21 Persons chargeable and computation of amounts chargeable.**

(1) Income tax under Schedule A shall be charged on and paid by the persons receiving or entitled to the income in respect of which the tax is directed by the Income Tax Acts to be charged.

(2) Income tax under Schedule A shall be computed on the full amount of the profits or gains arising in the year of assessment.

(3) Except in so far as express provision to the contrary is made by the Income Tax Acts, the profits or gains of a Schedule A business and the amount of any loss incurred in such a business shall be computed as if Chapter V of Part IV applied in relation to the business as it applies in relation to a trade the profits or gains of which are chargeable to tax under Case I of Schedule D.

(4) All the businesses and transactions carried on or entered into by any particular person or partnership, so far as they are businesses or transactions the profits or gains of which are chargeable to tax under Schedule A, shall be treated for the purposes of that Schedule as, or as entered into in the course of carrying on, the one business.

(5) Sections 103 to 106, 108, 109A and 110 shall apply in the case of the permanent discontinuance of a business the profits or gains of which are chargeable to income tax under Schedule A as they apply in the case of the permanent discontinuance of a trade.

(6) Section 111 shall apply in relation to a Schedule A business carried on in partnership as it applies in the case of a partnership whose business was set up and commenced on or after 6th April 1995.

(7) Subsections (1) and (2) of section 113 shall apply in relation to a change in the persons engaged in carrying on a Schedule A business as they apply in relation to a change in the persons carrying on a trade set up and commenced on or after 6th April 1995.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(8) The preceding provisions of this section do not apply for the purposes of the Corporation Tax Acts."

(3) That Act and the other enactments specified in Schedule 6 to this Act shall have effect with the further modifications set out in that Schedule; and, without prejudice to section 20(2) of the [M46]Interpretation Act 1978 (construction of references), a reference in any enactment to another enactment shall have effect, where the other enactment is applied or modified by virtue of this section or that Schedule, as including a reference to that other enactment as so applied or modified.

(4) This section and Schedule 6 to this Act shall have effect, subject to subsection (5) below—

(a) for the year 1995-96 and subsequent years of assessment, and

(b) so far as they make provision having effect for the purposes of corporation tax, in relation to accounting periods ending on or after 31st March 1995.

(5) This section and Schedule 6 to this Act shall not have effect for the year 1995-96 in relation to the profits or gains or losses arising or accruing from any source to any person where—

(a) that source is a source in respect of the profits or gains from which that person is chargeable to tax for the year 1994-95 under Schedule A or Case VI of Schedule D; and

(b) that source ceases, in the course of the year 1995-96, to be a source from which any such profits or gains arise to that or any other person as would be chargeable to tax under Schedule A or Case VI of Schedule D if the amendments for which this section and Schedule 6 to this Act provide were to be disregarded; and

(c) that person is not a person who sets up and commences a Schedule A business in the course of the year 1995-96;

and the provisions of that Schedule relating to the [M47]Capital Allowances Act 1990 shall not apply for the [M48]year 1995-96 in the case of any person who has a source of income for the whole or any part of that year which is a source falling within paragraphs (a) and (b) above and who is a person to whom paragraph (c) above applies.

Marginal Citations

M45 1960 c. 62.
M46 1978 c. 30.
M47 1990 c. 1.
M48 1990 c. 1.

40 Non-residents and their representatives.

(1) The following section shall be inserted after section 42 of the Taxes Act 1988—

"42A Non-residents and their representatives.

(1) The Board may by regulations make provision for the charging, assessment, collection and recovery on or from prescribed persons falling within subsection (2) below of prescribed amounts in respect of the tax which is or

may become chargeable under Schedule A on the income of any person who has his usual place of abode outside the United Kingdom ("the non-resident").

(2) A person falls within this subsection if he is—

(a) a person by whom any such sums are payable to the non-resident as fall, or would fall, to be treated as receipts of a Schedule A business carried on by the non-resident; or

(b) a person who acts on behalf of the non-resident in connection with the management or administration of any such business.

(3) A person on whom any obligation to make payments to the Board is imposed by regulations under this section shall be entitled—

(a) to be indemnified by the non-resident for all such payments; and

(b) to retain, out of any sums otherwise due from him to the non-resident, or received by him on behalf of the non-resident, amounts sufficient for meeting any liabilities under the regulations to make payments to the Board which have been discharged by that person or to which he is subject.

(4) Without prejudice to the generality of the preceding provisions of this section, regulations under this section may include any or all of the following provisions, that is to say—

(a) provision for the amount of any payment to be made to the Board in respect of the tax on any income to be calculated by reference to such factors as may be prescribed;

(b) provision for the determination in accordance with any such regulations of the period for which, the circumstances in which and the times at which any payments are to be made to the Board;

(c) provision for requiring the payment of interest on amounts which are not paid to the Board at the times required under any such regulations;

(d) provision as to the certificates to be given in prescribed circumstances to the non-resident by a person falling within subsection (2) above, and as to the particulars to be included in any such certificate;

(e) provision for the making of repayments of tax to the non-resident and for such repayments to be made in prescribed cases to persons falling within subsection (2) above;

(f) provision for the payment of interest by the Board on sums repaid under any such regulations;

(g) provision for the rights and obligations arising under any such regulations to depend on the giving of such notices and the making of such claims and determinations as may be prescribed;

(h) provision for the making and determination of applications for requirements of any such regulations not to apply in certain cases, and for the variation or revocation, in prescribed cases, of the determinations made on such applications;

(i) provision for appeals with respect to questions arising under any such regulations;

(j) provision requiring prescribed persons falling within subsection (2) (b) above to register with the Board;

(k) provision requiring persons registered with the Board and other prescribed persons falling within subsection (2) above to make returns

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and supply prescribed information to the Board and to make available prescribed books, documents and other records for inspection on behalf of the Board;

(l) provision for the partnership, as such, to be treated as the person falling within subsection (2) above in a case where a liability to make any payment under the regulations arises from amounts payable or things done in the course of a business carried on by any persons in partnership;

(m) provision which, in relation to payments to be made by virtue of this section in respect of any tax or to any sums retained in respect of such payments, applies (with or without modifications) any enactment or subordinate legislation having effect apart from this section with respect to cases in which tax is or is treated as deducted from any income.

(5) Interest required to be paid by any regulations under this section shall be paid without deduction of tax and shall not be taken into account in computing any income, profits or losses for any tax purposes.

(6) Regulations under this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate;

and the provision that may be made by virtue of paragraph (b) above may include provision which, in connection with any other provision made by any such regulations, modifies the operation in any case of section 59A of the Management Act or Schedule 21 to the Finance Act 1995 (payments on account of income tax).

(7) In this section—

"prescribed" means prescribed by, or determined by an officer of the Board in accordance with, regulations made by the Board under this section; and

"subordinate legislation" has the same meaning as in the [M49]Interpretation Act 1978.

(8) This section shall have effect—

(a) as if references in this section to a Schedule A business included references to any activities which would be comprised in a Schedule A business if they were carried on by an individual, rather than by a company; and

(b) in relation to companies that carry on such activities, as if the reference in subsection (1) above to tax which is or may become chargeable under Schedule A included a reference to tax which is or may become chargeable under Case VI of Schedule D."

(2) In the Table in section 98 of the Management Act (penalties in respect of certain information provisions), after the entry in the first column relating to section 42 of the Taxes Act 1988 and after the entry in the second column relating to section 41(2) of the Taxes Act 1988, there shall, in each case, be inserted the following entry—

"regulations under section 42A;".

(3) Section 43 of the Taxes Act 1988 (payments to non-residents of amounts chargeable under Schedule A) shall not have effect in relation to any payment made on or after 6th April 1996.

Marginal Citations

M49 1978 c. 30.

41 Income from overseas property.

(1) In section 65 of the Taxes Act 1988 (general provision about Cases IV and V assessments), after subsection (2) there shall be inserted the following subsections—

"(2A) Subject to section 65A and to the provisions of section 41(5) to (9) of the Finance Act 1995 (which contain transitional provisions for the years 1995-96 to 1997-98), income tax chargeable under Case V of Schedule D on income which—

(a) arises from any business carried on for the exploitation, as a source of rents or other receipts, of any estate, interest or rights in or over any land outside the United Kingdom; and

(b) is not income immediately derived by any person from the carrying on by him of any trade, profession or vocation, either solely or in partnership,

shall be computed in accordance with the rules which are applicable under the Income Tax Acts to the computation of the profits or gains of a Schedule A business.

(2B) The provisions of Schedule A shall apply for determining for the purposes of subsection (2A) above whether income falls within paragraph (a) of that subsection as they would apply if—

(a) the land in question were in the United Kingdom, or

(b) 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;

and any provision of the Income Tax Acts in pursuance of which there is deemed in certain cases to be a Schedule A business in relation to any land in the United Kingdom shall have effect, where the corresponding circumstances arise with respect to land outside the United Kingdom, as if, for the purposes of that subsection, there were deemed to be a business such as is mentioned in that paragraph.";

and in subsection (4) of that section for "Subsections (1), (2) and (3)" there shall be substituted " Subsections (1) to (3) ".

(2) After section 65 of that Act there shall be inserted the following section—

"**65A Case V income from land overseas etc.**

(1) Notwithstanding anything in section 21(4), subsection (2A) of section 65 shall require the rules referred to in that subsection to be applied separately in relation to—

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(a) any business which is treated for the purposes of that subsection as if it were a Schedule A business, and

(b) any actual Schedule A business of the person chargeable,

as if, in each case, that business were the only Schedule A business carried on by that person.

(2) Section 21(3), so far as applied by virtue of section 65(2A) for the purposes of the computation of the amount of any income chargeable to tax under Case V of Schedule D, shall have effect as if it required sections 80 and 81 to be disregarded in the computation of the amount of any profits or gains, or losses, of a Schedule A business.

(3) Sections 503 and 504 of this Act and section 29 of the 1990 Act (furnished holiday accommodation) shall be disregarded in the computation in accordance with section 65(2A) of any income chargeable to tax under Case V of Schedule D.

(4) Section 65(2A) and this section shall not apply for the purposes of corporation tax."

(3) In section 161 of the [M50]Capital Allowances Act 1990 (interpretative provisions), after subsection (2) there shall be inserted the following subsection—

"(2A) This Act applies in accordance with subsection (2A) of section 65 of the principal Act in relation to cases where a person is treated for the purposes of that subsection as if any actual or deemed business of his were a Schedule A business as it applies in relation to cases where a person is carrying on a Schedule A business."

(4) In Schedule 8 to the [M51]Taxation of Chargeable Gains Act 1992 (which contains provision excluding from the charge to capital gains tax premiums taxed under Schedule A), after paragraph 7 there shall be inserted the following paragraph—

"7A References in paragraphs 5 to 7 above to an amount brought into account as a receipt of a Schedule A business shall include references to any amount which, in accordance with section 65(2A) of the Taxes Act, is brought into account for the purposes of Case V of Schedule D as if it were such a receipt."

(5) Where any income falling within paragraphs (a) and (b) of subsection (2A) of section 65 of the Taxes Act 1988 which is chargeable to tax for any year of assessment under Case V of Schedule D would (apart from this section) be computed, wholly or partly, on an amount of income arising in the year preceding the year of assessment, that subsection shall have effect as if the income chargeable to tax for that year under Schedule A were to be computed, to the same extent, by reference to the year preceding the year of assessment (instead of being computed in accordance with the rule in section 21(2) of that Act), and as if the rules applied by section 65(2A) of that Act had effect accordingly.

(6) Notwithstanding anything in section 21(4) of the Taxes Act 1988, for the years 1995-96 and 1996-97 subsection (2A) of section 65 shall be treated as requiring the rules referred to in that subsection to be applied, in a case where a person is chargeable under Case V of Schedule D in respect of the rents or other receipts from more than one

property situated outside the United Kingdom, separately in relation to each property outside the United Kingdom—

(a) as if a separate Schedule A business were carried on in relation to each property, and

(b) in the case of each such business, as if that business were the only Schedule A business carried on by the person chargeable.

(7) Where subsection (5) above applies for the computation of the income from any property for any year of assessment, then for that year no allowance or charge under the [M52]Capital Allowances Act 1990 shall be made on any person by virtue of this section for any purpose connected with the taxation of the income from that property.

(8) Section 379A of the Taxes Act 1988 (Schedule A losses) shall not apply by virtue of section 65(2A) of that Act for the computation of any income chargeable to tax under Case V of Schedule D for any year of assessment before the year 1998-99.

(9) Section 65(2A) of the Taxes Act 1988 shall not apply in any case which, if the land in question were in the United Kingdom, would be a case falling within section 39(5) above.

(10) Subject to subsections (5) to (9) above, this section has effect for the year 1995-96 and subsequent years of assessment.

Marginal Citations

M50 1990 c. 1.

M51 1992 c. 12.

M52 1990 c. 1.

42 Abolition of interest relief for commercially let property.

(1) In section 355 of the Taxes Act 1988, paragraph (b) of subsection (1)(relief for property that is commercially let) shall cease to have effect.

(2) That Act shall be further amended as follows—

(a) in section 353(1B), in the words after paragraph (b), for “sections 237(5)(b) and 355(4)” there shall be substituted “ section 237(5)(b) ”;

(b) in section 355, for the words “subsection (1)(a) above”, wherever occurring, there shall be substituted “ subsection (1) above ”;

(c) in sections 356(1) and 356B(5), for “355(1)(a)” there shall be substituted “ 355(1) ”;

(d) in sections 357A(7) and 357B(1)(c) and (6), for the words from “and is such” onwards there shall be substituted “ by virtue of section 354 ”; and

(e) in section 357C—

(i) in subsection (1)(e), for the words from “and would have been” onwards, and

(ii) in subsection (2), for the words from “and was such” onwards,

there shall, in each case, be substituted “ by virtue of section 354 ”.

(3) Subject to subsections (4) to (6) below, this section shall have effect in relation to any payment of interest made on or after 6th April 1995.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(4) Where—

(a) the profits or gains of any source of income that ceases in the course of the year 1995-96 are taxed, by virtue of section 39(5) or 41(9) above, without reference to the Schedule A that has effect by virtue of section 39(1) above, and

(b) that source of income includes any land, caravan or house-boat with respect to which the condition specified in section 355(1)(b) of the Taxes Act 1988 would be satisfied in the case of any loan,

this section shall not apply to any payment of interest on that loan which is made before the time in the year 1995-96 when that source of income ceases.

(5) Subject to paragraph 19(3) of Schedule 6 to this Act, no relief in respect of any payment of interest before 6th April 1995 shall be given under section 355(4) of the Taxes Act 1988 (income against which relief available) against any income for the year 1995-96 or any subsequent year of assessment except in a case where the income falls within subsection (4)(a) above.

(6) Schedule 7 to this Act (which makes amendments in relation to corporation tax which are consequential on this section) shall have effect in relation to accounting periods ending after 31st March 1995.

Benefits in kind

43 Cars available for private use.

(1) After section 157 of the Taxes Act 1988 there shall be inserted—

"**157A Cars available for private use: cash alternative, etc.**

Where, in any year in the case of a person employed in employment to which this Chapter applies—

(a) a car is made available as mentioned in section 157, and

(b) an alternative to the benefit of the car is offered,

the mere fact that the alternative is offered shall not make the benefit chargeable to tax under section 19(1)."

(2) In section 158 of the Taxes Act 1988 (car fuel) in subsection (1) for the words "which is made available as mentioned in section 157," there shall be substituted " the benefit of which is chargeable to tax under section 157 as his income, ".

(3) In section 167 of the Taxes Act 1988 (employments to which Chapter II of Part V of that Act applies) at the beginning of subsection (2) (calculation of emoluments) there shall be inserted"Subject to subsection (2B) below" and after that subsection there shall be inserted—

"(2B) Where, in any relevant year—

(a) a car is made available as mentioned in section 157, and

(b) an alternative to the benefit of the car is offered,

subsection (2)(a) above shall have effect as if, in connection with the benefit of the car, the amount produced under subsection (2C) below together with any amounts falling within (2D) below were the amounts to be included in the emoluments.

(2C) The amount produced under this subsection is the higher of—

(a) the amount equal to the aggregate of—

(i) whatever is the cash equivalent (ascertained in accordance with Schedule 6) of the benefit of the car; and

(ii) whatever is the cash equivalent (ascertained in accordance with section 158) of the benefit of any fuel provided, by reason of the employee's employment, for the car; and

(b) the amount which would be chargeable to tax under section 19(1), if the benefit of the car were chargeable under that section by reference to the alternative offered to that benefit.

(2D) The amounts which fall within this subsection are those which would come into charge under section 141, 142 or 153 if the section in question applied in connection with the car."

(4) This section shall have effect for the year 1995-96 and subsequent years of assessment.

44 Cars: accessories for the disabled.

(1) At the end of section 168A(11) of the Taxes Act 1988 (mobile telephones not accessories for purpose of determining price of car) there shall be inserted " or equipment which falls within section 168AA ".

(2) After section 168A of the Taxes Act 1988 there shall be inserted—

"**168AA Equipment to enable disabled person to use car.**

(1) Equipment falls within this section if it is designed solely for use by a chronically sick or disabled person.

(2) Equipment also falls within this section if—

(a) at the time when the car is first made available to the employee, the employee holds a disabled person's badge, and

(b) the equipment is made available for use with the car because the equipment enables him to use the car in spite of the disability entitling him to hold the badge.

(3) In subsection (2) above "disabled person's badge" means a badge—

(a) which is issued to a disabled person under section 21 of the Chronically Sick and Disabled Persons Act 1970 or section 14 of the [M53][M54]Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (or which has effect as if so issued), and

(b) which is not required to be returned to the issuing authority under or by virtue of the section in question.

(4) Subsection (12) of section 168A applies for the purposes of this section as it applies for the purposes of that."

(3) This section shall have effect for the year 1995-96 and subsequent years of assessment.

Marginal Citations

M53 1978 c. 53.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

M54 1970 c. 44.

45 Beneficial loan arrangements: replacement loans.

(1) In Chapter II of Part V of the Taxes Act 1988 (benefits in kind, &c.), section 160 (beneficial loan arrangements) is amended as follows.

(2) In subsection (5) (interpretation), paragraph (b) (references to loan to include any replacement loan) shall cease to have effect.

(3) After subsection (3) (deemed continuance of employment to which that Chapter applies) insert—

"(3A) Where subsection (3) above applies, a loan which—

(a) is applied directly or indirectly to the replacement of any such loan as is mentioned in paragraph (a) of that subsection, and

(b) would, if the employment referred to in that subsection had not terminated or, as the case may be, ceased to be employment to which this Chapter applies, have been a loan the benefit of which was obtained by reason of that employment,

shall, unless it is a loan the benefit of which was obtained by reason of other employment, be treated as a loan the benefit of which was obtained by reason of that employment.".

(4) In paragraph 4 of Schedule 7 to the Taxes Act 1988 (loans obtained by reason of employment: normal method of calculation of benefit (averaging)), make the present provision sub-paragraph (1) and after it insert—

"(2) Where an employment-related loan is replaced, directly or indirectly—

(a) by a further employment-related loan, or

(b) by a non-employment-related loan which in turn is, in the same year of assessment or within 40 days thereafter, replaced, directly or indirectly, by a further employment-related loan,

sub-paragraph (1) above applies as if the replacement loan or, as the case may be, each of the replacement loans were the same loan as the first-mentioned employment-related loan.

(3) For the purposes of sub-paragraph (2) above "employment-related loan" means a loan the benefit of which is obtained by reason of a person's employment (and "non-employment-related loan" shall be construed accordingly).

(4) The references in sub-paragraph (2) above to a further employment-related loan are to an employment-related loan the benefit of which is obtained by reason of—

(a) the same or other employment with the person who is the employer in relation to the first-mentioned employment-related loan, or

(b) employment with a person who is connected (within the meaning of section 839) with that employer.".

(5) The above amendments have effect for the year 1995-96 and subsequent years of assessment and apply to loans whether made before or after the passing of this Act.

Chargeable gains

46 Relief on re-investment: property companies etc.

(1) Chapter IA of Part V of the [M55]Taxation of Chargeable Gains Act 1992 (roll-over relief on re-investment) shall be amended as follows.

(2) In section 164A (relief on re-investment for individuals) the following subsection shall be inserted after subsection (12)—

"(13) Where an acquisition is made on or after 29th November 1994 section 164H shall be ignored in deciding whether it is an acquisition of a qualifying investment for the purposes of this section."

(3) In section 164F (failure of conditions of relief) the following subsection shall be inserted after subsection (2)—

"(2A) In deciding for the purposes of subsection (2)(b) above whether a company is a qualifying company at a time falling on or after 29th November 1994 section 164H shall be ignored."

(4) In section 164I (qualifying trades) the following subsection shall be inserted after subsection (4)—

"(4A) In deciding whether a trade complies with this section at a time falling on or after 29th November 1994 paragraphs (g) and (h) of subsection (2) above shall be ignored."

Marginal Citations
M55 1992 c. 12.

47 Relief on re-investment: amount of relief, etc.

(1) Chapter IA of Part V of the [M56]Taxation of Chargeable Gains Act 1992 (roll-over relief on re-investment) shall be amended as follows.

(2) In section 164A after subsection (13) (inserted by section 46 above) there shall be inserted—

"(14) This section is subject to sections 164FF and 164FG."

(3) In section 164F after subsection (10B) there shall be inserted—

"(10C) Subsection (10A) above is subject to sections 164FF and 164FG."

(4) After section 164F there shall be inserted—

"**164FF Qualifying investment acquired from husband or wife.**

(1) This section applies where—

(a) a claim is made under subsection (2) of section 164A or subsection (10A) of section 164F; and

(b) the qualifying investment as respects which the claim is made is acquired by a disposal to which section 58 applies.

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(2) The amounts by reference to which the reduction is determined shall be treated as including the amount of the consideration which the claimant would under this Act be treated as having given for the qualifying investment if he had, immediately upon acquiring the qualifying investment, disposed of it on a disposal which was not a no gain/no loss disposal.

(3) Where—

(a) the claimant makes a disposal, which is not a no gain/no loss disposal, of the qualifying investment, and

(b) any disposal after 31st March 1982 and before he acquired the qualifying investment was a no gain/no loss disposal,

nothing in paragraph 1 of Schedule 3, section 35 or section 55 shall operate to defeat the reduction falling to be made under section 164A(2)(b) or, as the case may be, section 164F(10A)(b) in the consideration for the acquisition of the qualifying investment.

(4) Where—

(a) the claimant makes a disposal of the qualifying investment and that disposal is a disposal to which section 58 applies, and

(b) any disposal after 31st March 1982 and before the claimant acquired the qualifying investment was a no gain/no loss disposal,

nothing in the application of paragraph 1 of Schedule 3, section 35 or section 55 to the person to whom the claimant makes the disposal of the qualifying investment shall operate to defeat the reduction made under section 164A(2)(b) or, as the case may be, section 164F(10A)(b).

(5) For the purposes of this section a no gain/no loss disposal is one on which by virtue of any of the enactments specified in section 35(3)(d) neither a gain nor a loss accrues."

(5) After section 164FF (inserted by subsection (4) above) there shall be inserted—

"**164FG Multiple claims.**

(1) This section applies where—

(a) a reduction is claimed by a person as respects a qualifying investment under subsection (2) of section 164A or subsection (10A) of section 164F; and

(b) any other reduction has been or is being claimed by that person under either subsection as respects that investment.

(2) Subject to subsection (5) below, the reductions shall be treated as claimed separately in such sequence as the claimant elects or an officer of the Board in default of an election determines.

(3) In relation to a later claim as respects the qualifying investment under either subsection, the subsection shall have effect as if each of the relevant amounts were reduced by the aggregate of any reductions made in the amount or value of the consideration for the acquisition of that investment by virtue of any earlier claims as respects that investment.

(4) In subsection (3) above "the relevant amounts" means—

(a) if the claim is under section 164A(2), the amounts referred to in subsection (2)(a)(ii) and (iii) and any amount required to be included by virtue of section 164FF(2); and

(b) if the claim is under section 164F(10A), the amounts referred to in subsection (10A)(a)(i) and (ii) and any amount required to be included by virtue of section 164FF(2).

(5) A claim that has become final shall be treated as made earlier than any claim that has not become final.

(6) For the purposes of subsection (5) above, a claim becomes final when—

(a) it may no longer be amended, or

(b) it is finally determined,

whichever occurs first."

(6) Subsection (4) above (and subsections (1) to (3) above so far as relating to subsection (4) above) shall apply to a claim as respects a qualifying investment if—

(a) the qualifying investment is acquired on or after 20th June 1994; or

(b) the claim is under section 164A(2) and relates to a disposal on or after that day; or

(c) the claim is under subsection (10A) of section 164F and relates to a gain which (apart from that subsection) would accrue on or after that day.

(7) Subsection (5) above (and subsections (1) to (3) above so far as relating to subsection (5) above) shall apply to a claim as respects a qualifying investment if—

(a) the qualifying investment is acquired on or after 20th June 1994; or

(b) the claim is under section 164A(2) and relates to a disposal on or after that day; or

(c) the claim is under subsection (10A) of section 164F and relates to a gain which (apart from that subsection) would accrue on or after that day; or

(d) there is another claim as respects that qualifying investment which is under section 164A(2) and which relates to a disposal on or after that day; or

(e) there is another claim as respects that qualifying investment which is under subsection (10A) of section 164F and which relates to a gain which (apart from that subsection) would accrue on or after that day.

(8) Any such adjustment as is appropriate in consequence of this section may be made (whether by discharge or repayment of tax, the making of an assessment or otherwise).

Marginal Citations

M56 1992 c. 12.

48 Roll-over relief and groups of companies.

(1) In section 175 of the [M57]Taxation of Chargeable Gains Act 1992 (replacement of business assets by members of a group), after subsection (2) there shall be inserted the following subsections—

"(2A) Section 152 shall apply where—

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies,

(b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and

(c) the claim is made by both companies,

as if both companies were the same person.

(2B) Section 152 shall apply where a company which is a member of a group of companies but is not carrying on a trade—

(a) disposes of assets (or an interest in assets) used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade, or

(b) acquires assets (or an interest in assets) taken into use, and used only, for those purposes,

as if the first company were carrying on that trade.

(2C) Section 152 shall not apply if the acquisition of, or of the interest in, the new assets—

(a) is made by a company which is a member of a group of companies, and

(b) is one to which any of the enactments specified in section 35(3)(d) applies."

(2) In section 247 of the [M58]Taxation of Chargeable Gains Act 1992 (roll-over relief on compulsory acquisition of land), after subsection (5) there shall be inserted the following subsection—

"(5A) Subsections (2A) and (2C) of section 175 shall apply in relation to this section as they apply in relation to section 152 (but as if the reference in subsection (2C) to the new assets were a reference to the new land)."

(3) Subject to subsection (4) below—

(a) the subsection inserted into section 175 of the [M59]Taxation of Chargeable Gains Act 1992 by subsection (1) above as subsection (2A) shall be deemed always to have had effect; and

(b) the earlier enactments corresponding to that section shall be deemed to have contained provision to the same effect as that subsection (2A).

(4) Paragraph (c) of that subsection (2A) shall not apply unless the claim is made on or after 29th November 1994.

(5) The subsection inserted into section 175 of the [M60]Taxation of Chargeable Gains Act 1992 by subsection (1) above as subsection (2B) shall apply where the disposal or the [M61]acquisition is on or after 29th November 1994; and the subsection so inserted as subsection (2C) shall apply where the acquisition is on or after that date.

(6) The subsection inserted into section 247 of the [M62]Taxation of Chargeable Gains Act 1992 by subsection (2) above shall apply—

(a) so far as it relates to section 175(2A), where the disposal or the acquisition is on or after 29th November 1994; and

(b) so far as it relates to section 175(2C), where the acquisition is on or after that date.

Marginal Citations

M57 1992 c. 12.
M58 1992 c. 12.
M59 1992 c. 12.
M60 1992 c. 12.
M61 1992 c. 12.
M62 1992 c. 12.

49 De-grouping charges.

(1) In section 179 of the [M63]Taxation of Chargeable Gains Act 1992 (de-grouping charges), after subsection (2) there shall be inserted the following subsections—

"(2A) Where—

(a) a company that has ceased to be a member of a group of companies ("the first group") acquired an asset from another company which was a member of that group at the time of the acquisition,

(b) subsection (2) above applies in the case of that company's ceasing to be a member of the first group so that subsection (1) above does not have effect as respects the acquisition of that asset,

(c) the company that made the acquisition subsequently ceases to be a member of another group of companies ("the second group"), and

(d) there is a connection between the two groups,

subsection (1) above shall have effect in relation to the company's ceasing to be a member of the second group as if it had been the second group of which both companies had been members at the time of the acquisition.

(2B) For the purposes of subsection (2A) above there is a connection between the first group and the second group if, at the time when the chargeable company ceases to be a member of the second group, the company which is the principal company of that group is under the control of—

(a) the company which is the principal company of the first group or, if that group no longer exists, which was the principal company of that group when the chargeable company ceased to be a member of it;

(b) any company which controls the company mentioned in paragraph (a) above or which has had it under its control at any time in the period since the chargeable company ceased to be a member of the first group; or

(c) any company which has, at any time in that period, had under its control either—

(i) a company which would have fallen within paragraph (b) above if it had continued to exist, or

(ii) a company which would have fallen within this paragraph (whether by reference to a company which would have fallen within that paragraph or to a company or series of companies falling within this sub-paragraph)."

(2) After subsection (9) of that section there shall be inserted the following subsection—

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"(9A) Section 416(2) to (6) of the Taxes Act (meaning of control) shall have effect for the purposes of subsection (2B) above as it has effect for the purposes of Part XI of that Act; but a person carrying on a business of banking shall not for the purposes of that subsection be regarded as having control of any company by reason only of having, or of the consequences of having exercised, any rights of that person in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business."

(3) This section has effect in relation to a company in any case in which the time of the company's ceasing to be a member of the second group is on or after 29th November 1994.

Marginal Citations
M63 1992 c. 12.

50 Corporate bonds.

In section 117 of the [M64]Taxation of Chargeable Gains Act 1992 (qualifying corporate bonds) the following subsection shall be inserted after subsection (2)—

"(2A) Where it falls to be decided whether at any time on or after 29th November 1994 a security (whenever issued) is a corporate bond for the purposes of this section, a security which falls within paragraph 2(2)(c) of Schedule 11 to the [M65]Finance Act 1989 (quoted indexed securities) shall be treated as not being a corporate bond within the definition in subsection (1) above."

Marginal Citations
M64 1992 c. 12.
M65 1989 c. 26.

Insurance companies and friendly societies

51 Companies carrying on life assurance business.

Schedule 8 to this Act has effect in relation to companies carrying on life assurance business, as follows—

Part I contains general amendments,

Part II contains amendments of provisions relating to overseas life insurance companies, and

Part III contains supplementary provisions.

52 Meaning of "insurance company".

(1) In section 431(2) of the Taxes Act 1988 (interpretation of provisions relating to insurance companies), for the definition of "insurance company" there shall be substituted the following definition—

""insurance company" means any company which is—

(a) a company to which Part II of the [M66]Insurance Companies Act 1982 applies, or

(b) an EC company carrying on insurance business through a branch or agency in the United Kingdom,

and in this definition "EC company" and "insurance business" have the same meanings as in that Act of 1982;".

(2) In section 168(7) of the Finance Act 1993 (meaning of "insurance company" for the purposes of provisions relating to exchange gains and losses), for the words from "a company" onwards there shall be substituted " any company which carries on any insurance business (within the meaning of the [M67]Insurance Companies Act 1982). "

(3) In section 177(1) of the [M68]Finance Act 1994 (interpretation of provisions relating to financial instruments), in the definition of "insurance company", for the words "to which Part II of the Insurance Companies Act 1982 applies" there shall be substituted " which carries on any insurance business (within the meaning of the [M69]Insurance Companies Act 1982); ".

(4) In section 59(3)(b) of the Inheritance Tax Act 1984 (interests of insurance companies acquired before 14th March 1975 to be qualifying interests in possession), for the words from "if" onwards there shall be substituted "if the company is an insurance company (within the meaning of Chapter I of Part XII of the [M70]Taxes Act 1988) and either—

(i) is authorised to carry on long term business under section 3 or 4 of the [M71]Insurance Companies Act 1982; or

(ii) carries on through a branch or agency in the United Kingdom the whole or any part of any long term business which it is authorised to carry on by an authorisation granted outside the United Kingdom for the purposes of the first long term insurance Directive;

and in paragraph (b) above "long term business" and "the first long term insurance Directive" have the same meanings as in that Act of 1982. "

(5) Subsections (1) to (3) above shall have effect in relation to any accounting period ending after 30th June 1994; and subsection (4) above shall have effect for the purposes of the making, on an anniversary or other occasion after that date, of any charge to tax under section 64 or 65 of the [M72]Inheritance Tax Act 1984.

Marginal Citations

M66 1982 c. 50.
M67 1993 c. 34.
M68 1994 c. 9.
M69 1994 c. 9.
M70 1984 c. 51.
M71 1982 c. 50.
M72 1984 c. 51.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
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53 Transfer of life insurance business.

(1) The amendments specified in Schedule 9 to this Act (which relate to enactments referring to the transfer of the whole or part of the long term business of an insurance company) shall have effect.

(2) This section and that Schedule shall have effect in relation to any transfers sanctioned or authorised after 30th June 1994.

54 Friendly societies.

Schedule 10 to this Act (which makes provision about friendly societies) shall have effect.

Insurance policies

55 Qualifying life insurance policies.

(1) Subject to subsections (2) and (3) below—

(a) paragraph 21 of Schedule 15 to the Taxes Act 1988 (certification of policies and of standard forms etc.) shall not apply, in relation to any time on or after 5th May 1996, for determining whether a policy is or would be a qualifying policy at that time; and

(b) no certificate may be issued under that paragraph at any time on or after that date except, in the case of a certificate under sub-paragraph (1)(a) of that paragraph, in relation to a time before that date.

(2) Subsection (1) above shall not affect the right of any person to bring or continue with an appeal under paragraph 21(3) of that Schedule against either a refusal before 5th May 1996 to certify any policy or a refusal on or after that date to certify any policy in relation to times before that date.

(3) A certificate issued—

(a) before 5th May 1996 in pursuance of paragraph 21(1)(a) of that Schedule, or

(b) in pursuance of a determination on an appeal determined after that date by virtue of subsection (2) above,

shall, in relation to any time on or after that date or, as the case may be, the date on which it is issued, be conclusive evidence that the policy to which it relates is (subject to any variation of the policy) a qualifying policy.

(4) Paragraph 22 of that Schedule (certificates from body issuing policy) shall cease to have effect in relation to any time on or after 5th May 1996.

(5) Paragraph 24 of that Schedule (policies issued by non-resident companies) shall have effect in relation to times on or after 5th May 1996—

(a) with the substitution of the following sub-paragraphs for sub-paragraph (2)—

"(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 5th May 1996, 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.”; and

(b) with the omission, in sub-paragraph (3), of the word “first” and of sub-paragraph (4).

(6) In paragraph 25 of that Schedule (policies substituted for policies issued by non-resident companies), for sub-paragraph (2) there shall be substituted the following sub-paragraph—

“(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

(c) in paragraph 17(3)(c) the words “either by a branch or agency 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 5th May 1996, as including a reference to being capable of being certified as such a policy.”

(7) In paragraph 27(1) of that Schedule, except so far as it has effect for the purposes of any case to which paragraph 21 of that Schedule applies by virtue of the preceding provisions of this section, for “paragraphs 21 and” there shall be substituted “ paragraph ”.

(8) In section 553 of the Taxes Act 1988 (which contains provisions referring to paragraph 24(3) or (4) of Schedule 15 to that Act)—

(a) in subsection (2), for the words from “neither” to “fulfilled” there shall be substituted “ the conditions in paragraph 24(3) of Schedule 15 to this Act are not fulfilled ”; and

(b) in subsection (7), for “either sub-paragraph (3) or sub-paragraph (4)” there shall be substituted “ sub-paragraph (3) ”;

but this subsection shall not affect the operation of Chapter II of Part XIII of that Act in relation to any policy in relation to which the conditions in paragraph 24(4) of Schedule 15 to that Act, as it then had effect, were fulfilled at times in accounting periods before those in relation to which section 103 of the Finance Act 1993 (which repealed section 445 of the [M73]Taxes Act 1988) had effect.

Marginal Citations

M73 1993 c. 34.

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56 Foreign life policies etc.

(1) In section 547 of the Taxes Act 1988 (charging of certain gains arising in connection with insurance policies etc.), in subsection (5A), for "subsection (7)" there shall be substituted " subsection (6A) or (7) "; and after subsection (6) of that section there shall be inserted the following subsection—

"(6A) Subsection (6) above shall not apply in relation to a gain treated as arising in connection with a contract for a life annuity in any case where the Board are satisfied, on a claim made for the purpose—

(a) that the company liable to make payments under the contract ("the grantor") has not, at any time ("a relevant time") between the date on which it entered into the contract and the date on which the gain is treated as arising, been resident in the United Kingdom;

(b) that at all relevant times the grantor has—

(i) as a body deriving its status as a company from the laws of a territory outside the United Kingdom,

(ii) as a company with its place of management in such a territory, or

(iii) as a company falling, under the laws of such a territory, to be regarded, for any other reason, as resident or domiciled in that territory,

been within a charge to tax under the laws of that territory;

(c) that that territory is a territory within the European Economic Area when the gain is treated as arising;

(d) that the charge to tax mentioned in paragraph (b) above has at all relevant times been 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 contracts of the same class as the contract in question to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the grantor;

(e) that the rate of tax fixed for the purposes of that charge in relation to the amounts subject to tax in the hands of the grantor (not being amounts arising or accruing in respect of investments that are of a particular description for which a special relief or exemption is generally available) has at all relevant times been at least 20 per cent.; and

(f) that none of the grantor's obligations under the contract in question to pay any sum or to meet any other liability arising under that contract is or has been the subject, in whole or in part, of any reinsurance contract relating to anything other than the risk that the annuitant will die or will suffer any sickness or accident;

and subsection (6) above shall also not apply where the case would fall within paragraphs (a) to (f) above if references to a relevant time did not include references to any time when the contract fell to be regarded as forming part of so much of any basic life assurance and general annuity business the income and gains of which were subject to corporation tax as was being carried on through a branch or agency in the United Kingdom."

(2) In section 553 of that Act (non-resident policies and off-shore capital redemption policies), in subsection (6), for "subsection (7)" there shall be substituted " subsections

(6A) and (7) "; and after that subsection there shall be inserted the following subsection—

"(6A) Paragraphs (a) and (b) of subsection (6) above do not apply to a gain in a case where the Board are satisfied, on a claim made for the purpose—

(a) that the insurer has not, at any time ("a relevant time") between the making of the insurance and the date on which the gain is treated as arising, been resident in the United Kingdom;

(b) that at all relevant times the insurer has—

(i) as a body deriving its status as a company from the laws of a territory outside the United Kingdom,

(ii) as a company with its place of management in such a territory, or

(iii) as a company falling, under the laws of such a territory, to be regarded, for any other reason, as resident or domiciled in that territory,

been within a charge to tax under the laws of that territory;

(c) that that territory is a territory within the European Economic Area when the gain is treated as arising;

(d) that the charge to tax mentioned in paragraph (b) above has at all relevant times been 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 of the same class as the policy in question to be treated as sums or liabilities falling to be met out of amounts subject to tax in the hands of the insurer;

(e) that the rate of tax fixed for the purposes of that charge in relation to the amounts subject to tax in the hands of the insurer (not being amounts arising or accruing in respect of investments that are of a particular description for which a special relief or exemption is generally available) has at all relevant times been at least 20 per cent.; and

(f) that none of the insurer's obligations under the policy in question to pay any sum or to meet any other liability arising under that policy is or has been the subject, in whole or in part, of any reinsurance contract relating to anything other than the risk that the person whose life is insured by the policy will die or will suffer any sickness or accident;

and paragraphs (a) and (b) of subsection (6) above shall also not apply where the case would fall within paragraphs (a) to (f) above if references to a relevant time did not include references to any time when the conditions required to be fulfilled in relation to that time for the purposes of subsection (7) below were fulfilled."

(3) For the purpose of securing that section 547(5) of the Taxes Act 1988 has effect in other cases (in addition to those specified in sections 547(6A) and 553(6A)) where it appears to the Board appropriate for section 547(6) or 553(6) to be disapplied by reference to tax chargeable under the laws of a territory outside the United Kingdom, the Board may by regulations provide that the cases described in subsection (6A) of each of sections 547 and 553 of that Act are to be treated as including cases, being cases which would not otherwise fall within the subsection, where the conditions specified

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in the regulations are fulfilled in relation to any time (including one before the making of the regulations).

(4) This section shall apply in relation to any gain arising on or after 29th November 1994 and in relation to any gain arising before that date the income tax on which has not been the subject of an assessment that became final and conclusive before that date. [M74M75]

Marginal Citations

M74 1982 c. 50.

M75 1982 c. 50.

57 Duties of insurers in relation to life policies etc.

(1) In section 552 of the Taxes Act 1988 (duties of insurers of life policies etc.), the following subsection shall be inserted after subsection (2) in relation to times on or after the day on which this Act is passed—

"(2A) 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, this section 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 assignment, is an event of which the notification mentioned in subsection (1) above was given before the transfer,

as if the policy or contract had been issued, entered into or effected by the transferee."

(2) In that section, the following subsections shall be inserted after subsection (4)—

"(4A) The Board may by regulations—

(a) make provision as to the form which is to be taken by certificates under this section (including provision enabling such a certificate to be delivered otherwise than in the form of a document); and

(b) make such provision as they think fit for securing that they are able to ascertain whether there has been or is likely to be any contravention of the requirements of this section and to verify any such certificate.

(4B) Regulations by virtue of subsection (4A)(b) above may include, in particular, provision requiring persons to whom premiums under any policy are or have at any time been payable to supply information to the Board and to make available books, documents and other records for inspection on behalf of the Board.

(4C) Regulations under subsection (4A) above may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Board to be appropriate."

(3) In the second column of the Table in section 98 of the Management Act (penalties in respect of certain information provisions), for the entry relating to section 552 of the Taxes Act 1988 there shall be substituted the following entries—

"section 552(1) to (4);

regulations under section 552(4A);".

Pensions

58 Personal pensions: income withdrawals.

Schedule 11 to this Act has effect for the purpose of enabling income withdrawals to be made under a personal pension scheme where the purchase of an annuity is deferred.

59 Pensions: meaning of insurance company etc.

(1) Part XIV of the Taxes Act 1988 (pension schemes etc.) shall be amended as follows.

(2) In section 591 (discretionary approval of retirement benefits schemes) the following subsection shall be substituted for subsection (3)—

"(3) In subsection (2)(g) above "insurance company" has the meaning given by section 659B."

(3) In section 599 (charge to tax: commutation of entire pension in special circumstances) the following subsection shall be substituted for subsection (8)—

"(8) In subsection (7) above "insurance company" has the meaning given by section 659B."

(4) In section 630 (personal pension schemes: interpretation) the following definition shall be substituted for the definition of "authorised insurance company"—

""authorised insurance company" has the meaning given by section 659B."

(5) The following sections shall be inserted after section 659A—

"**659B Definition of insurance company.**

(1) In sections 591(2)(g) and 599(7) "insurance company" means one of the following—

(a) a person authorised under section 3 or 4 of the [M76]Insurance Companies Act 1982 (or any similar previous enactment) to carry on long term business;

(b) a friendly society carrying on long term business;

(c) an EC company falling within subsection (3) below.

(2) In Chapter IV of this Part "authorised insurance company" means a company that is an insurance company within the meaning given by subsection (1) above.

(3) An EC company falls within this subsection if it—

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(a) lawfully carries on long term business, or lawfully provides long term insurance, in the United Kingdom, and

(b) fulfils the requirement under subsection (5) below or that under subsection (6) below or that under subsection (7) below.

(4) For the purposes of subsection (3) above an EC company—

(a) lawfully carries on long term business in the United Kingdom if it does so through a branch in respect of which such of the requirements of Part I of Schedule 2F to the [M77]Insurance Companies Act 1982 as are applicable have been complied with;

(b) lawfully provides long term insurance in the United Kingdom if such of those requirements as are applicable have been complied with in respect of the insurance.

(5) The requirement under this subsection is that—

(a) a person who falls within subsection (8) below is for the time being appointed by the company to be responsible for securing the discharge of the duties mentioned in subsection (9) below, and

(b) his identity and the fact of his appointment have been notified to the Board by the company.

(6) The requirement under this subsection is that there are for the time being other arrangements with the Board for a person other than the company to secure the discharge of those duties.

(7) The requirement under this subsection is that there are for the time being other arrangements with the Board designed to secure the discharge of those duties.

(8) A person falls within this subsection if—

(a) he is not an individual and has a business establishment in the United Kingdom, or

(b) he is an individual and is resident in the United Kingdom.

(9) The duties are the following duties that fall to be discharged by the company—

(a) any duty to pay by virtue of section 203 and regulations made under it tax charged under section 597(3);

(b) any duty to pay tax charged under section 599(3) and (7);

(c) any duty imposed by regulations made under section 605;

(d) any duty to pay by virtue of section 203 and regulations made under it tax charged under section 648A(1).

(10) For the purposes of this section—

(a) references to an EC company shall be construed in accordance with section 2(6) of the [M78]Insurance Companies Act 1982;

(b) references to long term business shall be construed in accordance with section 1(1) of that Act;

(c) references to the provision of long term insurance in the United Kingdom shall be construed in accordance with section 96A(3A) of that Act;

(d) a friendly society is a friendly society within the meaning of the [M79]Friendly Societies Act 1992 (including 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).

659C Effect of appointment or arrangements under section 659B.

(1) This section shall have effect where—

(a) in accordance with section 659B(5) a person is for the time being appointed to be responsible for securing the discharge of duties, or

(b) in accordance with section 659B(6) there are for the time being arrangements for a person to secure the discharge of duties.

(2) In such a case the person concerned—

(a) shall be entitled to act on the company's behalf for any of the purposes of the provisions relating to the duties;

(b) shall secure (where appropriate by acting on the company's behalf) the company's compliance with and discharge of the duties;

(c) shall be personally liable in respect of any failure of the company to comply with or discharge any such duty as if the duties imposed on the company were imposed jointly and severally on the company and the person concerned."

Marginal Citations

M76 1982 c. 50.
M77 1982 c. 50.
M78 1982 c. 50.
M79 1992 c. 40.

60 Application of section 59.

(1) Section 59(2) above and the new section 659B, so far as relating to section 591(2)(g), shall apply in relation to a scheme not approved by virtue of section 591 before the day on which this Act is passed.

(2) Section 59(3) above and the new section 659B, so far as relating to section 599(7), shall apply where tax is charged under section 599 on or after the day on which this Act is passed.

(3) Section 59(4) above and the new section 659B, so far as relating to Chapter IV of Part XIV, shall apply in relation to a scheme not approved under that Chapter before the day on which this Act is passed.

(4) Subsection (5) below applies where—

(a) a scheme is approved under Chapter IV of Part XIV before the day on which this Act is passed,

(b) on or after that day the person who established the scheme proposes to amend it, and

(c) the scheme as proposed to be amended would make provision such that, if the scheme had not been approved before that day, section 59(4) above and the new section 659B (so far as relating to that Chapter) would allow the Board to approve it.

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(5) The Board may at their discretion approve the amendment notwithstanding anything in Chapter IV of Part XIV, and if the amendment is made—

(a) section 59(4) above and the new section 659B, so far as relating to that Chapter, shall apply in relation to the scheme, and

(b) any question as to the validity of the Board's approval of the scheme shall be determined accordingly.

61 Cessation of approval of certain retirement benefits schemes.

(1) After section 591B of the Taxes Act 1988 there shall be inserted—

"**591C Cessation of approval: tax on certain schemes.**

(1) Where an approval of a scheme to which this section applies ceases to have effect, tax shall be charged in accordance with this section.

(2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent. on an amount equal to the value of the assets which immediately before the date of the cessation of the approval of the scheme are held for the purposes of the scheme (taking that value as it stands immediately before that date).

(3) Subject to section 591D(4), the person liable for the tax shall be the administrator of the scheme in his capacity as such.

(4) This section applies to a retirement benefits scheme in respect of which either of the conditions set out below is satisfied.

(5) The first condition is satisfied in respect of a scheme if, immediately before the date of the cessation of the approval of the scheme, the number of individuals who are members of the scheme is less than twelve.

(6) The second condition is satisfied in respect of a scheme if at any time within the period of one year ending with the date of the cessation of the approval of the scheme, a person who is or has been a controlling director of a company which has contributed to the scheme is a member of the scheme.

(7) For the purposes of subsection (6) above a person is a controlling director of a company if he is a director of it and within section 417(5)(b) in relation to it.

591D Section 591C: supplementary.

(1) For the purposes of section 591C(2) the value of an asset is, subject to subsection (2) below, its market value, construing "market value" in accordance with section 272 of the 1992 Act.

(2) Where an asset held for the purposes of a scheme is a right or interest in respect of any money lent (directly or indirectly) to any person mentioned in subsection (3) below, the value of the asset shall be treated as being the amount owing (including any unpaid interest) on the money lent.

(3) The persons are—

(a) any employer who has at any time contributed to the scheme;

(b) any company connected with such an employer;

(c) any member of the scheme;

(d) any person connected with any member of the scheme.

(4) Where the administrator of the scheme is constituted by persons who include a person who is an approved independent trustee in relation to a scheme, that person shall not be liable for tax chargeable by virtue of section 591C.

(5) A person is an approved independent trustee in relation to a scheme only if he is—

(a) approved by the Board to act as a trustee of the scheme; and

(b) not connected with—

(i) a member of the scheme;

(ii) any other trustee of the scheme; or

(iii) an employer who has contributed to the scheme.

(6) For the purposes of section 596A(9) income and gains accruing to a scheme shall not be regarded as brought into charge to tax merely because tax is charged in relation to the scheme in accordance with section 591C.

(7) The reference in section 591C(1) to an approval of a scheme ceasing to have effect is a reference to—

(a) the scheme ceasing to be an approved scheme by virtue of section 591A(2);

(b) the approval of the scheme being withdrawn under section 591B(1); or

(c) the approval of the scheme no longer applying by virtue of section 591B(2);

and any reference in section 591C to the date of the cessation of the approval of the scheme shall be construed accordingly.

(8) For the purposes of section 591C and this section a person is a member of a scheme at a particular time if at that time a benefit—

(a) is being provided under the scheme, or

(b) may be so provided,

in respect of any past or present employment of his.

(9) Section 839 shall apply for the purposes of this section."

(2) After section 239 of the [M80]Taxation of Chargeable Gains Act 1992 there shall be inserted—

" Retirement benefits schemes

239A Cessation of approval of certain schemes.

(1) This section applies where tax is charged in accordance with section 591C of the Taxes Act (tax on certain retirement benefits schemes whose approval ceases to have effect).

(2) For the purposes of this Act the assets which at the relevant time are held for the purposes of the scheme—

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(a) shall be deemed to be acquired at that time for a consideration equal to the amount on which tax is charged by virtue of section 591C(2) of the Taxes Act by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at that time; but

(b) shall not be deemed to be disposed of by any person at that time;

and in this subsection "the relevant time" means the time immediately before the date of the cessation of the approval of the scheme.

(3) Expressions used in subsection (2) above and in section 591C of the Taxes Act have the same meanings in that subsection as in that section."

(3) This section shall apply in relation to any approval of a retirement benefits scheme which ceases to have effect on or after 2nd November 1994 other than an approval ceasing to have effect by virtue of a notice given before that day under section 591B(1) of the Taxes Act 1988.

Marginal Citations

M80 1992 c. 12.

Saving and investment: general

62 Follow-up TESSAs.

(1) The Taxes Act 1988 shall be amended as follows.

(2) After section 326B there shall be inserted—

"**326BB Follow-up TESSAs.**

(1) Subsection (2) below applies where—

(a) an individual, within the period of six months from the day on which a tax-exempt special savings account held by him matured, opens another account ("a follow-up account") which is a tax-exempt special savings account at the time it is opened; and

(b) the total amount deposited in the matured account, before it matured, exceeded £3,000.

(2) In relation to the follow-up account section 326B(2)(a) shall apply as if the reference to £3,000 were a reference to the total amount so deposited.

(3) For the purposes of subsection (1) above a tax-exempt special savings account held by an individual matures when a period of five years throughout which the account was a tax-exempt special savings account comes to an end.

(4) An account is not connected with another account for the purposes of section 326A(8) merely because one of them is a follow-up account."

(3) In section 326C(1) (regulations about tax-exempt special savings accounts) after paragraph (c) there shall be inserted—

"(cc) providing that subsection (2) of section 326BB does not apply in relation to a follow-up account unless at such time as may be

prescribed by the regulations the building society or institution with which the account is held has a document of a prescribed description containing such information as the regulations may prescribe;

(cd) requiring building societies and other institutions operating tax-exempt special savings accounts which mature to give to the individuals who have held them certificates containing such information as the regulations may prescribe;".

(4) In section 326C(1)(e) for "and 326B" there shall be substituted " 326B and 326BB ".

(5) In section 326C after subsection (1) there shall be inserted—

"(1A) In paragraph (cc) of subsection (1) above "document" includes a record kept by means of a computer; and regulations made by virtue of that paragraph may prescribe different documents for different cases.

(1B) Subsection (3) of section 326BB applies for the purposes of subsection (1) above as it applies for the purposes of subsection (1) of that section."

(6) In section 326C(2) for "section 326B" there shall be substituted " sections 326B and 326BB ".

63 TESSAs: European institutions.

(1) Section 326A of the [M81]Taxes Act 1988 (tax-exempt special savings accounts) shall be amended as mentioned in subsections (2) and (3) below.

(2) In subsection (4) (account must be with building society or institution authorised under Banking Act 1987) after "1987" there shall be inserted " or a relevant European institution ".

(3) The following subsection shall be inserted after subsection (9)—

"(10) In this section "relevant European institution" means an institution which—

(a) is a European authorised institution within the meaning of the [M82]Banking Co-ordination (Second Council Directive) Regulations 1992, and

(b) may accept deposits in the United Kingdom in accordance with those regulations."

(4) The following section shall be inserted after section 326C of the Taxes Act 1988 (regulations about tax-exempt special savings accounts etc.)—

"**326D Tax-exempt special savings accounts: tax representatives.**

(1) Without prejudice to the generality of section 326C(1), the Board may make regulations providing that an account held with a relevant European institution shall not be a tax-exempt special savings account at the time it is opened, or shall cease to be a tax-exempt special savings account at a given time, unless at the time concerned one of the following three requirements is fulfilled.

(2) The first requirement is that—

(a) a person who falls within subsection (5) below is appointed by the institution to be responsible for securing the discharge of prescribed duties which fall to be discharged by the institution, and

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(b) his identity and the fact of his appointment have been notified to the Board by the institution.

(3) The second requirement is that there are other arrangements with the Board for a person other than the institution to secure the discharge of such duties.

(4) The third requirement is that there are other arrangements with the Board designed to secure the discharge of such duties.

(5) A person falls within this subsection if—

(a) he is not an individual and has a business establishment in the United Kingdom, or

(b) he is an individual and is resident in the United Kingdom.

(6) Different duties may be prescribed as regards different institutions or different descriptions of institution.

(7) The regulations may provide that—

(a) the first requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;

(b) the appointment of a person in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(8) The regulations may provide that—

(a) the second requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;

(b) arrangements made in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(9) The regulations may provide as mentioned in subsection (10) below as regards a case where—

(a) in accordance with the first requirement a person is at any time appointed to be responsible for securing the discharge of duties, or

(b) in accordance with the second requirement there are at any time arrangements for a person to secure the discharge of duties.

(10) In such a case the regulations may provide that the person concerned—

(a) shall be entitled to act on the institution's behalf for any of the purposes of the provisions relating to the duties;

(b) shall secure (where appropriate by acting on the institution's behalf) the institution's compliance with and discharge of the duties;

(c) shall be personally liable in respect of any failure of the institution to comply with or discharge any such duty as if the duties imposed on the institution were imposed jointly and severally on the institution and the person concerned.

(11) Regulations under this section may include provision that section 326B(3) shall have effect as if the reference to subsection (1) included a reference to the regulations.

(12) In this section "prescribed" means prescribed by the regulations."

(5) Subsection (2) above shall apply in relation to accounts opened after such day as the Board may by order made by statutory instrument appoint.

Commencement Information

I9 S. 63 in force at Royal Assent but the day appointed for the application of s. 63(2) in relation to tax-exempt special savings accounts opened after that day is 1.1.1996 by S.I. 1995/3236, **art. 2**

Marginal Citations

M81 1987 c. 22.

M82 S.I. 1992/3218.

64 Personal equity plans: tax representatives.

(1) The following section shall be inserted after section 333 of the Taxes Act 1988 (personal equity plans)—

"333A Personal equity plans: tax representatives.

(1) Regulations under section 333 may include provision that a European institution cannot be a plan manager unless one of the following three requirements is fulfilled.

(2) The first requirement is that—

(a) a person who falls within subsection (5) below is for the time being appointed by the institution to be responsible for securing the discharge of prescribed duties which fall to be discharged by the institution, and

(b) his identity and the fact of his appointment have been notified to the Board by the institution.

(3) The second requirement is that there are for the time being other arrangements with the Board for a person other than the institution to secure the discharge of such duties.

(4) The third requirement is that there are for the time being other arrangements with the Board designed to secure the discharge of such duties.

(5) A person falls within this subsection if—

(a) he is not an individual and has a business establishment in the United Kingdom, or

(b) he is an individual and is resident in the United Kingdom.

(6) Different duties may be prescribed as regards different institutions or different descriptions of institution.

(7) The regulations may provide that—

(a) the first requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;

(b) the appointment of a person in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(8) The regulations may provide that—

(a) the second requirement shall not be treated as fulfilled unless the person concerned is of a prescribed description;

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(b) arrangements made in pursuance of that requirement shall be treated as terminated in prescribed circumstances.

(9) The regulations may provide as mentioned in subsection (10) below as regards a case where—

(a) in accordance with the first requirement a person is for the time being appointed to be responsible for securing the discharge of duties, or

(b) in accordance with the second requirement there are for the time being arrangements for a person to secure the discharge of duties.

(10) In such a case the regulations may provide that the person concerned—

(a) shall be entitled to act on the institution's behalf for any of the purposes of the provisions relating to the duties;

(b) shall secure (where appropriate by acting on the institution's behalf) the institution's compliance with and discharge of the duties;

(c) shall be personally liable in respect of any failure of the institution to comply with or discharge any such duty as if the duties imposed on the institution were imposed jointly and severally on the institution and the person concerned.

(11) In this section—

(a) "European institution" has the same meaning as in the [M83]Banking Co-ordination (Second Council Directive) Regulations 1992;

(b) "prescribed" means prescribed by the regulations.

(12) The preceding provisions of this section shall apply in the case of a relevant authorised person as they apply in the case of a European institution; and "relevant authorised person" here means a person who is an authorised person for the purposes of the [M84]Financial Services Act 1986 by virtue of section 31 of that Act."

(2) In section 151 of the [M85]Taxation of Chargeable Gains Act 1992 (personal equity plans) the following subsection shall be inserted after subsection (2)—

"(2A) Section 333A of the Taxes Act (personal equity plans: tax representatives) shall apply in relation to regulations under subsection (1) above as it applies in relation to regulations under section 333 of that Act."

Marginal Citations

M83 S.I. 1992/3218.

M84 1986 c. 60.

M85 1992 c. 12.

65 Contractual savings schemes.

Schedule 12 to this Act (which contains provisions about contractual savings schemes) shall have effect.

66 Enterprise investment scheme: ICTA amendments.

(1) Chapter III of Part VII of the Taxes Act 1988 as it has effect in relation to shares issued on or after 1st January 1994 (the enterprise investment scheme) shall be amended as follows.

(2) In section 292 (which denies relief where parallel trades are involved) the following subsection shall be inserted after subsection (4)—

"(5) This section shall not apply where the shares mentioned in subsection (1) above are issued on or after 29th November 1994."

(3) In section 293 (qualifying companies) the following subsection shall be inserted after subsection (8A) (which defines "the relevant period" for certain purposes)—

"(8B) In arriving at the relevant period for the purposes of sections 294 to 296 any time falling on or after 29th November 1994 shall be ignored; and subsection (8A) above shall have effect subject to the preceding provisions of this subsection."

(4) In section 305 (reorganisation of share capital) the following subsections shall be inserted after subsection (4)—

"(5) Subsection (2) above shall not apply where the reorganisation occurs on or after 29th November 1994.

(6) Subsection (2) above shall not apply by virtue of subsection (3) above where the rights are disposed of on or after 29th November 1994."

67 Enterprise investment scheme: TCGA amendments.

Schedule 13 to this Act (which contains amendments relating to chargeable gains as regards the enterprise investment scheme) shall have effect.

68 Business expansion scheme: ICTA amendments

(1) Chapter III of Part VII of the Taxes Act 1988 as it has effect in relation to shares issued before 1st January 1994 (the business expansion scheme) shall be amended as follows.

(2) In section 289 (the relief) the following subsection shall be inserted after subsection (12) (which defines "the relevant period" for the purposes of the Chapter) —

"(12A) In arriving at the relevant period for the purposes of sections 294 to 296 any time falling on or after 29th November 1994 shall be ignored; and subsection (12) above shall have effect subject to the preceding provisions of this subsection."

(3) In section 305 (reorganisation of share capital) the following subsections shall be inserted after subsection (4)—

"(5) Subsection (2) above shall not apply where the reorganisation occurs on or after 29th November 1994.

(6) Subsection (2) above shall not apply by virtue of subsection (3) above where the rights are disposed of on or after 29th November 1994."

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69 Business expansion scheme: TCGA amendments.

In section 150 of the [M86]Taxation of Chargeable Gains Act 1992 (business expansion schemes) the following subsections shall be inserted after subsection (8) (which disapplies provisions about exchanges, reconstructions or amalgamations in certain circumstances)—

"(8A) Subsection (8) above shall not have effect to disapply section 135 or 136 where—

(a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed,

(b) the new shares are issued on or after 29th November 1994 and after the end of the relevant period, and

(c) the condition in subsection (8B) below is fulfilled.

(8B) The condition is that at some time before the issue of the new shares—

(a) the company issuing them issued eligible shares, and

(b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act and in accordance with that section.

(8C) In subsection (8A) above—

(a) "new holding" shall be construed in accordance with sections 126, 127, 135 and 136;

(b) "relevant period" means the period found by applying section 289(12)(a) of the Taxes Act by reference to the company issuing the shares referred to in subsection (8) above and by reference to those shares."

Marginal Citations

M86 1992 c. 12.

Venture capital trusts

70 Approval of companies as trusts.

(1) After section 842 of the Taxes Act 1988 (investment trusts) there shall be inserted the following section—

"**842AA Venture capital trusts.**

(1) In the Tax Acts "venture capital trust" means a company which is not a close company and which is for the time being approved for the purposes of this section by the Board; and an approval for the purposes of this section shall have effect as from such time as may be specified in the approval, being a time which, if it falls before the time when the approval is given, is no earlier than—

(a) in the case of an approval given in the year 1995-96, 6th April 1995; or

(b) in any other case, the time when the application for approval was made.

(2) Subject to the following provisions of this section, the Board shall not approve a company for the purposes of this section unless it is shown to their satisfaction in relation to the most recent complete accounting period of the company—

(a) that the company's income in that period has been derived wholly or mainly from shares or securities;

(b) that at least 70 per cent. by value of the company's investments has been represented throughout that period by shares or securities comprised in qualifying holdings of the company;

(c) that at least 30 per cent. by value of the company's qualifying holdings has been represented throughout that period by holdings of eligible shares;

(d) that no holding in any company, other than a venture capital trust or a company which would qualify as a venture capital trust but for paragraph (e) below, has at any time during that period represented more than 15 per cent. by value of the company's investments;

(e) 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) have throughout that period been quoted on the Stock Exchange; and

(f) that the company has not retained more than 15 per cent. of the income it derived in that period from shares and securities.

(3) Where, in the case of any company, the Board are satisfied that the conditions specified in subsection (2) above are fulfilled in relation to the company's most recent complete accounting period, they shall not approve the company for the purposes of this section unless they are satisfied that the conditions will also be fulfilled in relation to the accounting period of the company which is current when the application for approval is made.

(4) The Board may approve a company for the purposes of this section notwithstanding that conditions specified in subsection (2) above are not fulfilled with respect to that company in relation to its most recent complete accounting period if they are satisfied—

(a) in the case of any of the conditions specified in paragraphs (a), (d), (e) and (f) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to the accounting period of the company which is current when the application for approval is made or in relation to its next accounting period;

(b) in the case of any of the conditions specified in paragraphs (b) and (c) of that subsection which are not fulfilled, that the conditions will be fulfilled in relation to an accounting period of the company beginning no more than three years after the time when they give their approval or, if earlier, when the approval takes effect; and

(c) in the case of every condition which is not fulfilled but with respect to which the Board are satisfied as mentioned in paragraph (a) or (b) above, that the condition will continue to be fulfilled in relation to accounting periods following the period in relation to which they are satisfied as so mentioned.

(5) For the purposes of subsection (2)(b) to (d) above the value of any holding of investments of any description shall be taken—

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(a) unless—

(i) it is added to by a further holding of investments of the same description, or

(ii) any such payment is made in discharge, in whole or in part, of any obligation attached to the holding as (by discharging the whole or any part of that obligation) increases the value of the holding,

to be its value when acquired, and

(b) where it is so added to or such a payment is made, to be its value immediately after the most recent addition or payment.

(6) The Board may withdraw their approval of a company for the purposes of this section wherever it at any time appears to them that there are reasonable grounds for believing—

(a) that the conditions for the approval of the company were not fulfilled at the time of the approval;

(b) in a case where the Board were satisfied for the purposes of subsection (3) or (4) above that a condition would be fulfilled in relation to any period, that that condition is one which will not be or, as the case may be, has not been fulfilled in relation to that period;

(c) in the case of a company approved in pursuance of subsection (4) above, that the company has not fulfilled such other conditions as may be prescribed by regulations made by the Board in relation to, or to any part of, the period of three years mentioned in subsection (4)(b) above; or

(d) that the company's most recent complete accounting period or its current one is a period in relation to which there has been or will be a failure of a condition specified in subsection (2) above to be fulfilled, not being a failure which, at the time of the approval, was allowed for in relation to that period by virtue of subsection (4) above.

(7) Subject to subsections (8) and (9) below, the withdrawal of the approval of any company for the purposes of this section shall have effect as from the time when the notice of the withdrawal is given to the company.

(8) If, in the case of a company approved for the purposes of this section in exercise of the power conferred by subsection (4) above, the approval is withdrawn at a time before all the conditions specified in subsection (2) above have been fulfilled with respect to that company in relation either—

(a) to a complete accounting period of twelve months, or

(b) to successive complete accounting periods constituting a continuous period of twelve months or more,

the withdrawal of the approval shall have the effect that the approval shall, for all purposes, be deemed never to have been given.

(9) A notice withdrawing the approval of a company for the purposes of this section may specify a time falling before the time mentioned in subsection (7) above as the time as from which the withdrawal is to be treated as having taken effect for the purposes of section 100 of the 1992 Act; but the time so specified shall be no earlier than the beginning of the accounting period in relation to which it appears to the Board that the condition by reference to which the approval is withdrawn has not been, or will not be, fulfilled.

(10) Notwithstanding any limitation on the time for making assessments, an assessment to any tax chargeable in consequence of the withdrawal of any approval given for the purposes of this section may be made at any time before the end of the period of three years beginning with the time when the notice of withdrawal is given.

(11) The following provisions of section 842 shall apply as follows for the purposes of this section as they apply for the purposes of that section, that is to say—

(a) subsections (1A) and (2) of that section shall apply in relation to subsection (2)(d) above (but with the omission of subsection (2)(a) of that section) as they apply in relation to subsection (1)(b) of that section;

(b) subsections (2A) to (2C) of that section shall apply in relation to subsection (2)(f) above as they apply in relation to subsection (1)(e) of that section; and

(c) without prejudice to their application in relation to provisions applied by paragraph (a) or (b) above, subsections (3) and (4) of that section shall apply in relation to any reference in this section to a holding or an addition to a holding as they apply in relation to any such reference in that section.

(12) In this section, and in the provisions of section 842 as applied for the purposes of this section, "securities", in relation to any company—

(a) includes any liability of the company in respect of a loan (whether secured or not) which has been made to the company on terms that do not allow any person to require the loan to be repaid, or any stock or security relating to that loan to be re-purchased or redeemed, within the period of five years from the making of the loan or, as the case may be, the issue of the stock or security; but

(b) does not include any stock or security relating to a loan which has been made to the company on terms which allow any person to require the loan to be repaid, or the stock or security to be re-purchased or redeemed, within that period.

(13) Schedule 28B shall have effect for construing the references in this section to a qualifying holding.

(14) In this section "eligible shares" means shares in a company which are comprised in the ordinary share capital of the company and carry no present or future preferential right to dividends or to the company's assets on its winding up and no present or future preferential right to be redeemed."

(2) Schedule 14 to this Act (meaning of "qualifying holdings") shall be inserted, before Schedule 29 to the Taxes Act 1988, as Schedule 28B to that Act, and shall be construed accordingly.

71 Income tax relief.

(1) In Chapter IV of Part VII of the Taxes Act 1988 (special provisions), after section 332 there shall be inserted the following section—

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"**332A Venture capital trusts: relief.**

Schedule 15B shall have effect for conferring relief from income tax in respect of investments in venture capital trusts and distributions by such trusts."

(2) Schedule 15 to this Act (relief in respect of holdings in a venture capital trust) shall be inserted, before Schedule 16 to the Taxes Act 1988, as Schedule 15B to that Act, and shall be construed accordingly.

(3) In the Table in section 98 of the Management Act (penalties in respect of certain information provisions)—

(a) after the entry in the first column relating to paragraph 14(5) of Schedule 15 to the Taxes Act 1988 there shall be inserted the following entry—

"Schedule 15B, paragraph 5(2);"

and

(b) after the entry in the second column relating to paragraph 14(4) of Schedule 15 to the Taxes Act 1988 there shall be inserted the following entry—

"Schedule 15B, paragraph 5(1);".

(4) This section has effect for the year 1995-96 and subsequent years of assessment.

72 Capital gains.

(1) The [M87]Taxation of Chargeable Gains Act 1992 shall be amended as follows.

(2) In section 100(1) (exemption from charge for gains accruing to authorised unit trusts, investment trusts etc.), after "investment trust" there shall be inserted " a venture capital trust ".

(3) In Chapter III of Part IV (miscellaneous provisions relating to securities), after section 151 there shall be inserted the following sections—

"**151A Venture capital trusts: reliefs.**

(1) A gain or loss accruing to an individual on a qualifying disposal of any ordinary shares in a company which—

(a) was a venture capital trust at the time when he acquired the shares, and

(b) is still such a trust at the time of the disposal,

shall not be a chargeable gain or, as the case may be, an allowable loss.

(2) For the purposes of this section a disposal of shares is a qualifying disposal in so far as—

(a) it is made by an individual who has attained the age of eighteen years;

(b) the shares disposed of were not acquired in excess of the permitted maximum for any year of assessment; and

(c) that individual acquired those shares 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.

(3) Schedule 5C shall have effect for providing relief in respect of gains invested in venture capital trusts.

(4) In determining for the purposes of this section whether a disposal by any person of shares in a venture capital trust relates to shares acquired in excess of the permitted maximum for any year of assessment, it shall be assumed (subject to subsection (5) below)—

(a) as between shares acquired by the same person on different days, that those acquired on an earlier day are disposed of by that person before those acquired on a later day; and

(b) as between shares acquired by the same person on the same day, that those acquired in excess of the permitted maximum are disposed of by that person before he disposes of any other shares acquired on that day.

(5) It shall be assumed for the purposes of subsection (1) above that a person who disposes of shares in a venture capital trust disposes of shares acquired at a time when it was not such a trust before he disposes of any other shares in that trust.

(6) References in this section to shares in a venture capital trust acquired in excess of the permitted maximum for any year of assessment shall be construed in accordance with the provisions of Part II of Schedule 15B to the Taxes Act; and the provisions of that Part of that Schedule shall apply (with subsections (4) and (5) above) for identifying the shares which are, in any case, to be treated as representing shares acquired in excess of the permitted maximum.

(7) In this section and section 151B "ordinary shares", in relation to a company, means any shares forming part of the company's ordinary share capital (within the meaning of the Taxes Act).

151B Venture capital trusts: supplementary.

(1) Sections 104, 105 and 107 shall not apply to any shares in a venture capital trust which are eligible for relief under section 151A(1).

(2) Subject to the following provisions of this section, where—

(a) an individual holds any ordinary shares in a venture capital trust,

(b) some of those shares fall within one of the paragraphs of subsection (3) below, and

(c) others of those shares fall within at least one other of those paragraphs,

then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply separately in relation to the shares (if any) falling within each of the paragraphs of that subsection (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(3) The kinds of shares referred to in subsection (2) above are—

(a) any shares in a venture capital trust which are eligible for relief under section 151A(1) and by reference to which any person has been given or is entitled to claim relief under Part I of Schedule 15B to the Taxes Act;

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(b) any shares in a venture capital trust which are eligible for relief under section 151A(1) but by reference to which no person has been given, or is entitled to claim, any relief under that Part of that Schedule;

(c) any shares in a venture capital trust by reference to which any person has been given, or is entitled to claim, any relief under that Part of that Schedule but which are not shares that are eligible for relief under section 151A(1); and

(d) any shares in a venture capital trust that do not fall within any of paragraphs (a) to (c) above.

(4) Where—

(a) an individual holds ordinary shares in a company ("the existing holding"),

(b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and

(c) immediately following the reorganisation, the shares or the allotted holding are shares falling within any of paragraphs (a) to (c) of subsection (3) above,

sections 127 to 130 shall not apply in relation to the existing holding.

(5) Sections 135 and 136 shall not apply where—

(a) the exchanged holding consists of shares falling within paragraph (a) or (b) of subsection (3) above; and

(b) that for which the exchanged holding is or is treated as exchanged does not consist of ordinary shares in a venture capital trust.

(6) 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) of the Taxes Act applies,

any person who at the time when the withdrawal takes effect is holding shares in that company which (apart from the withdrawal) would be eligible for relief under section 151A(1) shall be deemed for the purposes of this Act, at that time, to have disposed of and immediately re-acquired those shares for a consideration equal to their market value at that time.

(7) The disposal that is deemed to take place by virtue of subsection (6) above shall be deemed for the purposes of section 151A to take place while the company is still a venture capital trust; but, for the purpose of applying sections 104, 105 and 107 to the shares that are deemed to be re-acquired, it shall be assumed that the re-acquisition for which that subsection provides takes place immediately after the company ceases to be such a trust.

(8) For the purposes of this section—

(a) shares are eligible for relief under section 151A(1) at any time when they are held by an individual whose disposal of the shares at that time would (on the assumption, where it is not the case, that the individual attained the age of eighteen years before that time) be a disposal to which section 151A(1) would apply; and

(b) shares shall not, in relation to any time, be treated as shares by reference to which relief has been given under Part I of Schedule 15B to the Taxes Act if that time falls after—

(i) any relief given by reference to those shares has been reduced or withdrawn,

(ii) any chargeable event (within the meaning of Schedule 5C) has occurred in relation to those shares, or

(iii) the death of a person who held those shares immediately before his death;

and

(c) the references, in relation to sections 135 and 136, to the exchanged holding is a reference to the shares in company B or, as the case may be, to the shares or debentures in respect of which shares or debentures are issued under the arrangement in question."

(4) Schedule 16 to this Act (relief on re-investment in venture capital trusts) shall be inserted before Schedule 6, as Schedule 5C, and shall be construed accordingly.

(5) In section 257(1) (gifts to charities etc.), after paragraph (b) there shall be inserted—

"and the disposal is not one in relation to which section 151A(1) has effect."

(6) In section 260, after the subsection (6A) inserted by Schedule 13 to this Act (no reduction in the case of a disposal which is a chargeable event for the purposes of Schedule 5B), there shall be inserted—

"(6B) Subsection (3) above does not apply, so far as any gain accruing in accordance with paragraphs 4 and 5 of Schedule 5C is concerned, in relation to the disposal which constitutes the chargeable event by virtue of which that gain accrues."

(7) In section 288(1) (interpretation), after the definition of "trading stock" there shall be inserted the following definition—

""venture capital trust" has the meaning given by section 842AA of the Taxes Act;".

(8) Subsection (2) above shall have effect in relation to gains accruing on or after 6th April 1995 and the other provisions of this section have effect for the year 1995-96 and subsequent years of assessment.

Marginal Citations

M87 1992 c. 12.

73 Regulations.

(1) The Treasury may by regulations make such provision as they may consider appropriate for—

(a) giving effect to any relief for which provision is made by Schedule 15B to the Taxes Act 1988 or section 151A of, and Schedule 5C to, the [M88]Taxation of Chargeable Gains Act 1992; and

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(b) preventing such relief from being given except where a claim is made in accordance with the regulations and where such other requirements as may be imposed by the regulations have been complied with.

(2) Without prejudice to the generality of subsection (1) above, regulations under this section may make provision—

(a) as to the making of applications for approvals under section 842AA of the Taxes Act 1988 and otherwise as to the procedure in relation to any such applications and the giving of such approvals;

(b) as to the procedure to be followed in connection with the withdrawal of any such approval;

(c) as to the manner in which, and the persons by whom, relief is to be claimed;

(d) as to the obligations of a company which is a venture capital trust if it should appear to the company that the conditions for it to continue to be approved as such a trust are not satisfied;

(e) as to the accounts, records, returns and other information to be kept, and furnished or otherwise made available to the Board, by companies which are or have been venture capital trusts and by persons who hold or have held shares in such companies; and

(f) as to the persons liable to account for any tax becoming due where the approval of a company as a venture capital trust is withdrawn.

(3) Regulations under this section may make provision, in relation to tax credits to which any persons are entitled in respect of distributions of venture capital trusts—

(a) for the credits not to be set against income tax but to be claimed by and paid to the trusts; and

(b) for amounts equal to the credits to be paid by the trusts to the persons who receive or are entitled to receive the distributions;

and any such regulations may provide for sections 234 and 252 of the Taxes Act 1988 (information relating to distributions and rectification of excessive tax credit) to have effect, in relation to the distributions of venture capital trusts or, as the case may be, any provision made by virtue of paragraph (a) or (b) above, with such modifications as may be specified in the regulations.

(4) Regulations under this section may apply the following provisions of the Management Act, as they have effect in the case of repayments in respect of income tax, in relation to cases where amounts are paid to any person in pursuance of regulations made by virtue of subsection (3) above, that is to say—

(a) section 29(3)(c) (excessive relief);

(b) section 30 (tax repaid in error);

(c) section 88 (interest); and

(d) section 95 (incorrect return or accounts).

(5) In the Table in section 98 of the Management Act (penalties in respect of certain information provisions), at the end of the entries in the second column there shall be inserted the following entry—

"regulations under section 73 of the Finance Act 1995;".

(6) In this section "venture capital trust" has the meaning given by section 842AA of the Taxes Act 1988.

Marginal Citations
M88 1992 c. 12.

Settlements and estates

74 Settlements: liability of settlor.

(1) Schedule 17 to this Act has effect with respect to settlements and the liability of the settlor, as follows—

Part I inserts new provisions in place of sections 660 to 676 and 683 to 685 of the Taxes Act 1988,

Part II makes minor and consequential amendments of that Act, and

Part III contains consequential amendments of other enactments.

(2) The amendments made by Schedule 17 have effect for the year 1995-96 and subsequent years of assessment and apply to every settlement, wherever and whenever it was made or entered into.

75 Deceased persons' estates: taxation of beneficiaries.

Part XVI of the Taxes Act 1988 (deceased persons' estates) shall have effect with the amendments specified in Schedule 18 to this Act.

76 Untaxed income of a deceased person's estate.

(1) In section 246D of the Taxes Act 1988 (foreign income dividends), after subsection (3) there shall be inserted the following subsection—

"(3A) Without prejudice to subsection (3) above, a foreign income dividend paid as mentioned in that subsection to personal representatives shall not be treated for the purposes of income tax as income of the personal representatives as such."

(2) In section 547 of that Act (method of charging certain gains to tax)—

(a) in subsection (1)(c) (case where rights vested in personal representatives), after "gain" there shall be inserted " (so far as it is not otherwise comprised in that income) "; and

(b) after subsection (7) there shall be inserted the following subsection—

"(7A) Where, in the case of any gain—

(a) this section has effect by virtue of subsection (5A) or (7) above with the omission of subsection (5) above, and

(b) the rights conferred by the contract or policy were vested immediately before the happening of the chargeable event in question in personal representatives within the meaning of Part XVI,

the gain shall be deemed for the purposes of income tax to be income of the personal representatives as such."

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(3) In section 553 of that Act (non-resident policies), after subsection (7) there shall be inserted the following subsection—

"(7A) Where, in the case of a gain to which subsection (6)(a) and (b) above applies, the rights conferred by the policy were vested immediately before the happening of the chargeable event in question in personal representatives within the meaning of Part XVI, the gain shall be deemed for the purposes of income tax to be income of the personal representatives as such."

(4) After section 699 of that Act there shall be inserted the following section—

"**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 sections 246D(3), 249(5), 421(2) and 547(1)(c); and

(b) are sums in respect of which the personal representatives are not directly assessable to United Kingdom income tax.

(2) In determining for the purposes of this Part whether any amount is a relevant amount—

(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 assumption 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 section 246D(3), 249(5) or 421(2), at the lower rate, and

(b) in the case of sums included by virtue of section 547(1)(c), at the basic 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) For the purposes of sections 348 and 349(1) the income represented by a relevant amount shall be treated as not brought into charge to income tax."

(5) In section 701 of that Act (interpretation), after subsection (10), there shall be inserted the following subsection—

"(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."

(6) This section has effect for the year 1995-96 and subsequent years of assessment.

Securities

77 Interest on gilt-edged securities payable without deduction of tax.

After section 51 of the Taxes Act 1988 there shall be inserted the following section—

"**51A Gilt-edged securities held under authorised arrangements.**

(1) Subject to the provisions of any regulations under section 51B, where gilt-edged securities of an eligible person are for the time being held under arrangements that satisfy the applicable requirements—

(a) those securities shall be deemed to have been issued subject to the condition that the interest on them is paid without deduction of income tax; and

(b) that interest shall be so paid accordingly, but shall be chargeable under Case III of Schedule D.

(2) For the purposes of this section gilt-edged securities are securities of an eligible person so long as—

(a) they are in the beneficial ownership of a company, local authority or local authority association or of any health service body (within the meaning of section 519A) and that company, authority, association or body is beneficially entitled to the interest on them;

(b) they are in the beneficial ownership of a person who does not fall within paragraph (a) above but is of any such description as may be prescribed by regulations made by the Treasury and that person is beneficially entitled to the interest on those securities;

(c) the circumstances in which they are held are such that any income from them is eligible for relief from tax by virtue of section 505(1)(c), or would be so eligible but for section 505(3);

(d) the circumstances in which they are held are such that any income from them is eligible for relief from tax by virtue of section 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2);

(e) they are assets of any such trust fund as is referred to in section 83 of the [M89]Insurance Companies Act 1982 (premiums trust funds of members of Lloyd's); or

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(f) the circumstances in which they are held are such that any income from them falls to be treated as the income of, or of the government of, a sovereign power or of an international organisation.

(3) For the purposes of this section the arrangements under which any gilt-edged securities are held shall be taken to satisfy the applicable requirements if—

(a) such conditions as may be imposed by or under any such regulations as may be made by the Treasury are satisfied in relation to those arrangements; and

(b) a declaration with respect to the satisfaction of those conditions has been made in accordance with any such regulations by such person having an entitlement to or in respect of the securities as may be determined under the regulations.

(4) The conditions that may, for the purposes of subsection (3)(a) above, be imposed by regulations under this section in relation to arrangements for the holding of any gilt-edged securities shall include—

(a) conditions as to the accounts in which the securities are to be held under the arrangements and as to the accounts into which interest on the securities is to be paid;

(b) conditions requiring persons holding the securities, or otherwise having functions under or in connection with the arrangements, to be persons of a description specified in the regulations or to be approved in accordance with the regulations;

(c) conditions requiring persons who, for purposes connected with the arrangements, act directly or indirectly—

(i) on behalf of the person beneficially entitled to the securities, or

(ii) on behalf of the person who holds them,

to be persons registered with the Board in accordance with the regulations; and

(d) conditions as to the provision about transfers of securities held under the arrangements that is to be contained in the arrangements.

(5) Regulations made by the Treasury for the purposes of this section may—

(a) impose requirements in relation to any such persons as are mentioned in subsection (4)(b) and (c) above with respect to the manner in which their functions under or in connection with the arrangements are exercised;

(b) require such persons—

(i) to consider the accuracy of any declaration made for the purposes of subsection (3)(b) above; and

(ii) themselves to make declarations as to the extent to which conditions or other requirements imposed for the purposes of this section appear to be, or to have been, satisfied or complied with;

(c) make provision—

(i) about the making of applications for approval or registration under any such regulations;

(ii) for the circumstances in which any approval or registration is to be or may be given or refused;

(iii) for the withdrawal or cancellation of any approval or registration;

(iv) for appeals against any refusal to grant an approval or to register any person, or against the withdrawal or cancellation of any approval or registration;

(d) make provision for the publication of information showing the effect of any determinations in pursuance of regulations made by virtue of paragraph (c) above;

(e) make provision for notices to be issued by the Board to such persons as may be described in the regulations where the Board are satisfied that this section has effect, or does not have effect, in relation to any gilt-edged securities;

(f) impose obligations—

(i) on persons having any rights in relation to gilt-edged securities held under arrangements described in the regulations,

(ii) on any such persons as are mentioned in subsection (4)(b) and (c) above, and

(iii) on persons who are applying to be approved or registered for the purposes of this section,

as to the provision of information, and the production of documents, to the Board or, on request, to an officer of the Board;

and

(g) impose requirements, framed wholly or partly by reference to the opinion of the Board, as to—

(i) the contents of any declaration to be made in accordance with regulations under this section,

(ii) the form and manner in which any declaration or information is to be made or provided in accordance with any such regulations, and

(iii) the keeping and production to, or to an officer of, the Board of any document in which any such declaration or information is contained.

(6) Any person who—

(a) contravenes, or fails to comply with, any requirement imposed on him by or under any regulations under this section, or

(b) fraudulently or negligently makes or produces any incorrect declaration, information or document in pursuance of any such requirement,

shall be liable to a penalty not exceeding £25,000.

(7) In this section "gilt-edged securities" means any securities which—

(a) are gilt-edged securities for the purposes of the 1992 Act; or

(b) will be such securities on the making of any order under paragraph 1 of Schedule 9 to that Act the making of which is anticipated in the prospectus under which they were issued.

(8) In this section "international organisation" means an organisation of which two or more sovereign powers, or the governments of two or more sovereign powers, are members; and if, in any proceedings, any question arises whether

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a person is an international organisation for the purposes of this section a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question shall be conclusive evidence of that fact.

(9) Regulations made by the Treasury for the purposes of this section may—
(a) make different provision for different cases; and
(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate.

(10) This section shall not apply to any interest paid before such day as the Treasury may by order appoint, and different days may be appointed under this subsection for different purposes."

Marginal Citations
M89 1982 c. 50.

78 Periodic accounting for tax on interest on gilt-edged securities.

(1) After the section 51A of the Taxes Act 1988 inserted by section 77 above there shall be inserted the following section—

"**51B Periodic accounting for tax on interest on gilt-edged securities.**

(1) The Treasury may by regulations provide for persons to whom payments of interest on relevant gilt-edged securities are made without deduction of tax to be required to make periodic returns to an officer of the Board of—
(a) amounts of any payments of such interest made to that person, and
(b) amounts of tax for which, assuming the payments to bear tax at the basic rate for the relevant year of assessment, that person is to be accountable under the regulations in respect of those payments;

and any such regulations may further provide for the amounts of tax required to be included in any such return to become due, at the time when the return is required to be made, from the person required to make it.

(2) Regulations made by the Treasury for the purposes of this section may—
(a) specify such periods as the Treasury may consider appropriate as the periods for which returns are to be made, and in respect of which any person is to account for tax, under the regulations;
(b) make provision for enabling returns under the regulations to be combined with returns under Schedule 16 and for requiring particulars of claims and calculations made for the purposes of the regulations to be set out in the returns;
(c) provide, in respect of any period for which a return is to be made by any person under the regulations, for that person to be obliged, before the end of the period, to make a payment on account of amounts that may become due from him in respect of that period;
(d) impose a requirement for a special return to be made for the purposes of any obligation imposed by virtue of paragraph (c) above;

(e) provide for the amount which, under the regulations, is to be due from any person in respect of any period to be reduced by reference to amounts which—

(i) are paid by or on behalf of that person under contracts or arrangements relating to transfers of gilt-edged securities; and

(ii) are or fall to be treated as representative of interest on those securities;

(f) authorise amounts in respect of which there is an obligation to account for tax under the regulations to be treated for specified purposes of the Tax Acts as payments on which a person has borne income tax by deduction;

(g) make provision for the assessment of amounts due under the regulations and for the repayment in specified circumstances of amounts paid under the regulations;

(h) make provision for interest to be payable, at such rate as may be determined by or under the regulations, on amounts that have become due under the regulations but have not been paid;

(i) make provision, where payments of interest on any relevant gilt-edged securities would be comprised in the income of a member of Lloyd's, for obligations that may be imposed by regulations under this section on the person to whom the interest is paid to be imposed, instead, on such other person as may be described in the regulations.

(3) Regulations made by the Treasury for the purposes of this section may—

(a) include provision which for the purposes of the regulations makes any provision corresponding, with or without modifications, to any of the provisions of Schedule 16;

(b) make provision modifying the operation of Schedule 19AB in relation to cases where payments of interest on relevant gilt-edged securities are made without deduction of tax to companies carrying on pension business;

(c) include provision which requires obligations and liabilities under the regulations to be treated as obligations and liabilities to which provisions of Schedule 23 to the Finance Act 1995 (UK representatives) apply; and

(d) include provision which, for any of the purposes of the regulations, applies provisions of sections 126 and 127 of, and Schedule 23 to, that Act in relation to times before those provisions otherwise come into force.

(4) Regulations made by the Treasury for the purposes of this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate;

and subsection (3) of section 178 of the [M90]Finance Act 1989 (extent of powers to set rates of interest) shall apply for the purposes of the power conferred by virtue of subsection (2)(h) above as it applies for the purposes of the power to make regulations under that section.

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(5) In this section "relevant gilt-edged securities" means securities which are gilt-edged securities within the meaning of section 51A, other than any to which a direction of the Treasury under section 50 relates.

(6) In this section "relevant year of assessment"—

(a) in relation to a manufactured payment, means the year of assessment in which it is received by the person to whom it is paid; and

(b) in relation to any other payment of interest, means the year of assessment in which the payment is made;

and in this subsection "manufactured payment" means any payment which for the purposes of Schedule 23A is a payment of manufactured interest."

(2) In the Table in section 98 of the Management Act (penalties in respect of certain information provisions), immediately before the entry in the second column relating to section 124(3) of the Taxes Act 1988 there shall be inserted the following entry—

"regulations under section 51B;".

Marginal Citations

M90 1989 c. 26.

79 Sale and repurchase of securities: exclusion from accrued income scheme.

(1) In Chapter II of Part XVII of the Taxes Act 1988 (transfers of securities) after section 727 insert—

"**727A Exception for sale and repurchase of securities.**

(1) Where securities are transferred under an agreement to sell them, and under the same or any related agreement the transferor or a person connected with him—

(a) is required to buy back the securities, or

(b) acquires an option, which he subsequently exercises, to buy back the securities,

section 713(2) and (3) and section 716 do not apply to the transfer by the transferor or the transfer back.

(2) For the purposes of this section 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).

(3) Section 839 (connected persons) applies for the purposes of this section.

(4) References in this section to buying back securities include buying similar securities.

For this purpose securities are similar if they entitle their holders—

(a) to the same rights against the same persons as to capital and interest, and

(b) to 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.

(5) For the purposes of this section—

(a) a person connected with the transferor who is required to buy securities sold by the transferor shall be treated as being required to buy the securities back, and

(b) a person connected with the transferor who acquires an option to buy securities sold by the transferor shall be treated as acquiring an option to buy the securities back,

notwithstanding that it was not he who sold them.".

(2) In section 728 of the Taxes Act 1988 (information) in subsections (1) and (5) for "sections 710 to 727" substitute " sections 710 to 727A ".

(3) The above amendments have effect where the agreement to sell the securities is entered into on or after the date on which this Act is passed.

(4) If the appointed day for the purposes of section 737A of the Taxes Act 1988 in relation to any description of securities falls after the date on which this Act is passed, the reference in subsection (3) above to the date on which this Act is passed shall be construed in relation to an agreement relating to securities of that description and to which section 737A would apply if it were in force as a reference to that appointed day.

80 Treatment of price differential on sale and repurchase of securities.

(1) After section 730 of the Taxes Act 1988 there shall be inserted the following sections—

"**730A Treatment of price differential on sale and repurchase of securities.**

(1) Subject to subsection (8) below, this section applies where—

(a) a person ("the original owner") has transferred any securities to another person ("the interim holder") under an agreement to sell them;

(b) the original owner or a person connected with him is required to buy them back either—

(i) in pursuance of an obligation to do so imposed by that agreement or by any related agreement, or

(ii) in consequence of the exercise of an option acquired under that agreement or any related agreement;

and

(c) the sale price and the repurchase price are different.

(2) The difference between the sale price and the repurchase price shall be treated for the purposes of the Tax Acts—

(a) where the repurchase price is more than the sale price, as a payment of interest made by the repurchaser on a deemed loan from the interim holder of an amount equal to the sale price; and

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(b) where the sale price is more than the repurchase price, as a payment of interest made by the interim holder on a deemed loan from the repurchaser of an amount equal to the repurchase price.

(3) Where any amount is deemed under subsection (2) above to be a payment of interest, that payment shall be deemed for the purposes of the Tax Acts to be one that becomes due at the time when the repurchase price becomes due and, accordingly, is treated as paid when that price is paid.

(4) Where any amount is deemed under subsection (2) above to be a payment of interest, the repurchase price shall be treated for the purposes of the Tax Acts (other than this section and sections 737A and 737C) and (in cases where section 263A of the 1992 Act does not apply) for the purposes of the 1992 Act—

(a) in a case falling within paragraph (a) of that subsection, as reduced by the amount of the deemed payment; and

(b) in a case falling within paragraph (b) of that subsection, as increased by the amount of the deemed payment.

(5) For the purposes of section 209(2)(d) and (da) any amount which is deemed under subsection (2)(a) above to be a payment of interest shall be deemed to be interest in respect of securities issued by the repurchaser and held by the interim holder.

(6) Any amount which—

(a) is deemed under subsection (2) above to be a payment of interest, and

(b) does not fall (apart from this subsection) to be treated as yearly interest,

shall be treated for the purposes of section 338 as if the reference to yearly interest in subsection (3)(a) of that section included a reference to that amount.

(7) The Treasury may by regulations provide for any amount which is deemed under subsection (2) above to be received as a payment of interest to be treated, in such circumstances and to such extent as may be described in the regulations, as comprised in income that is eligible for relief from tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(8) Except where regulations under section 737E otherwise provide, this section does not apply if—

(a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or

(b) all of the benefits or risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrue to, or fall on, the interim holder.

(9) In this section references to the repurchase price are to be construed—

(a) in cases where section 737A applies, and

(b) in cases where section 737A would apply if it were in force in relation to the securities in question,

as references to the repurchase price which is or, as the case may be, would be applicable by virtue of section 737C(3)(b), (9) or (11)(c).

730B Interpretation of section 730A.

(1) For the purposes of section 730A 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).

(2) References in section 730A to buying back securities—

(a) shall include references to buying similar securities; and

(b) in relation to a person connected with the original owner, shall include references to buying securities sold by the original owner or similar securities,

notwithstanding (in each case) that the securities bought have not previously been held by the purchaser; and references in that section to repurchase or to a repurchaser shall be construed accordingly.

(3) In section 730A and this section "securities" has the same meaning as in section 737A.

(4) For the purposes of this section securities are similar if they entitle their holders—

(a) to the same rights against the same persons as to capital, interest and dividends, and

(b) to 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.

(5) Section 839 (connected persons) applies for the purposes of section 730A."

(2) In section 729 of that Act (sale and repurchase of securities), after subsection (5) there shall be inserted the following subsection—

"(5A) This section shall not apply where section 737A applies; and this section shall be disregarded in determining whether the condition in subsection (2)(b) of that section is fulfilled in any case."

(3) In subsections (3)(b), (9) and (11)(c) of section 737C of that Act (adjustment of repurchase price), for "the Tax Acts other than section 737A and of the 1992 Act" there shall be substituted, in each case, " section 730A "; and after subsection (11) of that section there shall be inserted the following subsection—

"(11A) The deemed increase of the repurchase price which is made for the purposes of section 730A by subsection (3)(b), (9) or (11)(c) above shall also have effect—

(a) for all the purposes of the Tax Acts, other than section 737A, and

(b) in cases where section 263A of the 1992 Act does not apply, for the purposes of the 1992 Act,

wherever in consequence of that increase there is for the purposes of section 730A no difference between the sale price and the repurchase price."

(4) After section 263 of the [M91]Taxation of Chargeable Gains Act 1992 there shall be inserted the following section—

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"**263A Agreements for sale and repurchase of securities.**

(1) Subject to subsections (2) to (4) below, in any case falling within subsection (1) of section 730A of the Taxes Act (treatment of price differential on sale and repurchase of securities) and in any case which would fall within that subsection if the sale price and the repurchase price were different—

(a) the acquisition of the securities in question by the interim holder and the disposal of those securities by him to the repurchaser, and

(b) except where the repurchaser is or may be different from the original owner, the disposal of those securities by the original owner and any acquisition of those securities by the original owner as the repurchaser,

shall be disregarded for the purposes of capital gains tax.

(2) Subsection (1) above does not apply in any case where the repurchase price of the securities in question falls to be calculated for the purposes of section 730A of the Taxes Act by reference to provisions of section 737C of that Act that are not in force in relation to those securities when the repurchase price becomes due.

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

(a) the agreement or agreements under which provision is made for the sale and repurchase 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 repurchase takes place, in the market value of the securities sold accrues to, or falls on, the interim holder.

(4) Subsection (1) above does not apply in relation to any disposal or acquisition of qualifying corporate bonds in a case where the securities disposed of by the original owner or those acquired by him, or by any other person, as the repurchaser are not such bonds.

(5) Expressions used in this section and in section 730A of the Taxes Act have the same meanings in this section as in that section."

(5) This section shall have effect where the agreement to sell the securities is entered into on or after the date on which this Act is passed.

Marginal Citations

M91 1992 c. 12.

81 Manufactured interest payments: exclusion from bond-washing provisions.

(1) Section 731 of the Taxes Act 1988 (application of sections 732 to 734) is amended as follows.

(2) After subsection (2) insert—

"(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 section 737A(5) as required to make such a payment.”.

(3) In consequence of the above amendment—

(a) in subsection (2) for “Subject to subsections (3) to (10) below” substitute “ Subject to subsections (2A) to (10) ” below, and for “relate” substitute “ apply ”;

(b) in subsection (3) for “relate to cases” substitute “ apply ”.

(4) The above amendments have effect where the date on which the payment referred to in the inserted subsection (2A) is required to be made, or treated as required to be made, is after the passing of this Act.

82 Manufactured interest on gilt-edged securities.

(1) In section 737 of the Taxes Act 1988 (manufactured dividends and interest)—

(a) after subsection (1A) there shall be inserted the following subsection—

“(1B) Subject to subsection (5AA) below, subsection (1) above shall not apply where the interest in question is interest on gilt-edged securities.”;

(b) at the beginning of subsections (2) and (5), there shall be inserted, in each case, “ Subject to subsection (5AA) below, ”;

(c) after subsection (5) there shall be inserted the following subsection—

“(5AA) Regulations made by the Treasury may make provision in relation to any such case where the securities in question are gilt-edged securities as may be specified in the regulations—

(a) for subsections (1B), (2) and (5) above to be disregarded in determining whether the case is one where subsection (1) above applies; or

(b) for this section to have effect as if subsections (1B) and (2) above were omitted and the words in subsection (5) from “unless” to the end of paragraph (b) were modified in such manner as may be set out in the regulations.”;and

(d) in subsection (6), after the definition of “foreign income dividend” there shall be inserted the following definition—

““gilt-edged securities” has the same meaning as in section 51A;”.

(2) In Schedule 23A to that Act, at the beginning of sub-paragraphs (2) and (3) of paragraph 3, there shall be inserted, in each case, “ Subject to paragraph 3A below, ”; and after that paragraph there shall be inserted the following paragraph—

“3A (1) This paragraph applies, except in so far as dividend manufacturing regulations otherwise provide, in any case where paragraph 3 above applies and the United Kingdom securities in question are gilt-edged securities.

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(2) In a case where this paragraph applies, sub-paragraphs (2) and (3) of paragraph 3 above shall not have effect, but the gross amount of the manufactured interest shall be treated—

(a) in relation to the interest manufacturer, for all the purposes of the Tax Acts except the determination of whether a deduction of tax is liable to be made on the making of the manufactured payment, and

(b) in relation to the recipient and all persons claiming title through or under him, for all the purposes of those Acts,

as if it were the gross amount of a periodical payment of interest on those gilt-edged securities, but made by the interest manufacturer.

(3) Sub-paragraph (4) of paragraph 3 above shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

(4) In this paragraph "gilt-edged securities" has the same meaning as in section 51A."

(3) In paragraph 5(6) of that Schedule (construction of references to securities in provisions relating to interest passing through the market), after "United Kingdom securities" there shall be inserted " , other than gilt-edged securities (within the meaning of section 51A), ".

(4) This section shall have effect in relation to any payments made on or after such day as the Treasury may by order appoint, and different days may be appointed under this subsection for different purposes.

Commencement Information

I10 S. 82 in force at Royal Assent but with effect from 2.1.1996 by S.I. 1995/2933, **art. 2**

83 Power to make special provision for special cases.

(1) Immediately before section 738 of the Taxes Act 1988 there shall be inserted the following sections—

"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 tax by virtue of section 438, 592(2), 608(2)(a), 613(4), 614(2), (3) or (4), 620(6) or 643(2).

(2) In this section "manufactured payment" means any manufactured dividend, manufactured interest or manufactured overseas dividend, within the meaning of Schedule 23A.

737E Power to modify sections 727A, 730A and 737A to 737C.

(1) The Treasury may by regulations make provision for all or any of sections 727A, 730A and 737A to 737C to have effect with modifications in relation

to cases involving any arrangement for the sale and repurchase of securities where—

(a) the obligation to make the repurchase is not performed or the option to repurchase is not exercised;

(b) provision is made by or under any agreement for different or additional securities to be treated as, or as included with, securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;

(c) provision is made by or under any agreement for any securities to be treated as not included with securities which, for the purposes of the repurchase, are to represent securities transferred in pursuance of the original sale;

(d) provision is made by or under any agreement for the sale price or repurchase price to be determined or varied wholly or partly by reference to fluctuations, occurring in the period after the making of the agreement for the original sale, in the value of securities transferred in pursuance of that sale, or in the value of securities treated as representing those securities; or

(e) provision is made by or under any agreement for any person to be required, in a case where there are any such fluctuations, to make any payment in the course of that period and before the repurchase price becomes due.

(2) The Treasury may by regulations make provision for all or any of sections 727A, 730A and 737A to 737C to have effect with modifications in relation to cases where—

(a) arrangements, corresponding to those made in cases involving an arrangement for the sale and repurchase of securities, are made by any agreement, or by one or more related agreements, in relation to securities that are to be redeemed in the period after their sale; and

(b) those arrangements are such that the person making the sale or a person connected with him (instead of being required to repurchase the securities or acquiring an option to do so) is granted rights in respect of the benefits that will accrue from their redemption.

(3) The Treasury may by regulations provide that section 730A is to have effect with modifications in relation to cases involving any arrangement for the sale and repurchase of securities where there is an agreement relating to the sale or repurchase which is not such as would be entered into by persons dealing with each other at arm's length.

(4) The powers conferred by subsections (1) and (2) above shall be exercisable in relation to section 263A of the 1992 Act as they are exercisable in relation to section 730A of this Act.

(5) Regulations made for the purposes of this section may—

(a) make different provision for different cases; and

(b) contain such supplementary, incidental, consequential and transitional provision as appears to the Treasury to be appropriate.

(6) The supplementary, incidental and consequential provision that may be made by regulations under this section shall include—

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(a) in the case of regulations relating to section 730A, provision modifying subsections (3)(b), (9), (11)(c) and (11A) of section 737C; and

(b) in the case of regulations relating to section 263A of the 1992 Act, provision modifying the operation of that Act in relation to cases where by virtue of the regulations any acquisition or disposal is excluded from those which are to be disregarded for the purposes of capital gains tax.

(7) In this section "modifications" includes exceptions and omissions; and any power under this section to provide for an enactment to have effect with modifications in any case shall include power to provide for it not to apply (if it otherwise would do) in that case.

(8) References in this section to a case involving an arrangement for the sale and repurchase of securities are references to any case where—

(a) a person makes a sale of any securities under any agreement ("the original sale"); and

(b) that person or a person connected with him either—

(i) is required under that agreement or any related agreement to buy them back; or

(ii) acquires, under that agreement or any related agreement, an option to buy them back.

(9) Section 730B shall apply for the purposes of this section as it applies for the purposes of section 730A."

(2) In section 182(1) of the [M92]Finance Act 1993 and section 229 of the [M93]Finance Act 1994 (powers to modify provisions relating to Lloyd's), the following paragraph shall be inserted, in each case, after paragraph (c)—

"(ca) for modifying the application of this Chapter in relation to cases where assets forming part of a premiums trust fund are the subject of—

(i) any such arrangement as is mentioned in section 129(1), (2) or (2A) of the Taxes Act 1988 (stock lending etc.); or

(ii) any such arrangements or agreements as are mentioned in section 737E(2) and (8) of the Taxes Act 1988 (sale and repurchase of securities etc.);".

Marginal Citations

M92 1993 c. 34.

M93 1994 c. 9.

84 Stock lending: power to modify rules.

(1) In subsection (1) of section 129 of the Taxes Act 1988 (description of stock lending arrangements)—

(a) for "subsection (4)" there shall be substituted " subsections (2B) and (4) "; and

(b) the words "has contracted to sell securities, and to enable him to fulfil the contract, he" shall be omitted.

(2) In subsection (2A) of that section, for "A to fulfil his contract" there shall be substituted " B to make the transfer to A or his nominee ".

(3) After subsection (2A) of that section there shall be inserted the following subsection—

"(2B) Except in so far as the Treasury by regulations otherwise provide, this section applies only if A enters into the arrangement mentioned in subsection (1) above to enable him to fulfil a contract under which he is required to sell securities."

(4) After subsection (4) of that section there shall be inserted the following subsections—

"(4A) Regulations under subsection (4) above relating to section 271(9) of the 1992 Act may include provision modifying the operation of that Act in relation to cases where, by virtue of the regulations, any acquisition or disposal is excluded from those which are to be disregarded for the purposes of capital gains tax.

(4B) In such cases as the Treasury may by regulations provide, this section shall have effect as if references to a transfer of securities of the same kind and amount as those subject to a previous transfer included references to the grant of equivalent rights in respect of benefits accruing from the redemption of securities of the same kind and amount."

(5) For subsection (9) of section 271 of the [M94]Taxation of Chargeable Gains Act 1992 (exemption for arrangements to which section 129 applies) there shall be substituted the following subsection—

"(9) Subject to any regulations under subsection (4) of section 129 of the Taxes Act, any disposal and acquisition made in pursuance of an arrangement mentioned in subsection (1), (2) or (2A) of that section shall be disregarded for the purposes of capital gains tax unless it is one in the case of which subsection (2B) of that section has the effect of preventing that section from applying."

Marginal Citations

M94 1992 c. 12.

85 Stock lending: interest on cash collateral.

(1) In Chapter VIII of Part IV of the Taxes Act 1988 (provisions relating to the Schedule D charge: miscellaneous and supplementary provisions), after section 129 insert—

"**129A Stock lending: interest on cash collateral.**

The provisions of Schedule 5A have effect with respect to the tax treatment of interest earned on cash collateral provided in connection with certain stock lending arrangements.".

(2) In the Taxes Act 1988 insert as Schedule 5A the provisions set out in Schedule 19 to this Act.

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(3) This section and that Schedule apply in relation to approved stock lending arrangements (within the meaning of that Schedule) entered into after the passing of this Act.

Interest

86 Deduction of tax from interest on deposits.

(1) In section 481(4) of the Taxes Act 1988 (meaning of "relevant deposit" for the purposes of provisions relating to the deduction of tax), after paragraph (c) there shall be inserted "or

(d) any interest in respect of the deposit is income arising to the trustees of a discretionary or accumulation trust in their capacity as such;"

and for "subsection (5)" there shall be substituted " any of subsections (5) to (5B) ".

(2) After subsection (4) of section 481 of that Act there shall be inserted the following subsection—

"(4A) For the purposes of the relevant provisions a trust is a discretionary or accumulation trust if it is such that some or all of any income arising to the trustees would fall (unless treated as income of the settlor or applied in defraying expenses of the trustees) to be comprised for the year of assessment in which it arises in income to which section 686 applies."

(3) In section 481(5)(k) of that Act (declaration by virtue of which deposit is not a relevant deposit)—

(a) the word "that" before sub-paragraph (i) shall be omitted;

(b) in sub-paragraph (i), at the beginning there shall be inserted " in a case falling within subsection (4)(a) or (b) above, that ";

(c) in sub-paragraph (ii), after "above" there shall be inserted " , that "; and

(d) after sub-paragraph (ii) there shall be inserted the following sub-paragraph—

"(iii) in a case falling within subsection (4)(d) above, that, at the time when the declaration is made, the trustees are not resident in the United Kingdom and do not have any reasonable grounds for believing that any of the beneficiaries of the trust is an individual who is ordinarily resident in the United Kingdom or a company which is resident in the United Kingdom."

(4) After subsection (5A) of section 481 of that Act there shall be inserted the following subsection—

"(5B) In a case falling within subsection (4)(d) above, a deposit shall not be taken to be a relevant deposit in relation to a payment of interest in respect of that deposit if—

(a) the deposit was made before 6th April 1995; and

(b) the deposit-taker has not, at any time since that date but before the making of the payment, been given a notification by the Board or any of the trustees in question that interest in respect of that deposit is income arising to the trustees of a discretionary or accumulation trust."

(5) In section 482(2) of that Act (contents of declaration under section 481(5)(k)), for paragraph (a) there shall be substituted the following paragraph—

"(a) if made under sub-paragraph (i) or (iii), contain an undertaking by the person making it that where—

(i) the individual or any of the individuals in respect of whom it is made becomes ordinarily resident in the United Kingdom,

(ii) the trustees or any company in respect of whom it is made become or becomes resident in the United Kingdom, or

(iii) an individual who is ordinarily resident in the United Kingdom or a company which is resident in the United Kingdom becomes or is found to be a beneficiary of a trust to which the declaration relates,

the person giving the undertaking will notify the deposit-taker accordingly; and".

(6) After subsection (5) of section 482 of that Act there shall be inserted the following subsection—

"(5A) The persons who are to be taken for the purposes of section 481(5)(k)(iii) and subsection (2) above to be the beneficiaries of a discretionary or accumulation trust shall be every person who, as a person falling wholly or partly within any description of actual or potential beneficiaries, is either—

(a) a person who is, or will or may become, entitled under the trust to receive the whole or any part of any income under the trust; or

(b) a person to or for the benefit of whom the whole or any part of any such income may be paid or applied in exercise of any discretion conferred by the trust;

and for the purposes of this subsection references, in relation to a trust, to income under the trust shall include references to so much (if any) of any property falling to be treated as capital under the trust as represents amounts originally received by the trustees as income."

(7) In section 482(6) of that Act (definitions for the purposes of section 481(5)), in the definition of "appropriate person", for "as a personal representative in his capacity as such" there shall be substituted " in his capacity as a personal representative or as a trustee of a discretionary or accumulation trust ".

(8) In section 482(11) of that Act (power to make regulations), after paragraph (aa) there shall be inserted the following paragraph—

"(ab) with respect to—

(i) the manner and form in which a notification for the purposes of section 481(5B) is to be given or may be withdrawn, and

(ii) the circumstances in which the deposit-taker is to be entitled to delay acting on such a notification,

and".

(9) In section 482A(1) of that Act (power to make regulations excluding audit requirements in certain cases), after "United Kingdom" there shall be inserted " , or investments of trustees who are not resident in the United Kingdom, ".

(10) The preceding provisions of this section apply in relation to any payments made on or after 6th April 1996.

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(11) Notwithstanding the repeal of section 67 of the Taxes Act 1988 by the [M95]Finance Act 1994 or anything contained in the transitional provisions relating to that repeal, where—

(a) this section has effect so as to require any deposit made before 6th April 1996 to be treated in relation to payments made after a time falling before 6th April 1998 as a relevant deposit for the purposes of section 480A(1) of the Taxes Act 1988, and

(b) section 67(2) of that Act does not otherwise apply in relation to the liability to deduction of tax that begins at that time,

section 67(1) of the Taxes Act 1988 shall apply in respect of payments made before that time as if the deposit were a source of income that the trustees in question ceased to possess at that time.

(12) An officer of the Board may, by notice to any of the trustees of a trust, require the trustees to provide the Board with the following, that is to say—

(a) information about any notification given by any of the trustees for the purposes of subsection (5B) of section 481 of the Taxes Act 1988; and

(b) such information as the Board may reasonably require for the purposes of themselves giving a notification under that subsection with respect to any income arising to the trustees;

and section 98 of the Management Act (penalties in respect of special returns) shall have effect with a reference to this subsection inserted at the end of the first column of the Table.

(13) Where a notice given by the Board before the passing of this Act requires any such information as is mentioned in subsection (12) above to be provided to the Board, and the period within which that information was required to be so provided does not expire until at least one month after the passing of this Act, that notice shall have effect as if given after the passing of this Act in accordance with that subsection.

(14) Without prejudice to section 20(2) of the Interpretation Act 1978 (references to other enactments) and subject to any provision to the contrary made in exercise of any power to make, revoke or amend any subordinate legislation, the enactments and subordinate legislation having effect, apart from this section, in relation to any provisions of the [M96]Taxes Act 1988 amended by this section shall be assumed, in cases where this section applies, to have the corresponding effect in relation to those provisions as so amended.

(15) In this section "subordinate legislation" has the same meaning as in the [M97]Interpretation Act 1978.

Marginal Citations

M95 1994 c. 9.

M96 1978 c. 30.

M97 1978 c. 30.

87 Interest payments deemed to be distributions.

(1) In subsection (2) of section 209 of the Taxes Act 1988 (meaning of "distribution" for the purposes of the Corporation Tax Acts), after paragraph (d) there shall be inserted the following paragraph—

"(da) any interest or other distribution out of assets of the company ("the issuing company") in respect of securities issued by that company which are held by another company where—

(i) the issuing company is a 75 per cent. subsidiary of the other company or both are 75 per cent. subsidiaries of a third company, and

(ii) the whole or any part of the distribution represents an amount which would not have fallen to be paid to the other company if the companies had been companies between whom there was (apart from in respect of the securities in question) no relationship, arrangements or other connection (whether formal or informal),

except so much, if any, of any such distribution as does not represent such an amount or as is a distribution by virtue of paragraph (d) above or an amount representing the principal secured by the securities;".

(2) In paragraph (e) of that subsection—

(a) for "paragraph (d)" there shall be substituted " paragraph (d) or (da) "; and

(b) sub-paragraphs (iv) and (v) (distribution in respect of securities of subsidiaries of non-resident companies etc.) shall be omitted;

and, in subsection (3) of that section, for "subsection (2)(d)" there shall be substituted " subsection (2)(d), (da) ".

(3) After subsection (8) of that section there shall be inserted the following subsections—

"(8A) For the purposes of paragraph (da) of subsection (2) above subsections (2) to (4) of section 808A shall apply as they apply for the purposes of a special relationship provision such as is mentioned in that section but as if—

(a) the references in those subsections to the relationship in question were references to any relationship, arrangements or other connection between the issuing company and the other company mentioned in sub-paragraph (ii) of that paragraph; and

(b) the provision in question required no account to be taken, in the determination of any of the matters mentioned in subsection (8B) below, of (or of any inference capable of being drawn from) any other relationship, arrangements or connection (whether formal or informal) between the issuing company and any person, except where that person—

(i) has no relevant connection with the issuing company, or

(ii) is a company that is a member of the same UK grouping as the issuing company.

(8B) The matters mentioned in subsection (8A)(b) above are the following—

(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

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of a security by the issuing company or the making of a loan, or a loan of a particular amount, to that company; and

(c) the rate of interest and other terms that might be expected to be applicable in any particular case to such a transaction.

(8C) For the purposes of subsection (8A) above a person has a relevant connection with the issuing company if he is connected with it within the terms of section 839 or that person (without being so connected to the issuing company) is—

(a) an effective 51 per cent. subsidiary of the issuing company; or

(b) a company of which the issuing company is an effective 51 per cent. subsidiary.

(8D) For the purposes of subsection (8A) above any question as to what constitutes the UK grouping of which the issuing company is a member or as to the other members of that grouping shall be determined as follows—

(a) where the issuing company has no effective 51 per cent. subsidiaries and is not an effective 51 per cent. subsidiary of a company resident in the United Kingdom, the issuing company shall be taken to be a member of a UK grouping of which it is itself the only member;

(b) where the issuing company has one or more effective 51 per cent. subsidiaries and is not an effective 51 per cent. subsidiary of a company resident in the United Kingdom, the issuing company shall be taken to be a member of a UK grouping of which the only members are the issuing company and its effective 51 per cent. subsidiaries; and

(c) where the issuing company is an effective 51 per cent. subsidiary of a company resident in the United Kingdom ("the UK holding company"), the issuing company shall be taken to be a member of a UK grouping of which the only members are—

(i) the UK holding company or, if there is more than one company resident in the United Kingdom of which the issuing company is an effective 51 per cent. subsidiary, such one of them as is not itself an effective 51 per cent. subsidiary of any of the others, and

(ii) the effective 51 per cent. subsidiaries of the company which is a member of that grouping by virtue of sub-paragraph (i) above.

(8E) For the purposes of subsections (8C) and (8D) above section 170(7) of the 1992 Act shall apply for determining whether a company is an effective 51 per cent. subsidiary of another company but shall so apply as if the question whether the effective 51 per cent. subsidiaries of a company resident in the United Kingdom ("the putative holding company") include either—

(a) the issuing company, or

(b) a company of which the issuing company is an effective 51 per cent. subsidiary,

were to be determined without regard to any beneficial entitlement of the putative holding company to any profits or assets of any company resident outside the United Kingdom.

(8F) References in subsections (8D) and (8E) above to a company that is resident in the United Kingdom shall not include references to a company which is a dual resident company for the purposes of section 404."

(4) In section 212 of that Act (exceptions from the definition of a "distribution" for certain interest and other payments)—

(a) in subsection (1), in paragraph (b), after "within" there shall be inserted " paragraph (da) of section 209(2) or ";

(b) in subsection (3)—

(i) at the beginning there shall be inserted " Without prejudice to subsection (4) below, "; and

(ii) at the end there shall be inserted " and does not apply in relation to any interest or distribution falling within section 209(2)(da) if that interest or distribution is otherwise outside the matters in respect of which that company is within the charge to corporation tax. "; and

(c) after subsection (3) there shall be inserted the following subsection—

"(4) Where any interest or other distribution is paid to a charity (within the meaning of section 506) or to any of the bodies mentioned in section 507, the interest or distribution so paid shall not be a distribution for the purposes of the Corporation Tax Acts if it would otherwise fall to be treated as such a distribution by virtue only of paragraph (da) of section 209(2)."

(5) In section 710(3)(a) of that Act (meaning of securities), for "section 209(2)(e)(iv) or (v)" there shall be substituted " section 209(2)(da) ".

(6) In paragraph 5(5) of Schedule 4 to that Act (deep discount securities), for "section 209(2)(d)" there shall be substituted " section 209(2)(d), (da) ".

(7) This section has effect, subject to subsection (8) below, in relation to any interest or other distribution paid on or after 29th November 1994.

(8) This section shall not have effect in relation to any interest or other distribution paid before 1st April 1995 in respect of any security if the security is one in the case of which a notice given before 29th November 1994 under Regulation 2(2) of the [M98]Double Taxation Relief (Taxes on Income) (General) Regulations 1970 was in force immediately before 29th November 1994 as regards payments of interest or other distributions made in respect of that security.

Marginal Citations

M98 S.I. 1970/488.

Debts

88 Generalisation of ss.63 to 66 of Finance Act 1993.

(1) In sections 63 to 66 of the [M99]Finance Act 1993 (deemed periodic disposal of certain debts), for "the resident company", wherever occurring, substitute " the creditor company ".

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(2) After section 62 of that Act insert—

"**62A Application of sections 63 to 66: supplementary.**

In sections 63 to 66 below as they apply by virtue of section 61 above—

(a) "the creditor company" means the company identified in subsection (1) of that section as the person entitled to the debt (referred to there as "the resident company"); and

(b) "the commencement date" means 1st April 1993.".

(3) In section 63 of that Act, omit subsection (12) (meaning of "commencement date").

(4) The above amendments shall be deemed always to have had effect.

(5) Anything done before the passing of this Act under or by reference to the provisions of sections 63 to 66 of the Finance Act 1993 as originally enacted shall have effect as if done under or by reference to those provisions as amended by this section.

Marginal Citations

M99 1993 c. 34.

89 Application of ss.63 to 66 to debts held by associates of banks.

(1) A debt is a qualifying debt for the purposes of sections 63 to 66 of the [M100]Finance Act 1993 (deemed periodic disposal of certain debts) at any time if, at that time, the person entitled to the debt is a company which—

(a) is resident in the United Kingdom, and

(b) is an associated company of a company (whether or not itself resident in the United Kingdom) which carries on a banking business in the United Kingdom,

and the debt is not an exempted debt as defined by the following provisions.

(2) A debt is an exempted debt for those purposes at any time if at that time it is held by the company entitled to it for the purposes of long term insurance business.

(3) A debt is an exempted debt for those purposes at any time if each of the first, second and third conditions mentioned below—

(a) is fulfilled at that time,

(b) has been fulfilled throughout so much of the period of the debt as falls before that time, and

(c) is likely to be fulfilled throughout so much of that period as falls after that time.

(4) The first condition is that the terms of the debt provide that any interest carried by it shall be at a rate which falls into one, and one only, of the following categories—

(a) a fixed rate which is the same throughout the period of the debt,

(b) a rate which bears to a standard published rate the same fixed relationship throughout that period, and

(c) a rate which bears to a published index of prices the same fixed relationship throughout that period.

(5) The second condition is that those terms provide for any such interest to be payable as it accrues at intervals of 12 months or less.

(6) The third condition is that the terms of the debt are not such—

(a) in the case of a debt on a security, that the security is a deep discount or deep gain security, or

(b) in any other case, that if the debt were a debt on a security it would be a deep discount or deep gain security.

In this subsection "deep discount security" has the same meaning as in Schedule 4 to the Taxes Act 1988 and "deep gain security" has the same meaning as in Schedule 11 to the [M101]Finance Act 1989, disregarding paragraph 1(4)(c) of that Schedule.

(7) In this section—

"associated company" shall be construed in accordance with section 416 of the Taxes Act 1988;

"long term insurance business" means insurance business of any of the classes specified in Schedule 1 to the [M102]Insurance Companies Act 1982; and

"published index of prices" means the retail prices index or any similar general index of prices which is published by, or by an agent of, the government of any territory outside the United Kingdom.

(8) In sections 63 to 66 of the [M103]Finance Act 1993 as they apply by virtue of this section "the creditor company" means the company identified in subsection (1) above as the person entitled to the debt.

(9) In sections 63 to 66 of the [M104]Finance Act 1993 as they apply by virtue of this section "the commencement date" means—

(a) in relation to a debt not falling within subsection (10) below, 29th November 1994; and

(b) in relation to a debt falling within that subsection, 1st April 1996.

(10) A debt falls within this subsection if the person liable for it is—

(a) an institution which is a higher education institution for the purposes of section 65 of the Further and Higher Education Act 1992 or Article 30 of the [M105]Education and Libraries (Northern Ireland) Order 1993,

(b) an institution which is an institution within the higher education sector for the purposes of the [M106]Further and Higher Education (Scotland) Act 1992, or

(c) a registered housing association within the meaning of the Housing Associations Act 1985 or Part II of the [M107]Housing (Northern Ireland) Order 1992,

and that person was so liable at the end of 28th November 1994.

Marginal Citations

M100 1993 c. 34.
M101 1989 c. 26.
M102 1982 c. 50.
M103 1993 c. 34.
M104 1993 c. 34.
M105 1992 c. 13.
M106 1992 c. 37.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
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M107 1985 c. 69.

Reliefs

90 Relief for post-cessation expenditure.

(1) In Chapter VI of Part IV of the Taxes Act 1988 (provisions relating to the Schedule D charge: discontinuance, &c.), after section 109 insert—

" Relief for post-cessation expenditure

109A Relief for post-cessation expenditure.

(1) Where in connection with a trade, profession or vocation formerly carried on by him which has been permanently discontinued a person makes, within seven years of the discontinuance, a payment to which this section applies, he may, by notice given within twelve months from the 31st January next following the year of assessment in which the payment is made, claim relief from income tax on an amount of his income for that year equal to the amount of the payment.

(2) This section applies to payments made wholly and exclusively—

(a) in remedying defective work done, goods supplied or services rendered in the course of the former trade, profession or vocation or by way of damages (whether awarded or agreed) in respect of any such defective work, goods or services; or

(b) in defraying the expenses of legal or other professional services in connection with any claim that work done, goods supplied or services rendered in the course of the former trade, profession or vocation was or were defective;

(c) in insuring against any liabilities arising out of any such claim or against the incurring of such expenses; or

(d) for the purpose of collecting a debt taken into account in computing the profits or gains of the former trade, profession or vocation.

(3) Where a payment of any of the above descriptions is made in circumstances such that relief under this section is available, the following shall be treated as sums to which section 103 applies (whether or not they would be so treated apart from this subsection)—

(a) in the case of a payment within paragraph (a) or (b) of subsection (2) above, any sum received, by way of the proceeds of insurance or otherwise, for the purpose of enabling the payment to be made or by means of which it is reimbursed,

(b) in the case of a payment within paragraph (c) of that subsection, any sum (not falling within paragraph (a) above) received by way of refund of premium or otherwise in connection with the insurance, and

(c) in the case of a payment within paragraph (d) of that subsection, any sum received to meet the costs of collecting the debt;

and no deduction shall be made under section 105 in respect of any such sums.

Where such a sum is received in a year of assessment earlier than that in which the related payment is made, it shall be treated as having been received in that later year and not in the earlier year; and any such adjustment shall be made, by way of modification of any assessment or discharge or repayment of tax, as is required to give effect to this subsection.

(4) Where a trade, profession or vocation carried on by a person has been permanently discontinued and subsequently an unpaid debt which was taken into account in computing the profits or gains of that trade, profession or vocation and to the benefit of which he is entitled—

(a) is proved to be bad, or

(b) is released, in whole or in part, as part of a relevant arrangement or compromise (within the meaning of section 74),

he shall be treated as making a payment to which this section applies of an amount equal to the amount of the debt or, as the case may be, the amount released or, if he was entitled to only part of the benefit of the debt, to an appropriate proportion of that amount.

If any sum is subsequently received by him in payment of a debt for which relief has been given by virtue of this subsection, the sum shall be treated as one to which section 103 applies; and no deduction shall be made under section 105 in respect of any such sum.

(5) Where in the case of a trade, profession or vocation which has subsequently been permanently discontinued a deduction was made in computing the profits or losses of the trade, profession or vocation in respect of an expense not actually paid (an "unpaid expense"), then—

(a) if relief under this section in connection with that trade, profession or vocation is claimed in respect of any year of assessment, the amount of the relief shall be reduced by the amount of any unpaid expenses at the end of that year;

(b) for the purposes of the application of paragraph (a) above in relation to a subsequent year of assessment, any amount by which relief under this section has been reduced by virtue of that paragraph shall be treated as having been paid in respect of the expense in question; and

(c) if subsequently any amount is in fact paid in respect of an expense in respect of which a reduction has been made under paragraph (a), that amount (or, if less, the amount of the reduction) shall be treated as a payment to which this section applies.

(6) Relief shall not be given under this section in respect of an amount for which relief has been given or is available under any other provision of the Income Tax Acts.

In applying this subsection relief available under section 105 shall be treated as given in respect of other amounts before any amount in respect of which relief is available under this section.

(7) This section does not apply for the purposes of corporation tax.".

(2) Section 109A(1) of the Taxes Act 1988 (inserted by subsection (1) above) has effect as respects the years 1994-95 and 1995-96 with the substitution for the words "twelve months from the 31st January next following" of the words " two years after ".

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(3) In section 110(1) of the Taxes Act 1988 (interpretation, &c.) for "sections 103 to 109" substitute " sections 103 to 109A ".

(4) Where under section 109A of the Taxes Act 1988 (inserted by subsection (1) above) a person makes a claim for relief for a year of assessment in respect of an amount which is available for relief under that section, he may in the notice by which the claim is made make a claim to have so much of that amount as cannot be set off against his income for the year (the "excess relief") treated for the purposes of capital gains tax as an allowable loss accruing to him in that year.

(5) No relief shall be available by virtue of subsection (4) above in respect of so much of the excess relief as exceeds the amount on which the claimant would be chargeable to capital gains tax for that year if the following (and the effect of that subsection) were disregarded—

(a) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2) of the [M108]Taxation of Chargeable Gains Act 1992;

(b) section 3(1) of that Act (the annual exempt amount); and

(c) any relief against capital gains tax under section 72 of the [M109]Finance Act 1991 (deduction of trading losses).

(6) In section 105(2) of the Taxes Act 1988 (deductions allowed against post-cessation receipts: exclusion of amounts allowed elsewhere), after "any other provision of the Tax Acts" insert " or by virtue of section 90(4) of the Finance Act 1995 ".

(7) This section has effect in relation to payments made or treated as made (see subsection (4) of section 109A of the Taxes Act 1988 inserted by subsection (1) above) on or after 29th November 1994.

Marginal Citations

M108 1992 c. 12.

M109 1991 c. 31.

91 Employee liabilities and indemnity insurance.

(1) After section 201 of the Taxes Act 1988 there shall be inserted the following section—

"201AA Employee liabilities and indemnity insurance.

(1) Subject to the provisions of this section, the following may be deducted from the emoluments of any office or employment to be assessed to tax, if defrayed out of those emoluments, that is to say—

(a) any amount paid in or towards the discharge of a qualifying liability of the person who is the holder of the office or employment;

(b) costs or expenses incurred in connection with any claim that that person is subject to such a liability or with any proceedings relating to or arising out of such a claim; and

(c) so much (if any) of any premium paid under a qualifying contract of insurance as relates to the indemnification of that person against a qualifying liability or to the payment of any such costs or expenses.

(2) For the purposes of this section a liability is a qualifying liability, in relation to any office or employment, if it is imposed either—

(a) in respect of any acts or omissions of a person in his capacity as the holder of that office or employment or in any other capacity in which he acts in the performance of the duties of that office or employment; or

(b) in connection with any proceedings relating to or arising out of a claim that a person is subject to a liability imposed in respect of any such acts or omissions.

(3) For the purposes of this section a qualifying contract of insurance is a contract of insurance which—

(a) so far as the risks insured against are concerned, relates exclusively to one or more of the matters mentioned in subsection (4) below;

(b) is not connected with any other contract;

(c) does not contain provision entitling the insured, in addition to cover for the risks insured against and any right to renew the policy, to receive any payment or other benefit the entitlement to which is something to which a significant part of the premium under the contract is reasonably attributable; and

(d) is a contract the period of insurance under which does not exceed two years (except by virtue of one or more renewals each for a period of two years or less) and is not a contract which the insured is required to renew for any period.

(4) The matters referred to in subsection (3)(a) above in relation to any contract of insurance are the following, that is to say—

(a) the indemnification of any person holding any office or employment against any qualifying liability;

(b) the indemnification of any person against any vicarious liability in respect of acts or omissions giving rise, in the case of another, to such a qualifying liability;

(c) the payment of some or all of the costs or expenses incurred by or on behalf of that or any other person in connection with any claim that a person is subject to a liability to which the insurance relates or with any proceedings relating to or arising out of such a claim; and

(d) the indemnification of any person against any loss from the payment by him (whether or not in discharge of any liability) to a person holding an office or employment under him of any amount in respect of a qualifying liability or of any such costs or expenses.

(5) For the purposes of this section a contract of insurance is connected with another contract at any time at or after the time when they have both been entered into if—

(a) either of them was entered into by reference to the other or with a view to enabling the other to be entered into on particular terms or to facilitating the other being entered into on particular terms; and

(b) the terms on which either of them was entered into would have been significantly different if it had not been entered into in anticipation of the other being entered into or if the other had not also been entered into.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
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(6) Two or more contracts of insurance shall not be prevented by virtue of paragraph (b) of subsection (3) above from being qualifying contracts if—

(a) they each satisfy the requirements of paragraphs (a), (c) and (d) of that subsection; and

(b) the only respects in which there is a significant difference between the terms on which any of those contracts is entered into and what would have been those terms if the other contract or contracts had not been entered into consist in such reductions of premium as are reasonably attributable to—

(i) the fact that, where different contracts have been entered into as part of a single transaction, the premium under each of the contracts has been fixed by reference to the appropriate proportion of what would have been the premium under a single contract relating to all the risks covered by the different contracts; or

(ii) the fact that the contract in question contains a right to renew or is entered into by way of renewal or in pursuance of such a right.

(7) For the purpose of determining the different parts of any premium under any contract of insurance which are to be treated for the purposes of this section as paid in respect of the different risks, different persons and different offices and employments to which the contract relates, such apportionment of that premium shall be made as may be reasonable.

(8) Where it would be unlawful for a person under whom any other person holds any office or employment to enter into a contract of insurance in respect of liabilities of any description or in respect of costs or expenses of any description, no deduction may be made under this section in respect of—

(a) the discharge of any liability of that other person which is a liability of that description; or

(b) any costs or expenses incurred by or on behalf of that other person which are costs or expenses of that description.

(9) References in this section to a premium, in relation to a contract of insurance, are references to any amount payable under the contract to the insurer.”

(2) In sections 141(3), 142(2), 153(2) and 156(8) of that Act (which make provision, in relation to non-cash vouchers, credit-tokens, expenses and benefits in kind, about amounts which would have been deductible under certain provisions if paid out of a person’s emoluments), after “201”, in each case, there shall be inserted “ 201AA ”.

(3) This section has effect for the year 1995-96 and subsequent years of assessment.

92 Post-employment deductions.

(1) Subject to the following provisions of this section, where any individual who has held any office or employment (“the former employee”) defrays any amount to which this section applies, he shall be entitled, on making a claim for the purpose, to a deduction of that amount in computing, for income tax purposes, his total income for the year of assessment in which that amount is defrayed.

(2) This section applies to any amount defrayed by the former employee where that amount—

(a) is defrayed by him in the period beginning when he ceased to hold the relevant office or employment and ending with the sixth year of assessment after that in which he ceased to hold it; and

(b) is not deductible in pursuance of section 201AA of the Taxes Act 1988 from the emoluments of that office or employment to be assessed for tax but would be so deductible if—

(i) the former employee had continued to hold that office or employment, and

(ii) that amount had been defrayed out of the emoluments of that office or employment for the year of assessment in which it is in fact defrayed.

(3) In determining for the purposes of subsection (2) above whether any amount would be deductible as mentioned in paragraph (b) of that subsection, the assumption in sub-paragraph (i) of that paragraph shall be disregarded when identifying the liabilities which are to be regarded as qualifying liabilities within the meaning of section 201AA of the Taxes Act 1988.

(4) This section shall not apply to any amount defrayed by the former employee in so far as the cost of defraying that amount, without being met out of his relevant retirement benefits or post-employment emoluments, is borne—

(a) by the person under whom he held the relevant office or employment;

(b) by a person for the time being carrying on the whole or any part of the business or other undertaking for the purposes of which the former employee held that office or employment;

(c) by a person who is for the time being subject to any of the liabilities with respect to that business or other undertaking of the person mentioned in paragraph (a) above;

(d) by a person who within the terms of section 839 of the Taxes Act 1988 is connected with a person falling within any of paragraphs (a) to (c) above; or

(e) out of the proceeds of any contract of insurance relating to the matters in respect of which the amount is defrayed.

(5) In so far as the amount of any expenditure which is either—

(a) defrayed by any person mentioned in subsection (4)(a) to (d) above, or

(b) borne as mentioned in subsection (4)(a) to (e) above,

is an amount which falls to be treated as a relevant retirement benefit or post-employment emolument of the former employee, that amount shall be deemed for the purposes of this section to be an amount defrayed by the former employee out of that benefit or emolument.

(6) Subject to subsection (7) below, if an amount to which this section applies exceeds by any amount ("the excess relief") the amount from which it is deductible in accordance with subsection (1) above, the former employee shall be entitled, on making a claim for the purpose, to have the amount of the excess relief treated for the purposes of capital gains tax as an allowable loss accruing to that person for that year of assessment.

(7) No relief shall be available by virtue of this section in respect of so much of the excess relief for any year of assessment as exceeds the maximum amount.

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(8) For the purposes of subsection (7) above the maximum amount, in relation to the excess relief for any year of assessment, is the amount on which the claimant would be chargeable to capital gains tax for that year if the following (together with any relief available under this section) were disregarded, that is to say—

(a) any allowable losses falling to be carried forward to that year from a previous year for the purposes of section 2(2) of the [M110]Taxation of Chargeable Gains Act 1992;

(b) section 3(1) of that Act (the annual exempt amount); and

(c) any relief against capital gains tax under section 72 of the [M111]Finance Act 1991 (deduction of trading losses) or under section 90(4) of this Act.

(9) In this section—

"post-employment emolument", in relation to the former employee, means so much of any amount as, having been received when the relevant office or employment is no longer held by the former employee, is treated for the purposes of the Income Tax Acts as an emolument of that office or employment;

"the relevant office or employment", in relation to the former employee, means the office or employment in respect of which he is the former employee; and

"relevant retirement benefit", in relation to the former employee, means so much of any amount as, in accordance with section 596A of the Taxes Act 1988, is chargeable to tax as a benefit received by him under a retirement benefits scheme of which he is a member in respect of the relevant office or employment.

(10) Tax shall not be charged under section 148 of the Taxes Act 1988 (payments on retirement or removal from office or employment) in respect of any payment made or treated as made to any individual, or to any individual's executors or administrators, in so far as the payment is made for meeting the cost of defraying any amount which, without being an amount to which this section applies in relation to that individual, would fall to be treated as such an amount if—

(a) subsection (4) of this section were omitted; and

(b) where that individual has died, he had not died but had himself defrayed any amounts defrayed by his executors or administrators;

and this subsection shall have effect in the case of any valuable consideration that is deemed under section 148(3) to be a payment as if the consideration were deemed, to the extent that it is or represents a benefit equivalent to meeting the cost of defraying such an amount, to be a payment made for meeting such a cost.

(11) This section applies for the year 1995-96 and subsequent years of assessment.

Marginal Citations

M110 1992 c. 12.

M111 1991 c. 31.

93 Incidental overnight expenses etc.

(1) In section 141 of the Taxes Act 1988 (non-cash vouchers), after subsection (6B) there shall be inserted the following subsections—

"(6C) Subsection (1) above shall not apply in relation to a non-cash voucher to the extent that it is used by the employee to obtain goods, services or money where—

(a) obtaining the goods or services is incidental to his being away from his usual place of abode during a qualifying absence from home or, as the case may be, the money is obtained for the purpose of being used to obtain goods or services which would be so incidental;

(b) the authorised maximum is not exceeded in relation to that qualifying absence; and

(c) the cost of obtaining the goods or services would not be deductible as mentioned in subsection (3) above if incurred by the employee out of his emoluments.

(6D) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (6C) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded."

(2) In section 142 of that Act (credit-tokens), after subsection (3B) there shall be inserted the following subsections—

"(3C) Subsection (1) above shall not apply in relation to a credit-token to the extent that it is used by the employee to obtain goods, services or money where—

(a) obtaining the goods or services is incidental to his being away from his usual place of abode during a qualifying absence from home or, as the case may be, the money is obtained for the purpose of being used to obtain goods or services which would be so incidental;

(b) the authorised maximum is not exceeded in relation to that qualifying absence; and

(c) the cost of obtaining the goods or services would not be deductible as mentioned in subsection (2) above if incurred by the employee out of his emoluments.

(3D) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (3C) above to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded."

(3) In section 155 of that Act (exceptions from general charge on benefits in kind for persons in director's or higher-paid employment), after subsection (1A) there shall be inserted the following subsections—

"(1B) Section 154 does not apply in the case of a benefit provided for the employee himself where—

(a) the provision of the benefit is incidental to the employee's being away from his usual place of abode during a qualifying absence from home;

(b) the authorised maximum is not exceeded in relation to that qualifying absence; and

(c) the cost of the benefit would not be deductible as mentioned in section 156(8) if incurred by the employee out of his emoluments.

(1C) Subsections (3) to (5) of section 200A shall apply as they apply for the purposes of that section for construing the references in subsection (1B) above

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to a qualifying absence from home and for determining, for the purposes of that subsection, whether the authorised maximum is exceeded."

(4) After section 200 of that Act there shall be inserted the following section—

"**200A Incidental overnight expenses.**

(1) Subject to subsection (2) below, sums paid to or on behalf of any person holding an office or employment, to the extent that they are paid wholly and exclusively for the purpose of defraying, or of being used for defraying, any expenses which—
   (a) are incidental to that person's being away from his usual place of abode during a qualifying absence from home, but
   (b) would not be deductible under section 193, 194, 195, 198 or 332 if incurred out of that person's emoluments,

shall not be regarded as emoluments of the office or employment for any purpose of Schedule E.

(2) Subsection (1) above shall not apply in the case of any qualifying absence in relation to which the authorised maximum is exceeded.

(3) For the purposes of this section a qualifying absence from home, in relation to a person holding an office or employment, is any continuous period throughout which that person is obliged to stay away from his usual place of abode and during which he—
   (a) has at least one overnight stay away from that place; but
   (b) does not on any occasion stay overnight at a place other than a place the expenses of travelling to which are either—
      (i) expenses incurred out of his emoluments and deductible, otherwise than by virtue of section 193(4), 194(2) or 195(6), under any of the provisions mentioned in subsection (1)(b) above, or
      (ii) expenses which would be so deductible if so incurred.

(4) In this section "the authorised maximum", in relation to each qualifying absence from home by any person, means the aggregate amount equal to the sum of the following amounts—
   (a) £5 for every night (if any) during that absence which is a night the whole of which is spent by that person in the United Kingdom; and
   (b) £10 for every night (if any) during that absence which is a night the whole or any part of which is spent by that person outside the United Kingdom.

(5) For the purposes of this section the authorised maximum is exceeded in relation to a qualifying absence from home by any person if that maximum is exceeded by the amount which, in the absence of subsection (2) above and of the other requirements of this Act that that maximum is not exceeded, would fall by virtue of this section and sections 141(6C), 142(3C) and 155(1B) to be disregarded, in relation to that qualifying absence, in determining the amount of that person's emoluments.

(6) The Treasury may by order increase either or both of the sums for the time being specified in subsection (4)(a) and (b) above; and such an order shall

have effect for determining what emoluments are received by any person on or after the date when the order comes into force."

(5) This section shall have effect for determining what emoluments are received by any person on or after 6th April 1995.

Capital allowances: ships

94 Deferment of balancing charges in respect of ships.

In Chapter II of Part II of the [M112]Capital Allowances Act 1990 (ships), after section 33 there shall be inserted the following sections—

" Balancing charges in respect of ship disposals etc.

33A Deferment of balancing charge.

(1) This section applies in any case where—

(a) a balancing charge of any amount would, apart from this section, be made for any chargeable period ("the relevant period") on any person ("the shipowner") in respect of a trade carried on by him (his "actual trade");

(b) there is, in the relevant period, an event falling within section 24(6)(c)(i) to (iii);

(c) that event is one occurring on or after 21st April 1994 with respect to a ship ("the old ship") provided by the shipowner for the purposes of his actual trade and belonging to him at some time in the relevant period;

(d) the old ship was a qualifying ship immediately before that event;

(e) the shipowner's expenditure on the provision of the old ship is not expenditure treated for any purposes by virtue of section 41(2), 61(1), 79(2) or 80(5) as expenditure incurred for the purposes of a trade carried on separately from his actual trade; and

(f) the old ship has not begun, and is not treated as having begun, before the event mentioned in paragraph (b) above, to be used partly, but not wholly, for purposes other than those of the shipowner's actual trade.

(2) If—

(a) the shipowner makes a claim in respect of the event mentioned in subsection (1)(b) above for the deferment under this section of the whole or part of the charge which would be made on him, and

(b) none of the amounts specified in subsection (3) below is nil,

the amount for which deferment is claimed, so far as it does not exceed the smallest of those amounts, shall for the purposes of sections 24, 25 and 26 be added to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade.

(3) Subject to the following provisions of this section, those amounts are—

(a) the amount which, in accordance with section 33B, is treated as brought into account in respect of the old ship;

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(b) the amount of expenditure which is or is to be incurred by the shipowner on new shipping in the period of six years beginning with the day on which the event mentioned in subsection (1)(b) above occurs;

(c) the amount of the balancing charge which, apart only from the claim in question, would be made on the shipowner for the relevant period in respect of his actual trade; and

(d) the amount which, on the assumption—

(i) that any other additions under this section to the shipowner's qualifying expenditure for the relevant period are taken into account, but

(ii) that amounts carried forward under section 385 or 393 of the principal Act (losses carried forward) are disregarded,

would have the effect of reducing to nil the amount (if any) falling to be taken into account, in computing the shipowner's total profits or total income for that period, as the trading income of that trade or, as the case may be, as profits or gains arising from that trade.

(4) If—

(a) an addition is made under this section to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade, but

(b) the shipowner does not, in the period of six years mentioned in subsection (3)(b) above, incur expenditure on new shipping of an amount equal to or exceeding the addition,

the shipowner shall be assumed not to have been entitled to so much of the addition as exceeds the amount in fact incurred.

(5) Where an addition is made under this section to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade, so much of the expenditure incurred or to be incurred by the shipowner on new shipping, being expenditure of an amount equal to the addition, as for the purposes of subsection (3)(b) or (4) above is (in accordance with section 33D(6)) either—

(a) identified by the shipowner in his claim or by notice to the inspector as the expenditure to which the addition is to be attributed, or

(b) in default of being so identified by the shipowner, determined by the inspector to be the expenditure to which that addition is to be attributed,

shall be disregarded for the purposes of subsections (3)(b) and (4) above in determining the shipowner's entitlement to any other addition under this section to his qualifying expenditure for any period.

(6) A balancing charge falling by virtue of section 41(2), 79(5) or 80(5) to be made for the relevant period in the case of the shipowner's actual trade shall be disregarded in determining the amount referred to in subsection (3)(c) above.

(7) In consequence of paragraph (d) of subsection (3) above, no addition shall be made under this section to the shipowner's qualifying expenditure for the relevant period in respect of his actual trade if—

(a) the amount falling (after disregarding any amounts carried forward under section 385 or 393 of the principal Act) to be taken into account as mentioned in that paragraph would have been nil even apart from this section, or

(b) he has, apart from this section, incurred a loss in that trade for the relevant period.

33B Amount brought into account in respect of the old ship.

(1) For the purposes of section 33A where—

(a) the old ship is, by virtue of section 31(2), assumed for the purposes of sections 24, 25 and 26 to have been provided wholly and exclusively for the purposes of a single ship trade,

(b) in consequence of the event mentioned in section 33A(1)(b), a disposal value of the old ship falls for the purposes of section 31(7) to be brought into account for the chargeable period of the single ship trade which corresponds to the relevant period, and

(c) no notice has been given in relation to the single ship trade under section 33(1) or (4),

the amount treated as brought into account in respect of the old ship shall be the amount which under section 31(7)(b) falls to be brought into account for the relevant period of the shipowner's actual trade as an item of disposal value referable to machinery or plant.

(2) In any other case, the amount treated as brought into account in respect of the old ship shall be the amount equal to the amount which, on the assumptions specified in subsection (3) below, would have been the balancing charge for the relevant period in respect of the shipowner's actual trade.

(3) Those assumptions are—

(a) that section 31(2) did not apply with respect to expenditure on the provision of the old ship;

(b) that the old ship was the only item of machinery or plant in respect of which sections 24, 25 and 26 have effect for chargeable periods of the shipowner's actual trade; and

(c) that the allowances made to the shipowner in respect of the provision of the old ship are—

(i) the first-year allowance (if any) which was actually made to the shipowner;

(ii) any first-year allowance falling to be made to him that was postponed under section 30(1)(a) or (c); and

(iii) the maximum amount of any writing-down allowances which, on the preceding assumptions, could have been made for the chargeable periods of that trade ending with the relevant period.

(4) Where a notice under section 33(1) or (4) is given in the case of a single ship trade after the determination for the purposes of section 33A of the amount treated as brought into account in respect of the old ship, subsection (2) above, instead of subsection (1), shall apply, and be deemed always to have applied, in relation to that ship.

(5) In this section and the following provisions of this Chapter "single ship trade" has the same meaning as in section 31."

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

Marginal Citations
M112 1990 c. 1.

95 Reimposition of deferred charge.

In Chapter II of Part II of the [M113]Capital Allowances Act 1990 (ships), after the sections inserted by section 94 above there shall be inserted the following section—

"33C Reimposition of deferred charge.

(1) Notwithstanding anything in section 31(2), the assumption specified in subsection (2) below shall apply, for the purposes of sections 24, 25 and 26 wherever—
   (a) an addition is made under section 33A to the shipowner's qualifying expenditure for the relevant period;
   (b) the shipowner incurs expenditure on new shipping within the period mentioned in section 33A(3)(b); and
   (c) an identification or determination of the whole or any part of the expenditure on new shipping is made as mentioned in section 33A(5) in relation to the whole or any part of the addition.

(2) That assumption is that an amount equal to so much of the expenditure incurred on new shipping as is expenditure to which the whole or any part of the addition is to be attributed is to be brought into account—
   (a) for the chargeable period in which that expenditure is incurred, and
   (b) in respect of the single ship trade in respect of which that expenditure falls to be taken into account in determining qualifying expenditure of the shipowner,

   as an item of disposal value referable to machinery or plant which in respect of that chargeable period and that trade falls within section 24(6)."

Marginal Citations
M113 1990 c. 1.

96 Ships in respect of which charge may be deferred.

In Chapter II of Part II of the [M114]Capital Allowances Act 1990 (ships), after the section inserted by section 95 above there shall be inserted the following sections—

"33D Expenditure to which deferments attributed.

(1) Subject to the following provisions of this section, expenditure is expenditure on new shipping for the purposes of sections 33A to 33C in so far as it is both—
   (a) capital expenditure incurred on the provision, wholly and exclusively for the purposes of the shipowner's actual trade, of a ship which it appears—

(i) will be brought into use for the purposes of that trade as a qualifying ship, and

(ii) will continue to be a qualifying ship throughout a period of at least three years after that; and

(b) expenditure falling, by virtue of section 31(2), to be taken into account for the purposes of sections 24, 25 and 26, in determining qualifying expenditure, as an amount of expenditure incurred by the shipowner wholly and exclusively for the purposes of a single ship trade.

(2) Expenditure on the provision of a ship shall not be, and shall be deemed never to have been, expenditure on new shipping if the ship—

(a) is brought into use for the purposes of any trade of the shipowner or (without having been so brought into use) for the purposes of any trade of a person connected with him;

(b) there is a time after it is first so brought into use when that ship is not a qualifying ship; and

(c) that time is before whichever is the earlier of—

(i) the end of the period of three years beginning with the time when it is first so brought into use, and

(ii) the first occasion after the beginning of that period when neither the shipowner nor any person connected with him is a person to whom the ship belongs.

(3) Where—

(a) a notice under section 33(1) or (4) has the effect, in relation to any expenditure which satisfies the conditions in subsection (1)(a) and (b) above, of requiring any of that expenditure to be attributed for the purposes of sections 24, 25 and 26 to a trade which is not a single ship trade, or

(b) section 42 has effect with respect to expenditure on the provision of a ship in a case where the expenditure would have fallen to be taken into account as mentioned in subsection (1)(b) above if the ship had not been leased as mentioned in section 42(1),

the expenditure which falls to be so attributed or, as the case may be, with respect to which section 42 has effect shall not be, and shall be deemed never to have been, expenditure on new shipping.

(4) Expenditure on the provision of a ship is not expenditure on new shipping if—

(a) the ship had already belonged to the shipowner at some time in the period of six years ending with the time when it first belongs to him in consequence of his incurring that expenditure;

(b) the ship has at any time in that period belonged to a person who has, at a material time, been a person connected with the shipowner; or

(c) the main object, or one of the main objects, of—

(i) the transaction by which the ship was provided for the purposes of the shipowner's actual trade,

(ii) any series of transactions of which that transaction was one, or

(iii) any transaction in such a series,

was to secure the deferment of a charge under section 33A.

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(5) In subsection (4)(b) above "a material time", in relation to any expenditure, means the time when the expenditure is incurred or any earlier time in the period of six years which is applicable in the case in question for the purposes of section 33A(3)(b).

(6) An addition made under section 33A to the shipowner's qualifying expenditure for any period shall not for the purposes of that section or section 33C be attributed to the whole or any part of any expenditure on new shipping if there is other expenditure incurred by the shipowner which—

(a) was incurred before that expenditure in the period of six years which is applicable, in the case of that addition, for the purposes of section 33A(3)(b), and

(b) is expenditure on new shipping or would fall to be treated as such expenditure but for any notice under section 33(1) or (4),

unless the whole amount of the other expenditure has been used for the purposes of attributions made in the case of that addition and of any other additions made under section 33A in respect of events occurring before the beginning of that period of six years.

(7) Notwithstanding any changes in the persons engaged in carrying on any trade previously carried on by the shipowner, expenditure shall be treated for the purposes of this Chapter as incurred by the shipowner if—

(a) it is incurred by the persons for the time being carrying on that trade, and

(b) the only changes in the persons so engaged, between the time when the trade was carried on by the shipowner and the time when the expenditure is incurred, are changes in respect of which that trade is to be treated by virtue of section 113(2) or 343(2) of the principal Act (continuity of trade) as not having been discontinued.

(8) For the purposes of this section a person is connected with the shipowner at any time if—

(a) at that time he is, within the terms of section 839 of the principal Act, connected either with the shipowner or with a person who is connected with the shipowner by virtue of paragraph (b) below, or

(b) any expenditure incurred by him at that time would fall, by virtue of subsection (7) above, to be treated as expenditure incurred by the shipowner.

33E Qualifying ships.

(1) Subject to the following provisions of this section, a ship is a qualifying ship for the purposes of sections 33A to 33D if it is a ship of a sea-going kind and is registered, in any register of shipping established and maintained under the law of the United Kingdom or of any other country or territory, as a ship with a gross tonnage of or in excess of 100 tons.

(2) In any case where the event mentioned in section 33A(1)(b) consists in or results from either—

(a) the total loss of the old ship, or

(b) damage to the old ship that puts it in a condition in which it is impossible, or not commercially worthwhile, for the repair required for restoring it to its previous use to be undertaken,

the references to a qualifying ship in section 33A(1)(d) and section 33D(1) and (2) shall have effect as if in subsection (1) above the words "as a ship with a gross tonnage of or in excess of 100 tons" were omitted.

(3) A ship is not a qualifying ship if the primary use to which ships of the same kind as that ship are put by the persons to whom they belong or, where their use is made available to others, by those others is use for sport or recreation.

(4) A ship is not a qualifying ship at any time when—

(a) it is an offshore installation for the purposes of the [M115]Mineral Workings (Offshore Installations) Act 1971; or

(b) it would be such an installation if the activity for the carrying on of which it is or is to be established or maintained were carried on in or under controlled waters (within the meaning of that Act).

(5) Where, in the case of any ship which has been brought into use for the purposes of a trade of the shipowner or a person connected with him but was not so brought into use before 20th July 1994—

(a) there is a time in the qualifying period when the ship is not registered in a relevant register, and

(b) that time is more than three months after that period began,

the ship shall not, in relation to times after the time mentioned in paragraph (a) above, be a qualifying ship.

(6) In subsection (5) above "the qualifying period" means the period between—

(a) the time when the ship is first brought into use for the purposes of any trade of the shipowner or (without having been so brought into use) for the purposes of any trade of a person connected with him; and

(b) whichever is the earlier of—

(i) the end of the period of three years beginning with that time, and

(ii) the first occasion after that time when neither the shipowner nor any person connected with him is a person to whom the ship belongs.

(7) In subsection (5) above "relevant register", in relation to any ship, means any register of shipping established and maintained under the law of any part of the British Islands or of any country or territory which, at a time in the period which in the case of that ship is the qualifying period for the purposes of that subsection, is a member State, another State within the European Economic Area or a colony.

(8) References in subsections (5) and (6) above to a person connected with the shipowner shall be construed in accordance with section 33D(8) but shall have effect in relation to the old ship as if a trade carried on at any time by any person were carried on at that time by a person so connected wherever—

(a) it was subsequently carried on by the shipowner or a person connected with him; and

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(b) it underwent, between that time and the time when it was carried on by the shipowner or a person connected with him, only such changes in the persons engaged in carrying it on as are changes in respect of which it is to be treated by virtue of section 113(2) or 343(2) of the principal Act as not having been discontinued."

Marginal Citations
M114 1990 c. 1.
M115 1971 c. 61.

97 Procedural provisions relating to deferred charges.

(1) In Chapter II of Part II of the [M116]Capital Allowances Act 1990 (ships), after the sections inserted by section 96 above there shall be inserted the following section—

"**33F Procedural provisions relating to deferred charges.**

(1) Schedule A1 to this Act shall apply for the purposes of corporation tax in relation to the making of a claim under section 33A as it applies in relation to the making of a claim for an allowance.

(2) No claim under section 33A shall be allowed for the purposes of income tax unless it is made within twelve months from the 31st January next following the year of assessment in which the relevant period ends.

(3) No claim under section 33A may be made at any time before such date as the Treasury may by order appoint; and where by virtue of anything in subsection (1) or (2) above the period for making any such claim would have expired (but for this subsection) before the end of the period of twelve months beginning with that date, it shall expire, instead, at the end of that period of twelve months.

(4) An attribution made for the purposes of section 33A(5) or 33C may be varied by notice given by the shipowner to the inspector at any time before the end of the period for the making, by the person giving the notice, of claims under section 33A above in respect of events occurring in the earliest chargeable period affected; and for the purposes of this subsection a chargeable period is an affected chargeable period, in relation to a variation, if it is one in which expenditure to which the variation relates was incurred.

(5) Where—

(a) a claim for the deferment of any charge has been made under section 33A, and

(b) circumstances subsequently arise that require the deferment claimed to be treated as one to which the shipowner was not entitled, either in whole or in part,

the shipowner shall, no later than three months after the end of the chargeable period in which those circumstances first arise, give notice of that fact, specifying the circumstances, to the inspector.

(6) All such assessments and adjustments shall be made as may be necessary to give effect to the provisions of sections 33A to 33C and subsection (4) above;

and, notwithstanding any limitation on the time for making assessments, an assessment to tax chargeable in consequence of any such circumstances as are mentioned in subsection (5) above may be made at any time between—

(a) the time when those circumstances arise, and

(b) the time 12 months after notice of the circumstances is given to the inspector by the shipowner.

(7) In this section references to the shipowner, in relation to the giving of any notice, shall have effect where there have been any such changes as are mentioned in section 33D(7)(b) in the persons engaged in carrying on the shipowner's actual trade, as references to the persons who, in consequence of those changes, are carrying on that trade at the time of the giving of the notice or, as the case may be, when the notice is required to be given."

(2) In section 42(7)(c) of the Management Act (procedure for making claims under the [M117]Capital Allowances Act 1990 in the case of a partnership), so far as that section has effect as inserted by paragraph 13 of Schedule 19 to the [M118]Finance Act 1994 (self-assessment cases), after "33," there shall be inserted " 33A, ".

(3) In the second column of the Table in section 98 of the Management Act (penalties in respect of certain information provisions), in the entry relating to sections 23(2), 48 and 49(2) of the [M119]Capital Allowances Act 1990, after "23(2)," there shall be inserted " 33F(5), ".

Marginal Citations

M116 1990 c. 1.
M117 1990 c. 1.
M118 1994 c. 9.
M119 1990 c. 1.

98 Deferred charges: commencement and transitional provisions.

(1) Sections 94 to 97 above shall have effect, subject to the following provisions of this section, in relation to every chargeable period ending on or after 21st April 1994.

(2) Those sections do not apply for the purposes of income tax in relation to a chargeable period if—

(a) that period is a year of assessment as respects which Chapter IV of Part IV of the [M120]Finance Act 1994 (changes for facilitating self-assessment) does not apply to the shipowner's actual trade ("a transitional year"); and

(b) the basis period for that chargeable period ended before 21st April 1994.

(3) Where the relevant period is a transitional year the references in paragraphs (b) and (c) of section 33A(1) of the [M121]Capital Allowances Act 1990 ("the 1990 Act") to the relevant period shall have effect for the purposes of income tax as if they were references to the basis period for the relevant period.

(4) Where the relevant period is a transitional year or any other year of assessment as respects which section 140 of the 1990 Act has effect without the substitution made by section 211 of the Finance Act 1994, section 33A(3)(d) and (7) of the 1990 Act shall have effect for the purposes of income tax—

(a) subject to the assumption for which subsection (5) below provides; and

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(b) as if the reference to the shipowner incurring a loss in his actual trade for the relevant period were a reference to his incurring a loss in that trade for the period ("the assessment period") any profits or gains of which would have been the profits or gains on which income tax chargeable for the relevant period in respect of that trade would finally have fallen to be computed.

(5) That assumption is that in computing the profits or gains of the assessment period which arise from the shipowner's actual trade, and in computing whether he has incurred a loss in that trade for that period, all such deductions and additions were to be made as would have to be made if—

(a) allowances falling to be made under the 1990 Act for the relevant period in taxing that trade (excluding any allowances carried forward to the relevant period by virtue of section 140(4) of the 1990 Act) were trading expenses of the trade for the assessment period; and

(b) charges falling to be so made (apart from any allowances so carried forward) were charges on amounts falling to be treated as trading receipts of that trade for the assessment period.

(6) In relation to expenditure incurred in the basis period for a transitional year—

(a) the reference in section 33C(2)(a) of the 1990 Act to the chargeable period in which the expenditure is incurred shall have effect as a reference to the chargeable period in the basis period for which it was incurred; and

(b) the reference in section 33F(4) of the 1990 Act to a chargeable period shall include a reference to a basis period.

(7) Section 33F(2) of the 1990 Act shall not apply to any claim under section 33A for the deferment of the whole or any part of any charge for a transitional year, but no such claim shall be allowed for the purposes of income tax unless it is made—

(a) within two years of the end of the relevant period; and

(b) in a case where the shipowner's actual trade is carried on by two or more persons jointly, by the person required under section 9 of the Management Act (partnership return) to make a return for that period in respect of that trade.

(8) Expressions used in this section and in the provisions inserted by sections 94 to 97 above in the 1990 Act shall have the same meanings in this section as in those provisions.

Marginal Citations

M120 1994 c. 9.

M121 1990 c. 1.

Capital allowances: other provisions

99 Highway concessions.

(1) The [M122]Capital Allowances Act 1990 shall be amended as follows.

(2) In section 3(5) (right to charge road tolls deemed to be interest in land for the purposes of writing-down allowance), for "charge tolls" there shall be substituted " a highway concession ".

(3) In subsection (1) of section 4 (events giving rise to balancing allowances or charges), after paragraph (d) there shall be inserted the following paragraph—

"(da) that interest, being a highway concession, is brought to or comes to an end, or".

(4) After subsection (2) of section 4 there shall be inserted the following subsections—

"(2AA) No balancing allowance or balancing charge shall be made by reason of an event falling within paragraph (da) of subsection (1) above if the period for which the concession was granted is deemed for the purposes of this subsection to be extended to include any period after the end of the concession; and for the purposes of this subsection where in the case of any highway concession that period is or is deemed to be different in relation to different parts of the road in respect of which it has been granted such apportionment shall be made for the purposes of this subsection as may be just and reasonable.

(2AB) Where a highway concession in respect of any road ("the prior concession") is brought to or comes to an end in circumstances in which—

(a) the person entitled to that concession is afforded (whether or not in pursuance of any legally enforceable arrangements), and takes advantage of, an opportunity to be granted a renewal of the concession, on the same or modified terms, in respect of the whole or any part of that road, or

(b) that person, or a person who is connected with that person within the terms of section 839 of the principal Act, is so afforded, and takes advantage of, an opportunity to be granted a new concession, on the same or modified terms, in respect of, or of a road that includes, the whole or any part of that road,

then to the extent that the prior concession and the renewed or new concession relate to the same road, the period of the prior concession shall be deemed, for the purposes of subsection (2AA) above, to have been extended or further extended for the period of the renewed or new concession and any question for the purposes of this Part as to what constitutes the relevant interest at any time after the renewal, or (as the case may be) the grant of the new concession, shall be determined on the assumption that the renewed or new concession is a continuation of the prior concession."

(5) In section 18(1)(da) (definition of "industrial building or structure" to include structure in use for the purposes of a toll road undertaking), for "toll road" there shall be substituted " highway ".

(6) In section 20 (meaning of "the relevant interest")—

(a) in subsection (5), for "a toll road, the right to charge tolls" there shall be substituted " any road, a highway concession "; and

(b) in subsection (6)—

(i) in the words before paragraph (a), for "toll road" there shall be substituted " road ";

(ii) in paragraph (b), for "charge tolls" there shall be substituted " a highway concession "; and

(iii) in the words after paragraph (b), for "right to charge tolls" there shall be substituted " highway concession ".

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(7) After subsection (5) of section 21 (interpretation of Part I) there shall be inserted the following subsection—

"(5AA) In this Part—

"highway concession", in relation to any road, means—

(a) any right, in respect of the fact that the road is or will be used by the general public, to receive sums from the Secretary of State or from the Department of the Environment for Northern Ireland, or

(b) where that road is a toll road, the right to charge tolls in respect of the road,

and

"highway undertaking" means so much of any undertaking relating to the design, building, financing and operation of any roads as is carried on for the purposes of, or in connection with, the exploitation of highway concessions."

(8) In subsections (5A) and (5B) of section 21, for the words "toll road undertaking", in each place where they occur, there shall be substituted " highway undertaking "; and in subsection (5B) for "toll road comprised in it" there shall be substituted " road in relation to which it is carried on ".

(9) In section 156 (meaning of sale, insurance, salvage or compensation moneys), after paragraph (d) there shall be inserted the following paragraph—

"(e) where the event is the bringing or coming to an end of a highway concession (within the meaning of Part I), any insurance moneys or other compensation received by him in respect of any expenditure which is, or for the purposes of that Part is deemed to be, capital expenditure on the construction of the road in question, in so far as that compensation consists of capital sums."

(10) This section has effect in relation to expenditure incurred on or after 6th April 1995.

Marginal Citations

M122 1990 c. 1.

100 Arrangements affecting the value of a relevant interest.

(1) After section 10C of the [M123]Capital Allowances Act 1990 there shall be inserted the following section—

"10D Arrangements affecting the value of the purchased interest.

(1) This section has effect for determining the following amounts, that is to say—

(a) any amount which for the purposes of any of sections 10 to 10C is to be taken to be the sum paid on the sale of the relevant interest in any building or structure; and

(b) any amount which for the purposes of sections 1 to 8 is to be taken to be the amount of any sale, insurance, salvage or compensation moneys payable in respect of any building or structure where—

(i) a person is deemed, under any of sections 10 to 10C, to have incurred expenditure on the construction of the building or structure; and

(ii) the amount of the deemed expenditure is taken, under those sections, to have been equal to the price paid on a sale of the relevant interest in the building or structure;

and in this section "the relevant amount" means the amount falling to be determined and "the basic amount" means whatever would be the relevant amount for the purposes of this Part if the provisions of this section were disregarded.

(2) Where—

(a) arrangements falling within subsection (3) below have been entered into, and

(b) those arrangements contain any provision having an artificial effect on pricing,

the relevant amount shall be taken to be equal to the basic amount less so much of the basic amount as, on a just apportionment, represents the extent to which the sale price or, as the case may be, the amount of the sale, insurance, salvage or compensation moneys is more than it would have been if those arrangements had not contained that provision.

(3) The arrangements falling within this subsection are any arrangements relating to, or to any other arrangements made with respect to, any interest in or right over the building or structure in question (whether granted by the person entitled to the relevant interest or by somebody else), so far as they are arrangements which—

(a) were entered into between any two or more persons at or before the time mentioned in subsection (5) below; and

(b) had the effect at the time so mentioned of enhancing the value of the relevant interest in that building or structure.

(4) For the purposes of this section arrangements falling within subsection (3) above in relation to any building or structure shall be treated as containing a provision having an artificial effect on pricing to the extent that they go beyond what, at the time they were entered into, it was reasonable to regard as required, so far as transactions involving interests in or rights over buildings or structures of the same or a similar description were concerned, by the market conditions then prevailing for persons dealing with each other at arm's length in the open market.

(5) The time mentioned in subsection (3)(a) above is—

(a) in relation to the determination of an amount falling within subsection (1)(a) above, the time of the fixing of the sale price for the sale in question; and

(b) in relation to the determination of an amount falling within subsection (1)(b) above, the time of the fixing of the sale price for the sale by reference to which the amount of the deemed expenditure on

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the construction of the building or structure fell to be determined in accordance with any of sections 10 to 10C."

(2) In section 151 of that Act (procedure on apportionments), after subsection (1) there shall be inserted the following subsection—

"(1A) This section applies in relation to so much of the determination of any price, or of any sale, insurance, salvage or compensation moneys, as is made in accordance with section 10D as it applies in relation to apportionments."

(3) This section has effect in relation to determinations on or after 29th November 1994 except where the time referred to in subsection (5) of the section 10D inserted in the [M124]Capital Allowances Act 1990 by this section would, in relation to the amount to be determined, be the time of the fixing of a sale price which either—

(a) became payable before 29th November 1994; or

(b) being an amount becoming payable before 6th April 1995, was fixed by a contract entered into before 29th November 1994.

Marginal Citations

M123 1990 c. 1.

M124 1990 c. 1.

101 Import warehouses etc.

Section 18(1)(f)(iv) of the Capital Allowances Act 1990 (industrial building or structure to include building or structure used for the storage of goods arriving by sea or air into the United Kingdom) shall have effect, and be deemed always to have had effect, as if for "by sea or air into any part of" there were substituted " in any part of the United Kingdom from a place outside ".

102 Commencement of certain provisions.

(1) Chapter IV of Part IV of the [M125]Finance Act 1994 (changes for facilitating self-assessment) shall be deemed to have been enacted with the following modification.

(2) In section 218 (commencement etc. of Chapter IV, sections 213(4) and (8) and 214(4) and (6) of which relate to capital allowances) the following subsection shall be inserted after subsection (1)—

"(1A) In a case where—

(a) a trade is set up and commenced by a company, and

(b) it is not set up and commenced before 6th April 1994,

sections 213(4) and (8) and 214(4) and (6) have effect only if it is set up and commenced on or after 6th April 1995."

Marginal Citations

M125 1994 c. 9.

Management: self-assessment etc.

103 Liability of trustees.

(1) In subsection (2) of section 7 of the Management Act (notice of liability)—

(a) for the words "a person who is" there shall be substituted the words " persons who are "; and

(b) for the words "a trustee" there shall be substituted the words " the relevant trustees ".

(2) After subsection (8) of that section there shall be inserted the following subsection—

"(9) For the purposes of this Act the relevant trustees of a settlement are—

(a) in relation to income, the persons who are trustees when the income arises and any persons who subsequently become trustees; and

(b) in relation to chargeable gains, the persons who are trustees in the year of assessment in which the chargeable gains accrue and any persons who subsequently become trustees."

(3) In subsection (1) of section 8A of that Act (trustee's return)—

(a) for the words "a trustee" there shall be substituted the words " the relevant trustees "; and

(b) for the words "the trustee", in the first place where they occur, there shall be substituted the words " any relevant trustee ".

(4) After subsection (4) of that section there shall be inserted the following subsection—

"(5) The following references, namely—

(a) references in section 9 or 28C of this Act to a person to whom a notice has been given under this section being chargeable to tax; and

(b) references in section 29 of this Act to such a person being assessed to tax,

shall be construed as references to the relevant trustees of the settlement being so chargeable or, as the case may be, being so assessed."

(5) At the beginning of Part XI of that Act (miscellaneous and supplemental) there shall be inserted the following section—

" Settlements

107A Relevant trustees.

(1) Subject to the following provisions of this section, anything which for the purposes of this Act is done at any time by or in relation to any one or more of the relevant trustees of a settlement shall be treated for those purposes as done at that time by or in relation to the other or others of those trustees.

(2) Subject to subsection (3) below, where the relevant trustees of a settlement are liable—

(a) to a penalty under section 7, 12B, 93, 95 or 97AA of this Act or paragraph 2A of Schedule 1A to this Act, or to interest under section 103A of this Act on such a penalty;

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(b) to make a payment in accordance with an assessment under section 30 of this Act, or to make a payment under section 59A or 59B of this Act;

(c) to a surcharge under section 59C of this Act, or to interest under that section on such a surcharge; or

(d) to interest under section 86 of this Act,

the penalty, interest, payment or surcharge may be recovered (but only once) from any one or more of those trustees.

(3) No amount may be recovered by virtue of subsection (2)(a) or (c) above from a person who did not become a relevant trustee until after the relevant time, that is to say—

(a) in relation to so much of a penalty under section 93(3) or 97AA(1)(b) of this Act as is payable in respect of any day, or to interest under section 103A of this Act on so much of such a penalty as is so payable, the beginning of that day;

(b) in relation to a penalty under any other provision of this Act mentioned in subsection (2)(a) above, or to interest under section 103A of this Act on such a penalty, the time when the relevant act or omission occurred; and

(c) in relation to a surcharge under subsection (2) or (3) of section 59C of this Act, or to interest under that section on such a surcharge, the beginning of the day mentioned in that subsection;

and in paragraph (b) above "the relevant act or omission" means the act or omission which caused the penalty to become payable.

(4) In a case where—

(a) subsection (2)(a) above applies in relation to a penalty under section 93 of this Act, or

(b) subsection (2)(c) above applies in relation to a surcharge under section 59C of this Act,

subsection (8) of section 93 or, as the case may be, subsection (9) of section 59C of this Act shall have effect as if the reference to the taxpayer were a reference to each of the relevant trustees."

(6) In section 118 of that Act (interpretation), after the definition of "the principal Act" there shall be inserted the following definition—

""the relevant trustees", in relation to a settlement, shall be construed in accordance with section 7(9) of this Act."

(7) Unless the contrary intention appears, this section, sections 104 to 115 below and Schedule 20 to this Act—

(a) so far as they relate to income tax and capital gains tax, have effect as respects the year 1996-97 and subsequent years of assessment, and

(b) so far as they relate to corporation tax, have effect as respects accounting periods ending on or after the appointed day for the purposes of Chapter III of Part IV of the [M126]Finance Act 1994.

Marginal Citations
M126 1994 c. 9.

104 Returns and self-assessments.

(1) In each of the following, namely—

(a) subsection (1A) of section 8 of the Management Act (personal return); and

(b) subsection (1A) of section 8A of that Act (trustee's return),

there shall be inserted at the end the words " and the amounts referred to in that subsection are net amounts, that is to say, amounts which take into account any relief, allowance or repayment of tax for which a claim is made and give credit for any income tax deducted at source and any tax credit to which section 231 of the principal Act applies ".

(2) In subsection (1B) of section 8 of that Act, for the word "loss" there shall be substituted the words " loss, tax, credit ".

(3) After subsection (4) of that section there shall be inserted the following subsection—

"(5) In this section and sections 8A, 9 and 12AA of this Act, any reference to income tax deducted at source is a reference to income tax deducted or treated as deducted from any income or treated as paid on any income."

(4) In subsection (1) of section 9 of that Act (returns to include self-assessment), for the words "on the basis of the information contained in the return" there shall be substituted the following paragraphs—

"(a) on the basis of the information contained in the return; and

(b) taking into account any relief, allowance or repayment of tax a claim for which is included in the return and giving credit for any income tax deducted at source and any tax credit to which section 231 of the principal Act applies,".

(5) In subsection (1) of section 11AA of that Act (return of profits to include self-assessment), for the words "on the basis of the information contained in the return" there shall be substituted the following paragraphs—

"(a) on the basis of the information contained in the return; and

(b) taking into account any relief, allowance or repayment of tax a claim for which is included in the return,".

(6) For subsection (1) of section 12AA of that Act (partnership return) there shall be substituted the following subsections—

"(1) Where a trade, profession or business is carried on by two or more persons in partnership, for the purpose of facilitating the establishment of the following amounts, namely—

(a) the amount in which each partner chargeable to income tax for any year of assessment is so chargeable, and

(b) the amount in which each partner chargeable to corporation tax for any period is so chargeable,

an officer of the Board may act under subsection (2) or (3) below (or both).

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(1A) The amounts referred to in paragraphs (a) and (b) of subsection (1) above are net amounts, that is to say, amounts which—

(a) take into account any relief, allowance or repayment of tax for which a claim is made; and

(b) in the case of the amount referred to in paragraph (a) of that subsection, give credit for any income tax deducted at source and any tax credit to which section 231 of the principal Act applies."

(7) For subsection (1) of section 12AB of that Act (partnership return to include partnership statement) there shall be substituted the following subsection—

"(1) Every return under section 12AA of this Act shall include a statement (a partnership statement) of the following amounts, namely—

(a) in the case of each period of account ending within the period in respect of which the return is made—

(i) the amount of income or loss from each source which, on the basis of the information contained in the return and taking into account any relief or allowance a section 42(7) claim for which is included in the return, has accrued to or has been sustained by the partnership for that period,

(ii) each amount of income tax which, on that basis, has been deducted or treated as deducted from any income of the partnership, or treated as paid on any such income, for that period,

(iii) the amount of each tax credit which, on that basis, has accrued to the partnership for that period, and

(iv) the amount of each charge which, on that basis, was a charge on the income of the partnership for that period; and

(b) in the case of each such period and each of the partners, the amount which, on that basis and (where applicable) taking into account any such relief or allowance, is equal to his share of that income, loss, tax, credit or charge."

(8) In subsection (5) of that section, after the definition of "period of account" there shall be inserted the following definitions—

""section 42(7) claim" means a claim under any of the provisions mentioned in section 42(7) of this Act;

"tax credit" means a tax credit to which section 231 of the principal Act applies."

105 Records for purposes of returns.

(1) In subsection (1) of section 12B of the Management Act (records to be kept for purposes of returns), for paragraph (b) there shall be substituted the following paragraph—

"(b) preserve those records until the end of the relevant day, that is to say, the day mentioned in subsection (2) below or, where a return is required by a notice given on or before that day, whichever of that day and the following is the latest, namely—

(i) where enquiries into the return or any amendment of the return are made by an officer of the Board, the day on which, by virtue of section 28A(5) or 28B(5) of this Act, those enquiries are treated as completed; and

(ii) where no enquiries into the return or any amendment of the return are so made, the day on which such an officer no longer has power to make such enquiries."

(2) In subsection (2) of that section, the words from "or, where a return" to the end shall cease to have effect.

(3) After that subsection there shall be inserted the following subsection—

"(2A) Any person who—

(a) is required, by such a notice as is mentioned in subsection (1) above given at any time after the end of the day mentioned in subsection (2) above, to make and deliver a return for a year of assessment or other period; and

(b) has in his possession at that time any records which may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period,

shall preserve those records until the end of the relevant day, that is to say, the day which, if the notice had been given on or before the day mentioned in subsection (2) above, would have been the relevant day for the purposes of subsection (1) above."

(4) In subsection (3) of that section—

(a) in paragraph (a), after the words "subsection (1)" there shall be inserted the words " or (2A) "; and

(b) in paragraph (b), for the words "the day mentioned in subsection (2) above" there shall be substituted the words " the end of the relevant day ".

(5) In subsection (4) of that section, after the words "subsection (1)" there shall be inserted the words " or (2A) ".

(6) In subsection (5) of that section—

(a) at the beginning there shall be inserted the words " Subject to subsection (5A) below, "; and

(b) after the words "subsection (1)" there shall be inserted the words " or (2A) ".

(7) After that subsection there shall be inserted the following subsection—

"(5A) Subsection (5) above does not apply where the records which the person fails to keep or preserve are records which might have been requisite only for the purposes of claims, elections or notices which are not included in the return."

106 Return of employees' emoluments etc.

(1) For section 15 of the Management Act there shall be substituted the following section—

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"**15 Return of employees' emoluments etc.**

(1) Every employer, when required to do so by notice from an officer of the Board, shall, within the time limited by the notice, prepare and deliver to the officer a return relating to persons who are or have been employees of his, containing the information required under the following provisions of this section.

(2) An employer shall not be required to include in his return information relating to any year of assessment if the notice is given more than five years after the 31st January next following that year.

(3) A notice under subsection (1) above—
- (a) shall specify the employees for whom a return is to be made and may, in particular, specify individuals (by name or otherwise) or all employees of an employer or all his employees who are or have been in employment to which Chapter II of Part V of the principal Act applies; and
- (b) shall specify the years of assessment or other periods with respect to which the information is to be provided.

(4) A notice under subsection (1) above may require the return to state the name and place of residence of an employee to whom it relates.

(5) A notice under subsection (1) above may require the return to contain, in respect of an employee to whom it relates, the following particulars—
- (a) in the case of relevant payments made by the employer, particulars of the payments;
- (b) in the case of relevant payments not falling within paragraph (a) above the making of which by another person has been arranged by the employer—
  - (i) particulars of the payments; and
  - (ii) the name and business address of the other person; and
- (c) in the case of relevant payments not falling within either of the preceding paragraphs, the name and business address of any person who has, to the employer's knowledge, made the payments.

(6) Any payments made to an employee in respect of his employment are relevant payments for the purposes of this section, including—
- (a) payments to him in respect of expenses (including sums put at his disposal and paid away by him);
- (b) payments made on his behalf and not repaid; and
- (c) payments to him for services rendered in connection with a trade or business, whether the services were rendered in the course of his employment or not.

(7) Where, for the purposes of his return, an employer apportions expenses incurred partly in or in connection with a particular matter and partly in or in connection with other matters—
- (a) the return shall contain a statement that the sum included in the return is the result of such an apportionment; and
- (b) if required to do so by notice from an officer of the Board, the employer shall prepare and deliver to the officer, within the time

limited by the notice, a return containing full particulars as to the amount apportioned and the manner in which, and the grounds on which, the apportionment has been made.

(8) A notice under subsection (1) above may require the return—

(a) to state in respect of an employee to whom it relates whether any benefits are or have been provided for him (or for any other person) by reason of his employment, such as may give rise to charges to tax under the relevant sections, that is to say, sections 141, 142, 143, 144A, 145, 146 and 154 to 165 of the principal Act (miscellaneous benefits in cash or in kind); and

(b) if such benefits are or have been provided, to contain such particulars of those benefits as may be specified in the notice.

(9) Where such benefits are provided the notice may, without prejudice to subsection (8)(b) above, require the return to contain the following particulars—

(a) in the case of benefits which are or have been provided by the employer, particulars of the amounts which may be chargeable to tax by virtue of the relevant sections;

(b) in the case of benefits not falling within paragraph (a) above the provision of which by another person is or has been arranged by the employer—

(i) particulars of the amounts which may be so chargeable; and

(ii) the name and business address of the other person; and

(c) in the case of benefits not falling within either of the preceding paragraphs, the name and business address of any person who has, to the employer's knowledge, provided the benefits.

(10) Where it appears to an officer of the Board that a person has, in any year of assessment, been concerned in making relevant payments to, or providing benefits to or in respect of, employees of another, the officer may at any time up to five years after the 31st January next following that year by notice require that person—

(a) to deliver to the officer, within the time limited by the notice, such particulars of those payments or benefits, or of the amounts which may be chargeable to tax in respect of the benefits, as may be specified in the notice (so far as known to him); and

(b) to include with those particulars the names and addresses (so far as known to him) of the employees concerned.

(11) In determining, in pursuance of a notice under subsection (1) or (10) above, amounts which may be chargeable to tax by virtue of the relevant sections, a person—

(a) shall not make—

(i) any deduction or other adjustment which he is unable to show, by reference to information in his possession or otherwise available to him, is authorised or required by the relevant sections; or

(ii) any deduction authorised by section 141(3), 142(2), 145(3) or 156(8) of the principal Act; but

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(b) subject to that, shall make all such deductions and other adjustments as may be authorised or required by the relevant sections.

(12) Where the employer is a body of persons, the secretary of the body or other officer (by whatever name called) performing the duties of secretary shall be treated as the employer for the purposes of this section.

Where the employer is a body corporate, that body corporate, as well as the secretary or other officer, shall be liable to a penalty for failure to comply with this section.

(13) In this section—

"arranged" includes guaranteed and in any way facilitated;

"employee" means an office holder or employee whose emoluments fall to be assessed under Schedule E, and related expressions are to be construed accordingly;

"relevant payments" has the meaning given by subsection (6) above; and

"the relevant sections" has the meaning given by subsection (8)(a) above."

(2) This section has effect as respects payments made or benefits provided on or after 6th April 1996.

107 Procedure for making claims etc.

(1) After subsection (1) of section 42 of the Management Act (procedure for making claims etc.) there shall be inserted the following subsection—

"(1A) Subject to subsection (3) below, a claim for a relief, an allowance or a repayment of tax shall be for an amount which is quantified at the time when the claim is made."

(2) In subsection (2) of that section, for the words "subsection (3)" there shall be substituted the words " subsections (3) and (3A) ".

(3) In subsection (3) of that section, for the words "Subsection (2)" there shall be substituted the words " Subsections (1A) and (2) ".

(4) After subsection (3) of that section there shall be inserted the following subsections—

"(3A) Where a person makes a claim requiring relief for a loss incurred or treated as incurred, or a payment made, in one year of assessment ("the later year") to be given in an earlier year of assessment ("the earlier year")—

(a) subsection (2) above shall not apply in relation to the claim;

(b) the claim shall be made in relation to the later year;

(c) the claim shall be for an amount equal to the difference between—

(i) the amount in which he has been assessed to tax under section 9 of this Act for the earlier year; and

(ii) the amount in which he would have been so assessed if the claim could have been, and had been, included in a return made under section 8 or 8A of this Act for that year; and

(d) effect shall be given to the claim in relation to the later year, whether by repayment or set-off, or by an addition to the aggregate amount given by section 59B(1)(b) of this Act, or otherwise.

(3B) Where no notice under section 8 or 8A of this Act has been given to the person for the earlier year, subsection (3A)(c) above shall have effect as if—

(a) sub-paragraph (i) referred to the amount in which he would have been assessed to tax under section 9 of this Act for that year if such a notice had been so given; and

(b) sub-paragraph (ii) referred to the amount in which he would have been so assessed if such a notice had been so given and the claim could have been, and had been, included in a return made under section 8 or 8A of this Act for that year."

(5) In subsection (4) of that section, there shall be inserted at the beginning the words " Subject to subsection (4A) below, ".

(6) After subsection (4) of that section there shall be inserted the following subsection—

"(4A) Subsection (4) above shall not apply where—

(a) the company is wholly exempt from corporation tax or is only not so exempt in respect of trading income; and

(b) the tax credit is not one in respect of which a payment on account may be claimed by the company under Schedule 19AB to the principal Act."

(7) In subsection (5) of that section, for the words "subsections (2) and (4) above" there shall be substituted the words " this section ".

(8) In subsection (7)(a) of that section, for the words "sections 84" there shall be substituted the words " sections 62A, 84 ".

(9) In subsection (10) of that section, after the words "This section" there shall be inserted the words " (except subsection (1A) above) ".

(10) In subsection (11) of that section, paragraph (b) and the word "and" immediately preceding that paragraph shall cease to have effect.

(11) Schedule 1A to that Act (claims etc. not included in returns) shall have effect subject to the amendments specified in Schedule 20 to this Act.

108 Payments on account of income tax.

(1) In subsection (1) of section 59A of the Management Act (payments on account of income tax)—

(a) there shall be inserted at the beginning the words " Subject to subsection (9) below, "; and

(b) in paragraph (a), for the words "has been assessed" there shall be substituted the words " is assessed ".

(2) In subsection (2) of that section, for the words "subsection (4)" there shall be substituted the words " subsections (4) and (4A) ".

(3) After subsection (4) of that section there shall be inserted the following subsection—

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"(4A) If as regards the year immediately preceding the year of assessment—

(a) the taxpayer is assessed to income tax under section 9 of this Act after the date on or before which either payment on account is required to be made, or

(b) his assessment to income tax under that section is amended after that date,

then, subject to subsections (3) and (4) above and to any subsequent application of this subsection, the amount of the payment on account shall be, and shall be deemed always to have been, equal to 50 per cent. of the relevant amount as determined on the basis of the assessment or, as the case may be, the assessment as amended."

(4) In subsection (5) of that section—

(a) after the words "the taxpayer makes a claim under subsection (3) or (4) above" there shall be inserted the words " or subsection (4A) above applies "; and

(b) after the words "whether by the repayment of amounts paid on account" there shall be inserted the words " , by the making of payments or further payments on account ".

(5) For subsection (8) of that section there shall be substituted the following subsections—

"(8) In this section, in relation to a year of assessment, any reference to the amount of any income tax deducted at source is a reference to the amount by which the aggregate of the following, namely—

(a) any income tax deducted or treated as deducted from any income, or treated as paid on any income, in respect of the year, and

(b) any amounts which, in respect of the year, are to be deducted at source under section 203 of the principal Act in subsequent years, or are tax credits to which section 231 of that Act applies,

exceeds the aggregate of any amounts which, in the year, are deducted at source under the said section 203 in respect of previous years.

(9) If, at any time before the 31st January next following a year of assessment, an officer of the Board so directs—

(a) this section shall not apply, and shall be deemed never to have applied, as regards that year to any person specified in the direction; and

(b) there shall be made all such adjustments, whether by the repayment of amounts paid on account or otherwise, as may be required to give effect to the direction."

109 Surcharges on unpaid tax.

(1) In section 59C of the Management Act (surcharges on unpaid income tax and capital gains tax), in subsection (4) (exceptions to surcharge), for the words "or 95" there shall be substituted the words " , 95 or 95A ".

(2) That section of that Act shall apply in relation to any income tax or capital gains tax which—

(a) is charged by an assessment made on or after 6th April 1998; and

(b) is for the year 1995-96 or an earlier year of assessment,

as it applies in relation to any income tax or capital gains tax which becomes payable in accordance with section 55 or 59B of that Act and is for the year 1996-97 or a subsequent year of assessment.

110 Interest on overdue tax.

(1) For section 86 of the Management Act there shall be substituted the following section—

"**86 Interest on overdue income tax and capital gains tax.**

(1) The following, namely—
  (a) any amount on account of income tax which becomes due and payable in accordance with section 59A(2) of this Act, and
  (b) any income tax or capital gains tax which becomes due and payable in accordance with section 55 or 59B of this Act,

shall carry interest at the rate applicable under section 178 of the [M127]Finance Act 1989 from the relevant date until payment.

(2) For the purposes of subsection (1)(a) above the relevant date is whichever of the dates mentioned in section 59A(2) of this Act is applicable; and for the purposes of subsection (1)(b) above the relevant date is—
  (a) in any such case as is mentioned in subsection (3) of section 59B of this Act, the last day of the period of three months mentioned in that subsection; and
  (b) in any other case, the date mentioned in subsection (4) of that section.

(3) Subsection (1) above applies even if the relevant date is a non-business day within the meaning of section 93 of the [M128]Bills of Exchange Act 1882.

(4) Subsection (5) below applies where as regards a year of assessment—
  (a) any person makes a claim under subsection (3) or (4) of section 59A of this Act in respect of the amounts (the section 59A amounts) payable by him in accordance with subsection (2) of that section, and
  (b) an amount (the section 59B amount) becomes payable by him in accordance with section 59B(3), (4) or (5) of this Act.

(5) Interest shall be payable under this section as if each of the section 59A amounts had been equal to—
  (a) the aggregate of that amount and 50 per cent. of the section 59B amount, or
  (b) the amount which would have been payable in accordance with subsection (2) of section 59A of this Act if the claim under subsection (3) or (4) of that section had not been made,

whichever is the less.

(6) In determining for the purposes of subsections (4) and (5) above what amount (if any) is payable by any person in accordance with section 59B(3), (4) or (5) of this Act—
  (a) it shall be assumed that both of the section 59A amounts have been paid, and

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(b) no account shall be taken of any amount which has been paid on account otherwise than under section 59A(2) of this Act or is payable by way of capital gains tax.

(7) Subsection (8) below applies where as regards any person and a year of assessment—

(a) amounts (the section 59A amounts) become payable by him in accordance with section 59A(2) of this Act, and

(b) an amount (the section 59B amount) becomes repayable to him in accordance with section 59B (3), (4) or (5) of this Act.

(8) So much of any interest payable under this section on either of the section 59A amounts as is not attributable to the amount by which that amount exceeds 50 per cent. of the section 59B amount shall be remitted.

(9) In determining for the purposes of subsections (7) and (8) above what amount (if any) is repayable to any person in accordance with section 59B(3), (4) or (5) of this Act, no account shall be taken of any amount which has been paid on account otherwise than under section 59A(2) of this Act or is payable by way of capital gains tax."

(2) That section of that Act shall apply in relation to any income tax or capital gains tax which—

(a) is charged by an assessment made on or after 6th April 1998; and

(b) is for the year 1995-96 or an earlier year of assessment,

as it applies in relation to any income tax or capital gains tax which becomes due and payable in accordance with section 55 or 59B of that Act and is for the year 1996-97 or a subsequent year of assessment.

(3) In that section of that Act as it so applies, "the relevant date" means the 31st January next following the year of assessment.

[[F2](4) So far as it relates to partnerships whose trades, professions or businesses were set up and commenced before 6th April 1994, subsection (1) above has effect as respects the year 1997-98 and subsequent years of assessment.**]**

Textual Amendments

F2 S. 110(4) inserted (*retrospectively*) by 1996 c. 8, **s. 131(1)**

Marginal Citations

M127 1989 c. 26.

M128 1882 c. 61.

111 Assessments in respect of income taken into account under PAYE.

(1) For section 205 of the Taxes Act 1988 there shall be substituted the following section—

"**205 Assessments unnecessary in certain circumstances.**

(1) Subject to the provisions of this section, no assessment need be made in respect of income assessable to income tax for any year of assessment if the income has been taken into account in the making of deductions or repayments of income tax by virtue of regulations made under section 203.

(2) Subsection (1) above does not apply if the total net tax deducted in the year in question from the income is not the same as it would have been if—
   (a) all the relevant circumstances had been known to all parties throughout the year;
   (b) deductions and repayments had throughout the year been made accordingly; and
   (c) the deductions and repayments had been so made by reference to cumulative tax tables.

(3) Nothing in this section shall be construed as preventing an assessment (whether under section 9 of the Management Act or otherwise) being made in respect of income assessable to income tax for any year of assessment.

(4) A person as regards whose income for a year of assessment deductions or repayments have been made may by notice, given not later than five years after the 31st October next following that year, require an officer of the Board to give him notice under section 8 of that Act in respect of that year.

(5) In this section—
   (a) "cumulative tax tables" means tax tables prepared under section 203 which are so framed as to require the tax which is to be deducted or repaid on the occasion of each payment made in the year to be ascertained by reference to a total of emoluments paid in the year up to the time of making that payment; and
   (b) any reference to the total net tax deducted shall be construed as a reference to the total income tax deducted during the year by virtue of regulations made under section 203, less any income tax repaid by virtue of any such regulations."

(2) In section 206 of that Act (additional provision for certain assessments) the words "under Schedule E" shall cease to have effect.

112 Recovery of certain amounts deducted or paid under MIRAS.

(1) After section 374 of the Taxes Act 1988 there shall be inserted the following section—

"**374A 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—

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(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.

(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 and as if—

(a) the assessment were among those specified in section 55(1) of that Act (recovery of tax not postponed);

(b) the assessment were made for the purpose of making good to the Crown a loss of tax wholly attributable to such a failure or error as is mentioned in subsection (1) of section 88 of that Act (interest on tax recovered to make good loss due to taxpayer's fault); and

(c) for the purposes of that section the date when the tax ought to have been paid were the 1st December following the year of assessment.

(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."

(2) In subsection (2) of section 375 of that Act (interest ceasing to be relevant loan interest etc.), after paragraph (a) there shall be inserted the following paragraph—

"(aa) as respects which any of the conditions mentioned in section 374(1) is fulfilled, and".

(3) For subsection (4) of that section there shall be substituted the following subsections—

"(4) The Management Act shall apply to an assessment under subsection (3) above as it applies, by virtue of subsection (4) of section 374A, to an assessment under subsection (3) of that section.

(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."

(4) After subsection (8) of that section there shall be inserted the following subsection—

"(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."

(5) This section applies in relation to deductions made by borrowers, and payments made by the Board, after the passing of this Act.

113 Allowable losses: capital gains tax.

(1) After subsection (2) of section 16 of the [M129]Taxation of Chargeable Gains Act 1992 (computation of losses) there shall be inserted the following subsection—

"(2A) A loss accruing to a person in a year of assessment shall not be an allowable loss for the purposes of this Act unless, in relation to that year, he gives a notice to an officer of the Board quantifying the amount of that loss; and sections 42 and 43 of the Management Act shall apply in relation to such a notice as if it were a claim for relief."

(2) Deductions under that Act in respect of allowable losses shall be given preference as follows—

(a) a deduction in respect of a loss accruing to a person in the year 1996-97 or a subsequent year of assessment shall be preferred to a deduction in respect of a loss accruing to him in an earlier year of assessment; and

(b) a deduction in respect of a loss accruing to a company in an accounting period ending on or after the appointed day for the purposes of Chapter III of Part IV of the [M130]Finance Act 1994 shall be preferred to a deduction in respect of a loss accruing to the company in an accounting period ending before that day.

Modifications etc. (not altering text)

C1 S. 113(2) excluded (27.7.1999) by 1992 c. 12, **s. 71(2C)** (as substituted (27.7.1999) by 1999 c. 16, **s. 75(1)**)

Marginal Citations

M129 1992 c. 12.

M130 1994 c. 9.

114 Liability of trustees and personal representatives: capital gains tax.

(1) For subsection (1) of section 65 of the [M131]Taxation of Chargeable Gains Act 1992 (liability for tax of trustees and personal representatives) there shall be substituted the following subsection—

"(1) Subject to subsection (3) below, capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of any one or more of the relevant trustees or the relevant personal representatives."

(2) After subsection (2) of that section there shall be inserted the following subsections—

"(3) Where section 80 applies as regards the trustees of a settlement ("the migrating trustees"), nothing in subsection (1) above shall enable any person—

(a) who ceased to be a trustee of the settlement before the end of the relevant period, and

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(b) who shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom,

to be assessed and charged to any capital gains tax which is payable by the migrating trustees by virtue of section 80(2).

(4) In this section—

"the relevant period" has the same meaning as in section 82;

"the relevant trustees", in relation to any chargeable gains, means the trustees in the year of assessment in which the chargeable gains accrue and any subsequent trustees of the settlement, and "the relevant personal representatives" has a corresponding meaning."

Marginal Citations

M131 1992 c. 12.

115 Minor amendments and repeals.

(1) In subsection (7) of section 7 of the Management Act (notice of liability), for the words "income from which" there shall be substituted the words " income on which ".

(2) In subsection (3) of section 9 of that Act (returns to include self-assessment), the words "the following provisions of" shall cease to have effect.

(3) Section 11A of that Act (notice of liability to capital gains tax) shall cease to have effect.

(4) In subsection (2) of section 12AA of that Act (partnership return), for the words "such accounts and statements" there shall be substituted the words " such accounts, statements and documents, relating to information contained in the return, ".

(5) In subsection (1)(c) of section 30B of that Act (amendment of partnership statement where loss of tax discovered), after the word "relief" there shall be inserted the words " or allowance ".

(6) In subsection (6) of section 59B of that Act (payment of income tax and capital gains tax), for the words "under section 29 of this Act shall" there shall be substituted the words " otherwise than under section 9 of this Act shall, unless otherwise provided, ".

(7) In subsection (1) of section 100B of that Act (appeals against penalty determinations), after the words "95A of this Act" there shall be inserted the word " and ".

(8) In section 103A of that Act (interest on penalties), for the words "Part II or VA" there shall be substituted the words " Part II, IV or VA ".

(9) Section 73 of the Taxes Act 1988 (single assessments for purposes of Cases III, IV and V of Schedule D) shall cease to have effect.

(10) In sections 536 and 537B of that Act (taxation of royalties where owner abroad)—

(a) in subsection (2) (exemption from requirement to deduct tax from royalties), the words "are shown on a claim to" shall cease to have effect; and

(b) in subsection (4) (deduction of tax where agent's commission unknown), the words from "and in that case" to the end shall cease to have effect.

(11) In Schedule 3 to that Act (machinery for assessment, charge and payment of income tax under Schedule C and, in certain cases, Schedule D), in paragraph 6E, sub-paragraphs (1) and (3) shall cease to have effect.

(12) Section 7 of the [M132]Taxation of Chargeable Gains Act 1992 (time for payment of capital gains tax) shall cease to have effect.

(13) Subsection (3) above has effect as respects the year 1995-96 and subsequent years of assessment.

Marginal Citations
M132 1992 c. 12.

116 Transitional provisions.

(1) The provisions of the Management Act specified in Schedule 21 to this Act shall have effect subject to the transitional provisions contained in that Schedule.

(2) Section 198 of the [M133]Finance Act 1994 (which is superseded by this section) shall cease to have effect.

Marginal Citations
M133 1994 c. 9.

Changes for facilitating self-assessment

117 Treatment of partnerships.

(1) Section 215 of the [M134]Finance Act 1994 (treatment of partnerships) shall have effect, and shall be deemed always to have had effect, as if—

(a) for the section set out in subsection (1) of that section there were substituted the section set out in subsection (2) below;

(b) after the said subsection (1) there were inserted the subsection set out in subsection (3) below;

(c) in subsection (2) of section 215, the word " and " were inserted immediately after paragraph (a), and paragraph (c) and the word "and" immediately preceding that paragraph were omitted; and

(d) in subsection (3) of that section, in paragraph (a), for the words from "in subsection (3)" to the end there were substituted the words " subsections (3) and (4) ".

(2) Subject to subsection (4) below, the section referred to in subsection (1)(a) above is as follows—

"**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 the

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purposes of the Tax Acts as an entity which is separate and distinct from those persons.

(2) So long as a trade or profession is carried on by persons in partnership, and any of those persons is chargeable to income tax, the profits or gains or losses arising from the trade or profession ("the actual trade or profession") shall be computed for the purposes of income tax in like manner as if—

(a) the partnership were an individual; and

(b) that individual were an individual resident in the United Kingdom.

(3) A person's share in the profits or gains or losses arising from the actual trade or profession which for any period are computed in accordance with subsection (2) above shall be determined according to the interests of the partners during that period.

(4) Where a person's share in any profits or gains or losses is determined in accordance with subsection (3) above, sections 60 to 63A shall apply as if—

(a) that share of the profits or gains or losses derived from a trade or profession carried on by him alone;

(b) that trade or profession ("the deemed trade or profession") had been set up and commenced by him at the time when he became a partner or, where the actual trade or profession was previously carried on by him alone, the time when the actual trade or profession was set up and commenced;

(c) as regards each year of assessment, any accounting date or accounting change of the actual trade or profession were also an accounting date or accounting change of the deemed trade or profession;

(d) subsection (2) of section 62 applied in relation to any accounting change of the deemed trade or profession if, and only if, on the assumption that the partnership were an individual, that subsection would apply in relation to the corresponding accounting change of the actual trade or profession; and

(e) the deemed trade or profession were permanently discontinued by him at the time when he ceases to be a partner or, where the actual trade or profession is subsequently carried on by him alone, the time when the actual trade or profession is permanently discontinued.

(5) Where section 62(2) does not apply in relation to any accounting change of the deemed trade or profession which is made or treated as made in the year of assessment next following or next but one following the commencement year, sections 60(3)(a) and 61(2)(a) shall apply as if the old date in that year were the accounting date.

(6) For the purpose of determining whether, on the assumption that the partnership were an individual, section 62(2) would apply in relation to an accounting change of the actual trade or profession—

(a) a notice may be given under subsection (3) of section 62A; and

(b) an appeal may be brought under subsection (6) of that section,

by such one of the partners as may be nominated by them for the purposes of this subsection.

(7) Where—

(a) subsections (2) and (3) above apply in relation to the profits or gains or losses of a trade or profession carried on by persons in partnership; and

(b) other income or other relievable losses accrue to those persons by virtue of their being partners,

those subsections shall apply as if references to the profits or gains or losses arising from the trade or profession included references to that other income or those other relievable losses.

(8) Where a person's share in any untaxed income from one or more sources, or in any relievable losses, is determined in accordance with subsection (3) as applied by subsection (7) above, sections 60 to 63A shall apply as if—

(a) that share of that income or of those losses were profits or gains or losses of a trade or profession carried on by that person alone;

(b) that trade or profession ("the second deemed trade or profession") had been set up and commenced by him at the time when he became a partner;

(c) paragraphs (c) and (d) of subsection (4) and subsection (5) above applied in relation to the second deemed trade or profession as they apply in relation to the other deemed trade or profession;

(d) the second deemed trade or profession were permanently discontinued by him at the time when he ceases to be a partner; and

(e) each source of the income were treated as continuing until the second deemed trade or profession is treated as permanently discontinued.

(9) Where—

(a) the basis period for any year of assessment is given by section 62(2)(b) in the case of a person's second deemed trade or profession, or such a trade or profession is treated as permanently discontinued in any year of assessment; and

(b) the amount falling to be deducted under subsection (1) or (3) of section 63A exceeds that person's share, as determined in accordance with subsection (3) as applied by subsection (7) above, in any untaxed income,

the amount of the excess shall be deducted in computing that person's income for that year.

(10) Subsections (1) to (3) above apply in relation to persons in partnership by whom a business which is not a trade or profession is carried on as they apply in relation to persons in partnership by whom a trade or profession is carried on.

(11) In subsections (2) and (3) above as applied by subsection (10) above, references to the profits or gains or losses arising from the trade or profession shall have effect as references to any income or relievable losses arising from the business.

(12) In this section—

"accounting change" and "the old date" have the meanings given by section 62(1);

"accounting date" has the meaning given by section 60(5);

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"the commencement year", in relation to the deemed trade or profession or the second deemed trade or profession, means the year of assessment in which that trade or profession is deemed to have been set up and commenced;

"income" means any income (whether or not chargeable under Schedule D);

"untaxed income" means income which is not—

(a) income from which income tax has been deducted;

(b) income from or on which income tax is treated as having been deducted or paid; or

(c) income chargeable under Schedule F.

(13) In this section—

(a) any reference to sections 60 to 63A includes a reference to those sections as applied in relation to losses by section 382(3) and (4) and section 385(1); and

(b) any reference to a person becoming or ceasing to be a partner is a reference to his beginning or, as the case may be, ceasing to carry on the actual trade or profession in partnership with other persons."

(3) The subsection referred to in subsection (1)(b) above is as follows—

"(1A) In subsection (2) of section 110 of that Act (interpretation of sections 103 to 109A), for the words from "any event" to the end there shall be substituted the following paragraphs—

(a) any event which, under section 113 or 337(1), is to be treated as equivalent to the permanent discontinuance of a trade, profession or vocation; or

(b) in relation to a trade or profession carried on by a person in partnership with other persons, any event which, under subsection (4) of section 111, is to be treated as equivalent to the permanent discontinuance of his deemed trade or profession (within the meaning of that subsection)".

(4) As respects the year 1994-95, the section set out in subsection (2) above shall have effect as if, in subsection (2) of that section, paragraph (b) and the word "and" immediately preceding that paragraph were omitted.

Marginal Citations

M134 1994 c. 9.

118 Loss relief: general.

Section 209 of the [M135]Finance Act 1994 (loss relief: general) shall have effect, and shall be deemed always to have had effect, as if for subsection (7) (commencement of subsections (3) to (5)) there were substituted the following subsections—

"(7) Subsections (1), (2) and (6) above—

(a) except in their application to a trade set up and commenced on or after 6th April 1994, have effect in relation to losses sustained in the year 1996-97 and subsequent years of assessment; and

(b) in their application to a trade so set up and commenced, have effect in relation to losses sustained in the year 1994-95 and subsequent years of assessment.

(8) Subsections (3) to (5) above—

(a) except in their application to a trade set up and commenced on or after 6th April 1994, have effect in relation to losses sustained in the year 1997-98 and subsequent years of assessment; and

(b) in their application to a trade so set up and commenced, have effect in relation to losses sustained in the year 1994-95 and subsequent years of assessment.

(9) Any reference in subsection (7) or (8) above to a trade includes a reference to a profession, vocation or employment."

Marginal Citations

M135 1994 c. 9.

119 Relief for losses on unquoted shares.

Section 210 of the [M136]Finance Act 1994 (relief for losses on unquoted shares) shall have effect, and shall be deemed always to have had effect, as if, in subsection (2) (commencement), for the words "as respects" there were substituted the words " in relation to losses incurred in ".

Marginal Citations

M136 1994 c. 9.

120 Relief for pre-trading expenditure.

(1) In section 401 of the Taxes Act 1988 (relief for pre-trading expenditure)—

(a) in subsection (1), for the words from "treated" to the end there shall be substituted the words " treated as incurred on the day on which the trade, profession or vocation is first carried on by him "; and

(b) subsection (2) shall cease to have effect.

(2) This section has effect as respects trades, professions and vocations which are set up and commenced on or after 6th April 1995.

121 Basis of apportionment for Cases I, II and VI of Schedule D.

In section 72(2) of the Taxes Act 1988 (apportionments etc. for purposes of Cases I, II and VI of Schedule D) for the words "months, or fractions of months," there shall be substituted the word " days ".

122 Amendments of transitional provisions.

(1) Schedule 20 to the [M137]Finance Act 1994 (changes for facilitating self-assessment: transitional provisions and savings) shall be amended as follows.

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(2) In sub-paragraph (4) of paragraph 2 (Cases I and II of Schedule D), after the words "which arise" there shall be inserted the words "after the end of—

(a) the basis period for the year 1996-97; or

(b) in the case of a trade or profession carried on by a person in partnership with other persons, the basis period of the partnership for that year,

and (in either case) ".

(3) After that sub-paragraph there shall be inserted the following sub-paragraphs—

"(4A) In calculating the amount of the profits or gains of the basis period for the year 1997-98 which arise as mentioned in sub-paragraph (4) above, any deduction of a capital allowance and any addition of a balancing charge shall be ignored.

(4B) Sub-paragraph (4A) above does not apply in the case of a trade or profession carried on by persons who include both an individual and a company."

(4) At the beginning of sub-paragraph (5) of paragraph 10 (double taxation relief) there shall be inserted the words " Subject to sub-paragraph (5A) below, ".

(5) After that sub-paragraph there shall be inserted the following sub-paragraph—

"(5A) Where the period on the profits or gains of which income tax is chargeable under Case IV or V of Schedule D for the year 1995-96 is that year, sub-paragraph (5) above shall have effect as if for the words from "50 per cent." to the end there were substituted the words "the amount of foreign tax paid on income arising, or (as the case may require) received in the United Kingdom, in that year"."

Marginal Citations
M137 1994 c. 9.

123 Prevention of exploitation of transitional provisions.

Schedule 22 to this Act shall have effect for preventing the exploitation of, and (in certain cases) penalising attempts to exploit, the transitional provisions set out in paragraphs 2(2) and (4), 4(2) and 6(2)(a) and (4) of Schedule 20 to the [M138]Finance Act 1994 (changes for facilitating self-assessment: transitional provisions and savings).

Marginal Citations
M138 1994 c. 9.

Change of residence and non-residents

124 Change of residence.

(1) In Chapter VI of Part IV of the Taxes Act 1988 (discontinuance and change of basis of computation), after section 110 there shall be inserted the following section—

" Change of residence

110A Change of residence.

(1) Where there is a change of residence by an individual who is carrying on any trade, profession or vocation wholly or partly outside the United Kingdom and otherwise than in partnership with others, tax shall be chargeable, and loss relief may be claimed, as if the change—

(a) constituted the permanent discontinuance of the trade, profession or vocation; and

(b) was immediately followed, in so far as the trade, profession or vocation continues to be carried on by that individual, by the setting up and commencement of a new one;

but nothing in this subsection shall prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against profits or gains arising or accruing after the change.

(2) For the purposes of this section there is a change of residence by an individual if—

(a) not being resident in the United Kingdom, he becomes so resident; or

(b) being so resident, he ceases to be so resident."

(2) This section shall have effect as respects the year 1997-98 and subsequent years of assessment and also, in relation only to a trade, profession or vocation set up and commenced on or after 6th April 1994, as respects the years 1995-96 and 1996-97.

125 Non-resident partners.

(1) The provisions of the Taxes Act 1988 to which sections 215 and 216 of the [M139]Finance Act 1994 (partnerships and change of ownership of trade etc.) relate shall have effect as respects the year 1995-96 and subsequent years of assessment as if subsection (5)(b) of section 215 (amendments not to apply until the year 1997-98 to partnerships controlled abroad) were omitted; and the [M140]Taxes Act 1988 shall have effect—

(a) as respects the year 1997-98 and subsequent years of assessment, and

(b) in its application with the amendments made by those sections to partnerships whose trades, professions or businesses were set up and commenced on or after 6th April 1994, as respects the years 1995-96 and 1996-97,

with the further amendments specified in the following provisions of this section.

(2) For subsections (1) to (3) of section 112 (partnerships controlled abroad) there shall be substituted the following subsections—

"(1) So long as a trade, profession or business is carried on by persons in partnership and any of those persons is not resident in the United Kingdom, section 111 shall have effect for the purposes of income tax in relation to the partner who is not so resident as if—

(a) the reference in subsection (2)(b) to an individual resident in the United Kingdom were a reference to an individual who is not so resident; and

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(b) in subsection (4)(a), after "carried on" there were inserted "in the United Kingdom".

(1A) Where—

(a) any persons are carrying on a trade, profession or business in partnership,

(b) the trade, profession or business is carried on wholly or partly outside the United Kingdom,

(c) the control and management of the trade, profession or business is situated outside the United Kingdom, and

(d) any of the partners who is an individual resident in the United Kingdom satisfies the Board that he is not domiciled in the United Kingdom or that, being a Commonwealth citizen or a citizen of the Republic of Ireland, he is not ordinarily resident in the United Kingdom,

section 111 shall have effect in accordance with subsection (1) above as if that partner were not resident in the United Kingdom and, in addition (as respects that partner as an individual who is in fact resident in the United Kingdom), his interest as a partner, so far as it entitles him to a share of any profits or gains arising from the carrying on of the trade, profession or business otherwise than within the United Kingdom, shall be treated for the purposes of Case V of Schedule D as if it were a possession outside the United Kingdom.

(1B) Where any persons are carrying on a trade or profession in partnership, the trade or profession is carried on wholly or partly outside the United Kingdom and an individual who is one of the partners changes his residence (within the meaning of section 110A), it shall be assumed for income tax purposes—

(a) that that individual ceased to be a partner at the time of the change and became one again immediately afterwards; and

(b) in relation to matters arising after the change, that the time when he became a partner is the time immediately after the change;

but nothing in this subsection shall, in relation to that individual, prevent any portion of a loss sustained before the change from being carried forward under section 385 and set against profits or gains arising or accruing after the change."

(3) In that section—

(a) in subsection (4)(a), for "or is deemed to reside outside the United Kingdom" there shall be substituted " 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) in subsection (6), for "this section" there shall be substituted " subsections (4) and (5) above ".

(4) In section 114(1) (partnerships including companies), after the word "company", in the second place where it occurs, there shall be inserted " and, subject to section 115(4), as if that company were resident in the United Kingdom ".

(5) In section 115 (provisions supplementary to section 114), for subsections (4) and (5) there shall be substituted the following subsections—

"(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 branch or agency".

(5) Where the partners in a partnership include a company, subsections (4) and (5) of section 112 shall apply for the purposes of corporation tax as well as for the purposes of income tax, and section 114 shall have effect accordingly."

Marginal Citations

M139 1994 c. 9.

M140 1994 c. 9.

126 UK representatives of non-residents.

(1) Schedule 23 to this Act shall have effect for imposing obligations and liabilities in relation to income tax, corporation tax and capital gains tax on a branch or agency which, under this section, is the UK representative of a person who is not resident in the United Kingdom ("the non-resident").

(2) Subject to the following provisions of this section and to section 127 below, a branch or agency in the United Kingdom through which the non-resident carries on (whether solely or in partnership) any trade, profession or vocation shall, for the purposes of this section and Schedule 23 to this Act, be the non-resident's UK representative in relation to the following amounts, that is to say—

(a) the amount of any such income from the trade, profession or vocation as arises, directly or indirectly, through or from that branch or agency;

(b) the amount of any income from property or rights which are used by, or held by or for, that branch or agency;

(c) amounts which, by reference to that branch or agency, are chargeable to capital gains tax under section 10 of the [M141]Taxation of Chargeable Gains Act 1992 (non-residents) or fall under that section to be included in the chargeable profits of the non-resident; and

(d) in a case where the non-resident is an overseas life insurance company, any other amounts which by virtue of paragraph 3 of Schedule 19AC to the Taxes Act 1988 fall by reference to that branch or agency to be included in the company's chargeable profits for the purposes of corporation tax.

(3) For the purposes of this section and Schedule 23 to this Act, the non-resident's UK representative in relation to any amount shall continue to be the non-resident's UK representative in relation to that amount even after ceasing to be a branch or agency through which the non-resident carries on the trade, profession or vocation in question.

(4) For the purposes of this section and Schedule 23 to this Act, the non-resident's UK representative in relation to any amount shall be treated, where he would not otherwise be so treated, as if he were a separate and distinct person from the non-resident.

(5) Where the branch or agency through which the non-resident carries on the trade, profession or vocation is one carried on by persons in partnership, the partnership,

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as such, shall be deemed for the purposes of this section and Schedule 23 to this Act to be the non-resident's UK representative in relation to the amounts mentioned in subsection (2) above.

(6) Where a trade or profession carried on by the non-resident through a branch or agency in the United Kingdom is one carried on by him in partnership, the trade or profession carried on through that branch or agency shall be deemed, for the purposes of this section and Schedule 23 to this Act, to include the deemed trade or profession from which the non-resident's share in the partnership's profits, gains or losses is treated for the purposes of section 111 or 114 of the Taxes Act 1988 as deriving.

(7) For the purposes of this section and Schedule 23 to this Act where—

(a) a trade or profession carried on by the non-resident in the United Kingdom is one carried on by him in partnership, and

(b) any member of that partnership is resident in the United Kingdom,

the deemed trade or profession from which the non-resident's share in the partnership's profits, gains or losses is treated for the purposes of section 111 or 114 of the Taxes Act 1988 as deriving shall be treated (in addition, where subsection (6) above also applies, to being treated as included in a trade or profession carried on through any such branch or agency as is mentioned in that subsection) as a trade carried on in the United Kingdom through the partnership as such.

(8) In this section "branch or agency" has the same meaning as in the Management Act.

(9) This section and Schedule 23 to this Act apply—

(a) for the purposes of income tax and capital gains tax, in relation to the year 1996-97 and subsequent years of assessment; and

(b) for the purposes of corporation tax, in relation to accounting periods beginning after 31st March 1996.

Modifications etc. (not altering text)

C2 S. 126(6)(7) amended (31.7.1998) by 1998 c. 36, s. 46(3), **Sch. 7 para. 10**

Marginal Citations

M141 1992 c. 12.

127 Persons not treated as UK representatives.

(1) For the purposes of section 126 above and Schedule 23 to this Act, none of the following persons shall be capable of being the non-resident's UK representative in relation to income or other amounts falling within paragraphs (a) to (d) of section 126(2) above, that is to say—

(a) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to transactions carried out through a person who (though an agent of the non-resident) does not act in relation to the transactions in the course of carrying on a regular agency for the non-resident, that agent;

(b) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to transactions carried out through a broker and falling within subsection (2) below, that broker;

(c) where the income arises from, or the other amounts are chargeable by reference to, so much of any business as relates to investment transactions carried out through an investment manager and falling within subsection (3) below, that manager; and

(d) where the non-resident is a member of Lloyd's and the income arises from, or the other amounts are chargeable by reference to, his underwriting business, any person who, in relation to or to matters connected with that income or those amounts, has been the non-resident's members' agent or the managing agent of the syndicate in question.

(2) For the purposes of subsection (1)(b) above where any income arises from, or other amounts are chargeable by reference to, so much of any business as relates to any transaction carried out through a broker, that transaction shall be taken, in relation to the income or other amounts ("the taxable sums"), to fall within this subsection if—

(a) at the time of the transaction, the broker was carrying on the business of a broker;

(b) the transaction was carried out by the broker on behalf of the non-resident in the ordinary course of that business;

(c) the remuneration which the broker received for the provision of the services of a broker to the non-resident in respect of that transaction was at a rate not less than that which would have been customary for that class of business; and

(d) the non-resident does not fall (apart from this paragraph) to be treated as having the broker as his UK representative in relation to any income or other amounts not included in the taxable sums but chargeable to tax for the same chargeable period.

(3) For the purposes of subsection (1)(c) above where any income arises from, or other amounts are chargeable by reference to, so much of any business as relates to any investment transaction, that transaction shall be taken, in relation to that income or those amounts ("the taxable sums"), to have been carried out through an investment manager and to fall within this subsection if—

(a) the transaction was carried out on behalf of the non-resident by a person ("the manager") who at the time was carrying on a business of providing investment management services;

(b) the transaction was carried out in the ordinary course of that business;

(c) the manager, when he acted on behalf of the non-resident in relation to the transaction, did so in an independent capacity;

(d) the requirements of subsection (4) below are satisfied in relation to the transaction;

(e) the remuneration which the manager received for the provision to the non-resident of the investment management services in question was at a rate which was not less than that which would have been customary for that class of business; and

(f) the non-resident does not fall (apart from this paragraph) to be treated as having the manager as his UK representative in relation to any income or other amounts not included in the taxable sums but chargeable to tax for the same chargeable period.

(4) Subject to subsections (9) to (11) below, the requirements of this subsection are satisfied in relation to any transaction if—

(a) there is a qualifying period in relation to which it has been or is the intention of the manager and the persons connected with him that the non-resident's

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relevant excluded income should, as to at least 80 per cent., consist of amounts to which neither the manager nor any such person has a beneficial entitlement; and

(b) to the extent that there is a failure to fulfil that intention, that failure—

(i) is attributable (directly or indirectly) to matters outside the control of the manager and persons connected with him; and

(ii) does not result from a failure by the manager or any of those persons to take such steps as may be reasonable for mitigating the effect of those matters in relation to the fulfilment of that intention.

(5) For the purposes of this section any reference to the relevant excluded income of the non-resident for a qualifying period is a reference to the aggregate of such of the profits and gains of the non-resident for the chargeable periods comprised in the qualifying period as—

(a) derive from transactions carried out by the manager while acting on the non-resident's behalf; and

(b) for the purposes of section 128 or 129 below would fall (apart from the requirements of subsection (4) above) to be treated as excluded income for any of those chargeable periods.

(6) For the purposes of this section any reference to an amount of relevant excluded income to which a person has a beneficial entitlement is a reference to so much of any amount to which he has or may acquire a beneficial entitlement by virtue of—

(a) any interest of his (whether or not an interest giving a right to an immediate payment of a share in the profits or gains) in property in which the whole or any part of that income is represented, or

(b) any interest of his in or other rights in relation to the non-resident,

as is or would be attributable to that income.

(7) For the purposes of subsections (4) to (6) above references to a qualifying period, in relation to any transaction, are references to any period consisting in or including the chargeable period for which the taxable sums are chargeable to tax, being, in a case where it is not that chargeable period, a period of not more than five years comprising two or more complete chargeable periods.

(8) Where there is a transaction which would fall within subsection (3) above but for its being a transaction in relation to which the requirements of subsection (4) above are not satisfied, this section shall have effect as if the transaction did fall within subsection (3) above but only in relation to so much of the amount of the taxable sums as does not represent any amount of the non-resident's relevant excluded income to which the manager or a person connected with him has or has had any beneficial entitlement.

(9) Subsections (10) and (11) below shall apply, where amounts arise or accrue to the non-resident as a participant in a collective investment scheme, for the purpose of determining whether a transaction carried out for the purposes of that scheme, in so far as it is a transaction in respect of which any such amounts arise or accrue to him, is one in relation to which the requirements of subsection (4) above are satisfied.

(10) Those requirements shall be deemed to be satisfied in relation to the transaction wherever the collective investment scheme is such that, if the following assumptions applied, namely—

(a) that all transactions carried out for the purposes of the scheme were carried out on behalf of a company constituted for the purposes of the scheme and resident outside the United Kingdom, and

(b) that the participants did not have any rights in respect of the amounts arising or accruing in respect of those transactions other than the rights which, if they held shares in the company on whose behalf the transactions are assumed to be carried out, would be their rights as shareholders,

the assumed company would not, in relation to the chargeable period in which the taxable sums are chargeable to tax, be regarded for tax purposes as a company carrying on a trade in the United Kingdom.

(11) Where, on those assumptions, the assumed company would be so regarded for tax purposes, subsections (4) to (8) above shall have effect in relation to the transaction as if, applying those assumptions—

(a) references to the non-resident were references to the assumed company; and

(b) the following subsection were substituted for subsection (5) above, namely—

"(5) In subsection (4) above the reference to the assumed company's relevant excluded income for a qualifying period is a reference to the aggregate of the amounts which would, for the chargeable periods comprised in the qualifying period, be chargeable to tax on that company as profits deriving from the transactions carried out by the manager and assumed to be carried out on the company's behalf."

(12) In this section "investment transactions" means—

(a) transactions in shares, stock, futures contracts, options contracts or securities of any description not mentioned in this paragraph, but excluding futures contracts or options contracts relating to land,

(b) transactions consisting in the buying or selling of any foreign currency or in the placing of money at interest, and

(c) such other transactions as the Treasury may by regulations designate for the purposes of this section;

and the power to make regulations for the purposes of paragraph (c) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

(13) For the purposes of subsection (12) 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.

(14) The preceding provisions of this section shall have effect in the case of a person who acts as a broker or provides investment management services as part only of a business as if that part were a separate business.

(15) For the purposes of this section—

(a) a person shall be taken to carry out a transaction on behalf of another where he undertakes the transaction himself, whether on behalf of or to the account of that other, and also where he gives instructions for it to be so carried out by another; and

(b) the references to the income arising from so much of a business as relates to transactions carried out through a branch or agency on behalf of the non-

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resident shall include references to income from property or rights which, as a result of the transactions, are used by, or held by or for, that branch or agency.

(16) In paragraph (d) of subsection (1) above—

(a) the reference to a member of Lloyd's is a reference to any person who is a member within the meaning of Chapter III of Part II of the Finance Act 1993 or a corporate member within the meaning of Chapter V of Part IV of the [M142]Finance Act 1994, and

(b) the references to a members' agent and to a managing agent shall also be construed in accordance with section 184 of that Act of 1993 or, as the case may be, section 230 of that Act of 1994.

(17) In this section—

"branch or agency" has the same meaning as in the Management Act;

"collective investment scheme" has the same meaning as in the [M143]Financial Services Act 1986; and

"participant", in relation to a collective investment scheme, shall be construed in accordance with section 75 of that Act of 1986;

and section 839 of the Taxes Act 1988 (connected persons) shall apply for the purposes of this section.

(18) For the purposes of this section a person shall not be regarded as acting in an independent capacity when acting on behalf of the non-resident unless, having regard to its legal, financial and commercial characteristics, the relationship between them is a relationship between persons carrying on independent businesses that deal with each other at arm's length.

(19) This section applies—

(a) for the purposes of income tax and capital gains tax, in relation to the year 1996-97 and subsequent years of assessment; and

(b) for the purposes of corporation tax, in relation to accounting periods beginning after 31st March 1996.

Marginal Citations

M142 1993 c. 34.

M143 1986 c. 60.

128 Limit on income chargeable on non-residents: income tax.

(1) Subject to subsection (5) below, the income tax chargeable for any year of assessment on the total income of any person who is not resident in the United Kingdom shall not exceed the sum of the following amounts, that is to say—

(a) the amount of tax which, apart from this section, would be chargeable on that total income if—

(i) the amount of that income were reduced by the amount of any excluded income; and

(ii) there were disregarded any relief under Chapter I of Part VII of the Taxes Act 1988 to which that person is entitled for that year by virtue of section 278(2) of that Act or of any arrangements having effect by virtue of section 788 of that Act;

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and

(b) the amount of tax deducted from so much of any excluded income as is income the tax on which is deducted at source.

(2) For the purposes of this section income arising for any year to a person who is not resident in the United Kingdom is excluded income in so far as it—

(a) falls within subsection (3) below; and

(b) is not income in relation to which that person has a UK representative for the purposes of section 126 above and Schedule 23 to this Act.

(3) Income falls within this subsection if—

(a) it is chargeable to tax under Schedule C, Case III of Schedule D or Schedule F;

(b) it is chargeable to tax under Case VI of Schedule D by virtue of section 56 of the Taxes Act 1988 (transactions in deposits);

(c) it is chargeable to tax under Schedule E by virtue of section 150 or 617(1) of the Taxes Act 1988 or section 139(1) of the [M144]Finance Act 1994 (social security benefits etc.);

(d) without being chargeable as mentioned in paragraphs (a) to (c) above or chargeable in accordance with section 171(2) of the [M145]Finance Act 1993 (profits of the underwriting business of a member of Lloyd's), it is income arising as mentioned in subsection (1)(b) or (c) of section 127 above; or

(e) it is income of such other description as the Treasury may by regulations designate for the purposes of this subsection;

and the power to make regulations for the purposes of paragraph (e) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

(4) In subsection (1)(b) above—

(a) the reference to excluded income the tax on which is deducted at source is a reference to excluded income from which an amount in respect of income tax is or is treated as deducted, on which any such amount is treated as paid or in respect of which there is a tax credit, and

(b) the reference, in relation to any such income, to the amount of income tax deducted shall be construed, accordingly, as a reference to the amount which is or is treated as deducted or which is treated as paid or, as the case may be, to the amount of that credit.

(5) This section shall not apply to the income tax chargeable for any year of assessment on the income of trustees not resident in the United Kingdom if there is a relevant beneficiary of the trust who is either—

(a) an individual ordinarily resident in the United Kingdom, or

(b) a company resident in the United Kingdom.

(6) In subsection (5) above, the reference to a relevant beneficiary, in relation to a trust, is a reference to any person who, as a person falling wholly or partly within any description of actual or potential beneficiaries, is either—

(a) a person who is, or will or may become, entitled under the trust to receive the whole or any part of any income under the trust; or

(b) a person to or for the benefit of whom the whole or any part of any such income may be paid or applied in exercise of any discretion conferred by the trust;

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and for the purposes of this subsection references, in relation to a trust, to income under the trust shall include references to so much (if any) of any property falling to be treated as capital under the trust as represents amounts originally received by the trustees as income.

(7) This section shall apply, subject to subsections (8) and (9) below, in relation to the year 1995-96 and subsequent years of assessment.

(8) This section shall have effect in relation to the year 1995-96 as if the following paragraphs were substituted for paragraph (b) of subsection (2) above, that is to say—

"(aa) arises on or after 6th April 1995; and

(b) is not income in relation to which that person would have a UK representative for the purposes of section 126 above and Schedule 23 to this Act if sections 126 and 127 above and that Schedule applied for the year 1995-96."

(9) This section shall have effect in relation to the year 1995-96 as if—

(a) the income falling within paragraphs (a) and (b) of subsection (3) above did not include any income arising otherwise than from a transaction falling within subsection (10) below; and

(b) the reference in paragraph (d) of subsection (3) above to income arising as mentioned in subsection (1)(b) or (c) of section 127 above were a reference to any income which would be such income if that section applied in relation to the year 1995-96.

(10) A transaction falls within this subsection if—

(a) it is either—

(i) a transaction carried out on behalf of the non-resident by a person who, at the time of the transaction, was carrying on the business of a broker; or

(ii) an investment transaction carried out on behalf of the non-resident by a person ("the manager") who at the time was carrying on a business of providing investment management services;

(b) it was carried out by the broker or manager on behalf of the non-resident in the ordinary course of the business referred to in paragraph (a) above; and

(c) the remuneration which the broker or manager received in respect of that transaction for the provision to the non-resident of the services of a broker or, as the case may be, for the provision of the investment management services in question was at a rate not less than that which would have been customary for that class of business.

(11) In this section "investment transaction" has the same meaning as in section 127 above.

Marginal Citations

M144 1994 c. 9.

M145 1993 c. 34.

129 Limit on income chargeable on non-residents: corporation tax.

(1) Subject to subsection (4) below, the corporation tax chargeable on the chargeable profits arising in any accounting period to a company which is not resident in the United Kingdom shall not exceed the sum of the following amounts, that is to say—

(a) the amount of tax deducted from so much of any excluded income as is income the tax on which is deducted at source; and

(b) the amount (if any) of corporation tax which would be chargeable on the chargeable profits arising to that company for that period if the excluded income of the company for that period were not included in those profits.

(2) For the purposes of this section income arising for any accounting period to any company is excluded income in so far as it—

(a) is income arising as mentioned in subsection (1)(b) or (c) of section 127 above; and

(b) is not income in relation to which that person has a UK representative for the purposes of section 126 above and Schedule 23 to this Act.

(3) In subsection (1)(a) above—

(a) the reference to excluded income the tax on which is deducted at source is a reference to excluded income from which an amount in respect of tax is or is treated as deducted, on which any such amount is treated as paid or in respect of which there is a tax credit, and

(b) the reference, in relation to any such income, to the amount of tax deducted shall be construed, accordingly, as a reference to the amount which is or is treated as deducted or which is treated as paid or, as the case may be, to the amount of that credit.

(4) This section does not apply in relation to the chargeable profits arising to a company which is a corporate member within the meaning of Chapter V of Part IV of the [M146]Finance Act 1994 (corporate Lloyd's underwriters etc.).

(5) This section applies, subject to subsection (6) below, in relation to any accounting period ending after 5th April 1995.

(6) This section shall have effect in relation to any accounting period beginning before 1st April 1996 as if the following paragraphs were substituted for paragraphs (a) and (b) of subsection (2) above, that is to say—

"(a) is income arising after 5th April 1995 which would be income arising as mentioned in subsection (1)(b) or (c) of section 127 above if that section applied in relation to accounting periods beginning before 1st April 1996; and

(b) is not income in relation to which that person would have a UK representative for the purposes of section 126 above and Schedule 23 to this Act if sections 126 and 127 above and that Schedule so applied."

Marginal Citations

M146 1994 c. 9.

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Exchange gains and losses and currency contracts

130 Exchange gains and losses: general.

Schedule 24 to this Act (which amends the provisions of the [M147]Finance Act 1993 relating to exchange gains and losses and other provisions connected with exchange gains and losses) shall have effect.

Marginal Citations
M147 1993 c. 34.

131 Exchange gains and losses: transitional provision.

(1) The provisions specified in subsection (2) below, so far as they require a disposal to be treated, for the purposes of the [M148]Taxation of Chargeable Gains Act 1992, as a disposal on which neither a gain nor a loss accrues, shall not apply in relation to any disposal of a qualifying asset which is made—

(a) by one qualifying company to another such company; and

(b) at a time before the commencement day of the company making the disposal and on or after the commencement day of the company to which the disposal is made.

(2) The provisions referred to in subsection (1) above are—

(a) sections 139, 140A, 171, 172, 215, 216 and 217A of the [M149]Taxation of Chargeable Gains Act 1992; and

(b) section 486(8) of the Taxes Act 1988.

(3) In this section—

"commencement day", in relation to a qualifying company, means that company's commencement day for the purposes of section 165 of the [M150]Finance Act 1993;

"qualifying asset", in relation to a disposal, means anything which, after the disposal, is by virtue of section 153 of that Act a qualifying asset in relation to the company to which the disposal was made; and

"qualifying company" means any company which is a qualifying company within the meaning of section 152 of that Act.

(4) This section has effect in relation to any disposal of an asset taking place on or after 1st January 1995.

Marginal Citations
M148 1992 c. 12.
M149 1992 c. 12.
M150 1993 c. 34.

132 Currency contracts: transitional provisions.

(1) Section 175 of the [M151]Finance Act 1994 (currency contracts: transitional provisions) shall be deemed to have been enacted with the modifications set out below.

(2) In subsection (1) after paragraph (b) there shall be inserted "and

(c) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for an accounting period beginning before that time it falls (or would fall) to be taken into account as a profit or loss of the trade or part,".

(3) For subsection (2) there shall be substituted—

"(2) In a case where—

(a) at any time, a currency contract held by a qualifying company becomes a qualifying contract by virtue of section 147(2) above, and

(b) the circumstances are such that if any profit or loss accrues (or were to accrue) to the company as regards the contract for the accounting period beginning with that time it does not fall (or would not fall) to be taken into account as a profit or loss of a trade or part of a trade carried on by the company,

in applying section 158(2) and (4) above in relation to the contract and the period section 153(4) and (5) above shall be treated as omitted."

Marginal Citations

M151 1994 c. 9.

Provisions with a foreign element

133 Controlled foreign companies.

Schedule 25 to this Act (which contains amendments of Chapter IV of Part XVII of the Taxes Act 1988 and connected amendments) shall have effect.

134 Offshore funds.

(1) Section 759 of the Taxes Act 1988 (material interests in offshore funds) shall be amended as mentioned in subsections (2) and (3) below.

(2) In subsection (1)—

(a) for the words "of the following, namely" there shall be substituted " collective investment scheme which is constituted by ";

(b) for the word "and" immediately preceding paragraph (c) there shall be substituted " or "; and

(c) for the words "company, unit trust scheme or arrangements" there shall be substituted " collective investment scheme ".

(3) After subsection (1) there shall be inserted—

"(1A) In this section "collective investment scheme" has the same meaning as in the [M152]Financial Services Act 1986."

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(4) In Schedule 27 to the Taxes Act 1988 (distributing funds) in Part I (the distribution test) in paragraph 1(2) for paragraphs (a) and (b) there shall be substituted—

"(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,".

(5) Section 212 of the [M153]Taxation of Chargeable Gains Act 1992 (annual deemed disposal of certain holdings, including holdings consisting of a relevant interest in an offshore fund) shall be amended as mentioned in subsections (6) and (7) below.

(6) In subsection (5) (meaning of "relevant interest in an offshore fund") for paragraph (b) there shall be substituted—

"(b) it would be such an interest if either or both of the assumptions mentioned in subsection (6A) below were made."

(7) Immediately before subsection (7) there shall be inserted—

"(6A) The assumptions referred to in subsection (5)(b) above are—

(a) that the companies, unit trust schemes and arrangements referred to in paragraphs (a) to (c) of subsection (1) of section 759 of the Taxes Act are not limited to those which are also collective investment schemes;

(b) that the shares and interests excluded by subsections (6) and (8) of that section are limited to shares or interests in trading companies."

(8) Subsections (1) to (3) above shall apply where it falls to be decided—

(a) whether a material interest is, at any time on or after 29th November 1994, a material interest in an offshore fund;

(b) whether a company, unit trust scheme or arrangements in which any person has an interest which is a material interest is, at any time on or after that day, an offshore fund.

(9) Subsection (4) above shall apply in relation to account periods ending on or after 29th November 1994.

(10) Subsections (5) to (7) above shall apply where it falls to be decided whether an interest is, at any time on or after 29th November 1994, a relevant interest in an offshore fund.

Marginal Citations

M152 1986 c. 60.

M153 1992 c. 12.

Miscellaneous

135 Change in ownership of investment company: deductions.

Schedule 26 to this Act (which makes provision for the purposes of corporation tax about deductions following a change in the ownership of an investment company) shall have effect.

136 Profit-related pay.

(1) In Schedule 8 to the Taxes Act 1988 (profit-related pay schemes) paragraph 19 (ascertainment of profits) shall be amended in accordance with subsections (2) to (4) below.

(2) In sub-paragraph (6) (cases where scheme may provide for departure from requirements applicable to profit and loss account) paragraphs (g) to (k) (extraordinary items) shall be omitted.

(3) After paragraph (ff) of sub-paragraph (6) there shall be inserted—

"(l) any exceptional items which fall within sub-paragraph (6A) below and should in accordance with any accounting practices regarded as standard be shown separately on the face of the profit and loss account."

(4) After sub-paragraph (6) there shall be inserted—

"(6A) The items are—

(a) profits or losses on the sale or termination of an operation;

(b) costs of a fundamental reorganisation or restructuring having a material effect on the nature and focus of the employment unit's operations;

(c) profits or losses on the disposal of fixed assets; and

(d) the effect on tax of any of the items mentioned in paragraphs (a) to (c) above."

(5) Subject to subsections (6) to (10) below, subsections (2) to (4) above shall have effect in relation to the preparation, for the purposes of a scheme, of a profit and loss account in respect of a period beginning on or after the day on which this Act is passed.

(6) Subsections (2) to (4) above shall not have effect in relation to an existing scheme unless, before the end of the period of 6 months beginning with the day on which this Act is passed, the scheme is altered to take account of the amendments made by those subsections.

(7) Subsections (8) to (10) below apply where, before the end of the period mentioned in subsection (6) above, an existing scheme is altered as mentioned in that subsection.

(8) The provision made by the scheme in compliance with paragraph 20(1) of Schedule 8 to the Taxes Act 1988 shall not prevent a profit and loss account being prepared in accordance with the alteration.

(9) Where the distributable pool would but for this subsection be determined by reference—

(a) to an amount shown in a profit and loss account prepared in accordance with the altered scheme, and

(b) to an amount shown in a profit and loss account ("an earlier account") prepared in accordance with the scheme in a form in which it stood before the alteration,

then, for the purposes of the determination of the pool, the amount shown in the earlier account shall be recalculated using the same method as that used to calculate the amount mentioned in paragraph (a) above.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(10) The alteration of the existing scheme shall be treated as being within subsection (8) of section 177B of the Taxes Act 1988 (alterations which are registrable and which once registered cannot give rise to Board's power of cancellation).

(11) In subsections (6) to (10) above "an existing scheme" means a scheme which, immediately before the day on which this Act is passed, is registered under Chapter III of Part V of the Taxes Act 1988.

(12) After paragraph 19 of Schedule 8 to the Taxes Act 1988 there shall be inserted—

"19A (1) The Treasury may by order amend paragraph 19 above so as to add to, delete or vary any of the items mentioned in sub-paragraph (6) of that paragraph.

(2) In this paragraph references to an order are references to an order under sub-paragraph (1) above.

(3) Subject to sub-paragraphs (4) to (8) below, any amendment or amendments made by virtue of an order shall have effect in relation to the preparation, for the purposes of a scheme, of a profit and loss account in respect of a period beginning on or after the day on which the order comes into force.

(4) Any amendment or amendments made by virtue of an order shall not have effect in relation to an existing scheme unless, before the end of the period of 6 months beginning with the day on which the order comes into force, the scheme is altered to take account of the amendment or amendments.

(5) Sub-paragraphs (6) to (8) below apply where, before the end of the period mentioned in sub-paragraph (4) above, an existing scheme is altered as mentioned in that sub-paragraph.

(6) The provision made by the scheme in compliance with paragraph 20(1) below shall not prevent a profit and loss account being prepared in accordance with the alteration.

(7) Where the distributable pool would but for this sub-paragraph be determined by reference—

(a) to an amount shown in a profit and loss account prepared in accordance with the altered scheme, and

(b) to an amount shown in a profit and loss account ("an earlier account") prepared in accordance with the scheme in a form in which it stood before the alteration,

then, for the purposes of the determination of the pool, the amount shown in the earlier account shall be recalculated using the same method as that used to calculate the amount mentioned in paragraph (a) above.

(8) The alteration of the existing scheme shall be treated as being within subsection (8) of section 177B.

(9) An order may include such supplementary, incidental or consequential provisions as appear to the Treasury to be necessary or expedient.

(10) In this paragraph "an existing scheme", in relation to an order, means a scheme which, immediately before the day on which the order comes into force, is a registered scheme."

137 Part-time workers: miscellaneous provisions.

(1) In Schedule 8 to the Taxes Act 1988 (profit-related pay schemes) paragraph 8(a) (employees working less than 20 hours a week excluded by scheme from receiving profit-related pay) shall be omitted.

(2) In Part III of Schedule 9 to the Taxes Act 1988 (savings-related share option schemes) in paragraph 26(1)(a) (certain full-time employees and directors must be eligible to participate in scheme) for the words "a full-time employee" there shall be substituted " an employee ".

(3) In Part IV of Schedule 9 to the Taxes Act 1988 (share option schemes other than savings-related share option schemes) in paragraph 27(4) (qualifying employee defined as employee required to work at least 20 hours a week) the words from "who is required" to the end shall be omitted.

(4) In Part V of Schedule 9 to the Taxes Act 1988 (profit sharing schemes) in paragraph 36(1)(a) (certain full-time employees and directors must be eligible to participate in scheme on similar terms) for the words "a full-time employee" there shall be substituted " an employee ".

(5) In Schedule 5 to the [M154]Finance Act 1989 (employee share ownership trusts) in paragraph 4(2)(c) (trust deed must provide that certain persons are beneficiaries if they work at rate of at least 20 hours a week) for the words "at that given time he worked as an employee or" there shall be substituted " in the case of a director, at that given time he worked as a ".

(6) Subsection (1) above shall apply in relation to any scheme not registered before the day on which this Act is passed.

(7) Subsections (2) to (4) above shall apply in relation to any scheme not approved before the day on which this Act is passed.

(8) In a case where—

(a) a scheme is approved before the day on which this Act is passed, and

(b) on or after that day the scheme is altered in such a way that paragraph 27 of Schedule 9 to the Taxes Act 1988 would be fulfilled if subsection (3) above applied in relation to the scheme,

subsection (3) above shall apply in relation to the scheme with effect from the time the alteration is made.

(9) Subsection (5) above shall apply in relation to trusts established on or after the day on which this Act is passed; and for this purpose a trust is established when the deed under which it is established is executed.

Marginal Citations

M154 1989 c. 26.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

138 Charities, etc.: lotteries.

(1) In section 505 of the Taxes Act 1988 (charities: general) in subsection (1) (exemptions) after paragraph (e) there shall be inserted—

"(f) exemption from tax under Schedule D in respect of profits accruing to a charity from a lottery if—

(i) the lottery is promoted and conducted in accordance with section 3 or 5 of the [M155]Lotteries and Amusements Act 1976 or Article 133 or 135 of the [M156]Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985; and

(ii) the profits are applied solely to the charity's purposes."

(2) Subsection (1) above shall apply to chargeable periods beginning—

(a) in the case of a company, after 31st March 1995; and

(b) in any other case, after 5th April 1995.

Marginal Citations

M155 1976 c. 32.

M156 S.I. 1985/1204 (N.I.11).

139 Sub-contractors in the construction industry.

(1) Subsection (4) of section 559 of the Taxes Act 1988 (which requires deductions to be made from payments to certain sub-contractors in the construction industry) shall have effect in relation to payments made on or after the appointed day with the substitution for " 25 per cent. " of "the relevant percentage"; and after that subsection there shall be inserted the following subsection—

"(4A) In subsection (4) above "the relevant percentage", in relation to a payment, means such percentage (not exceeding the percentage which is the basic rate for the year of assessment in which the payment is made) as the Treasury may by order determine."

(2) Chapter IV of Part XIII of the Taxes Act 1988 (sub-contractors in the construction industry) shall be further amended in accordance with Schedule 27 to this Act.

(3) In this section and that Schedule "the appointed day" means such day, not being a day before 1st August 1998, as the Treasury may by order made by statutory instrument appoint; and different days may be appointed under this subsection for different purposes.

Subordinate Legislation Made

P1 S. 139(3): S. 139(3) power exercised (23.11.1998) by S.I. 1998/2620, **art. 2**
S. 139(3): S. 139(3) power exercised (1.8.1999) by S.I. 1998/2620, **art. 2**
S. 139(3): Power partly exercised: 6.8.1999 appointed for specified provisions by S.I. 1999/2156, **art. 2**
S. 139(3): Power partly exercised: 6.4.2000 appointed for specified provisions by S.I. 2000/922, **art. 2**

Modifications etc. (not altering text)

C3 S. 139(3) extended (31.7.1998) by 1998 c. 36, s. 57, **Sch. 8 para. 7**

140 Valuation of trading stock on discontinuance of trade.

(1) In section 100 of the Taxes Act 1988 (valuation of trading stock on discontinuance of trade), in paragraph (a) of subsection (1), for the words from "realised" to the end of the paragraph there shall be substituted " determined in accordance with subsections (1A) to (1C) below; and "; and after that subsection there shall be inserted the following subsections—

"(1A) Subject to subsections (1B) and (1C) below and to paragraph 2 of Schedule 12 to the [M157]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 the person who 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 case may be, which is in fact the value of the consideration given for the transfer; and

(b) if those persons 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) stock consisting of debts to which section 88A(2) applies shall have the value for which paragraph (a) of subsection (1A) above provides even where the persons in question are connected with each other; and

(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 chargeable 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 tax purposes the profits or gains of the discontinued trade, would have been deductible as representing the acquisition value of that stock if—

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(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 profits or gains were to be computed began immediately before the sale.

(1E) Where any trading stock falls to be valued under subsection (1)(a) above, the amount determined in accordance with subsections (1A) to (1C) above to be the amount to be brought into account as the value of that stock in computing profits or gains of the discontinued trade shall also be taken, for the purpose of making any deduction in computing the profits or gains 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;

(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) This section applies in relation to any case in which a trade is discontinued at a time on or after 29th November 1994.

Marginal Citations

M157 1988 c. 39.

141 Incapacity benefit.

(1) Section 139 of the [M158]Finance Act 1994 (taxation of incapacity benefit) shall have effect, and be deemed always to have had effect, with the following amendments.

(2) In subsection (5), for the definition of "initial period of incapacity" there shall be substituted—

""initial period of incapacity", in relation to incapacity benefit, means any period for which short-term incapacity benefit is payable otherwise than at the higher rate; and".

(3) After that subsection there shall be inserted the following subsection—

"(6) The reference in subsection (5) above to short-term incapacity benefit payable at the higher rate shall be construed in accordance with sections 30B(5), 40(8) and 41(7) of the [M159]Social Security Contributions and Benefits Act 1992 and the corresponding provisions of the [M160]Social Security Contributions and Benefits (Northern Ireland) Act 1992."

Marginal Citations

M158 1994 c. 9.
M159 1992 c. 4.
M160 1992 c. 7.

142 Annuities purchased where certain claims or actions are settled.

The following sections shall be inserted after section 329 of the Taxes Act 1988—

"329A Annuities purchased for certain persons.

(1) In a case where—

(a) an agreement is made settling a claim or action for damages for personal injury,

(b) under the agreement the damages are to consist wholly or partly of periodical payments, and

(c) under the agreement the person entitled to the payments is to receive them as the annuitant under one or more annuities purchased for him by the person against whom the claim or action is brought or, if he is insured against the claim concerned, by his insurer,

the agreement is for the purposes of this section a qualifying agreement.

(2) In a case where—

(a) an agreement is made settling a claim or action for damages for personal injury,

(b) under the agreement the damages are to consist wholly or partly of periodical payments, and

(c) a later agreement is made under which the person entitled to the payments is from a future date to receive them as the annuitant under one or more annuities purchased for him by the person against whom the claim or action is brought or, if he is insured against the claim concerned, by his insurer,

the agreement mentioned in paragraph (c) above is for the purposes of this section a qualifying agreement.

(3) Subsection (4) below applies where—

(a) a person receives a sum as the annuitant under an annuity purchased for him pursuant to a qualifying agreement, or

(b) a person receives a sum on behalf of the annuitant under an annuity purchased for the annuitant pursuant to a qualifying agreement.

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(4) Where this subsection applies the sum shall not be regarded as the recipient's or annuitant's income for any purposes of income tax and accordingly shall be paid without any deduction under section 349(1).

(5) Subsections (6) to (10) below apply for the purposes of subsection (1) above.

(6) The periodical payments may be for the life of the claimant, for a specified period or of a specified number or minimum number or include payments of more than one of those descriptions.

(7) The amounts of the periodical payments (which need not be at a uniform rate or payable at uniform intervals) may be—
- (a) specified in the agreement, with or without provision for increases of specified amounts or percentages,
- (b) subject to adjustment in a specified manner so as to preserve their real value, or
- (c) partly specified as mentioned in paragraph (a) and partly subject to adjustment as mentioned in paragraph (b) above.

(8) The annuity or annuities must be such as to provide sums which as to amount and time of payment correspond to the periodical payments described in the agreement.

(9) Personal injury includes any disease and any impairment of a person's physical or mental condition.

(10) A claim or action for personal injury includes—
- (a) such a claim or action brought by virtue of the [M161]Law Reform (Miscellaneous Provisions) Act 1934;
- (b) such a claim or action brought by virtue of the [M162]Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937;
- (c) such a claim or action brought by virtue of the [M163]Damages (Scotland) Act 1976;
- (d) a claim or action brought by virtue of the [M164]Fatal Accidents Act 1976;
- (e) a claim or action brought by virtue of the [M165]Fatal Accidents (Northern Ireland) Order 1977.

(11) For the purposes of subsection (2) above—
- (a) subsections (6), (9) and (10) above apply;
- (b) subsection (7) above applies as if the reference to the agreement were to that mentioned in subsection (2)(a) above;
- (c) subsection (8) above applies as if the reference to periodical payments described in the agreement were to periodical payments described in the agreement mentioned in subsection (2)(a) above and falling to be made after the later agreement takes effect.

(12) This section does not apply unless the sum concerned is received after the day on which the Finance Act 1995 is passed, but it is immaterial when—
- (a) the agreement mentioned in subsection (1) above is made or takes effect, or
- (b) either of the agreements mentioned in subsection (2) above is made or takes effect.

329B Annuities assigned in favour of certain persons.

(1) In a case where—

(a) an agreement is made settling a claim or action for damages for personal injury,

(b) under the agreement the damages are to consist wholly or partly of periodical payments,

(c) the person against whom the claim or action is brought (or, if he is insured against the claim concerned, his insurer) purchases one or more annuities, and

(d) a later agreement is made under which the annuity is, or the annuities are, assigned in favour of the person entitled to the payments so as to secure that from a future date he receives the payments as the annuitant under the annuity or annuities,

the agreement mentioned in paragraph (d) above is for the purposes of this section a qualifying agreement.

(2) Subsection (3) below applies where—

(a) a person receives a sum as the annuitant under an annuity assigned in his favour pursuant to a qualifying agreement, or

(b) a person receives a sum on behalf of the annuitant under an annuity assigned in the annuitant's favour pursuant to a qualifying agreement.

(3) Where this subsection applies the sum shall not be regarded as the recipient's or annuitant's income for any purposes of income tax and accordingly shall be paid without any deduction under section 349(1).

(4) For the purposes of subsection (1) above—

(a) subsections (6), (9) and (10) of section 329A apply;

(b) subsections (7) and (8) of section 329A apply as if references to the agreement were to that mentioned in subsection (1)(a) above.

(5) This section does not apply unless the sum concerned is received after the day on which the Finance Act 1995 is passed, but it is immaterial when either of the agreements mentioned in subsection (1) above is made or takes effect."

Marginal Citations

M161 1934 c. 41.
M162 1937 c. 9 (N.I.).
M163 1976 c. 13.
M164 1976 c. 30.
M165 S.I. 1977/1251 (N.I. 18).

143 Lloyd's underwriters: new-style special reserve funds.

(1) In Schedule 20 to the [M166]Finance Act 1993 (Lloyd's underwriters: special reserve funds) paragraph 2 (general requirements about special reserve funds) shall be deemed to have been enacted with the modification in subsection (2) below.

(2) For sub-paragraphs (2) and (3) there shall be substituted—

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"(2) The arrangements must be such as to secure that—

(a) any income arising to the trustee or trustees of the special reserve fund shall be added to the capital of the fund and held on the same trusts as the fund; and

(b) except as required or permitted by this Schedule, no payments shall be made into or out of the special reserve fund."

Marginal Citations

M166 1993 c. 34.

144 Local government residuary body.

(1) In section 842A of the Taxes Act 1988 (meaning of "local authority" in the Tax Acts) in subsection (2) (England and Wales) after paragraph (g) insert—

"(h) a residuary body established by order under section 22(1) of the [M167]Local Government Act 1992;".

(2) This section shall be deemed to have come into force on 29th November 1994.

Commencement Information

I11 S. 144 in force on 29.11.1994: see s. 144(2).

Marginal Citations

M167 1992 c. 19.

145 Payment of rent &c., under deduction of tax.

(1) In section 119(1) of the Taxes Act 1988 (rent, &c., payable in connection with mines, quarries and similar concerns), the words from "and, subject to subsection (2) below, shall be subject to deduction of income tax" to the end shall cease to have effect.

(2) In section 121 of that Act (management expenses of owner of mineral rights), for subsections (1) and (2) (right to repayment where tax paid by deduction, &c.) substitute—

"(1) Where for any year of assessment rights to work minerals in the United Kingdom are let, the lessor shall be entitled to deduct, in determining the amount chargeable to income tax in respect of the rents or royalties for that year, any sums wholly, exclusively and necessarily disbursed by him as expenses of management or supervision of those minerals in that year.".

(3) The provisions of this section have effect in relation to payments made after the passing of this Act.

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

PART IV

PETROLEUM REVENUE TAX

146 Restriction of unrelievable field losses.

(1) In section 6 of the [M168]Oil Taxation Act 1975 (allowance of unrelievable loss from abandoned field), in subsection (1) after the words "Subject to" there shall be inserted " subsections (5) to (9) below and ".

(2) After subsection (1) of that section there shall be inserted—

"(1A) In this section, in relation to an unrelievable field loss,—

(a) "the abandoned field" means the oil field from which the winning of oil has permanently ceased; and

(b) "the person to whom the loss accrued" means the person to whom, as a participator in the abandoned field, the loss accrued (whether or not he is the participator in another oil field who makes the claim for the allowance of the unrelievable field loss)."

(3) After subsection (4) of that section there shall be inserted—

"(5) Subsections (6) to (9) below apply if—

(a) a claim is made for the allowance of an unrelievable field loss; and

(b) the person to whom the loss accrued made a claim or election for the allowance of any expenditure unrelated to that field; and

(c) that claim or election was received by the Board on or after 29th November 1994; and

(d) the whole or a part of the expenditure to which the claim or election relates is allowed and, accordingly, falls to be taken into account under section 2(8)(a) of this Act for a chargeable period (whether beginning before or after 29th November 1994).

(6) Subject to subsection (7) below, where this subsection applies, from the amount which, apart from this subsection, would be the amount of the unrelievable field loss referred to in paragraph (a) of subsection (5) above there shall be deducted an amount equal to so much of any expenditure unrelated to the field as is allowed on a claim or election as mentioned in paragraph (d) of that subsection.

(7) If—

(a) claims are made for the allowance of more than one unrelievable field loss derived from the same abandoned field, and

(b) the person to whom the loss accrued is the same in respect of each of the unrelievable field losses,

subsection (6) above shall have effect as if the deduction referred to in that subsection fell to be made from the aggregate amount of those losses.

(8) Where subsection (7) above applies, the deduction shall be set against the unrelievable field losses in the order in which the claims for the allowance of each of those losses were received by the Board.

(9) In subsections (5) and (6) above, "expenditure unrelated to the field" means—

(a) expenditure allowable under any of sections 5, 5A and 5B of this Act;

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(b) expenditure allowable under this section (derived from a different abandoned field); or

(c) expenditure falling within section 65 of the [M169]Finance Act 1987 which is accepted by the Board as allowable in accordance with Schedule 14 to that Act;

and, in relation to expenditure falling within section 65 of the [M170]Finance Act 1987, "election" means an election under Part I of Schedule 14 to that Act."

Marginal Citations

M168 1975 c. 22.

M169 1987 c. 16.

M170 1987 c. 16.

147 Removal of time limits for claims for unrelievable field losses.

(1) In Schedule 8 to the [M171]Oil Taxation Act 1975 (procedural provisions as to allowance of unrelievable field losses), in paragraph 4 (claims)—

(a) in sub-paragraph (1) (which requires a participator to make a claim to the Board within a time limit), for the words from "and must be made" to "that is to say" there shall be substituted " at any time after " and the words from "and the date" to the end of the sub-paragraph shall be omitted; and

(b) in sub-paragraph (2) the words "within the time allowed for making the original claim" shall be omitted.

(2) This section applies to claims made on or after the day on which this Act is passed.

Marginal Citations

M171 1975 c. 22.

148 Transfer of interests in fields: restriction of transferred losses.

(1) In Schedule 17 to the [M172]Finance Act 1980 (transfer of interests in oil fields) paragraph 7 (transfer of unused losses from the old to the new participator) shall be amended as follows.

(2) At the beginning of sub-paragraph (2) there shall be inserted " Subject to the following provisions of this paragraph ".

(3) After sub-paragraph (2) there shall be inserted the following sub-paragraphs—

"(3) If, in the case of a transfer of the whole or part of an interest on or after 29th November 1994,—

(a) the old participator made a claim or election for the allowance of any expenditure unrelated to the field, and

(b) the claim or election was received by the Board on or after that date, and

(c) the expenditure allowed on the claim or election fell to be taken into account in computing the assessable profit or allowable loss of the old participator for the transfer period or any earlier chargeable period,

then, from the sum which, apart from this sub-paragraph, would be the aggregate of all the losses transferred to the new participator under this paragraph there shall be deducted (subject to sub-paragraphs (5) and (6) below) so much of the expenditure referred to in paragraph (a) above as is allowed on the claim or election (and, accordingly, the amount so deducted shall not fall to be transferred to the new participator under this paragraph).

(4) In this paragraph "expenditure unrelated to the field" means expenditure allowable under any of the following provisions—

(a) section 5 (abortive exploration expenditure);

(b) section 5A (exploration and appraisal expenditure);

(c) section 5B (research expenditure);

(d) section 6 (unrelievable loss from abandoned field); and

(e) section 65 of the [M173]Finance Act 1987 (cross-field allowance of certain expenditure incurred on new fields);

and, in relation to any such expenditure, "claim" means a claim under Schedule 7 or Schedule 8 and "election" means an election under Part I of Schedule 14 to the [M174]Finance Act 1987 and, in relation to such an election, expenditure shall be regarded as allowed if it is accepted by the Board as allowable in accordance with that Schedule.

(5) Where, in accordance with sub-paragraph (1) above, only a part of a loss (corresponding to the part of the interest transferred) falls to be transferred under this paragraph, only a corresponding part of the expenditure referred to in sub-paragraph (3) above shall be deducted under that sub-paragraph.

(6) Where the amount of the deduction under sub-paragraph (3) above equals or exceeds the sum from which it is to be deducted, no part of any loss shall be transferred to the new participator under this paragraph."

Marginal Citations

M172 1980 c. 48.

M173 1987 c. 16.

M174 1987 c. 16.

PART V

STAMP DUTY

149 Transfer: associated bodies.

(1) Section 42 of the [M175]Finance Act 1930 (relief from transfer stamp duty in case of transfer of property as between associated bodies corporate) shall be amended as mentioned in subsections (2) to (5) below.

(2) In subsection (2) (as substituted by section 27(2) of the [M176]Finance Act 1967) for the words from "that the effect" to the end of the subsection there shall be substituted "that—

(a) the effect of the instrument is to convey or transfer a beneficial interest in property from one body corporate to another, and

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

(b) the bodies in question are associated at the time the instrument is executed."

(3) The following subsections shall be inserted after subsection (2) (as so substituted)—

"(2A) For the purposes of this section bodies corporate are associated at a particular time if at that time one is the parent of the other or another body corporate is the parent of each.

(2B) For the purposes of this section one body corporate is the parent of another at a particular time if at that time the first body is beneficial owner of not less than 75 per cent. of the ordinary share capital of the second body."

(4) In subsection (3) (as so substituted) for "(2)" there shall be substituted " (2B) ", and the words from "with the substitution" to the end shall be omitted.

(5) The following subsection shall be inserted after subsection (3) (as so substituted)—

"(4) In this section "ordinary share capital", in relation to a body corporate, means all the issued share capital (by whatever name called) of the body corporate, 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 body corporate."

(6) In section 27 of the [M177]Finance Act 1967 (which relates to section 42 of the [M178]Finance Act 1930) in subsection (3)(c) for the words from "a change" to "third body corporate" there shall be substituted " the transferor or a third body corporate ceasing to be the transferee's parent (within the meaning of the said section 42) ".

(7) This section shall apply in relation to instruments executed on or after the day on which this Act is passed.

Marginal Citations

M175 1930 c. 28.
M176 1967 c. 54.
M177 1967 c. 54.
M178 1930 c. 28.

150 Northern Ireland transfer: associated bodies.

(1) Section 11 of the [M179]Finance Act (Northern Ireland) 1954 (relief from stamp duty in case of transfer of property between associated bodies corporate) shall be amended as follows.

(2) In subsection (2)(c)(iii) for the words from "a change" to "third body corporate" there shall be substituted " the transferor or a third body corporate ceasing to be the transferee's parent ".

(3) The following subsections shall be substituted for subsection (3)—

"(3) For the purposes of this section a body corporate is associated with another body corporate at a particular time if at that time one is the parent of the other or another body corporate is the parent of each.

(3AA) For the purposes of this section one body corporate is the parent of another at a particular time if at that time the first body is beneficial owner of not less than 75 per cent. of the ordinary share capital of the second body."

(4) In subsection (3A) for the words "paragraphs (i) and (ii) of subsection (3)" there shall be substituted " subsection (3AA) ", and the words from "with the substitution" to the end shall be omitted.

(5) The following subsection shall be inserted after subsection (3A)—

"(3AB) In this section "ordinary share capital", in relation to a body corporate, means all the issued share capital (by whatever name called) of the body corporate, 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 body corporate."

(6) This section shall apply in relation to instruments executed on or after the day on which this Act is passed.

Marginal Citations
M179 1954 c. 23 (N.I.).

151 Lease or tack: associated bodies.

(1) Stamp duty under the heading "Lease or Tack" in Schedule 1 to the [M180]Stamp Act 1891 shall not be chargeable on an instrument which is—
- (a) a lease or tack,
- (b) an agreement for a lease or tack, or
- (c) an agreement with respect to a letting,

as respects which the condition in subsection (2) below is satisfied.

(2) The condition is that it is shown to the satisfaction of the Commissioners of Inland Revenue that—
- (a) the lessor is a body corporate and the lessee is another body corporate,
- (b) those bodies are associated at the time the instrument is executed,
- (c) in the case of an agreement, the agreement is for the lease or tack or letting to be granted to the lessee or to a body corporate which is associated with the lessee at the time the instrument is executed, and
- (d) the instrument is not executed in pursuance of or in connection with an arrangement falling within subsection (3) below.

(3) An arrangement falls within this subsection if it is one under which—
- (a) the consideration, or any part of the consideration, for the lease or tack or agreement was to be provided or received (directly or indirectly) by a person other than a body corporate which at the relevant time was associated with either the lessor or the lessee, or
- (b) the lessor and the lessee were to cease to be associated by reason of the lessor or a third body corporate ceasing to be the lessee's parent;

and the relevant time is the time of the execution of the instrument.

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(4) Without prejudice to the generality of paragraph (a) of subsection (3) above, an arrangement shall be treated as within that paragraph if it is one under which the lessor or the lessee or a body corporate associated with either at the relevant time was to be enabled to provide any of the consideration, or was to part with any of it, by or in consequence of the carrying out of a transaction which involved (or transactions any of which involved) a payment or other disposition by a person other than a body corporate associated with the lessor or the lessee at the relevant time.

(5) An instrument mentioned in subsection (1) above shall not be treated as duly stamped unless—

(a) it is duly stamped in accordance with the law that would apply but for that subsection, or

(b) it has, in accordance with section 12 of the [M181]Stamp Act 1891, been stamped with a particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped.

(6) In this section—

(a) references to the lessor are to the person granting the lease or tack or (in the case of an agreement) agreeing to grant the lease or tack or letting;

(b) references to the lessee are to the person being granted the lease or tack or (in the case of an agreement) agreeing for the lease or tack or letting to be granted to him or another.

(7) For the purposes of this section bodies corporate are associated at a particular time if at that time one is the parent of the other or another body corporate is the parent of each.

(8) For the purposes of this section one body corporate is the parent of another at a particular time if at that time the first body is beneficial owner of not less than 75 per cent. of the ordinary share capital of the second body.

(9) In subsection (8) above "ordinary share capital", in relation to a body corporate, means all the issued share capital (by whatever name called) of the body corporate, 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 body corporate.

(10) The ownership referred to in subsection (8) above is ownership either directly or through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate; and Part I of Schedule 4 to the [M182]Finance Act 1938 (determination of amount of capital held through other bodies corporate) shall apply for the purposes of this section.

(11) This section shall apply in relation to instruments executed on or after the day on which this Act is passed.

Marginal Citations

M180 1891 c. 39.

M181 1891 c. 39.

M182 1938 c. 46.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

PART VI

MISCELLANEOUS AND GENERAL

Miscellaneous

152 Open-ended investment companies.

(1) The Treasury may, by regulations, make such provision as they consider appropriate for securing that the enactments specified in subsection (2) below have effect in relation to—

(a) open-ended investment companies of any such description as may be specified in the regulations,

(b) holdings in, and the assets of, such companies, and

(c) transactions involving such companies,

in a manner corresponding, subject to such modifications as the Treasury consider appropriate, to the manner in which they have effect in relation to unit trusts, to rights under, and the assets subject to, such trusts and to transactions for purposes connected with such trusts.

(2) The enactments referred to in subsection (1) above are—

(a) the Tax Acts and the [M183]Taxation of Chargeable Gains Act 1992; and

(b) the enactments relating to stamp duty and Part IV of the [M184]Finance Act 1986 (stamp duty reserve tax).

(3) The power of the Treasury to make regulations under this section in relation to any such enactments shall include power to make provision which does any one or more of the following, that is to say—

(a) identifies the payments which are or are not to be treated, for the purposes of any prescribed enactment, as the distributions of open-ended investment companies;

(b) modifies the operation of Chapters II, III and VA of Part VI of the Taxes Act 1988 in relation to open-ended investment companies or in relation to payments falling to be treated as the distributions of such companies;

(c) applies and adapts any of the provisions of Part IV of the [M185]Finance Act 1986 for the purpose of making in relation to transactions involving open-ended investment companies any provision corresponding (with or without modifications) to that which applies under the enactments relating to stamp duty in the case of equivalent transactions involving unit trusts;

(d) provides for any or all of the provisions of sections 75 to 77 of the [M186]Finance Act 1986 to have effect or not to have effect in relation to open-ended investment companies or the undertakings of, or any shares in, such companies;

(e) so modifies the operation of any prescribed enactment in relation to any such companies as to secure that arrangements for treating the assets of an open-ended investment company as assets comprised in separate pools are given an effect corresponding, in prescribed respects, to that of equivalent arrangements constituting the separate parts of an umbrella scheme;

(f) requires prescribed enactments to have effect in relation to an open-ended investment company as if it were, or were not, a member of the same group of companies as one or more other companies;

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(g) identifies the holdings in open-ended investment companies which are, or are not, to be treated for the purposes of any prescribed enactment as comprised in the same class of holdings;

(h) preserves a continuity of tax treatment where, in connection with any scheme of re-organisation, assets of one or more unit trusts become assets of one or more open-ended investment companies, or vice versa;

(i) treats the separate parts of the undertaking of an open-ended investment company in relation to which provision is made by virtue of paragraph (e) above as distinct companies for the purposes of any regulations under this section;

(j) amends, adapts or applies the provisions of any subordinate legislation made under or by reference to any enactment modified by the regulations.

(4) The power to make regulations under this section shall be exercisable by statutory instrument and shall include power—

(a) to make different provision for different cases; and

(b) to make such incidental, supplemental, consequential and transitional provision as the Treasury may think fit.

(5) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of the House of Commons.

(6) In this section—

"the enactments relating to stamp duty" means the [M187]Stamp Act 1891, and any enactment (including any Northern Ireland legislation) which amends or is required to be construed together with that Act;

"Northern Ireland legislation" shall have the meaning given by section 24(5) of the [M188]Interpretation Act 1978;

"open-ended investment company" has the same meaning as in the [M189]Financial Services Act 1986;

"prescribed" means prescribed by regulations under this section;

"subordinate legislation" means any subordinate legislation within the meaning of the [M190]Interpretation Act 1978 or any order or regulations made by statutory instrument under Northern Ireland legislation; and

"umbrella scheme" shall have the meaning given by section 468 of the Taxes Act 1988;

and references in this section to the enactments relating to stamp duty, or to any of them, or to Part IV of the Finance Act 1986 shall have effect as including references to enactments repealed by sections 107 to 110 of the [M191]Finance Act 1990.

(7) Any reference in this section to unit trusts has effect—

(a) for the purposes of so much of this section as confers power in relation to the enactments specified in paragraph (a) of subsection (2) above, as a reference to authorised unit trusts (within the meaning of section 468 of the Taxes Act 1988), and

(b) for the purposes of so much of this section as confers power in relation to the enactments specified in paragraph (b) of that subsection, as a reference to any unit trust scheme (within the meaning given by section 57 of the [M192]Finance Act 1946).

(8) For the purposes of this section the enactments which shall be taken to make provision in relation to companies that are members of the same group of companies shall include any enactments which make provision in relation to a case—

(a) where one company has, or in relation to another company is, a subsidiary, or a subsidiary of a particular description, or

(b) where one company controls another or two or more companies are under the same control. [M193]

Marginal Citations

M183 1992 c. 12.
M184 1986 c. 41.
M185 1986 c. 41.
M186 1986 c. 41.
M187 1891 c. 39.
M188 1978 c. 30.
M189 1986 c. 60.
M190 1978 c. 30.
M191 1986 c. 41.
M192 1946 c. 64.
M193 1990 c. 29.

153 Electronic lodgement of tax returns, etc.

Schedule 28 to this Act (which makes provision with respect to the electronic lodgement of certain tax returns and documents required in connection with tax returns) shall have effect.

154 Short rotation coppice.

(1) The cultivation of short rotation coppice shall be regarded for the purposes of the Tax Acts and the [M194]Taxation of Chargeable Gains Act 1992 as farming (and, where relevant, as husbandry or agriculture) and not as forestry; and land in the United Kingdom on which the activity is carried on shall accordingly be regarded for those purposes as farm land or agricultural land, as the case may be, and not as woodlands.

(2) For the purposes of the [M195] Inheritance Tax Act 1984 the cultivation of short rotation coppice shall be regarded as agriculture; and accordingly for those purposes—

(a) land on which short rotation coppice is cultivated shall be regarded as agricultural land, and

(b) buildings used in connection with the cultivation of short rotation coppice shall be regarded as farm buildings.

(3) In subsections (1) and (2) "short rotation coppice" means a perennial crop of tree species planted at high density, the stems of which are harvested above ground level at intervals of less than ten years.

(4) Subsection (1) and subsection (3) so far as relating to subsection (1) shall be deemed to have come into force on 29th November 1994.

(5) Subsection (2) and subsection (3) so far as relating to subsection (2) shall have effect in relation to transfers of value or other events occuring on or after 6th April 1995.

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Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

Marginal Citations
M194 1992 c. 12.
M195 1984 c.51

155 Inheritance tax: agricultural property.

(1) In section 116 of the Inheritance Tax Act 1984 (relief for transfers of agricultural property) in subsection (2) (rate of relief) the word "either" shall be omitted and at the end of paragraph (b) there shall be inserted "or

(c) the interest of the transferor in the property immediately before the transfer does not carry either of the rights mentioned in paragraph (a) above because the property is let on a tenancy beginning on or after 1st September 1995;".

(2) After subsection (2) of that section there shall be inserted the following subsection—

"(2A) In the application of this section as respects property in Scotland, the reference in subsection (2)(c) above to a tenancy beginning on or after 1st September 1995 includes a reference to its being acquired on or after that date by right of succession (the date of acquisition being taken to be the date on which the successor gives relevant notice under section 12 of the [M196]Agricultural Holdings (Scotland) Act 1991)."

(3) Subsections (1) and (2) above shall apply in relation to transfers of value made, and other events occurring, on or after 1st September 1995.

Marginal Citations
M196 1991 c. 55.

156 Proceedings for tax in sheriff court.

(1) Section 67 of the [M197]Taxes Management Act 1970 (proceedings for tax in sheriff court) shall be amended as follows.

(2) In subsection (1) (tax not exceeding a specified sum recoverable in sheriff court) for the words from "where" to "the tax" there shall be substituted " tax due and payable under any assessment ".

(3) The following subsection shall be inserted after subsection (1)—

"(1A) An officer of the Board who is authorised by the Board to do so may address the court in any proceedings under this section."

(4) This section shall apply in relation to proceedings commenced after the day on which this Act is passed.

Marginal Citations
M197 1970 c. 9.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

157 Certificates of tax deposit.

(1) If, whether before or after the passing of this Act—

(a) any person ("the depositor") has received any sum on the making, on or after 6th April 1990, of a withdrawal for cash of a tax deposit made before that date,

(b) the whole or any part of any qualifying tax liability has been discharged by any payment made otherwise than by the application of a tax deposit, and

(c) that payment was made in the period beginning one month before the withdrawal and ending one month afterwards,

the depositor shall be entitled to receive compensation under this section from the Board.

(2) In this section "qualifying tax liability", in relation to a tax deposit, means so much of any liability as is—

(a) a liability of any person for any tax for the year 1990-91 or any subsequent year of assessment, or for interest on such tax;

(b) a liability that relates to tax for a year of assessment during the whole or any part of which that person was married to the depositor; and

(c) a liability of such a description that, if it had been a liability of the depositor (and the withdrawal were to be disregarded), the whole or any part of it could have been discharged, immediately before the time of the payment mentioned in subsection (1)(b) above, by the application of that deposit and of accrued interest thereon.

(3) Subject to the following provisions of this section, the amount of the compensation to which the depositor is entitled under this section in the case of any deposit withdrawn for cash shall be equal to the difference between—

(a) the sum received as mentioned in subsection (1)(a) above on the withdrawal; and

(b) the sum that would have been received if interest had accrued on the relevant part of the sum received at the rate applicable under the relevant terms to sums applied in the payment of tax, instead of at the rate applicable to a withdrawal for cash.

(4) In subsection (3) above, the reference to the relevant part of the sum received on the withdrawal of a deposit is a reference to the following amount, that is to say—

(a) in a case where the sum received on the withdrawal is equal to or smaller than the amount of the liability discharged by the payment mentioned in subsection (1)(b) above, the amount equal to such part of the sum actually received as does not represent interest that has accrued under the relevant terms; and

(b) in any other case, to the amount which would have been the amount specified in paragraph (a) above if the sum actually received on the withdrawal had been equal to the amount of qualifying tax liability so discharged.

(5) The amount of compensation to which any person is entitled under this section shall also include an amount equal to interest, for the period from the withdrawal mentioned in subsection (1)(a) above until the payment of the compensation, on the amount determined in accordance with subsection (3) above; and a liability to compensation under this section shall not bear interest apart from in accordance with this subsection.

(6) Section 178 of the [M198]Finance Act 1989 (interest rates) shall apply to subsection (5) above for determining the rate of the interest treated, by virtue of that subsection,

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as included in any compensation under this section; and any regulations under that section which are in force at the passing of this Act shall be deemed, subject to the powers of the Treasury under that section, to have effect in relation to this section as they have effect in relation to the enactments specified in subsection (2)(f) of that section (interest on overdue tax).

(7) The part of any compensation under this section that represents interest under subsection (5) above shall not be treated as included in the income of the depositor for the purposes of income tax; but the remainder shall be chargeable to income tax under Case III of Schedule D.

(8) No compensation shall be paid under this section unless a claim for it has been made to the Board.

(9) Where any claim is made under this section with respect to any withdrawal for cash of a tax deposit—

(a) this section shall have effect if there is, in the period mentioned in subsection (1)(c) above, more than one such payment as is mentioned in subsection (1)(b) above as if (subject to paragraph (b) below) all the payments in that period were, for the purposes of that claim, to be aggregated and treated as one such payment; and

(b) the amount of compensation payable under this section on that claim shall be computed without regard to so much of any payment discharging a qualifying tax liability as, in pursuance of any claim under this section, has been or is to be so taken into account as to affect the amount of compensation payable in the case of any other withdrawal.

(10) Sums required by the Board for paying compensation under this section shall be issued to the Board by the Treasury out of the National Loans Fund.

(11) A withdrawal for cash of a tax deposit shall be taken for the purposes of this section to occur at the same time as, under the relevant terms, it is deemed to occur for the purposes of the calculation of interest on the amount withdrawn.

(12) This section shall be construed as one with the Tax Acts, and in this section—

(a) references to a tax deposit are references to the whole or any part of any deposit in respect of which a certificate of tax deposit has been issued by the Treasury under section 12 of the [M199]National Loans Act 1968; and

(b) references to the relevant terms, in relation to a tax deposit, are references to the terms applicable to that deposit and to the certificate issued in respect of it.

Marginal Citations

M198 1989 c. 26.

M199 1968 c. 13.

158 Amendment of the Exchequer and Audit Departments Act 1866.

Section 10 of the [M200]Exchequer and Audit Departments Act 1866 (Commissioners of Customs and Excise and of Inland Revenue to deduct repayments from gross revenues) shall have effect, and be deemed always to have had effect, as if the reference in that section to repayments included references to—

(a) payments in respect of any actual or deemed credits relating to any tax or duty; and

(b) payments of any interest on sums which are or are deemed to be repayments for the purposes of that section.

Marginal Citations

M200 1866 c. 39.

159 Ports levy.

(1) In Part I of the [M201]Ports Act 1991 (transfer of statutory port undertakings), after section 15 (duty to provide information for purposes of levy) insert—

"**15A Notice of assessment: supplementary provisions.**

(1) Where a notice of assessment has been served under section 14(2) above on a former relevant port authority ("the authority"), the authority may, within the period mentioned in section 14(3) above, by notice in writing request the appropriate Minister to reconsider the amount of the assessment.

The request shall set out the grounds on which the authority allege that the amount assessed is incorrect.

(2) If it appears to the Minister that there are reasonable grounds for believing that the amount of the assessment may be excessive, he may direct that section 14(3) and (4) above shall not apply to the whole amount of the assessment but only to such lesser amount as he may specify.

(3) If a request for reconsideration is duly made, the appropriate Minister shall reconsider the amount of the assessment and may confirm or reduce it.

An appeal lies to the High Court or, in Scotland, to the Court of Session as the Court of Exchequer in Scotland from any decision of the Minister under this subsection.

(4) The appropriate Minister may reconsider the amount of an assessment under section 14(2) above in any other case, if he thinks fit, and may confirm or reduce it.

(5) When the amount of the assessment is finally determined—

(a) if the amount of the assessment is less than the amount paid by the authority, the appropriate Minister shall make such payment to the authority as is required to put the authority in the same position as if the reduced amount had been specified in the original assessment;

(b) if a further amount is payable by the authority, section 14(3) and (4) above shall apply in relation to that amount as if the reference to the date of issue of the notice of assessment were a reference to the date of the determination.

(6) Except as provided by this section a notice of assessment under section 14(2) above shall not be questioned in any legal proceedings whatsoever.".

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(2) Sections 115 to 120 of the [M202]Finance Act 1990 (levy on privatisation of certain ports) shall cease to have effect.

(3) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the [M203]Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of subsection (1) above—

(a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M201 1991 c. 52.
M202 1990 c. 29.
M203 1974 c. 28.

160

(1) The Inland Revenue shall prepare and present to Treasury Ministers a report on tax simplification.

(2) The report shall be laid before Parliament and published before 31st December 1995.

(3) The report shall give—

(a) an account of recent tax legislation history;

(b) full details of recent annual additions to both primary and secondary legislation;

(c) a summary of recent criticism of both the complexity of tax legislation and of parliamentary procedure; and

(d) the advantages and disadvantages of possible solutions including a Royal Commission on taxation and a tax law commission.

General

161 Interpretation.

(1) In this Act "the Taxes Act 1988" means the [M204]Income and Corporation Taxes Act 1988.

(2) In Part III of this Act "the Management Act" means the [M205]Taxes Management Act 1970.

(3) Part V of this Act shall be construed as one with the [M206]Stamp Act 1891.

Marginal Citations

M204 1988 c. 1.
M205 1970 c. 9.
M206 1891 c. 39.

Status: *Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Finance Act 1995. (See end of Document for details)*

162 Repeals.

The provisions specified in Schedule 29 to this Act (which include provisions which are already spent) are hereby repealed to the extent specified in the third column of that Schedule, but subject to any provision of that Schedule.

163 Short title.

This Act may be cited as the Finance Act 1995.

Status:
Point in time view as at 01/05/1995. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 1995.