

*Status: Point in time view as at 31/07/1997.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1997, SCHEDULE 7. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 7

Section 69.

#### SPECIAL TREATMENT FOR CERTAIN DISTRIBUTIONS

**Modifications etc. (not altering text)**

**C1** Sch. 7 excluded (28.4.1997) by S.I. 1997/1154, reg. 25(10)

*Distributions to which Schedule applies*

- [<sup>F1</sup>1] (1) Subject to paragraphs 4 to 7 below, this Schedule applies to any qualifying distribution which—
- (a) falls within either or both of sub-paragraphs (2) and (3) below; and
  - (b) is a distribution made on or after 8th October 1996 by a company resident in the United Kingdom.
- (2) A qualifying distribution of a company falls within this sub-paragraph if it is a payment made by that company—
- (a) on the redemption, repayment or purchase of its own shares, or
  - (b) on the purchase of rights to acquire its own shares.
- (3) A qualifying distribution of a company falls within this sub-paragraph if—
- (a) arrangements are or have been made by virtue of which any one or more of the specified matters is or was made referable (in some way and to any extent) to, or to the carrying out of, a transaction in securities; and
  - (b) that transaction is a transaction completed on or after 8th October 1996, or some or all of those arrangements are arrangements made on or after that date.
- (4) For the purposes of this Schedule the specified matters, in relation to a qualifying distribution, are—
- (a) whether the distribution is made,
  - (b) the time when it is made,
  - (c) its form, and
  - (d) its amount.
- (5) In this Schedule—
- “arrangements” means arrangements of any kind, whether in writing or not;
  - “qualifying distribution” has the same meaning as in the Taxes Act 1988;
  - “shares” has the same meaning as in sections 219 to 228 of that Act (purchase of own shares);

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“transaction in securities” has the same meaning as in Chapter I of Part XVII of that Act (cancellation of tax advantages from certain transactions in securities).]

#### Textual Amendments

- F1** Sch. 7 para. 1 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, s. 52, Sch. 8 Pt. II(12) Note 1 (with s. 3(3))

#### *Distributions treated as FIDs*

- [<sup>F2</sup> (1) The Tax Acts shall have effect, and be deemed in relation to any time on or after 8th October 1996 to have had effect, as if a qualifying distribution to which this Schedule applies were a foreign income dividend within the meaning of Chapter VA of Part VI of the Taxes Act 1988 and, accordingly, as if the making of the distribution were the payment of a foreign income dividend.
- (2) In section 246A of the Taxes Act 1988 (elections for dividends to be treated as foreign income dividends), after subsection (2) there shall be inserted the following subsection—
- “(2A) An election under this section cannot be made as regards a distribution which already falls to be treated as a foreign income dividend by virtue of paragraph 2(1) of Schedule 7 to the Finance Act 1997.”
- (3) Sub-paragraph (1) above has effect subject to—
- [ section 95(1A)(b) of the Taxes Act 1988 (receipt of qualifying distribution
- <sup>F3</sup>(a) by dealer not to be treated as FID for certain purposes); and]
- (b) section 247(5B) to (5D) [<sup>F4</sup>of the Taxes Act 1988] (distributions that are subject to group income elections).
- (4) Sub-paragraph (2) above has effect in relation to the making of elections on or after 8th October 1996.]

#### Textual Amendments

- F2** Sch. 7 para. 2 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, Sch. 6 para. 21(2)(4), Sch. 8 Pt. II(11) note (with s. 3(3))
- F3** Sch. 7 para. 2(3)(a) repealed (31.7.1997 with effect as mentioned in s. 24(15)(a)(b) of the amending Act) by 1997 c. 58, ss. 24(14)(a), 52, Sch. 8 Pt. II(8) note 1 (with s. 3(3))
- F4** Words in Sch. 7 para. 2(3)(b) substituted (31.7.1997 with effect as mentioned in s. 24(15)(a)(b) of the amending Act) by 1997 c. 58, s. 24(14)(b) (with s. 3(3))

#### Modifications etc. (not altering text)

- C2** Sch. 7 para. 2(1) restricted (31.7.1997) by 1997 c. 58, s. 36(3) (with s. 3(3))

#### *Distributions treated as section 686 income of trustees*

- [<sup>F5</sup> (1) This paragraph applies where—
- (a) a qualifying distribution to which this Schedule applies by virtue of its falling within paragraph 1(2) above is or has been made to trustees; and

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- (b) those trustees are not or, as the case may be, were not the trustees of a unit trust scheme within the meaning of section 469 of the Taxes Act 1988.
- (2) The relevant part of that distribution (and, accordingly, the corresponding part of the foreign income dividend that paragraph 2(1) above deems the distribution to be) shall be treated for the purposes of the Tax Acts as if it were income to which section 686 of the Taxes Act 1988 (application of rate applicable to trusts to income of certain discretionary trusts) applies.
- (3) In sub-paragraph (2) above the reference to the relevant part of the distribution is a reference to so much (if any) of that distribution as—
- (a) is not income falling within paragraph (a) of section 686(2) of the Taxes Act 1988 (income which is to be accumulated or which is payable at any person’s discretion);
  - (b) does not fall to be treated for the purposes of the Income Tax Acts as income of a settlor;
  - (c) is not income arising under a trust established for charitable purposes; and
  - (d) is not income from investments, deposits or other property held for any such purposes as are mentioned in sub-paragraph (i) or (ii) of section 686(2)(c) of the Taxes Act 1988 (property held for pension purposes).
- (4) Subsection (6) of section 686 of the Taxes Act 1988 (meaning of “trustees” etc.) shall apply for the purposes of this paragraph as it applies for the purposes of that section.
- (5) This paragraph has effect for the year 1997-98 and subsequent years of assessment and shall be deemed to have had effect for the year 1996-97 in relation to distributions made on or after 5th December 1996.]

#### Textual Amendments

- F5** Sch. 7 para. 3 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, s. 52, Sch. 8 Pt. II(9) Note 3 (with s. 3(3))

#### *Stock options*

- [<sup>F6</sup>4 (1) A qualifying distribution does not fall within paragraph 1(3) above by reason only that it is made in consequence of the exercise of such an option as is mentioned in section 249(1)(a) of the Taxes Act 1988 (option to receive either a cash dividend or additional share capital).
- (2) Section 251(1)(c) of the Taxes Act 1988 (interpretation of references to the exercise of an option to receive either a cash dividend or additional share capital) shall apply for the purposes of this paragraph as it applies for the purposes of sections 249 and 250 of that Act.]

#### Textual Amendments

- F6** Sch. 7 para. 4 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, Sch. 6 para. 21(3)(4), Sch. 8 Pt. II(11) note (with s. 3(3))

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*Dividends on fixed rate preference shares*

- [<sup>F75</sup> (1) A qualifying distribution consisting in a dividend on a fixed-rate preference share does not fall within paragraph 1(3) above by reason only that any of the specified matters is made referable to the terms on which the share was issued.
- (2) In this paragraph “fixed-rate preference share” means—
- (a) any fixed rate preference share within the meaning of [<sup>F8</sup>paragraph 13 of Schedule 28B to] the Taxes Act 1988; or
  - (b) any share which would be such a share if the dividends mentioned in [<sup>F9</sup>paragraph 13(6)(c)(i) of that Schedule] included dividends fixed by reference to a standard published rate of interest.

[ For the purposes of sub-paragraph (2) above, any reference in paragraph 13(6) of <sup>F10</sup>(3) Schedule 28B to shares shall be taken as a reference to shares within the meaning of this Schedule.]]

**Textual Amendments**

- F7** Sch. 7 para. 5 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, Sch. 6 para. 21(3)(4), Sch. 8 Pt. II(11) note (with s. 3(3))
- F8** Words in Sch. 7 para. 5(2)(a) substituted (31.7.1997 with effect on and after 2.7.1997) by 1997 c. 58, s. 25(6)(a)(8) (with s. 3(3))
- F9** Words in Sch. 7 para. 5(2)(b) substituted (31.7.1997 with effect on and after 2.7.1997) by 1997 c. 58, s. 25(6)(b)(8) (with s. 3(3))
- F10** Sch. 7 para. 5(3) inserted (31.7.1997 with effect on and after 2.7.1997) by 1997 c. 58, s. 25(7)(8) (with s. 3(3))

*Pre-sale distributions*

- [<sup>F116</sup> (1) A qualifying distribution which is an excepted pre-sale distribution does not fall within paragraph 1(3) above if the only transactions in securities to which any of the specified matters are referable are relevant transactions.
- (2) For the purposes of this paragraph, a qualifying distribution of a company is an excepted pre-sale distribution if, in the period beginning with the making of the distribution and ending with the fourteenth day after the day on which the distribution is made, there is a major change in the ownership of that company.
- (3) For the purposes of sub-paragraph (2) above, there is a major change in the ownership of a company in any period if, in that period—
- (a) a single person acquires a holding of 75 per cent. or more of the ordinary share capital of the company; or
  - (b) each of two or more persons acquires a holding of ordinary share capital of the company, and the holdings together amount to 75 per cent. or more of the ordinary share capital of the company.
- (4) For the purposes of this paragraph a relevant transaction, in relation to any excepted pre-sale distribution, is any transaction in securities by which the holding or, as the case may be, any of the holdings mentioned in sub-paragraph (3) above is acquired.
- (5) In applying sub-paragraph (3) above—

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- (a) the circumstances at any two points in time falling within the period in question may be compared, and a holder at the later time may be regarded as having acquired in that period whatever he did not hold at the earlier time, irrespective of what he has acquired or disposed of in between;
  - (b) to allow for any issue of shares or other reorganisation of capital, any such comparison may be made in terms of percentage holdings of the total ordinary share capital at the respective times, so that a person whose percentage holding is greater at the later time may be regarded as having acquired in the period a percentage holding equal to the increase;
  - (c) any acquisition of shares under the will or on the intestacy of a deceased person, and any gift of shares which is unsolicited and made without regard to the provisions of paragraphs 2 and 3 above, shall be left out of account.
- (6) For the purposes of this paragraph, where—
- (a) persons, whether company members or not, possess extraordinary rights or powers under the articles of association of a company or under any other document regulating the company, and
  - (b) because of that fact, ownership of the ordinary share capital may not be an appropriate test of whether there has been a major change in the ownership of the company,
- then, in considering whether there has been a major change in the ownership of the company, holdings of all kinds of share capital, including preference shares, or of any particular kind of share capital, or voting power or any other special kind of power, shall be taken into account, and holdings of ordinary share capital shall be disregarded, to such extent as may be appropriate.
- (7) For the purposes of this paragraph, references to ownership shall be construed as references to beneficial ownership, and references to acquisition shall be construed accordingly.]

#### Textual Amendments

**F11** Sch. 7 para. 6 repealed (31.7.1997 with effect in relation to distributions made on or after 6.4.1999) by 1997 c. 58, ss. 36(4), 52, Sch. 6 para. 21(3)(4), Sch. 8 Pt. II(11) Note (with s. 3(3))

#### *Manufactured payments*

- [<sup>F127</sup> (1) A manufactured dividend shall not be taken to be a qualifying distribution to which this Schedule applies except in pursuance of sub-paragraph (2) below.
- (2) Where a payment is made which is representative of a qualifying distribution to which this Schedule applies, that payment shall be deemed to be such a distribution for all the purposes of the Tax Acts, except those for which Schedule 23A to the Taxes Act 1988 (manufactured payments) makes provision in relation to the payment which is different from the provision applying to distributions to which this Schedule applies.
- (3) For the purposes of Schedule 23A to the Taxes Act 1988 a payment which is representative of a payment falling within paragraph 1(2) above shall be treated as if it were representative of a dividend on the shares redeemed, repaid or purchased or, as the case may be, on the shares to which the right relates.

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- (4) In this paragraph “manufactured dividend” has the same meaning as in Schedule 23A to the Taxes Act 1988.]

**Textual Amendments**

**F12** Sch. 7 para. 7 repealed (31.7.1997 with effect in relation to payments which are representative of distributions made on or after 6.4.1999) by 1997 c. 58, s. 52, Sch. 8 Pt. II(12) Note 2 (with s. 3(3))

*Amendment of section 95 of the Taxes Act 1988*

- 8 (1) In section 95 of the Taxes Act 1988 (taxation of distributions received by dealers on purchase by a company of its own shares), for subsections (1) to (3) there shall be substituted the following subsections—

“(1) Each of the following, that is to say—

- (a) any qualifying distribution to which Schedule 7 to the Finance Act 1997 (special treatment for certain distributions) applies which is received by a dealer, and
- (b) any payment by a dealer which is representative of a qualifying distribution to which that Schedule applies,

shall be taken into account in computing the profits of the dealer which are chargeable to tax in accordance with the provisions of this Act applicable to Case I or II of Schedule D.

- (1A) Accordingly, where a dealer receives a qualifying distribution to which Schedule 7 to the Finance Act 1997 applies—

- (a) tax shall not be charged under Schedule F in respect of that distribution;
- (b) that distribution shall not be treated for the purposes of sections 246D and 246F as a foreign income dividend received by the dealer;
- (c) sections 208 and 234(1) shall not apply to that distribution; and
- (d) paragraph 2A(2) of Schedule 23A shall not apply to the payment by the dealer of an amount which is representative of that distribution and is paid by him on or after the date appointed under paragraph 16(1) of Schedule 10 to the Finance Act 1997.

- (1B) Where the result of any transaction is that a qualifying distribution to which Schedule 7 to the Finance Act 1997 applies is receivable by a dealer, that distribution shall not, in relation to that transaction, be treated as interest for the purposes of determining whether section 732 applies by virtue of section 731.

- (2) For the purposes of this section a person is a dealer in relation to any qualifying distribution if—

- (a) were there a sale by that person of the shares in respect of which the distribution is made, and
- (b) the circumstances of that sale were such that the price would not fall to be treated as a qualifying distribution,

the price would be taken into account in computing the profits of that person which are chargeable to tax in accordance with the provisions of this Act applicable to Case I or II of Schedule D.”

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- (2) In that Act—
- (a) in section 20(1), in paragraph 1 of Schedule F, for “95(1)(a)” there shall be substituted “ 95(1A)(a) ”; and
  - (b) in section 234(1) (information relating to distributions), for “95(1)(c)” there shall be substituted “ 95(1A)(c) ”.
- (3) This paragraph has effect in relation to distributions made on or after 26th November 1996.

*Information to be provided about deemed FID*

- [<sup>F139</sup> (1) In section 246G(1)(d) of that Act (information to be provided about a foreign income dividend), after “carries no entitlement to a tax credit” there shall be inserted “ and, in the case of a qualifying distribution to which Schedule 7 to the Finance Act 1997 applies, that it is a foreign income dividend by virtue of paragraph 2(1) of that Schedule ”.
- (2) This paragraph has effect in relation to distributions made on or after 26th November 1996.]

**Textual Amendments**

- F13** Sch. 7 para. 9 repealed (31.7.1997 with effect in accordance with s. 36 and Sch. 6 of the amending Act) by 1997 c. 58, s. 52, Sch. 8 Pt. II(11) Note (with s. 3(3))

*Group income*

- [<sup>F1410</sup> (1) In subsection (5A) of section 247 of that Act (under which the group income provisions do not apply to FIDs), at the beginning there shall be inserted the words “ Subject to subsections (5B) to (5D) below, ”; and after that subsection there shall be inserted the following subsections—
- “(5B) Where—
- (a) a company falling within subsection (5C) below and resident in the United Kingdom receives a dividend, and
  - (b) that dividend would, apart from subsection (5D) below, be a distribution to which Schedule 7 to the Finance Act 1997 (special treatment for certain distributions) applies,
- the dividend shall be taken to be one in relation to which an election under subsection (1) above may have effect in accordance with this section.
- (5C) The receiving company falls within this subsection if—
- (a) it directly or indirectly owns all the ordinary share capital of the paying company, or
  - (b) all the ordinary share capital of the paying company is owned directly or indirectly by a company resident in the United Kingdom which also owns, directly or indirectly, all the ordinary share capital of the receiving company;
- and section 838 shall apply for construing the references in this subsection to directly or indirectly owning ordinary share capital of a company.



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(5D) If an election under subsection (1) above has effect in relation to such a distribution as is mentioned in subsection (5B) above, that distribution shall be deemed to be a distribution to which Schedule 7 to the Finance Act 1997 does not apply.”

(2) This paragraph has effect in relation to distributions made on or after 26th November 1996.]

#### Textual Amendments

**F14** Sch. 7 para. 10 repealed (31.7.1997 with effect in accordance with s. 36 and Sch. 6 of the amending Act) by 1997 c. 58, s. 52, Sch. 8 Pt. II(11) Note (with s. 3(3))

#### Modifications etc. (not altering text)

**C3** Sch. 7 para. 10(1) excluded (19.3.1997 with effect in relation to distributions made on or after 26.11.1996) by 1988 c. 1, s. 247(5D) (as inserted (19.3.1997 with effect in relation to distributions made on or after 26.11.1996) by 1997 c. 16, s. 69, Sch. 7 para. 10)

#### *Distribution accounts*

[<sup>F15</sup>11 (1) In section 468I of that Act (distribution accounts of authorised unit trusts), after subsection (5) there shall be inserted the following subsection—

“(5A) The following amounts shown as available for distribution in the distribution accounts must be shown in those accounts as available for distribution as foreign income dividends—

- (a) amounts deriving from qualifying distributions to which Schedule 7 to the Finance Act 1997 (special treatment for certain distributions) applies; and
- (b) so much of any amounts not falling within paragraph (a) above as, if shown as available for distribution as dividends, would fall to be treated as distributions to which that Schedule applies.”

(2) This paragraph applies to distribution accounts for any distribution period ending on or after 26th November 1996.]

#### Textual Amendments

**F15** Sch. 7 para. 11 repealed (31.7.1997 with effect in accordance with s. 36 and Sch. 6 of the amending Act) by 1997 c. 58, s. 52, Sch. 8 Pt. II(11) Note (with s. 3(3))

#### *Amendments consequential on paragraph 3 above*

12 (1) In section 686 of that Act (application of rate applicable to trusts to income of certain discretionary trusts), paragraph (d) of subsection (2) shall be omitted; and after that subsection there shall be inserted the following subsection—

“(2AA) The rate at which income tax is chargeable on so much of any income arising to trustees in any year of assessment as—

- (a) is income to which this section applies, and



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- (b) is treated in accordance with section 689B as applied in defraying the expenses of the trustees in that year which are properly chargeable to income (or would be so chargeable but for any express provisions of the trust),  
shall be the rate at which it would be chargeable on that income apart from this section, instead of the rate applicable to trusts.”
- (2) In subsection (2A) of that section, for “subsection (2)(d)” there shall be substituted “ subsection (2AA) ”.
- (3) In section 233(1A)(a) of that Act (taxation of non-resident recipients of distributions), for sub-paragraph (ii) there shall be substituted—  
“(ii) income to which section 686 applies,”.
- (4) This paragraph has effect for the year 1997-98 and subsequent years of assessment and shall be deemed to have had effect for the year 1996-97.

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